



450-0522016-002

Agenda Item **No. 5(b)**
Meeting of July 19, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Second Amendment to the Master Lease with the U.S. Department of the Navy for Parcel B, to extend the term from July 1, 2016 to June 30, 2017 or upon the conveyance of Parcel B to the Office of Community Investment and Infrastructure, whichever is sooner; Hunters Point Shipyard Redevelopment Project Area

EXECUTIVE SUMMARY

For more than 20 years, the former Hunters Point Naval Shipyard (the "Shipyard") has housed a community of artist studios and small businesses located in a number of buildings on various parcels on the Shipyard (the "Artists' Community"). When the Shipyard became a redevelopment project area in 1997, the U.S. Department of the Navy (the "Navy") began transferring property management responsibility for the Artists' Community to the San Francisco Redevelopment Agency ("SFRA") (now, the "Office of Community Investment and Infrastructure" or "OCII," the successor to the San Francisco Redevelopment Agency). In anticipation of this transfer of property management responsibility to SFRA, the Navy and the SFRA entered into a master lease in December 1996 which transferred the responsibility for leasing the Artists' Community, covering both Parcel A and Parcel B, from the Navy to SFRA (the "Master Lease").

In 2004, Navy Parcel A was conveyed from the Navy to the SFRA. The Master Lease for the remaining portion of the Artists Community expired in August 2008. Accordingly, the SFRA entered into a new Master Lease with the Navy for Parcel B for a term ending on October 1, 2011. The First Amendment to the Master Lease extended the term to June 30, 2016 or upon the conveyance of Parcel B to OCII.

Also in August 2008, the SFRA executed a First Amendment to the Interim Lease with HPS Development Co, LP (the "Developer") to amend the scope of the Interim Lease to include the Artists' Community area as part of the Developer's property management service responsibility. The Interim Lease requires Lennar to provide property management services to the Artists' Community at the Shipyard at no costs to OCII.

Edwin M. Lee
MAYOR

Tiffany Bohee
EXECUTIVE DIRECTOR

Mara Rosales
CHAIR

Miguel Bustos
Marily Mondejar
Leah Pimentel
Darshan Singh
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

As Navy Parcels on the Shipyard get transferred from the Navy to OCII, OCII requires the Developer to take over property management responsibilities at no costs to OCII. This is a requirement of the 2003 Phase 1 Disposition and Development Agreement between the SFRA and Developer (the "Phase 1 DDA"). Under the Fourth Amendment to the Interim Lease, the Developer's property management obligations for the Artists Community will expire after the Developer and OCII agree to an operations and maintenance plan ("O&M Plan") and lease the property to an entity responsible for implementing the O&M Plan.

Staff recommends approval of the Second Amendment to the Master Lease with the Navy to extend the term from July 1, 2016 to June 30, 2017 or upon the conveyance of Parcel B to OCII, whichever is sooner.

BACKGROUND

Since the 1970's, artists have occupied studios in various buildings on the Shipyard, creating the largest artist enclave on the west coast. Through decades of planning efforts related to the Shipyard, the need to maintain the role of the artists in the future of the Shipyard has become a clear mandate from a variety of local, state and federal stakeholders.

Several documents, including the Shipyard Redevelopment Plan and the Candlestick Point and Phase 2 of the Hunters Point Shipyard Disposition and Development Agreement ("Phase 2 DDA"), capture and embrace the vision of the Artists Community. Development plans call for Parcel B to be developed as mixed income housing. To preserve the Artists' Community, Building 101, where the majority of artists currently work, will be retained and a new studio building will be constructed. The Phase 2 development incorporates artist studio space, arts, and artists as a creative center of the Shipyard, featuring galleries, retail, and other arts-related uses in the mixed-use center known in the Phase 2 Design for Development as the Shipyard Village Center (see the attached Site Map of Parcel B included at Attachment A).

OCII is obligated under the 2004 Conveyance Agreement with the Navy and the Phase 2 DDA to lease Parcel B to ensure the legal tenancy of the Artists' Community and maintain site control to make certain that the development planned on Parcel B occurs.

DISCUSSION

The time extension to the Master Lease with the Navy will enable OCII to maintain the tenancy of the approximately 120 artists that have studios on Parcel B. The Second Amendment will extend the Master Lease's duration from July 1, 2016 to June 30, 2017 or upon the conveyance of Parcel B to OCII, whichever is sooner. The rent under the Master Lease is approximately \$17,500 per month payable to the Navy. The Navy's Master Lease rent and all the property management are borne by the Developer through the Interim Lease. Extending the term of the Master Lease with the Navy will not require any change to the Interim Lease.

The Master Lease is shown on line HPSY 78 of the approved Recognized Obligation Payment Schedule ("ROPS") approved by the Oversight Board and the Department of Finance. The Master Lease is an eligible Project Cost as defined in the Phase 2 DDA, and OCII's costs under the lease are reimbursed by the Developer.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Commission authorization of the First Amendment to the Master Lease with the Navy are categorically exempt under Section 15301 of the California Environmental Quality Act Guidelines because they involve the leasing of existing structures with no expansion or change of use.

