

All correspondence pertaining to this Amendment must include reference to:  
FILE NO: EO -10529  
Doc # 9607  
CONTRACT NO: NF(R) - 13956 AMD ONE (1)

Prepared by Department of the Navy  
Naval Facilities Engineering Systems  
Command, Southwest  
750 Pacific Highway  
San Diego, CA 92132-5190

Copy to: Orange County Sanitation District  
ATTN: Clerk of the Board  
10844 Ellis Avenue  
Fountain Valley, CA 92708

THIS SPACE FOR RECORDER'S USE ONLY

Exempt per Revenue and Taxation Code Section 11922  
Exempt from Recording fees per Govt. Code Section 27383

**FIRST AMENDMENT TO GRANT OF EASEMENT NF(R)-13956**

THIS FIRST AMENDMENT TO GRANT OF EASEMENT ("Amendment") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by the **UNITED STATES OF AMERICA**, represented by the Commanding Officer, Naval Facilities Engineering Systems Command, Southwest, acting by and through the Secretary of the Navy, hereinafter referred to as the **GOVERNMENT**, and **ORANGE COUNTY SANITATION DISTRICT** hereinafter referred to as the **GRANTEE**.

**WITNESSETH:**

WHEREAS, the **GOVERNMENT** owns that certain real property identified as Naval Weapons Station, Seal Beach in the City of Seal Beach, County of Orange, State of California, hereinafter called the Installation; and

WHEREAS, by GRANT OF EASEMENT NF(R)-13956 ("GRANT OF EASEMENT"), dated November 16, 1971, and recorded in the Official Records of Orange County, California on December 10, 1971 as Document No. 9607, **GOVERNMENT** granted to **COUNTY SANITATION DISTRICT NO. 3** of Orange County, California, predecessor of the **GRANTEE**, and its successors and assigns, an easement in perpetuity, for the construction, installation, maintenance, operation, repair and replacement of a sewer pumping station, sewer pipeline, and appurtenances thereto, hereinafter called the **PREMISES**, as more fully described in the **GRANT OF EASEMENT**; and

WHEREAS, **GRANTEE** is proposing to replace the existing pump station within the **PREMISES**; and

WHEREAS, **GOVERNMENT'S** security protocols require that **GRANTEE** acquire an additional twenty (20) foot easement to provide a twenty (20) foot clear zone between the perimeter barrier of **GRANTEE's** facilities and the Installation; and

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

WHEREAS, the GOVERNMENT has agreed to expand the PREMISES to provide the required twenty (20) foot clear zone.

NOW THEREFORE, GOVERNMENT and GRANTEE hereby effect the amendment of the GRANT OF EASEMENT as follows:

1. EXPANSION OF PREMISES AND CONSIDERATION. The Easement PREMISES are hereby expanded and restated to extend through, across, over and under and be confined to that portion of the Installation as described in Exhibit A-1, attached hereto and made a part hereof. In consideration for this Amendment, the GRANTEE shall pay the GOVERNMENT the “not to exceed (NTE)” sum of Two Hundred Ninety Thousand Dollars (\$290,000) (excluding any administrative fees charged to and paid by GRANTEE) the receipt of which is hereby acknowledged;

a. GRANTEE shall satisfy payment of the consideration by providing “In-Kind Consideration” in the form of work or services to be provided by the GRANTEE to the GOVERNMENT as further described below. The work or services will be identified and agreed upon by the GOVERNMENT. The work or services will be valued at a NTE amount of Two Hundred Ninety Thousand Dollars (\$290,000). The cost of the work shall not include administrative expenses incurred by the GRANTEE, which will be borne by the GRANTEE. The GRANTEE may obtain the work or services through contracts with third parties.

