

Attachment C to Agenda File No. 2018-0340

U. S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE 1 October 2018	LEASE NO: HSCG89-18-1-0078
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PURPOSE: Pursuant to specific Congressional appropriations and 14 U.S.C. §81 (1) the statutory authority to establish, maintain, and operate aids to navigation; and §92(f), the statutory authority to acquire real property interests where required for the purpose of carrying out any project or purpose for which an appropriation has been made. The parties understand that the sole purpose of the Lease is to secure for the CG a site to operate an Aid to Navigation (ATON).

THEREFORE THIS LEASE, made and entered into this date by and between the **San Diego Unified Port District** whose address is **3165 Pacific Highway, San Diego, CA 92101-1128**, and whose interest in the property hereinafter described is that of owner ("LESSOR"), and the Commanding Officer, U.S. Coast Guard SILC, Product Line Division, Portfolio Management Branch, Oakland, California, 94612-5203 on behalf of the **UNITED STATES OF AMERICA**, hereinafter called the ("Government:"), pursuant to 14 U.S.C. § 92 (f), for the consideration hereinafter mentioned.

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agrees as follows:
Lessor hereby leases to the Government the following described premises: (Succeeds lease No. DTCG89-99-L-6-63-020)

Three parcels of land, together with related electrical power connections and right of ways (shown in Exhibit ("A") and located in the area of Shelter Island described as follows:

Parcel one: Commencing at the most southwesterly corner point of an area now under lease to the Kona Company (Kona Club Motel, Inc.) said point also lies at Station 58+70.98 on the center line of an area known as Shelter Island in the City of San Diego, California, thence along said center line of Shelter Island in the City of San Diego, California; thence along said center line of Shelter Island South 89deg 28' West a distance of 85.99 feet to a point of intersection with the center line of the San Diego Bay entrance Range Line; Thence leaving said center line of Shelter Island and (CONTINUED on Exhibit "B")

To be used for: **CA Shelter Island Rear Range Light (LLNR 1640)**

2. **TO HAVE AND TO HOLD** the said premises with their appurtenances for the term beginning on October 1, 2018 through September 30, 2019 subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of (No Cost). Rent has been waived by Lessor since the Coast Guard's mission benefits the Community.

LOA: 2/L/901/111/30/0/63/13306/2329

4. The Government or lessor may terminate this lease, at any time without cause, by giving at least sixty (60) days' written notification to the Lessor. Said notice shall be computed commencing with the day after the date of mailing.

5. This lease may be renewed at the option of the Government for 19 (nineteen) **1** (one) year options periods with the same conditions and payment formula listed in article #3 (three) above provided adequate funds are appropriated annually by Congress.

6. The Lessor shall furnish to the Government the following:

a. The right of ingress and egress over the adjacent property of the Lessor for the Government, its contractors or other duly authorized representatives, necessary or convenient for the maintenance, repair operation and replacement of Government equipment located on its leased premises.

b. The right to use facility as an ATON site.

c. The Lessor shall notify the Government, in writing, within thirty (30) days of any:

1) Transfer of ownership of the described premises.

7. The following are attached and made a part hereof:

a. The General Clauses (GSA form 3517B as amended) –Lease Article 27

- b. Area Map Exhibit "A"
- c. Continued legal description "B"

8. **SUCCESSORS BOUND:** The Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

9. **SUBLETTING/ASSIGNMENT:** Government may not sublet or assign lease premises to without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

10. **ENVIRONMENTAL PROTECTION:** The Government is limited by Federal Law as to the assumption of liability for its acts or omissions. Within its legal limitations and appropriations, the Government agrees to the following: Government may not unlawfully pollute the air, ground or water, nor create a public nuisance. Government shall, at no cost to the Lessor, promptly comply with all applicable Federal, state, and local laws, regulations, and directives regulating the quality of the environment. This does not affect the Government's right to contest the validity of such laws, regulations or directives or to try to enjoin their applicability. Government shall use all required means to protect the environment and natural resources from any damage arising from Lessee's use of the facility and activities incident to its use. If any damage results to the environment or natural resources, Government shall restore the environment or damaged resources. Government agrees to comply with all applicable federal, state and local environmental laws and regulations, including, but not limited, to those laws concerning any petroleum products, toxic substances, medical wastes and hazardous materials, substances or wastes.

11. **ANTI-DEFICIENCY ACT:** (31 USC §1341 as amended). Nothing in this Lease shall constitute an obligation of funds of the United States in advance of appropriation thereof.