STAFF RECOMMENDATION

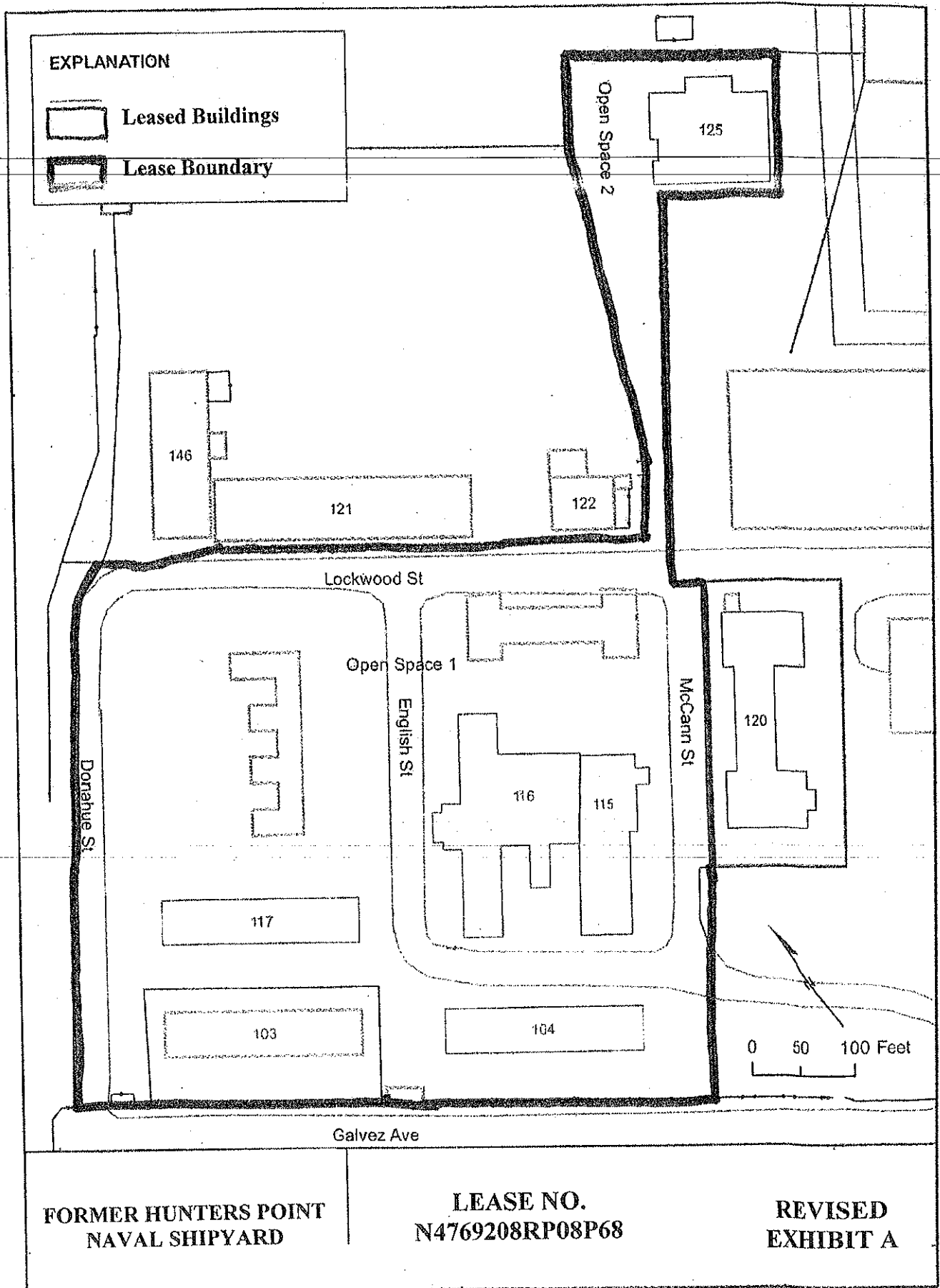
Staff recommends approval of the Second Amendment to the Master Lease with the Navy to extend the term from July 1, 2016 to June 30, 2017 or upon the conveyance of Parcel B to OCII, whichever is sooner.

(Originated by Tamsen Drew, Senior Project Manager)

A handwritten signature in blue ink, appearing to read 'Tiffany Bohee', is written over the printed name and title.

Tiffany Bohee
Executive Director

Exhibit A:	Site Map, Hunters Point Shipyard Parcel B
Exhibit B:	Second Amendment to the Master Lease
Exhibit C:	Master Lease between the Navy and OCII for Parcel B, as amended



**SECOND AMENDMENT
TO LEASE AGREEMENT N4769208RP08P68
“LEASE AGREEMENT”
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO**

THIS LEASE AMENDMENT, made this ____ day of July 2016, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the “**Government**”, and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereinafter called the “**Lessee**”;

WHEREAS, the parties hereto, as of 1 October 2008, entered into Lease Agreement N4769208RP08P68 (the “Original Lease”) under the terms of which the Lessee uses certain real property located at the former Hunters Point Naval Shipyard; and

WHEREAS, on 1 October 2012, the parties entered into a First Amendment to the Original Lease, which together now constitutes the “Lease Agreement”; and at this time 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 the Lease Agreement are hereby amended to reflect the following changes:

1. Paragraph 2 **TERM**, amend as shown below:

The term of the Lease Agreement shall be from October 1, 2008 (Date of first inception of lease) and shall continue until 1) the real property conveyance of Parcel B-1 (which includes the Leased Premises) to the Lessee or the City and County of San Francisco (or their nominee) or 2) conditions as described in Paragraph 14 of the Lease Agreement.

2. Paragraph 3 **Consideration** and Paragraph 9 **Submission of Notices**, delete Government’s address and insert the following:

Government: Navy BRAC PMO West
33000 Nixie Way
Building 50 Attn: Real Estate
San Diego, CA 92147

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Second Amendment to the Lease Agreement as of the day and year first written above.

UNITED STATES OF AMERICA

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN
FRANCISCO

Elizabeth A. Larson
Real Estate Contracting Officer

Tiffany Bohee, Executive Director

APPROVED AS TO FORM:

James Morales, Successor Agency
General Counsel

**FIRST AMENDMENT
TO LEASE AGREEMENT N4769208RP08P68
"LEASE AGREEMENT"
BETWEEN
THE UNITED STATES OF AMERICA**

**AND
THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO**

THIS LEASE AMENDMENT, made this 1st day of October 2012, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "**Government**", and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereinafter called the "**Lessee**";

WHEREAS, the parties hereto, as of 1 October 2008, entered into Lease Agreement N4769208RP08P68 under the terms of which the Lessee uses certain real property located at the former Hunters Point Naval Shipyard; 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 the Lease Agreement are hereby amended to reflect the following changes:

1. Paragraph 1 **LEASED PREMISES**, delete in its entirety and replace with the following:

"Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from Government, leased premises, which consists of buildings 103, 104, 115, 116, 117, 125 and associated land as delineated in Revised Exhibit A , attached hereto and made a part of this Lease (hereafter "**Leased Premises**"), together with all improvements; and associated personal property, and with the right of ingress and egress to Leased Premises."