b. At the discretion of the GOVERNMENT, the GRANTEE may be required to pay consideration in cash in advance in lieu of performance of In-Kind Consideration. If In-Kind Consideration is to be provided in lieu of cash, the form of In-Kind Consideration and terms of performance/delivery shall be identified within two (2) years of the execution of this EASEMENT. The GOVERNMENT shall compile a list of In-Kind Consideration projects or services and shall meet with the GRANTEE on an as needed basis, but not less than quarterly from the date of execution of this EASEMENT, to review and amend, if necessary, the established list of specific In-Kind Consideration projects or services to be provided. For each project or service proposed, an estimated cost to perform the work must be provided by the GOVERNMENT and reviewed by the GRANTEE and be included with the project or service statement of work. The estimated cost shall be broken down by material, subcontract cost, labor, overhead and general and administrative expense. Projects or services shall be selected by the GOVERNMENT and scheduled so that the work to be performed does not exceed the total value of the amount of consideration indicated in Paragraph 1.a. Authorization to proceed will be provided by written approval from the GOVERNMENT. Approval shall be in the form of an official letter signed by the Real Estate Contracting Officer and countersigned by the GRANTEE. A Statement of Work (SOW) and “not to exceed (NTE) cost ceiling” will be attached to the letter. The Real Estate Contracting Officer may, upon request, with supporting rationale from the GRANTEE, increase the “NTE cost ceiling,” provided that such increase does not exceed or result in exceedance of the total amount of In-Kind Consideration reflected in paragraph 1.a. Such request for an increase in said amount must be submitted before incurring any cost in excess of the said amount and sufficiently in advance to provide for review of the requirement and, in any event, not less than ten (10) business days before the date authorization is required. In the limited circumstances wherein, due to unavoidable time constraints, it is not practicable to comply with the ten-day requirement, GRANTEE may seek verbal

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

approval from the Real Estate Contracting Officer, pending written confirmation. The GRANTEE shall not be obligated to incur costs in excess of the "NTE cost ceiling."

c. Any project shall be publicly bid and any services shall be performed at a not-to-exceed contract price approved by the GOVERNMENT's Real Estate Contracting Officer. If the total cost of the In-Kind Consideration project is less than the NTE cost of the easement consideration amount of Two Hundred Ninety Thousand Dollars (\$290,000), then the remaining balance shall be paid by the GRANTEE in the form of a check made payable to the GRANTOR within a period of up to four (4) years from the date of the execution of this modification, however; failure of the GRANTEE to pay any remaining balance to GRANTOR in the form of a check within the four (4) year timeframe, does not relive GRANTEE from fulfilling their consideration obligations as specified in section 1.a..

d. Nothing in this Easement shall preclude the GRANTEE from contracting with a third party contractor for the work. GRANTEE shall require any contractor to have a performance and payment bond with the penal amount of no less than the cost of the work contracted for with respect to any work performed by or on behalf of GRANTEE and for which bonds are required by the Miller Act (40 U.S.C. Section 3131 et. seq.). GRANTEE shall be solely responsible for obtaining any environmental permits required for the proposed work independent of any existing permits held by the GOVERNMENT. Copies of all required construction permits shall be provided to the GOVERNMENT and the costs thereof shall be credited towards the In-Kind Consideration.

e. The GOVERNMENT will retain the right to technical review of any proposed work to be performed pursuant to Paragraph 1.b. Title for any improvements constructed or personal property provided pursuant to Paragraph 1.b shall vest in the GOVERNMENT upon acceptance of such improvements or personal property by the GOVERNMENT. Any bills of sale, purchase receipts, written warranty agreements and other indicia or documents of ownership shall be provided to the GOVERNMENT upon its acceptance of such improvements or personal property. Written warranties shall include but not be limited to a warranty that work performed conforms to the contract requirements and is free of any material defect in equipment, material, or design furnished, or workmanship performed, and that the GRANTEE or GRANTEE's contractor will remedy any failure to conform or any defect that is covered by any applicable warranty. Additionally, the warranty shall provide that GRANTEE or GRANTEE's contractor shall remedy any damage to GOVERNMENT owned or controlled real or personal property caused by the contractor during construction. Notwithstanding the foregoing, GRANTEE shall be required to provide or obtain warranties only for (a) new equipment installed by the GRANTEE or the GRANTEE'S contractor during the term of this Easement, or (b) equipment, materials and workmanship performed or installed in connection with the construction of new buildings, structures or improvements on the PREMISIS. For purposes of clarity, the GOVERNMENT agrees that no warranties shall be required in connection with maintenance and repairs performed by GRANTEE during the term of the Easement except to the extent such warranties are customarily provided by the contractors that perform such services. To the extent any warranties are not directly transferrable to the GOVERNMENT, all warranties shall name the GOVERNMENT as an additional beneficiary and GRANTEE shall enforce such warranties for the benefit of the GOVERNMENT if so directed by the GOVERNMENT. Minimum warranty periods are one (1) year for new construction, and industry standard warranties for equipment.