12. **INDEMNIFICATION:** The Government, in the manner and to the extent provided by the Federal Tort Claims Act (28 USC Sections 2671-2680) shall be liable for claims for damages or cost and expenses, including but not limited to fire damage, loss of property, personal injury or death caused by the acts or omissions of the Government, its officers, invitees, employees and agents in the use of the property.

13. **INSURANCE:** Government is a sovereign entity and as such is not required to provide Lessor with any certificate of insurance or notice of renewal, termination, cancellation, expiration or alteration of insurance policy.

14. **OWNERSHIP OF IMPROVEMENTS:** It is understood and agreed that any improvements added by the Government belong to the Government. Lessor is responsible for the maintenance of the leased premises.

15. **EQUIPMENT INSTALLATION AND OPERATION.** The Government shall have the right during the term of this Lease to install, operate, maintain, repair, and replace upon the Premises, including but not limited to any other improvement presently existing or to be constructed upon the Premises, or related or ancillary to, the operation, performance, and maintenance of the equipment and infrastructure. Upon termination of this Lease, the Lessor shall permit the Government all reasonable access to the Premises for the purpose of removing or otherwise disposing of the equipment or any part thereof, and the Government shall conduct its removal of the equipment or any part thereof in a reasonable and safe manner and within a reasonable period of time, in accordance with all Federal, state, and local law.

16. **IMPROVEMENTS AND ALTERATIONS.** The Government shall have the right during the term of this lease, as long as the prior written consent of Lessor is received by the Government, which consent shall not be unreasonably withheld or delayed by Lessor, to make improvements and alterations, erect structures, and attach fixtures and signs upon the Premises. Government acknowledges that Lessor's consent to the installation of any such improvements may be conditioned upon a reasonable increase in the Rental Amount payable by Government to Lessor pursuant to condition 3 of this Agreement. If Lessor consents to the installation of such improvements, Lessor shall deliver to Government an amendment to this Agreement and any other documents required to evidence such a modification. The Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the Premises. Any improvements, structures, fixtures or signs attached to or otherwise erected upon the Premises shall remain the property of the Government and may be removed or otherwise disposed of by the Government.

17. **OFFICIALS NOT TO BENEFIT:** No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or any benefit to arise there from, but this provision shall not be construed to extend to this Lease if made with a corporation whose membership, includes a member or delegate to Congress or Resident Commissioner, who indirectly receives a general benefit from this Lease.

18. **AMENDMENT OR MODIFICATION:** No amendment or modification shall be valid unless evidenced by an agreement in writing signed by both parties.

19. **GOVERNING LAW:** The parties shall construe the Lease to be in accordance with and governed by the laws of the State of California, insofar as those laws are consistent with applicable federal laws and regulations.

20. **SEVERABILITY:** If any term or provision of this Lease is held invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law.

21. **PAYMENTS OF TAXES AND ASSESSMENTS:**
The Government is not responsible for or liable for the payment of any real property taxes, personal taxes or assessments levied or assessed upon or against the leased premises.

22. **ENTIRE AGREEMENT:** This Lease, with attachment, constitutes the only agreement between Lessor and Government. Any prior understanding or representation of any kind, which proceeded the date of this Lease, are not binding on either party, except to the extent the understandings are incorporated into this Lease.

23. **MUTUAL AUTHORITY:** Lessor and Government represent and warrant to each other that they have full right, power and authority to enter into this Lease without the consent or approval of any other entity or person and make these representations knowing that the other party will rely thereon. Furthermore, the signatories on behalf of Lessor and Government further represent and warrant that they have full right, power and authority to act for and on behalf of Lessor and Government in entering into this lease.

24. **LEASE ADMINISTRATION:**
The following office shall administer this Lease:
Commanding Officer
Civil Engineering Office Oakland
1301 Clay Street, Suite 700N
Oakland, CA 94612-5203

25. **TAX IDENTIFICATION:** Government regulations require a Lessor tax identification number (TIN/SSN). Lessor hereby certifies that the following TIN/SSN and telephone number are correct:

TIN/SSN: _____
Telephone Number: _____
DUNS: _____
Registered in SAM: _____ Yes _____ No

Date

Signature

LEASEE CONTACT: _____
TEL NO: _____

26. **PAYMENT BY ELECTRONIC FUNDS TRANSFER- SYSTEM FOR AWARD MANAGMENT:**

a. Method of Payment:

1) All payments by the Government under this contract shall be made by electronic transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

