

962



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
December 2, 2010

**SUBJECT:** Option Agreement and Lease Agreement – Solar Facilities, Blythe Airport

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Option Agreement between the County of Riverside and NRG Solar Blythe II, ("Optionee"), granting Optionee the option to lease up to 829 acres of certain real property, known as Assessor's Parcel Numbers 821-080-040, 821-080-041, 821-110-002, and 821-110-003, located at the Blythe Airport, County of Riverside;
2. Approve the attached lease agreement between the County of Riverside and NRG Solar Blythe II, for lease approximately 156 acres of real property, known as Assessor Parcel Number 821-110-003, located at Blythe Airport, County of Riverside;

(Continued)

*Lisa Brandl for*

Robert Field  
Assistant County Executive Officer/EDA  
By Lisa Brandl, Managing Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> Revenue Lease	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
*Jennifer L. Sargent*

**County Executive Office Signature** Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL  
BY: ANITA C. WILLIS  
DATE: 12-13-10  
Departmental Coordinator

Dep't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** 3.9, May 30, 1997; 3.42, October 5, 2010 | **District:** 4 | **Agenda Number:** 3.29

**RECOMMENDED MOTION:** (Continued)

3. Authorize the Chairman of the Board to Execute the option agreement and the lease agreement on behalf of the county; and
4. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions to complete this transaction.

**BACKGROUND:**

On May 20, 1997, the Board of Supervisors approved a lease agreement between the County of Riverside and the City of Blythe whereby the county leased the Blythe Airport to the City of Blythe (Blythe Airport Lease) for a period of thirty years. Due to the Blythe's financial burden of supporting the airport operations and maintenance, the Blythe Airport Lease was terminated by the county and Blythe with a lease termination agreement, approved by the Board of Supervisors on October 5, 2010.

Prior to the termination of the Blythe Airport Lease, the City of Blythe entered into negotiations with U.S. Solar Holdings, LLC, an affiliate entity of USSV Land Company, LLC, for an option agreement and lease agreement, to lease real property for the purpose of planning, constructing, and operating Photovoltaic Solar Facilities on approximately 829 acres of airport property. In August of 2009, US Solar completed the California Environmental Quality Act (CEQA) process with the City of Blythe as the lead entity. Along with the termination of the Blythe Airport Lease, these agreements between the City of Blythe and US Solar were terminated to enable the county to move forward directly with US Solar on new option and lease agreements for the benefit of the airport property.

Due to the aforementioned situation, US Solar, as the applicant, has been submitting all necessary documents and completing processes to obtain land use entitlements and approvals with the county and other regulatory agencies. The applicant processed the necessary CEQA related studies and analysis, which is contained in Environmental Assessment 42340 associated with Plot Plan 24616 with the County Planning Department, acting as the lead agency. Environmental Assessment No. 42340 includes the contemplation of entering into an option agreement and lease agreement(s) for the real property. US Solar also submitted a National Environmental Policy Act (NEPA) Environmental Impact Statement for the Blythe Airport Solar 1 project to the Economic Development Agency (EDA). As the airport sponsor for the county, EDA has submitted the NEPA for Federal Aviation Administration approval.

All potentially significant effects of the actions described in this Form 11 have been adequately analyzed in the Environmental Assessment No. 42340 which was prepared for Plot Plan 24616; all potentially significant effects of the actions have been avoided or mitigated pursuant to EA 42340 and a Mitigated Negative Declaration will be prepared; the actions will not result in any new significant environmental effects not identified in EA 42340; the actions will not substantially increase the severity of the environmental effects identified in EA 42340; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible. As a result, no further environmental documentation is required for California Environmental Quality Act purposes.