f. The amount of In-Kind Consideration provided under this EASEMENT shall not exceed the value indicated in Paragraph 1.a. Once the value of In-Kind Consideration reflected in Paragraph 1.a has been provided, GRANTEE is under no further obligation to provide LTM projects (as hereinafter defined) or other services for GOVERNMENT. However, GRANTEE shall still be required to perform work and other obligations at its own expense required to maintain its EASEMENT and comply with any applicable rules or regulations related thereto.

g. On or before four (4) years from the execution of this EASEMENT, a final accounting will be performed and the balance of any Easement consideration still payable to the GOVERNMENT will be due on demand. Notwithstanding the previous sentence, the GOVERNMENT reserves the right to have a final accounting at any time during the first three (3) years of this EASEMENT and request that the value of any remaining Easement consideration balance not already contractually obligated to any specific project or service to be performed, be paid in cash to the GOVERNMENT promptly after demand.

h. In-Kind Consideration Projects, as used herein, shall mean and will include (1) maintenance, operations, protection, repair, alteration, improvement, or restoration (including environmental restoration) of facilities under the control of the Department of the Navy, (2) construction of new facilities, or (3) provision of such other services relating to activities that will occur on Department of the Navy property as the Assistant Secretary of the Navy (Installations & Environment) (ASN I&E) considers appropriate, including property in which GRANTEE's right of use shall be in common with others, the recurrence of which is not anticipated within the twelve (12) month period following its completion. For purposes of this agreement, in-kind consideration projects will include designs, studies, electric construction projects (including, but not limited to, meters, SCADA and AMI), renewable energy projects, energy efficiency projects, battery storage projects, and EV charging projects. For purposes of this EASEMENT, in-kind consideration projects as used herein shall not include any maintenance, operation, protection, repair alteration, improvement or restoration of any natural gas system, including, but not limited to, pipelines, valves, or meters or any other part of the INSTALLATION's natural gas system.

i. "In-Kind Consideration projects" as used herein does not include any item of protection, maintenance, improvement or repair which is solely incidental to GRANTEE's use of the property hereunder and which GRANTEE is obligated to perform in accordance with Paragraph 2, of the original Easement, or any other obligation that would be required to maintain the EASEMENT absent the availability of In-Kind Consideration, such as, but not limited to, guard service, janitorial service, replacement of expendable items, garbage and trash collection or disposal, or clean-up work.

j. "Actual Costs" as used herein, shall mean the sum of: (a) direct labor costs, including overheads, (b) expenses, fees and charges (including taxes), (c) calculated overhead and profit, and (d) direct material costs, when GRANTEE has incurred such costs directly in the performance of any particular LTM project approved or directed by the Local GOVERNMENT Representative. When GRANTEE contracts with third parties for performance of LTM projects, whether in part or in whole, "Actual Costs," as used herein, shall mean the amount of such contracts as shall have been

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

approved in advance by the Local GOVERNMENT Representative. Davis-Bacon wages are applicable.

k. Before commencement of any in-kind consideration projects for which the GRANTEE is to receive in-kind consideration credit from the GOVERNMENT, the GRANTEE must be in receipt of an official letter of approval executed by the Real Estate Contracting Officer setting forth terms, conditions, and the amount of compensation to be paid upon completion of the work to the satisfaction of the GOVERNMENT. The following procedures apply:

1) GOVERNMENT provides GRANTEE with in-kind consideration project specifications.

2) GRANTEE submits an itemized bid proposal and scope of work (SOW) covering all aspects of the project to the Real Estate Contracting Officer. The GRANTEE's bid price must not exceed the GOVERNMENT's fair cost estimate.

3) GOVERNMENT reviews the bid and SOW and, if acceptable, shall approve the in-kind consideration project via official letter. GOVERNMENT shall send a proposed official approval letter to GRANTEE. Upon receipt of the proposed official approval letter, GRANTEE shall sign the letter and return to the Real Estate Contracting Officer for final signature and approval. GOVERNMENT shall return a copy the official approval letter to the GRANTEE. **IN NO CASE SHALL GRANTEE AWARD OR BEGIN ANY IN-KIND CONSIDERATION PROJECT BEFORE RECEIVING AN OFFICIAL APPROVAL LETTER SIGNED BY BOTH THE GRANTEE AND THE REAL ESTATE CONTRACTING OFFICER.**

4) GRANTEE shall then begin work coordinating all details of the work, including starting dates and time and the location of the work, with the GOVERNMENT, specifically, the Naval Weapons Station Seal Beach Public Works Officer or his "Designated Representative".