2) In the event the Government is unable to release one or more payments by EFT, the Lessor agrees to either accept payment by check or some other mutually agreeable method of payment or request the Government extend the payment due date until such time as the Government can make payment by EFT (see paragraph (d) of this clause).

b. Lessor EFT information. The Government shall make payment to the Lessor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Lessor shall be responsible for providing the updated SAM database.

c. Mechanisms for EFT payment. The Government may make payments by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

d. Suspension of payment. If the Lessor EFT information in the SAM database is incorrect, then the Government need not make payment to the Lessor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request shall be deemed not to be proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

e. Lessor EFT arrangements. If the Lessor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the SAM database, and the Lessor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address is applicable) listed in the SAM database.

f. Liability for incomplete or erroneous transfer:

1) If an incomplete or erroneous transfer occurs because of Government used the Lessor's EFT information incorrectly, the Government remains responsible for making a correct payment, paying any prompt payment penalty due and recovering any erroneously directed funds.

2) If any incomplete or erroneous transfer occurs because the Lessor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and if funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Lessor is responsible for recovery of an erroneously directed funds or if the funds remain under the control of payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

g. EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

h. EFT and assignment claims. If the Lessor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Lessor shall require as a condition of any such assignment, that the assignee shall register in the SAM database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Lessor. EFT information that shows the ultimate recipient of the transfer to be other than the Lessor, in the absence of proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

i. Liability for change to EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Lessor's financial agent.

j. Payment information. The payment or disbursing office shall forward to the Lessor available payment information that is suitable for transmission as of the date of release of EFT instruction to the Federal Reserve System. The Government may request the Lessor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM database.

27. CLAUSES INCORPORATED BY REFERENCE. This lease incorporates one or more clauses by reference with the same force and effect as if they were given in full text. The full text may be found in GSA Form 3517B (Rev. 4/2015), and the following clauses are incorporated by reference:

GSA Form 3517B

<u>Clause Number</u>	<u>48 CFR Reference</u>	<u>Clause Title</u>
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3	552.270-23	SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
4	552.270-24	STATEMENT OF LEASE
5	552.270-25	SUBSTITUTION OF TENANT AGENCY
6	552.270-26	NO WAIVER
8	552.270-28	MUTUALITY OF OBLIGATION
9	--	DELIVERY AND CONDITION
10	--	DEFAULT BY LESSOR
14	--	COMPLIANCE WITH APPLICABLE LAW
17	52.204-7	SYSTEM FOR AWARD MANAGEMENT
18	52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE
19	552.270-31	PROMPT PAYMENT
20	552.232-23	ASSIGNMENT OF CLAIMS
21		PAYMENT
22	52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT
24	552.270-32	COVENANT AGAINST CONTINGENT FEES
28	552.270-30	PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
30	552.270-13	PROPOSALS FOR ADJUSTMENT
31	--	CHANGES
32	552.215-70	EXAMINATION OF RECORDS BY GSA
34	52.233-1	DISPUTES
35	52.222-26	EQUAL OPPORTUNITY
36	52.222-21	PROHIBITION OF SEGREGATED FACILITIES
38	52.222-35	EQUAL OPPORTUNITY FOR VETERANS
39	52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES
40	52.222-37	EMPLOYMENT REPORTS VETERANS