2. Paragraph 2 **TERM**, amend as shown below:

The term of the Lease shall be extended for the period beginning on 1 October 2011 and ending on 30 June 2014, or upon the conveyance of Parcel B to Lessee or the City and County of San Francisco (or their nominee), whichever is later, but in no case later than 30 June 2016, unless sooner terminated in accordance with the provisions of the Lease.

3. Paragraph 3.2 **CONSIDERATION**, delete in its entirety.

4. Paragraph 5.1 **SUBLETTING**, delete in its entirety, and replace with the following:

"5.1 Lessee may enter into subleases of the Leased Premises (and such sublessees may further sublease the Leased Premises) without the approval of Government provided that the terms and conditions of any such sublease require compliance with the terms and conditions of this Lease (including the requirements of Paragraph 13 and Exhibit E). In the event that any such proposed sublease does not comply with the terms and conditions of this Lease, or any such sublease involves the use of hazardous or toxic materials other than those permitted under this Lease (including under Paragraph 13 and Exhibit E), or requires consent as provided in 10 U.S.C. § 2692 with respect to materials of an explosive, flammable or pyrotechnic nature, then prior Government approval is required, which approval shall not be unreasonably withheld, conditioned or delayed. Under no circumstances shall Lessee assign this Lease."

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

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IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment to the Lease Agreement as of the day and year first written above.

UNITED STATES OF AMERICA

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY

OF THE CITY AND COUNTY OF SAN
FRANCISCO



ELIZABETH A. LARSON

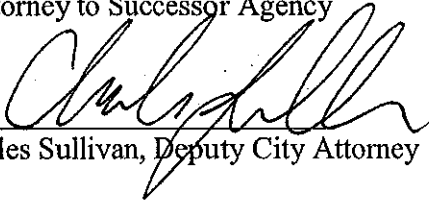
Title REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY



Title Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney,
as attorney to Successor Agency



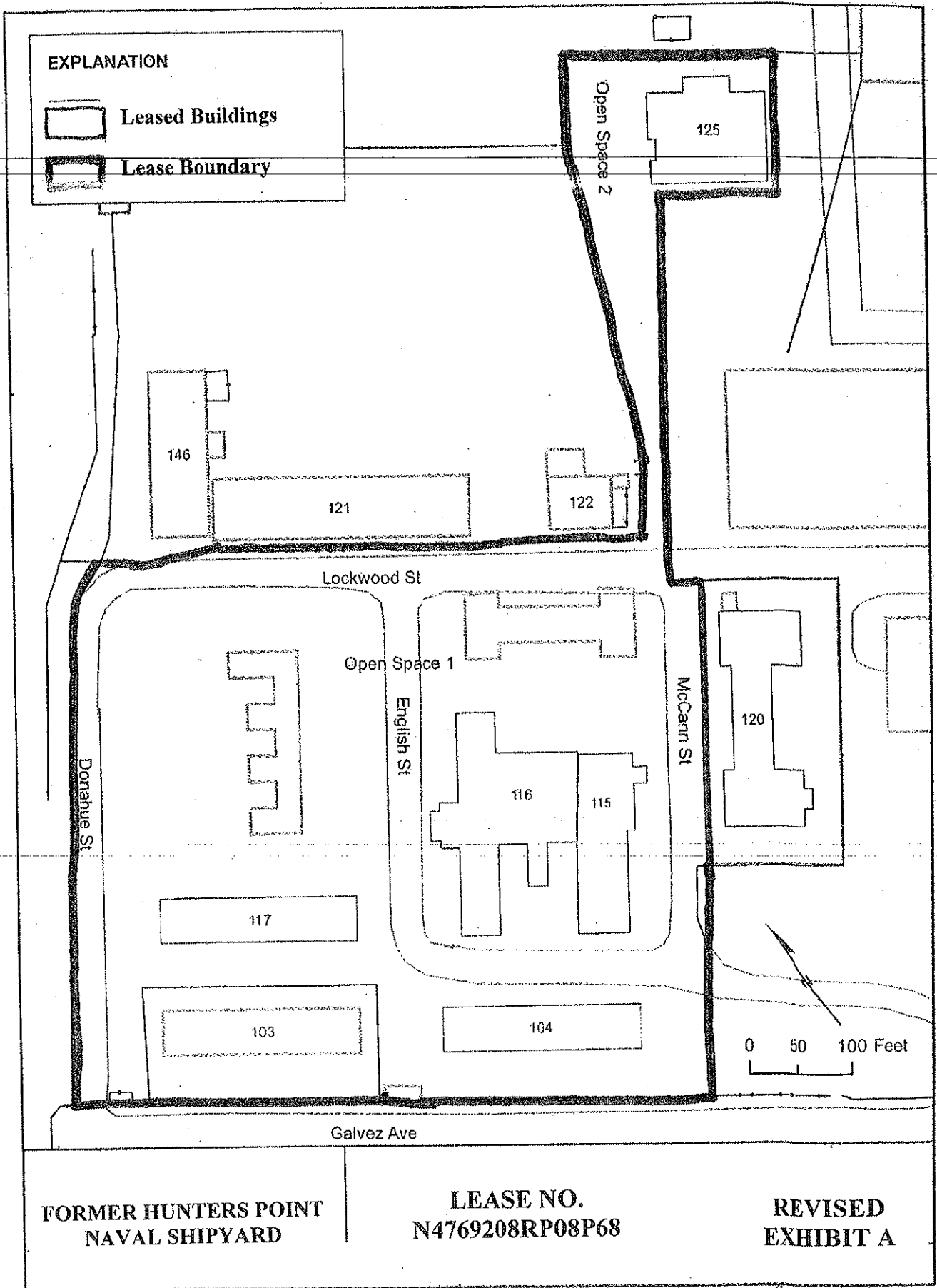
Charles Sullivan, Deputy City Attorney

**Revised
EXHIBIT A**

Location of Premises

(See Attached)

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FEB 11 1964
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COPY

LEASE BETWEEN
THE UNITED STATES OF AMERICA
AND
THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY
OF SAN FRANCISCO

FOR
USE OF BUILDINGS, 103, 104, 115, 116, 117, and 125 AT
FORMER HUNTERS POINT NAVAL SHIPYARD

SAN FRANCISCO, CALIFORNIA

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LEASE
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN
FRANCISCO

THIS LEASE, made this 1st day of October, 2008 (the "Effective Date") by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, herein called "**Government**", and the SAN FRANCISCO REDEVELOPMENT AGENCY, herein called "**Lessee**".