5) The Naval Weapons Station Seal Beach Public Works Officer or a "Designated Representative" shall inspect ongoing in-kind consideration project work and shall inspect all work performed for each in-kind consideration project completed within seven (7) business days of written notification by GRANTEE of in-kind consideration project work completion. The purpose of the inspection is to verify compliance in all material respects with the specifications for each in-kind consideration project according to the acceptance criteria and deliverable requirements outlined in the SOW. If the in-kind consideration project is performed in accordance with the SOW, the Designated Representative shall provide written acceptance to the GRANTEE with a copy to the Real Estate Contracting Officer within ten (10) business days of the inspection. Should the work not be performed in accordance with the SOW, the Designated Representative shall provide, within ten (10) business days of the inspection, a written description detailing how the project work does not meet the SOW acceptance criteria and deliverable requirements. The GRANTEE will provide the Designated Representative with a plan to correct the discrepancies as soon as possible. The GOVERNMENT shall have ten (10) business days to review and comment on the GRANTEE's plan, after which time the plan will be deemed accepted. The GRANTEE shall implement the plan and provide GOVERNMENT with written notice of Project completion. This process shall be

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

repeated until the work is accepted and a letter of acceptance is delivered to GRANTEE within ten (10) business days of an acceptable inspection. If the Designated Representative does not provide a written notification within thirty (30) calendar days, the Project work will be deemed acceptable to the GOVERNMENT.

6) Upon completion of the work and receipt of written acceptance from the Designated Representative, the GRANTEE shall submit to the GOVERNMENT a letter invoice signed by the GRANTEE stating the full credit amount requested for the work performed, including an itemization of all labor and material and all related invoices. Naval Weapons Station Seal Beach Public Works Officer or his “Designated Representative” shall verify work completion and countersign the letter invoice before the Real Estate Contracting Officer approves any credit. Once the credit is approved, the Real Estate Contracting Officer shall issue an Easement consideration credit letter.

7) GRANTEE and GOVERNMENT 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 of any nature constituting an item of Actual Costs incurred by it directly in the performance of any in-kind consideration project(s). The GRANTEE shall provide the Designated Representative with access to such records and books of account and proper facilities for inspection thereof at all reasonable times. All information obtained from said records and books of account shall be deemed confidential to the fullest extent permitted under the Freedom of Information Act and/or California Public Records Act.

8) The GOVERNMENT acknowledges and agrees that the standards, codes, procedures or specifications listed in the SOW shall be applicable to the in-kind consideration project. To the extent that GRANTEE’s standards, procedures or specifications meet or exceed the standards, procedures or specifications listed in the SOW, the GOVERNMENT acknowledges and agrees that GRANTEE may use such standards, procedures or specifications.

2. The GRANTEE agrees to provide safety upgrades to the PREMISES to meet the current Anti-Terrorism Force Protection (ATFP) and Unified Facilities Criteria (UFC) requirements to accommodate GRANTEE’s intent to build a new pump station on the PREMISES. Upgrades shall include:

- a. The GRANTEE shall acquire and maintain a twenty (20) foot clear zone, containing 7,963.62 square feet, and more specifically described in Exhibit “A-1” attached hereto and made a part hereof. The twenty (20) foot clear zone shall be maintained and must be free of all vegetation.
- b. The GRANTEE shall install a fence twenty (20) feet from the current fence line. The location of the fence is to the Southwest as further indicated in Exhibit “D” attached hereto and made a part hereof.

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

- c. The GRANTEE shall install security lights to illuminate the twenty (20) foot continuously at night. The location of the lighting is described in Exhibit "D" attached hereto and made a part hereof.

3. APPROVAL OF PLANS. All work performed by the GRANTEE, its agents, or contractors in connection with the construction, installation, operation, maintenance, repair, and replacement of the security fence and security lighting shall be done without cost or expense to the GOVERNMENT and in accordance with plans previously approved by the Installation's Commanding Officer.

4. INDEMNIFICATION. GRANTEE shall indemnify and defend the GOVERNMENT against, and hold the GOVERNMENT harmless from, any costs, expenses, liabilities, fines, suits, actions, damages, liability and cause of action arising or growing out of, or in any way connected with, the occupation or use of the PREMISES by the GRANTEE and its employees, agents, servants, guests, and invitees. However, this liability shall not extend to matters caused by the GOVERNMENT's negligent or willful acts. This provision shall survive the expiration or termination of this Easement and GRANTEE's obligations hereunder shall apply whenever the GOVERNMENT incurs costs or liabilities for the GRANTEE's actions.