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

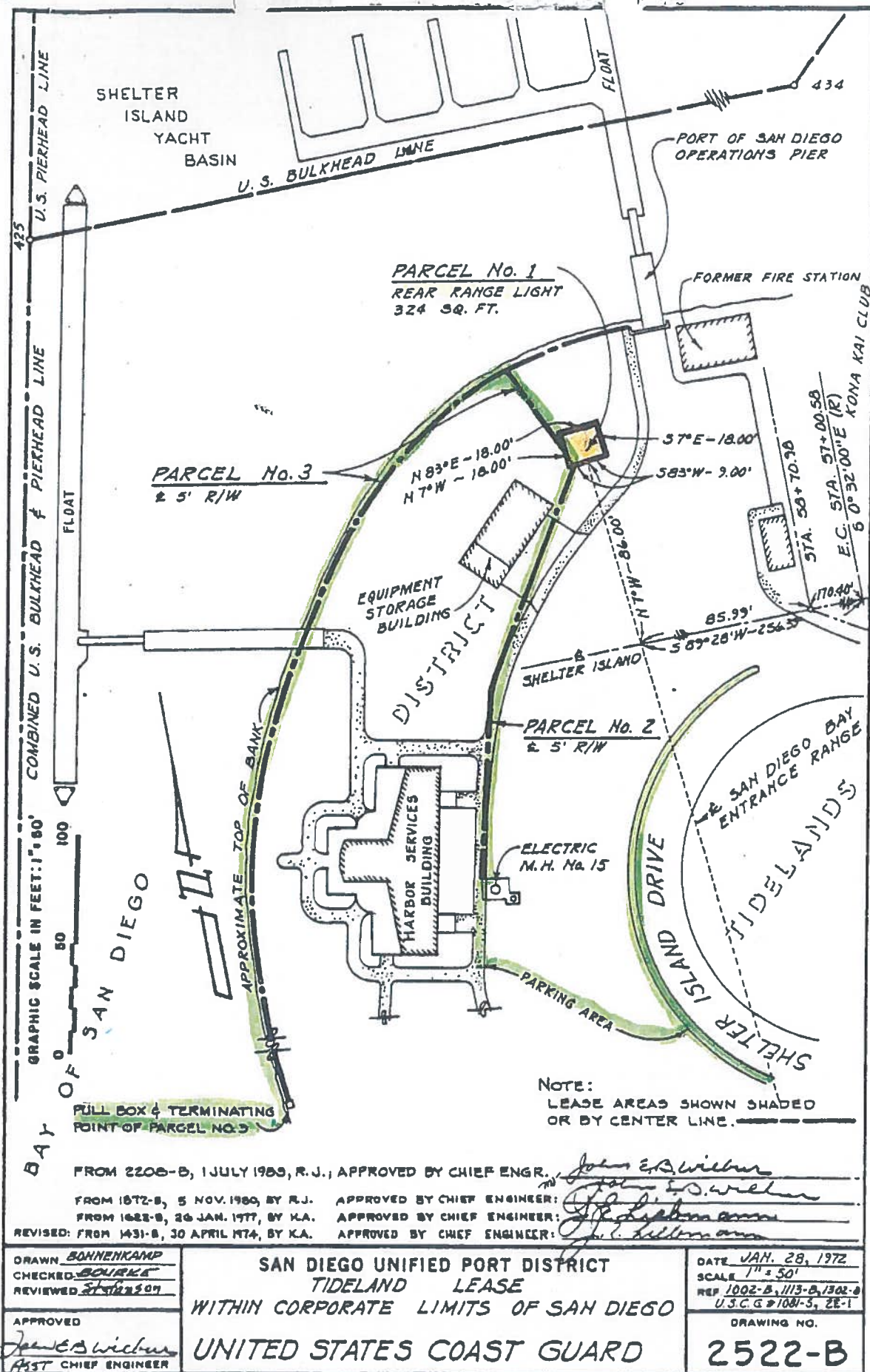
LESSOR SIGNATURES

SIGNATURE	SIGNATURE
NAME OF SIGNER	NAME OF SIGNER

SIGNATURE	SIGNATURE
NAME OF SIGNER	NAME OF SIGNER

UNITED STATES OF AMERICA	
SIGNATURE	NAME OF SIGNER David E. Brumley Realty Specialist Contracting Officer United States Coast Guard
	OFFICIAL TITLE OF SIGNER

DRAFT



REDUCED DRAWING - DO NOT SCALE

Paragraph 1 continued

along the center line of said range line North 7° West a distance of 86.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1; thence South 83° West a distance of 9.00 feet; thence North 7° West a distance of 18.00 feet; thence North 83° East a distance of 18.00 feet; thence South 7° East a distance of 18.00 feet; thence South 83° West a distance of 9.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 324 square feet of tideland area.

PARCEL NO. 2:

Being a right of way 5 feet in width extending northerly and northeasterly from electric manhole No. 15 located easterly of the easterly side of the Harbor Services Building to the above described Parcel No. 1.

PARCEL NO. 3:

Being a right of way 5 feet in width extending westerly, southwesterly and southerly concentric with the existing top of bank line from the Port of San Diego Operations Pier to a terminating point including the last pull box in line, also being a right of way 5 feet in width extending northwesterly from the above described Parcel No. 1 to the point of intersection with the above described 5 foot wide right of way along the top of the bank.

The GOVERNMENT shall also have the right of access to the above described Parcels No. 1, 2 and 3 from the street known as Shelter Island Drive on Shelter Island, San Diego, California.

The above described areas are those delineated on Drawing No. 252-B, dated 1 July 1983, as revised, and made part of this agreement as Exhibit "A".