WITNESSETH:

WHEREAS, the Government has determined that there is no further requirement for certain real and personal property, as more particularly described as the Leased Premises in Paragraph 1, at the former Hunters Point Naval Shipyard, San Francisco, California, and the Lessee has identified an immediate need to use such real and personal property; and

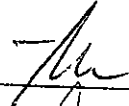
WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. §2667(g)(1), has determined that this lease will facilitate state and local economic adjustment efforts pending final disposition of the real and personal property; and

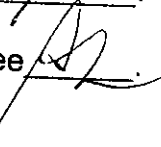
WHEREAS, the Secretary of the Navy, pursuant to 10 U.S.C. §2667(g)(2), has determined that a public interest will be served as a result of this Lease, the fair market value of the Lease is either unobtainable or not compatible with such public benefit, and consequently, consideration for this Lease will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

WHEREAS, to the extent that this Lease involves storage, treatment and disposal of toxic or hazardous materials, the Secretary of the Navy has determined that the proposed use of the premises, subject to the terms and conditions of this Lease, meets the criteria of 10 U.S.C. § 2692 (b)(9); and

WHEREAS, the Secretary of the Navy, after consultation with the Environmental Protection Agency Administrator has determined that the Leased Premises are suitable for release, and the uses contemplated for the Lease are consistent with the protection of human health and the environment, and there are adequate assurances that the United States will take all remedial action necessary with respect to any hazardous substance remaining on the property that has not been taken on the date of the Lease; 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

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WHEREAS, Lessee has the power to acquire and lease federal military installations, and Lessee desires to enter into this Lease;

NOW THEREFORE: in consideration of the terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, Government and Lessee hereby agree as follows:

1. **LEASED PREMISES:**

Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from Government, leased premises, which consists of buildings 103, 104, 115, 116, 117, 125 and associated land as delineated in Exhibit "A", attached hereto and made a part of this Lease (hereafter "Leased Premises"), together with all improvements; and associated personal property, and with the right of ingress and egress to Leased Premises.

2. **TERM:**

The term of this Lease shall be for a period of three (3) years from the Effective Date shown above, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination.

The Government may require the Lessee to vacate all or a portion of the Leased Premises to avoid interference with the Installation Restoration Program ("IRP"), and the Lessee shall have no claim on account of any such relinquishment against the Government or any officer, agent, employee, contractor or subcontractor of the Government.

3. **CONSIDERATION:**

3.1 Lessee shall pay the Government monthly rent of \$0.20 per square foot of indoor space and \$0.01 per square foot of outdoor space, per month, due and payable the first day of each month, in advance. The indoor space is approximately 85,121 square feet and outdoor area is approximately 330,485 square feet all as more particularly described in Exhibit "A".

3.2 The Lease rental rate shall be adjusted upon the anniversary of the Effective Date of the Lease annually. The annual rental rate adjustment shall be based on the percentage change in the Consumer Price Index (CPI) from the 4th quarter average of the current year over the 4th quarter average of the previous year; however, the annual adjustment shall be not less than an increase of three percent (3%) nor more than six percent (6%).

As used herein, the Consumer Price Index is defined as follows: Consumer Price Index shall mean and refer to the table in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, known as the "All Urban Consumers for the San Francisco-Oakland-San Jose area."

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For the purposes of rental adjustments under this Lease, the first annual adjustment of this Lease shall occur on January 1, 2009. Subsequent annual adjustments shall be calculated in the same manner. If the CPI percentage change for any applicable period has not been published as of the anniversary date, and/or the Lease has not been modified to reflect the rental rate increase as of said date, the rental adjustment shall be applied retroactively when it has been determined.

3.3 All payments to the Government required under this Lease shall be made by check or postal money order made payable to the United States Treasury and delivered to:

BRAC PROGRAM MANAGEMENT OFFICE WEST
Attn: Ms. Beth Larson
1455 Frazee Road, Suite 900
San Diego, CA 92108

4. USE OF LEASED PREMISES:

The sole purpose for which Leased Premises may be used, in the absence of prior written approval by Government for any other use, is to sublease the Leased Premises to private parties for artist's studios. Use of the Leased Premises is subject to all restrictions, as set forth in this lease agreement.

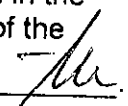
The Lessee shall be required to obtain written Government approval prior to any proposed change in use of the Leased Premises as presently authorized hereunder. At no time shall the Leased Premises be used for residential and/or childcare facilities. Lessee shall install fencing around the entire boundary of the Leased Premises and provide ongoing maintenance of the fence, at Lessee's sole cost and expense, to ensure that occupants of the Leased Premises do not have access to Government-owned property outside of the Leased Premises. Type of fencing installed and maintained around the Leased Premises will be of a mutually agreed upon type, but in no event shall Government require the installation of fencing that requires subsurface excavation, penetration, digging, drilling, or other disturbance of the soil either within or outside of the Leased Premises.

Except as otherwise provided herein, Lessee or sublessee shall not engage in any subsurface excavation, penetration, digging, drilling, or other disturbance of the surface, soil, or groundwater either within or outside of the Leased Premises.

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.

5. SUBLETTING:

5.1 Lessee may enter into subleases. Prior Government approval is not required if the terms and conditions of the sublease comply with or are included in the terms and conditions of this Lease. In the event that the terms and conditions of the

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proposed sublease do not comply with or are not included in this Lease, then prior Government approval is required. Any proposed sublease, which involves the use of hazardous or toxic materials, including those of an explosive, flammable or pyrotechnic nature, as provided in 10 U.S.C. § 2692, shall require prior approval. Such consent shall not be unreasonably withheld or delayed. Each sublease shall contain the environmental protection provisions set forth in Paragraph 13 and Exhibit E herein. Under no circumstances shall Lessee assign this Lease.