5. GRANTEE'S RESPONSIBILITIES. The GOVERNMENT shall not be responsible for damages to property or injuries to persons that may arise from, or be incident to, the use and occupation of the PREMISES by the GRANTEE, or for damages to the property or injuries to the persons of the GOVERNMENT's officers, agents, servants, or employees, or others who may be on the PREMISES at their invitation or the invitation of any one of them arising from or incident to governmental activities except as permitted under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.

6. ACCESS BY GRANTEE. The GOVERNMENT grants to the GRANTEE the right to use the PREMISES, together with the necessary rights of ingress and egress authorized by the Installation Commanding Officer. From time to time, the GRANTEE may request access to the Installation. The GRANTEE and its invitees and contractors agree to absorb all costs, including time and expenses, associated with gaining access to the Installation under the Defense Biometric Identification System (DBIDS) or similar program. Any parking that accompanies the use of, and any routes of access to and from, the PREMISES are subject to change at the sole discretion of the Installation Commanding Officer.

7. ENVIRONMENTAL PROVISIONS.

- a. GRANTEE shall comply with all applicable environmental laws, ordinances, rules, and regulations and all other Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to GRANTEE's activities on the PREMISES.
- b. GRANTEE shall be, at its sole cost and expense, solely responsible for obtaining any environmental permits required for its activities on the PREMISES.

c. GOVERNMENT's rights under this Easement specifically include the right for its representatives to inspect the PREMISES upon reasonable notice for compliance with environmental, safety, and occupational health laws and regulations, if the GOVERNMENT is responsible for enforcing them. The inspections shall be made without prejudice to the right of duly constituted enforcement officials to make them. The GRANTEE shall have no claim on account of any entries against the United States or any of its officers, agents, employees, contractors, or subcontractors.

d. Storage, treatment, or disposal of toxic hazardous materials on the PREMISES is prohibited except as authorized by the GOVERNMENT in accordance with 10 U.S.C. § 2692.

e. The GRANTEE will not use the PREMISES for accumulation points for hazardous and other wastes or permit its hazardous wastes to be commingled with hazardous waste of the GOVERNMENT.

f. The GRANTEE shall be solely responsible for the release, or substantial threat of a release, into the environment of any hazardous substance, pollutant or contaminant as the result of any activity under this Easement, and any preceding easements, licenses, or rights-of-way. Any reporting, containment, removal, or other remedial action relating to a release or threat of release required by law or regulation shall also be the responsibility of the GRANTEE.

g. The GRANTEE agrees to comply with the provisions of any health and safety plan in effect under the Installation Restoration Plan (IRP) or the Resource Conservation Recovery Act (RCRA) Corrective Action Program during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will be, to the extent practicable, coordinated with representatives designated by the GOVERNMENT. The GRANTEE shall have no claim on account of any entries against the United States or its officers, agents, employees, contractors, or subcontractors. In addition, GRANTEE shall comply with all applicable Federal, state and local occupational safety and health regulations.

h. GRANTEE shall, to the extent permitted under applicable law, indemnify and hold harmless GOVERNMENT from, and defend GOVERNMENT against, any damages, costs, expenses, liabilities, fines, suits, actions, or penalties resulting from releases, discharges, emissions, spills, storage, treatment, disposal, or other acts or omissions by GRANTEE, its officers, employees, agents, contractors, licensees, or the invitees of any of them, giving rise to GOVERNMENT liability, civil or criminal, or responsibility under federal, state or local environmental laws. This Paragraph shall survive the termination of this Easement, and the GRANTEE's obligations under this Paragraph shall apply whenever the GOVERNMENT incurs costs or liabilities for GRANTEE's actions. However, this liability shall not extend to matters caused by the GOVERNMENT's negligent or willful acts.

i. The GRANTEE shall strictly comply with the hazardous waste permit, storage, handling, and disposal requirements under the Solid Waste Disposal Act or its California equivalent. The GRANTEE must provide at its own expense any hazardous waste storage facilities, complying with all laws and regulations that it may need for storage. Installation hazardous waste storage facilities will not be available to the GRANTEE.



j. GRANTEE shall manage the natural and cultural resources on the PREMISES in a manner that is consistent with the philosophies and supportive of the objectives of the Installation's Integrated Natural Resource Management Plan and Integrated Cultural Resource Management Plan.