(Continued)

**BACKGROUND:** (Continued)

The purpose of this Form 11 is to request authorization and obtain Board approval for the option and lease agreement (the first of potentially up to five) which will allow the county, as the owner and Lessor of the Blythe Airport, to enter into a Option Agreement and Lease with NRG Solar Blythe II, a contract partner of US Solar Holdings, LLC, resulting in NRG Solar Blythe II to move forward on its planning, construction, and operation of the proposed Solar Facilities. This first lease agreement is for 156 acres of real property. Up to four additional lease agreements would be brought to the Board for approval, if and, when Optionee exercises an option to lease additional acreage of real property not-to-exceed the 829 acres of Assessor's Parcel Numbers 821-080-040, 821-080-041, 821-110-002, and 821-110-003, located at the Blythe Airport, County of Riverside.

The terms of the agreements are as follows:

Option Agreement: NRG Solar Blythe II, will have up to five years to exercise options to lease and occupy various portions of the 829 acres, for the purpose of planning, constructing, and operating solar facilities. The terms of the Option Agreement are as follows:

Effective Date: Execution by the Board of Supervisors of this agreement

Total Acreage: Approximately 829 acres

Use: Photovoltaic Solar Facilities

Option Term: Five (5) Years, 2 year initial term w/3 one-year option period extensions

Options: Options to lease, Can be exercised up to five times

Option Consideration: \$50,000 per option term period, payable to county as Optionor

Lease Agreement: NRG Solar Blythe II, after exercising its option rights for portions of the acreage above, will enter into separate lease agreement(s) with the county for the respective acreage based on each option exercised, as defined in the lease agreement identified in motion 2 of this Form 11. The terms of the lease agreement are as follows:

Effective Date: Execution by the Board of Supervisors of this agreement

Total Acreage: Approximately 829 acres

Use: Photovoltaic Solar Facilities

Term: Thirty (30) Years Initial Lease Term, 4 five year options to extend

Rental: \$270 per gross acre per year to be increased by the greater of 2 ½%, or 7% of the appraised value every five years

Completion Date: No later than five (5) years from the Effective Date

**FINANCIAL DATA:**

This is a Revenue Lease and no Departmental funding is required.

## OPTION AGREEMENT

This OPTION AGREEMENT (this "Agreement") is made as of the \_\_\_ day of December, 2010 (the "Effective Date") by and between THE COUNTY OF RIVERSIDE a political subdivision of the State of California ("Optionor"), and NRG SOLAR BLYTHE II, a Delaware limited liability company ("Optionee"), with reference to the following facts and objectives:

A. Optionor is the owner of the fee simple interest in certain real property known as the "Blythe Airport" situated in the County of Riverside, State of California.

B. Optionor desires to grant to Optionee, and Optionee desires to obtain from Optionor, the right to lease the Property (as hereinafter defined) pursuant to this Agreement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. Option to Lease.

(a) Grant of Option. Subject to the satisfaction of the terms and conditions set forth in this Agreement, Optionor hereby grants to Optionee the right (the "Option") to lease the Property pursuant to the terms and conditions set forth in this Agreement and the form of the lease agreement (the "Lease") attached hereto as Exhibit "A" and by this reference incorporated herein. For purposes of this Agreement, "Property" means (i) the land consisting of approximately 829 acres described on Exhibit "B" attached hereto (the "Land"), and (ii) use of any easements, rights-of-way and any other rights, privileges, including ingress and egress to, from and appurtenant thereto or otherwise benefiting the Land or Optionor relating to the Land other than water and mineral rights (collectively, the "Appurtenant Rights").

(b) Term of Option. The period of time for the exercise of the Option (the "Option Period") shall commence on the date the County of Riverside Board of Supervisors ("Board") approves and executes this Agreement ("Effective Date") and shall expire at 5:00 p.m. Pacific time on the Expiration Date. For purposes of this Agreement, "Expiration Date" means the date that is twenty-four (24) months after the Effective Date, as it may be extended pursuant to Section 1(d) below. For purposes of this Agreement, "Initial Option Period" means the Option Periods, without taking into account any extensions of the Expiration Date. Notwithstanding any other provision herein, Optionor shall have the right to terminate this Agreement only in the event that Optionee fails to perform, keep or observe any of Optionee's duties or obligations; provided, however, that Optionee shall have thirty (30) days to cure a breach or default after written notice thereof has been received by Optionee, excepting therefrom a default for non-payment of any Option Period Payment (as hereinafter defined) in which case Optionee shall have the cure period described in Section 1(d)(3). In the event that Optionee fails to pay an Option Period Payment following such cure period, Optionor shall have the right to terminate the Agreement after providing written notice to Optionee.