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 all of the obligations of Lessee under this Lease. No sublease shall relieve Lessee of any of its obligations hereunder.

5.3 Upon its execution, a copy of the sublease shall be furnished to Government within 30 calendar days. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. 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.

6. JOINT INSPECTION:

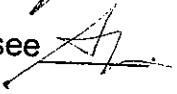
6.1 Representatives of Lessee and Government have conducted a joint non-subsurface inspection of Leased Premises. The findings of this inspection, which have been recorded in a Joint Inspection Report attached hereto and made a part hereof, describe the condition of Leased Premises, including safety and/or health hazards that are required to be repaired pursuant to Paragraph 6.3, and any other deficiencies that are found to exist but are not required to be repaired, as provided in Paragraph 12.1.1.

6.2 The Joint Inspection Report also identifies all personal property, if any, in each building within the Lease Premises. Unless specifically excepted by terms and conditions of this Lease, all personal property shall remain with the building.

6.3 Leased Premises shall be delivered to Lessee "AS IS", "WHERE IS". Government makes no warranty as to Leased Premises' usability generally or as to its fitness for any particular purpose. Subject to Section 13.13, any safety and/or health hazards identified in the Joint Inspection Report shall be corrected, at Lessee's expense, within a reasonable period of time of the Effective Date of this Lease.

6.4 In the event the Lease is terminated, Lessee shall return the Leased Premises to Government in the same condition in which it was received, reasonable wear and tear for facilities in such condition and acts of God excepted. Lessee may at its expense and with prior written approval of Government, which approval shall not be unreasonably withheld or delayed, (a) replace any personal property with personal property of like kind and utility, (b) repair any personal property in a good and

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workmanlike manner and (c) dispose of any worn out, obsolete or non-functioning personal property, in accordance with applicable laws and regulations.

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

An Environmental Baseline Survey for Lease (EBS) and a Finding of Suitability to Lease (FOSL) are attached as Exhibits B and C and made part of this Lease. The EBS sets forth the existing environmental conditions of 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 notifications contained in the FOSL and shall comply with Lease restrictions set forth therein.

8. **ALTERATIONS:**

8.1 Lessee shall not construct or make or permit its sublessees to construct or make any substantial alterations, additions, improvements to, installations upon or otherwise modify or alter Leased Premises in any way (collectively "Work"), including those which may adversely affect the cleanup, human health or the environment, without the prior written approval of Government. Such consent may involve a requirement to provide Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interest of Government.

8.2 Lessee shall provide Government with prior written notification and a full description of all proposed Work on Leased Premises, including: a projected schedule and cost thereof, and an analysis as to how and why such Work will or will not be visible from the exterior of the building situated on Leased Premises or be substantially likely to adversely affect the environmental cleanup of Leased Premises, human health, or the environment, or adversely impact the building structure. Such written notification shall be delivered by Lessee to Government's representative as designated in Paragraph 19 of this Lease.

8.3 Except as provided in Paragraph 8.1, upon termination, revocation or surrender of this Lease or any sublease, Lessee shall, at the option of the Government, either:

8.3.1 Promptly remove all Work and restore 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

8.3.2 Abandon such Work in place, at which time title to said Work shall vest in Government.

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

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9. ACCESS BY GOVERNMENT:

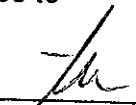
In addition to access required under Paragraph 13, at all reasonable times throughout the term of this Lease, Government shall be allowed access to Leased Premises for any purpose upon notice to Lessee. Government normally will give Lessee or any sublessee twenty-four (24) hour prior notice of its intention to enter Leased Premises, unless it determines the entry is 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.

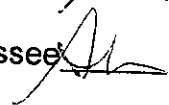
10. UTILITIES AND SERVICES:

Procurement of utilities (i.e., electricity, water, gas, sewer, telephone, and trash removal) and caretaker services (i.e. fire protection services and security services) will be the responsibility of Lessee as per section 402(c) of the Cooperative Agreement. 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 addition to the consideration required under this Lease. Such charges will be determined by Government in accordance with applicable laws and regulations. In the event Government subsequently discontinues furnishing to Lessee any utilities or services maintained by Government, Government agrees to work cooperatively with Lessee to establish alternate utilities or services and to provide for any easements or licenses that may be necessary to establish such alternate utilities or services. Lessee, at its sole cost, 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. In the event that the Lessee chooses to use the Government's water system, the Lessee shall be responsible for that portion of the system within the boundaries of the Leased Premises (hereafter referred to as the Water System). Use of the Water System will be for fire protection and non-potable uses. All hydrants and service connections including restroom facilities will be marked as non-potable water.

11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:

Lessee shall not conduct operations or make any alterations that would interfere with or otherwise restrict operations with, environmental clean-up or restoration actions by the Government, United States Environmental Protection Agency (EPA), state environmental regulators, 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

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environmental contamination, including investigation and remedial actions, and Lessee's and sublessee's use of Leased Premises.

12. PROTECTION AND MAINTENANCE SERVICES:

12.1 Lessee shall furnish or cause to be furnished all labor, supervision, materials, supplies and equipment necessary for the operation, maintenance and repair of the following building systems and appurtenances: 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 as 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 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 Report prepared pursuant to Paragraph 6, ordinary wear and tear for buildings in such condition and acts of God excepted. Lessee's obligation under this Paragraph 12.1.1 does not apply to any pre-existing defective conditions (exclusive of safety and/or health hazards) of the Leased Premises which were identified in the Joint Inspection Report. Any repair to correct such pre-existing defective conditions shall be at Lessee's option and expense. Government, upon due notice, may inspect Leased Premises to ensure performance of the maintenance set forth herein.

12.2 During the term of this Lease, debris, trash and other useless materials shall be promptly removed from Leased Premises. Vegetation shall be maintained at a height of no more than six inches. Upon termination or expiration of this Lease, Leased Premises shall be left without containers, Lessee's equipment, and other undesirable materials, and in an acceptably clean condition.