GRANTEE shall identify any activity that may affect Federally regulated resources (listed species, wetlands, waters of the United States, etc.) and provide information and mitigation that may be required to support consultation with the applicable regulatory agency.

k. GRANTEE shall, during the construction, installation, operation, maintenance, and repair of the security fence and security lighting, upon inadvertently discovering Native American human remains, funerary objects, sacred objects, objects of cultural patrimony, as those terms are defined in 43.C.F.R. § 10.2(d), immediately notify by telephone the Installation Environmental Program Director at (562) 626-6070, followed by written confirmation. The GRANTEE shall cease all activity in the area of inadvertent discovery until directed otherwise by the Installation.

Additionally, the GRANTEE shall take all reasonable efforts to protect any Native American human remains, funerary objects, sacred objects, objects of cultural patrimony, so discovered consistent with 43 C.F.R. § 10.2(d).

#### 8. ENVIRONMENTAL CONDITION OF PROPERTY.

a. An Environmental Condition of Property (ECP) has been prepared as of the start date of this Amendment to document the known environmental condition of the property. It is attached hereto as **Exhibit "C"** and made a part hereof. At the termination or expiration of this Easement, another ECP shall be prepared to note the environmental condition of the property at that time. A comparison of the two ECP documents shall be made to determine the extent, if any, of liability on the part of the GRANTEE.

b. For purposes of this Easement Amendment the following terms shall have the following meanings:

(1) "Toxic or Hazardous Materials" means all manner of substances, pollutants, contaminants, and waste to which Applicable Environmental Laws pertain, expressly including petroleum, petroleum products, and materials defined in 48 C.F.R. § 252.223-7006 (a)(ii) and (iii).

(2) "Contamination" means a level of Toxic or Hazardous Materials in the air, soil, or water (surface water or ground water), that exceeds levels allowed by Applicable Environmental Laws.

(3) "Applicable Environmental Laws" means:

(a) Federal, state, and local statutes, laws, ordinances, rules, and regulations, to which the GOVERNMENT is made subject by Federal law or to which the GRANTEE is made subject by Federal and state law;

(b) Executive Orders of the President of the United States;

(c) decisions of courts and administrative tribunals of competent jurisdiction;

(d) administrative orders of regulatory agencies of competent jurisdiction (involuntary or on consent); and

(e) regulations and directives of the Department of Defense, the Department of the Navy, and the Marine Corps (for Marine Corps installations only), which pertain to the human environment (as defined in the National Environmental Policy Act of 1969); transportation of hazardous material; and human health and safety (including occupational safety).

(4) Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651, et seq.), and 10 U.S.C. § 2692, as amended.

(5) "Release" means any discharge, spill, emission, leaking, pumping, injection, excavation, deposit, disposal, leaching, or migration into the environment, accidental or otherwise, or introduction into the environment by any other means or method.

(6) "Remedial Action" means: investigating or monitoring the environmental condition of the PREMISES and clean-up, removal, response (including emergency response), and restoration of the PREMISES, as per Applicable Environmental Laws, due to the presence or suspected presence of Contamination or a Release or suspected Release of Toxic or Hazardous Materials.

c. If during the term of this Easement the GRANTEE becomes aware that a Release of Toxic or Hazardous Materials has occurred due to acts or omissions of the GRANTEE, its agents, or contractors, if such release results in contamination of the PREMISES, the GRANTEE will give verbal notice to the GOVERNMENT within 24 hours of becoming aware of the Release, providing all relevant facts and circumstances. The GOVERNMENT may direct the GRANTEE to make a detailed written report of these facts and circumstances within a time certain.

d. The GRANTEE, at its sole expense, will promptly take all action necessary to comply with Applicable Environmental Laws pertaining to a Release described in subparagraph 8(b), including but not limited to: report the occurrence to appropriate Federal, state, or local regulatory authorities, if so directed by the GOVERNMENT; take timely and effective steps to minimize the Release and its impact on human health and the environment; and take Remedial Action. The GOVERNMENT may direct the GRANTEE to provide all information requested by the GOVERNMENT regarding such actions within a time certain.