(c) Exercise of Option; Failure to Exercise.

(1) The Option may be exercised in whole or in part (and on multiple occasions to the extent exercised in part) at any time during the Option Period provided that Optionee is not then in default (after the expiration of any applicable cure periods) under this Agreement or any Lease then in effect with Optionor. The Option may be exercised, if at all, by delivery of written notice to



Optionor ("Option Notice"), which shall include a legal description, created at Optionee's sole cost, of which portion of the Land (if not all) Optionee is exercising its right to lease (the "Leased Land"; together with the Appurtenant Rights, the "Leased Property"); provided the portion of Land to be leased is done in a reasonable order so not to create issues with access or future usability; provided, however, that Optionor acknowledges that Optionee shall have the right to exercise the Options in accordance with Optionee's Site Phasing Plan, attached hereto as Exhibit "B-1" and by this reference incorporated herein. Optionor shall have the right to provide input on the order that the Land is leased. Not later than sixty (60) days after Optionee's exercise of an Option, Optionor and Optionee shall duly execute and acknowledge a copy of the Lease, with the legal description of the Leased Property set forth in the Option Notice attached thereto, and Optionor to deliver the same to Optionee. For purposes of this Agreement, "Closing" shall mean Optionor's delivery to Optionee of a duly executed and acknowledged Lease with respect to the Leased Property. The Lease shall be effective on the date the Lease is approved by the Board. For sake of clarity, each exercise of an Option by Optionee shall result in a separate and independent Lease with respect to the Leased Property described in the applicable Option Notice from Optionee; *provided, however, that* Optionee may not exercise the Option more than five (5) times (*i.e.*, there shall not be more than five (5) separate Leases). No Option rights shall be granted to Optionee after five (5) years from the Effective Date of this Agreement.

(2) This Agreement shall terminate following the end of the Option Period if and to the extent the Option is not exercised, whereupon the Option Period Payment (as hereinafter defined) shall be retained by Optionor. In the event that FAA Approval (as hereinafter defined) is not granted prior to the expiration of the Initial Option Period, Forty Thousand Dollars (\$40,000) of the Initial Option Period Payment shall be belong to and retained by Optionor in consideration of granting this Option; the rest of the Initial Period Payment shall be returned to Optionee and this Agreement shall be terminated; except in the event of Optionee's uncured default past the cure period set forth in Section 1(b) above, all shall be retained by Optionor. Upon termination of this Agreement, the parties shall each bear their own respective costs in connection with the transactions contemplated by this Agreement, and the parties shall have no further rights or obligations under this Agreement other than the provisions of this Agreement that expressly survive such termination (the "Surviving Obligations"). For purposes of this Agreement, "FAA Approval" means the approval by the Federal Aviation Administration ("FAA") to the land use change for Optionee's proposed use of the Property and the National Environmental Policy Act ("NEPA") Environmental Assessment Document, in each case if and to the extent required by applicable FAA law or regulations. In the event that the FAA Approval has not been granted prior to the expiration of the Initial Option Period, Optionor and Optionee may agree to extend the time until such approval has been obtained, but not more than a total of sixty (60) months. Optionor and Optionee shall each use reasonably practicable efforts to obtain the FAA Approval, including, but not limited to, preparing and conducting activities to satisfy the National Environmental Policy Act, in each case if and to the extent required thereby, as soon as reasonably practicable but not later than prior to the expiration of the Option Period. Each party shall assist the other party in obtaining the FAA Approval as soon as reasonably practicable.