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.

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12.4 Lessee shall take or cause to be taken, all reasonable and necessary fire protection precautions at Leased Premises. Such precautions shall include, but are not limited to, maintaining fire lanes and clear space around buildings, storage (to the extent authorized as set forth in the Lease) of flammable materials in proper storage lockers, routine fire prevention inspections/repairs and 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 utility systems, distribution lines, connections and equipment within the Leased Premises to the extent such repair and maintenance does not require excavation or otherwise disturbance of the soil. These systems include but are not limited to: heating plants, steam lines, traps, transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems and catch basins. Notwithstanding any other provision of this Lease, the Government shall not be responsible for providing any utilities or utility services to the 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.

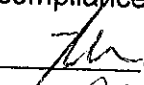
13. ENVIRONMENTAL PROTECTION PROVISIONS:

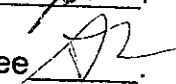
13.1 Lessee, sublessees and contractors shall comply with all applicable Federal, state and local laws, regulations and standards that are or may become applicable to Lessee's activities on Leased Premises.

13.2 Lessee understands and acknowledges that its operations are subject to regulation by and compliance with the Hunter's Point Storm Water Pollution Prevention Plan (SWPPP), a copy of which is Exhibit D to this Lease, wherever applicable. Lessee further acknowledges that it is bound to comply with the Best Management Practices (BMP) requirements of the SWPPP. Violations by lessee or sublessee of the BMPs shall be deemed a material breach of this Lease.

13.3 The Lessee or any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Any and all environmental permits required for any of Lessee's or sublessees' operations or activities will be subject to prior concurrence of Government. Lessee acknowledges that the Government will not consent to being named a secondary discharger 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.

13.4 Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice Leased Premises for compliance

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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 normally will give Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines that the entry is required for safety, environmental, operations or security purposes. Lessee or sublessee shall have no claim on account of any such non-negligent entries or inspections against the United States or any officer, agent, employee, contractor or subcontractor thereof.

13.5 Lessee acknowledges that Government has provided it with a copy of the installation Federal Facility Agreement (FFA) entered into by the EPA, the state equivalent, and the Government. Government will provide Lessee with a copy of any amendments thereto. Lessee agrees that should any conflict arise between the terms of the FFA as it presently exists or may be amended and the provisions of this Lease, the terms of the FFA will take precedence over this Lease. Lessee further agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Lessee or its sublessees or licensees should implementation of the FFA interfere with Lessee's or any sublessees' and licensees' use of Leased Premises. Lessee shall have no claim on account of any such interference against the United States or officer, agent, employee, contractor or subcontractor thereof, other than for abatement of rent, where applicable.

13.5.1 Lessee acknowledges that Installation has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended.

13.6 Government, EPA (for NPL sites) and the State (for non-NPL sites) and their officers, agents, employees, contractors and subcontractors, have the right, upon reasonable notice to Lessee and/or any sublessee, to enter upon Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provisions of the cleanup program (including but not limited to the Administrative Record, BRAC Cleanup Plan, Installation Restoration Program (IRP), or FFA):

13.6.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the cleanup program;

13.6.2 to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

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

13.6.4 to construct, operate, maintain or undertake any other

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response or remedial action as required or necessary under the cleanup program, including but not limited to monitoring wells, pumping wells and treatment facilities.

13.7 Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA 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 Government 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.

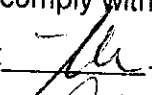
13.8 Lessee further agrees that in the event of any sublease of Leased Premises, Lessee shall provide to EPA and applicable state equivalent by certified mail a copy of the agreement or sublease of Leased Premises (as the case may be) within fourteen (14) calendar days after the effective date of such transaction. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of sublease furnished pursuant to this condition.

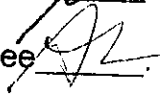
13.9 Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent and any other applicable laws, rules or regulations. Except as specifically authorized by Government in writing, Lessee must provide at its own expense such hazardous waste management facilities 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.

13.10 The Government component accumulation points for hazardous and other waste will not be used by Lessee or any sublessee. Lessee or sublessee shall not permit its hazardous wastes to be commingled with hazardous waste of Government.

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

13.12 Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface, soil or groundwater within the Leased Premises without the prior written approval of Government. In the event the Government authorizes Lessee to engage in subsurface activities at the site, Lessee or sublessee, at its sole cost and expense, shall comply with

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all applicable federal, state, and local laws that regulate the handling of any hazardous substances that Lessee or sublessee disturbs.

13.13 To the extent required by law and regulation, Lessee shall abate, remove or otherwise remedy all friable, accessible and damaged asbestos containing material (ACM), lead based paint (LBP) and polychlorinated biphenyls from Leased Premises at their sole cost and expense. The Lessee shall be responsible for appropriate disposal of any PCB containing ballast in accordance with applicable regulations. The presence of known ACM, LBP or PCBs shall be fully identified in the Environmental Baseline Survey (EBS) and/or Supplemental Environmental Baseline Survey (SEBS).

13.13.1 If Lessee intends to make any improvements or repairs that require the removal of ACM, 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.

13.13.2 ACM which during the period of this Lease becomes damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Lessee's activities under this Lease, including but not limited to any emergency, will be abated by Lessee at its sole cost and expense. Notwithstanding Paragraph 13.13.1 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.

13.13.3 The Lessee or sublessee will not be permitted to remove paint or affected window glazing without prior Government written approval. The Lessee will be prohibited from using the Leased Premises for residential use or daycare facilities. The Lessee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Leased Premises as residential property, as defined under 24 Code of Federal Regulations Part 35.

13.14 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 giving rise to Government liability, civil or criminal or any other action by Lessee or any sublessee giving rise or responsibility under Federal, state, or local environmental laws. Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for Lessee's activities or activities of any sublessee as provided hereunder. This provision shall survive the expiration or termination of this Lease.

13.15 Storage, treatment, or disposal of toxic or hazardous materials on the Leased Premises is prohibited except as authorized by Government in accordance with 10 U.S.C. § 2692 and Section 5.1 of this Lease.