e. The GRANTEE will ensure that all activities conducted on the PREMISES by the GRANTEE, its agents, or contractors are carried out in compliance with Applicable Environmental Laws. The

GRANTEE will provide verbal notice to the GOVERNMENT within 24 hours of receiving any complaint, order, directive, claim, citation, or notice from any governmental authority or any other person or entity alleging noncompliance with or a violation of Applicable Environmental Laws on the PREMISES. The GRANTEE, at its sole expense, will promptly take all necessary action directed by Federal, state, or local regulatory authorities of competent jurisdiction to achieve or regain compliance with Applicable Environmental Laws. The GOVERNMENT may direct the GRANTEE to make a detailed written report, within a time certain, of the facts and circumstances underlying the alleged noncompliance or violation. Without limitation of the foregoing, the GOVERNMENT, in response to acts or omissions of the GRANTEE, its agents, or contractors may, in its discretion, take Remedial Action to remedy Contamination on the PREMISES or to achieve or regain compliance with Applicable Environmental Laws.

f. The GOVERNMENT may at any time inspect the PREMISES or cause the PREMISES to be inspected, to assess whether the operations of the GRANTEE, its agents, or contractors are in compliance with Applicable Environmental Laws. To assist in this evaluation, the GRANTEE, its agents, and contractors will provide to the GOVERNMENT, or another entity, as the GOVERNMENT may direct, for examination and copying, all relevant books, records, documents, and other material in their possession.

g. The GOVERNMENT, with good cause, may from time-to-time require the GRANTEE to conduct tests and analyses to assess whether the PREMISES are in compliance with Applicable Environmental Laws, and based on the results thereof, to so certify to the GOVERNMENT. Such tests and analyses shall be conducted in a manner satisfactory to the GOVERNMENT by recognized professionals approved by the GOVERNMENT. If the GOVERNMENT and the GRANTEE cannot reach agreement as to what tests and analyses shall be conducted, by whom, and when, the GRANTEE may perform such tests and analyses or cause such tests and analyses to be performed.

9. FAILURE TO INSIST ON COMPLIANCE. The failure of the GOVERNMENT to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Easement shall not be construed as a waiver or relinquishment of GOVERNMENT's right to the future performance of any such terms, covenants or conditions and GRANTEE's obligations for their future performance shall continue in full force and effect.

10. FEDERAL FUNDS. This Easement does not obligate the GOVERNMENT to expend any appropriated funds.

11. ASSIGNMENT / TRANSFER OF RIGHTS. The GRANTEE shall not transfer or assign this Easement or any interest in it, or otherwise make any portion of, or rights in, the PREMISES available to any party without the prior consent of the GOVERNMENT. If any assignment is made, with or without consent, the assignee shall be deemed to have assumed all the obligations of the GRANTEE. However, in no event shall the GRANTEE be relieved of any of its obligations under this Easement, except for an extension of its term that begins after an assignment, and then only if the GOVERNMENT shall have consented to it.

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

12. ADMINISTRATIVE COSTS AT TERMINATION OF EASEMENT. At the termination of this Easement, at the GOVERNMENT's discretion, GRANTEE shall be responsible for administrative costs associated with completing a final inspection of the premises and updating the Environmental Condition of Property Report.

13. SURRENDER. Upon any termination of this Easement, the GRANTEE, at its own expense and risk, shall promptly remove, to the extent required by the GOVERNMENT, improvements, fixtures, and equipment installed or constructed hereunder, and shall restore the PREMISES to the same or as good a condition as that which existed prior to the exercise by the GRANTEE of its rights hereunder. The restoration shall be done in a manner satisfactory to the Real Estate Contracting Officer, Naval Facilities Engineering Systems Command, Southwest, or his/her designated representative and in accordance with applicable laws and regulations. If the GRANTEE fails to remove the property as required by the GOVERNMENT, all improvements, chattels, and other items abandoned by the GRANTEE become GOVERNMENT property ninety (90) days following the date of termination or expiration. If the GOVERNMENT incurs any cost to remove the items abandoned by the GRANTEE, the GRANTEE shall reimburse the GOVERNMENT for all actual costs, direct and indirect, incurred by the GOVERNMENT.

14. MISSION ASSURANCE AND SECURITY. GRANTEE shall provide, and shall have a continuing obligation to provide, advanced written notice to the GOVERNMENT of:

(a) Any change in the business entity or entities having an ownership interest in the GRANTEE.