(d) Option Consideration.

(1) Initial Option Period Payment. The Initial Option Period is granted in consideration of Optionee's payment of Fifty Thousand Dollars (\$50,000) (the "Initial Option Period Payment") to Optionor, due and payable when this Agreement is approved and executed by the Board. No consideration shall be applied to or credited against any amounts due under the Lease(s) if an Option to Lease is exercised. It is understood that in all cases (other than as provided in Sections 1(c)(2) and 3(c)) the Initial Option Period Payment shall be non-refundable and deemed as consideration for Optionor's the execution of this Agreement. Optionor shall obtain Extension Option Periods, as

described below, by delivery of written notice to Optionor no later than thirty days prior to expiration of the Initial Option Period or any Extension Option Period. If Optionee exercises an Extension Option Period, then the applicable Extension Option Period Payment shall be due from Optionee at the same time the Option Notice is given to Optionor.

(2) Extension Option Period Payments. Optionee shall have the right (each, an "Extension Option Period" and, collectively, the "Extension Option Periods") to extend the Option Period as follows:

(i) An additional twelve (12) months (thirty-six (36) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000).

(ii) An additional twelve (12) months (forty-eight (48) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000)(not including the Initial Option Period Payment or the amount set forth in the preceding clause (a)).

(iii) An additional twelve (12) months (sixty (60) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000)(not including the Initial Option Period Payment or the amounts set forth in the preceding clauses (a) and (b)).

For purposes of this Agreement, "Extension Option Period Payment" means any payments made by Optionee to exercise the Extension Option Periods pursuant to this Section 1(d)(2).

(3) In the event that Optionee fails to make an Extension Option Period Payment when required by this Section 1(d)(2), then Optionor shall provide Optionee with notice of such nonpayment and, if Optionee does not make the required payment within fifteen (15) days of its receipt of such notice, then the Option Period shall terminate. For purposes of this Agreement, "Option Period Payment" means the Initial Option Period Payment together with any Extension Option Period Payments made by Optionee.

(e) Retention of Option Period Payment. Any of the Option Period Payments shall be deemed earned by Optionor in consideration of granting the Option to Optionee except in the event of a default of this Agreement by the Optionor. The right to request an extension of the Option Period is contingent upon the Optionee not then being in default of this Agreement beyond any applicable cure periods provided herein.

## 2. Right of Entry on the Property.

(a) Upon approval and full execution of this Agreement, Optionee shall have performed all of its due diligence activities to determine the suitability of Property for Optionee's intended purpose.

(b) Physical Inspections. During the Option Period, Optionee may investigate matters relating to or affecting the Property and the additional feasibility studies for Optionee's desired use of the Property, and conduct inspections, tests and studies with respect to the physical and environmental condition of the Property so long as they are not materially disruptive to the Airport property or operations. Optionee and Optionee's consultants, agents, engineers, inspectors, contractors, employees and others acting for, at the request of or on behalf of, Optionee shall be given access to the Property for the purpose of performing such inspections of the Property ("Physical Inspections"). Optionee shall undertake the Physical Inspections at its sole cost and expense. Optionee shall defend,

indemnify and hold Optionor free and harmless from any liability, claim, cost or expense reasonably incurred by Optionor as a result of the 1) acts or omission by Optionee; 2) any Physical Inspections; 3) the breach of any representations or warranties made by Optionee under this Agreement; *provided, however, that* Optionee shall not be required to defend, indemnify or hold Optionor harmless on account of (i) Optionee's uncovering, disclosure, or identification of any existing conditions on the Property or any adjacent property except to the extent exasperated by Optionee, or (ii) to the extent such liability, cost or expense is attributable to or caused by Optionor's negligent acts or omissions or willful misconduct.