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13.16 If Lessee 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 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.

13.17 Lessee shall not conduct operations or make any alterations that would interfere with or otherwise restrict operations with, environmental clean-up or restoration actions by the Government, EPA, State environmental regulators, 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.

13.18 The Lessee, its successors or assigns, is restricted from accessing or using groundwater underlying the Leased Premises for any purpose. Extraction of groundwater and installation of new groundwater wells is prohibited without prior review and written approval from the Government and California Department of Toxic Substances Control (DTSC). The Lessee shall avoid contact with the groundwater within the Leased Premises, including ingestion, inhalation or direct dermal contact. The Lessee will be prohibited against subsurface excavation, digging, drilling or other disturbance of the subsurface without prior written approval of the Government.

13.19 Alteration, disturbance, or removal of any component of a response or cleanup action (including but not limited to pump-and-treat facilities, and soil and debris fill area cap/containment systems), groundwater extraction, injection, and monitoring wells and associated piping and equipment, or associated utilities is prohibited. Removal of or damage to security features (for example, locks on monitoring wells, survey monuments, fencing, signs, or monitoring equipment and associated pipelines and appurtenances) is prohibited without prior written approval by the Government. Any destruction of Government owned monitoring wells, or other such equipment by the Lessee, or its successors and assigns, will be restored at the Lessee's sole cost and expense.

13.20 The Lessee will be required to obtain written Government approval prior to any pesticide and/or herbicide application on the Leased Premises.

13.21 The Lessee is strictly prohibited from using the existing Government-owned ASTs for any purpose.

13.22 The Lessee shall be required to obtain the Government's written approval prior to any construction, landscaping, or other activities which may disturb soil on the Leased Premises. The Lessee shall avoid contact with the soil within the Leased Premises, including ingestion, inhalation or direct dermal contact. If work is approved by the Government for any construction, landscaping, or other activities that may disturb soil on the Leased Premises, the Lessee will be required to dispose of any contamination encountered during the course of the soil disturbing activities at their sole cost and expense.

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13.23 For any work in the proximity of CERCLA Installation Restoration Sites, written approval by the Government is required. All work shall be subject to the requirements of all Federal, State and local laws and building codes. If work is approved by the Government for any work in the proximity of CERCLA Installation Sites, the Lessee will be required to dispose of any contamination encountered during the course of their exaction or projects at their sole cost and expense.

13.24 The Lessee shall provide access to the Leased Premises by or on behalf of the Government in order to sample and maintain the groundwater monitoring wells on the Leased Premises.

13.25 The Lessee or any Sublessee is strictly prohibited from storing, treating, or dispersing any radiological materials within the Leased Premises.

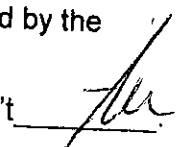
13.26 The Lessee shall provide access to the Leased Premises to the Government for sewer/storm line removal activities. If safe access to the Leased Premises is temporarily compromised by construction activities, the Government will notify the Lessee of appropriate health and safety procedures. Lessee access to Leased Premises may be limited or suspended during CERCLA actions. The Lessee will be required to comply with all construction signage and to remain within the fenced lease area. The Lessee will be required to notify Sublessees of site construction and safety procedures received from the Government. The Lessee is strictly prohibited from using the existing ASTs for any purpose.

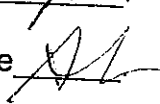
13.27 The Lessee shall be required to prepare an asbestos operations and maintenance (O&M) plan and program to ensure compliance with all applicable Federal, State and local laws related to asbestos, including tenant notification. The O&M program should include notification of the presence of ACM to tenants and contractors, regular inspection of ACM, work permit system to control work activities that could disturb ACM, asbestos training for those who perform O&M activities, medical monitoring and respiratory protection program for those exposed to ACM during O&M activities, and record keeping to document all aspects of the program. The Lessee shall be required to obtain the Government's written approval prior to any construction demolition and/or modification of the Leased Premises buildings.

13.28 Prohibition of intrusive activities and disturbance of surface and subsurface soils and caution against contacting any exposed soils. Lessee is prohibited from installing wells or conduction subsurface investigation, digging, or other disturbance of the surface of the Leased Premises.

14. TERMINATION:

14.1 The Government shall have the right to terminate this Lease, at any time, without cause and without prior notice, and regardless of any lack of breach by Lessee of any of the terms and conditions of this Lease. In the event of termination for any reason, not involving a breach by Lessee of the terms and conditions of the Lease the Government shall make an equitable adjustment of any advance rentals paid by the Lessee hereunder.

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14.2 In the event of a breach by Lessee of any terms and conditions hereof, Lessee shall be afforded sixty (60) calendar days from the receipt of Government's notice of intent to terminate to complete the 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 the Government shall elect to terminate this Lease on account of the breach by Lessee of any of the terms and conditions hereof no adjustment in advance rentals paid by Lessee shall be made, and the Government shall be entitled to recover and Lessee shall pay to the Government:

14.2.1 The costs incurred in recovering possession of the Leased Premises.

14.2.2 The costs incurred in performing any obligation on the part of Lessee to be performed hereunder.

14.2.3 The costs of any delays incurred by the Government in environmental work required to be completed.

14.2.4 An amount equal to the aggregate of all rents and charges assumed hereunder and not theretofore paid or satisfied, less the new rentals, if any, collected by the Government on the reletting of the Leased Premises, which amounts shall be due and payable at the time when such rents and charges would have accrued or become due and payable under this Lease.

14.3 Lessee shall have the right to terminate this Lease upon thirty (30) calendar days written notice to Government without cause and regardless of any lack of breach by Government of any of the terms and conditions of this Lease without further liability to Government. In the event of a breach involving the performance of any obligation, Government shall be afforded sixty (60) 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 of use for the purposes for which it is leased hereunder, provided:

14.3.1 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

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

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14.3.3 If Government requires Lessee to vacate all or a substantial portion of Leased Premises pursuant to Paragraph 15 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. Government shall refund to Lessee any and all rents paid in advance, in an amount proportionate to the days in which Lessee is not in possession of the Leased Premises.