(b) The names of foreign business entities or foreign citizens with which the GRANTEE has, or intends to have, a contract related to use and occupancy of the PREMISES.

(c) The names of all business entities not previously identified to the GOVERNMENT with which GRANTEE has entered into, or plans to enter into, a contract to furnish parts or materials for the PREMISES or perform development, construction, operations, or maintenance activities at the PREMISES.

For those business entities identified under Paragraphs 15(a), (b) and (c), the GOVERNMENT agrees to identify to GRANTEE, no later than sixty (60) days after notification, any business entity posing a potential threat to national security pursuant to the factors contained in 50 U.S.C. § 4565(f). For any proposed business entities identified under Paragraphs 15(a), (b) and (c) the GOVERNMENT agrees to identify to GRANTEE, no later than forty-five (45) days after notification, any business entity posing a potential threat to national security pursuant to the factors contained in 50 U.S.C. § 4565(f). Any such national security threat must be resolved to the satisfaction of the GOVERNMENT prior to allowing access to the PREMISES by the entity or its representatives, and prior to installation or use of on-site equipment manufactured by such a business entity. Except as provided in the last sentence of Paragraph 15, if GRANTEE allows access to the PREMISES by the entity or its representatives in question prior to the resolution of any such national security threat to the satisfaction of the GOVERNMENT, such access shall constitute a material breach by GRANTEE and GOVERNMENT shall have the right to terminate in accordance with Paragraph 12.b. The Parties acknowledge that under the Defense Production Act of 1950, the executive branch of the GOVERNMENT is authorized to review "covered transactions" under

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

50 U.S.C. § 4565(b)(1)(A), as implemented by the Committee on Foreign Investment in the United States (CFIUS). Nothing in this Agreement shall prohibit or limit DoD, on behalf of and in consultation with the GOVERNMENT, from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews and investigations, and, should mitigation result, during mitigation, tracking, and post-consummation monitoring and enforcement, pursuant to 50 U.S.C. § 4565. The foregoing notwithstanding, if the GOVERNMENT fails to provide the notices or approvals referenced in Paragraph 18, the GOVERNMENT'S right to identify any business entity posing a potential threat to national security pursuant to the factors contained in 50 U.S.C. § 4565(f) shall be deemed waived, or the GRANTEE's proposed contract related to use and occupancy of the PREMISES shall be deemed approved, as the case may be.

15. EXISTING EASEMENT. Except as expressly amended herein, all other terms and provisions of the GRANT OF EASEMENT shall remain in full force and effect.

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For the proposed language regarding the release, we recommend the following:

**Add to Section 1.f.:**

"A Notice of Satisfaction shall be provided to GRANTEE by the GOVERNMENT in recordable form, which GRANTEE may record as evidence of satisfaction of the consideration."

I think that we should not mention a "release" because we noticed that the same term is used with respect to environmental laws in Section 8.

**Add new subsection 1.j.2)a. with proposed language:**

"If the lowest bid by a responsive and responsible bidder received by the GRANTEE is greater than the amount in 1.a, the GRANTEE shall reject all bids and the GOVERNMENT shall reduce the scope of the in-kind consideration project, or provide another at no cost to the GRANTEE for re-advertising to be within the amount specified in 1.a."

FILE NO: EO-10529  
CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their duly authorized representatives as of the day and year first written above.

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_

TANYA M. SPENST  
Real Estate Contracting Officer  
Naval Facilities Engineering Systems Command, Southwest

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Name and Title of the Officer

personally, appeared \_\_\_\_\_,  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
Signature of the Notary Public

Place Notary Seal Above

FILE NO: EO-10529

CONTRACT NO: N624-7322-RP-00040 AMD ONE (1)

**ACKNOWLEDGEMENT AND ACCEPTANCE OF GRANTEE**

This is to certify that the Amendment to the GRANT OF EASEMENT dated \_\_\_\_\_ from the United States of America, to the Orange County Sanitation District is hereby accepted by order of the Board of Directors of the Orange County Sanitation District, pursuant to the authority conferred by said Board, on \_\_\_\_\_, and the Orange County Sanitation District agrees to be bound by all the agreements, covenants, conditions and restrictions contained herein; and to the recordation thereof by its duly authorized officer.

**ORANGE COUNTY SANITATION DISTRICT**

By \_\_\_\_\_

Kelly A. Lore, MMC  
Clerk of the Board