15. ENVIRONMENTAL CONTAMINATION:

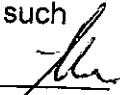
Either (1) in the event environmental contamination is discovered on Leased Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Leased Premises, or (2) as required by the provisions of any health and safety plan applicable to the Lease 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 immediately terminate this Lease if, as provided in Section 14.3 above, Lessee 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.

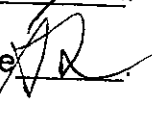
16. NON-ENVIRONMENTAL INDEMNIFICATION BY LESSEE:

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 in any manner predicated upon activities of the Lessee on the Leased Premises during the term of the Lease, except to the extent caused by the Government's sole negligence or willful misconduct.

17. INSURANCE:

17.1 At the commencement of this Lease, Lessee shall obtain, from a reputable insurance company or companies or a reputable insurance pool, such as Bay Cities Joint Powers Insurance Authority, comprehensive general liability insurance. The insurance shall provide for an amount not less than \$3,000,000 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 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

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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 on Leased Premises in an amount not less than \$1,000,000.00 to demolish damaged or destroyed structures and improvements, remove debris, and clear the Leased Premises. Lessee shall procure such insurance from a reputable company or companies or from a reputable insurance pool such as Bay Cities Joint Powers Insurance Authority. 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 clearance of 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.

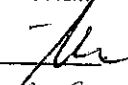
17.3 If and to the extent required by law, Lessee shall provide workmen's compensation or similar insurance in form and amounts required by law.

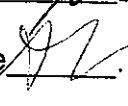
17.4 During the entire period this Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on Leased Premises to carry and maintain the insurance required below:

17.4.1 Comprehensive general liability insurance, in the amount of \$3,000,000 per occurrence with respect to personal injury or death, and with respect to property damage.

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

17.5 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. 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

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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 evidencing the insurance required by this Lease - and shall also deliver 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 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 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.

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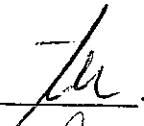
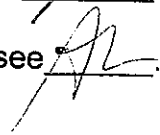
18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause of this Lease or with any of said rules, regulations or orders, this Lease may be canceled, terminated or suspended in whole or in part and Lessee may be declared ineligible for further Government contracts in accordance 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 Government to enter into such litigation to protect the interest of the Government.

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 and Safety 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 ten dollars (\$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 work week of 40 hours without payment of the overtime wages required by Paragraph 18.2.1.

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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 submitted in the case of Lessee to:

San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Notices shall be sufficient under this Lease if made in writing and submitted in the case of Government to:

BRAC Program Management Office West
Attn: Ms. Beth Larson
1455 Frazee Road, Suite 900
San Diego, CA 92108

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. The Lessee will make these materials available for a period of three (3) years after termination or expiration of this Lease.

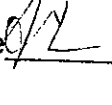
21. **AMENDMENTS:**

This Lease shall not be 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.

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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. "Command" used in this clause shall refer to:

Director
BRAC PROGRAM MANAGEMENT OFFICE WEST
1455 Frazee Road, Suite 900
San Diego, CA 92108

23.4 A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim, to the 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 Lessee 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

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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.

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 Federal Acquisition Regulation 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, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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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:**

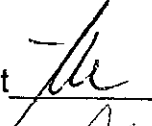
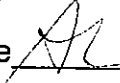
Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished therefor, or any part thereof, and if the 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 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 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 Leased Premises, 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.

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

Lessee understands that Government may periodically be required to close certain routes of ingress and egress to the Leased Premises. Government agrees, however, that in the event of any such closure, Lessee and any sublessees will be granted access to the Leased Premises via alternate routes of ingress and egress. Such alternate access will be provided and coordinated by 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.

30. **ADMINISTRATION:**

Except as otherwise provided for under this Lease, Government shall, under the direction of the Command described in Paragraph 23.3, 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.

32. **INTEREST:**

32.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, 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 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

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pricing proposal or in connection with a negotiated pricing agreement not confirmed by Lease supplement.

33. AVAILABILITY OF FUNDS:

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. APPLICABLE RULES AND REGULATIONS:

Lessee and any sublessees shall comply with all Federal, State and local laws, regulations and standards that are applicable or may become applicable to Lessee's or sublessee's activities on the Leased Premises, as well as such rules and regulations as may be prescribed, from time to time, by the Local Government Representative or by the Director, BRAC Program Management Office West. These include, but are not limited to, laws and regulations on the environment, construction of facilities, security, ingress, egress, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. Lessee and any sublessee are responsible for obtaining and paying for permits required for its operations under the Lease.

35. SPECIAL PROVISIONS

35.1 Lessee is prohibited from operating any motorized, two-wheel vehicle, including but not limited to motorcycles and scooters, on the Leased Premises or on any portion of the Shipyard, including those portions used for ingress and egress. This prohibition is not applicable to any manually powered, two-wheel vehicle.

35.2 Lessee is prohibited from parking in existing or future storm water swales on the Leased Premises.

36. Exhibits:

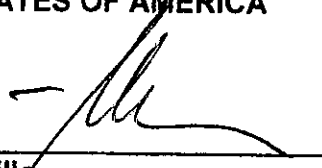
- A: Location of Premises
- B: Environmental Baseline Survey for Lease (EBS)
- C: Finding of Suitability to Lease (FOSL)
- D: Hunters' Point Storm Water Pollution Prevention Plan Best Management Practices (BMPs)
- E: Approved Hazardous Materials Use List
- F: Joint Inspection Report

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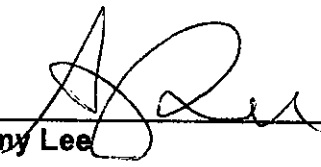
IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth below duly executed this Lease as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: 
William Carsillo
Real Estate Contracting Officer

Date _____

REDEVELOPMENT AGENCY OF
THE CITY AND COUNTY OF SAN FRANCISCO
a public body, corporate and politic

By: 
CHC Amy Lee
Deputy Executive Director
Finance & Administration

Date _____

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