3. Representations and Warranties.

(a) Optionor's Representations. Optionor hereby makes the following representations and warranties, each as of the Effective Date and the date of each Closing:

(1) Optionor is duly organized, validly existing and in good standing under the laws of the State of California. Optionor has the right, power, legal capacity and authority to execute, deliver and perform this Agreement and, other than the FAA Approval, any consent required as a condition to the authority of Optionor to execute, deliver and perform this Agreement has been obtained. The individuals who have executed this Agreement on behalf of Optionor have the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Optionor.

(2) There is no action, suit or proceeding pending or, to the best of Optionor's knowledge, threatened against Optionor or the Property in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Optionor to carry out the transactions contemplated by this Agreement. Optionor has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Optionor has not received any written notice of (i) the filing of an involuntary petition by Optionor's creditors, (ii) the appointment of a receiver to take possession of all, or substantially all, of its assets, or (iii) the attachment or other judicial seizure of all, or substantially all, of its assets.

(3) Subject to obtaining FAA Approval, neither entering into this Agreement nor performance of any of Optionor's obligations under this Agreement shall violate the terms of any contract, agreement or instrument to which Optionor is a party or any laws. Optionor has not received any notices that the Property is in violation of any applicable law, statute, ordinance, regulation or governmental order (collectively, "Applicable Law"). Optionor makes no representation or warranty as to whether the FAA will approve this Agreement. Optionor has complied with the requirements of the California Environmental Quality Act and National Environmental Policy Act, each as amended to date, in approving and entering into this Agreement and each Lease.

(4) Optionor shall not enter any agreement which would unduly interfere with the use and enjoyment of the Leased Property which could survive the Closing. Additionally, Optionor shall not alienate, lien, encumber or otherwise transfer all of any portion of or interest in the Property during the Option Period that would unduly interfere with the use and enjoyment of the Leased Property.

(5) There are no adverse or other parties in possession of the Property or of any part thereof, and no party has been granted any license, lease or other right relating to the use or possession of the Property.

(6) The Property is free and clear of any monetary liens and encumbrances, agreements or instruments that could have the effect of causing the termination of this Agreement or any Lease.

(b) Optionee's Representations. Optionee hereby makes the following representations and warranties, each as of the Effective Date and the date of each Closing:

(1) Optionee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Optionee has the right, power, legal capacity and authority to execute, deliver and perform this Agreement and any consent required as a condition to the authority of Optionee to execute, deliver and perform this Agreement has been obtained. The individuals who have executed this Agreement on behalf of Optionee have the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Optionee.

(2) There is no action, suit or proceeding pending or, to the best of Optionee's knowledge, threatened against Optionee in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Optionee to carry out the transactions contemplated by this Agreement. Optionee has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Optionee has not received any written notice of (i) the filing of an involuntary petition by Optionee's creditors, (ii) the appointment of a receiver to take possession of all, or substantially all, of Optionee's assets, or (iii) the attachment or other judicial seizure of all, or substantially all, of Optionee's assets.

(3) Neither the entering into this Agreement nor this performance of any of Optionee's obligations under this Agreement shall violate the terms of any contract, agreement or instrument to which Optionee is a party or any laws.

(4) Optionee hereby expressly represents and warrants to Optionor that prior to the Closing of a Lease, Optionee will have had the opportunity to make and will have made such an investigation and inspection of all aspects of the condition of the Leased Property was reasonably necessary and appropriate and whether it is suitable for the purposes in which it was leased. Optionee is relying upon its own inspections and investigations of the Property.

(c) Breach of Representations, Warranties and/or Covenants. If at or prior to Closing any party's representations, warranties and/or covenants are breached, then the other party may (but shall not be obligated to) cause the cure of such representations, warranties and/or covenants, and thereafter offset all costs and expenses of the breaching party in connection with such cure against any amounts owing under the Lease. The provisions of this Section shall survive the Closing. If the non-breaching party does not elect to cure such breach, then it may terminate this Agreement, whereupon (1) if Optionor is the breaching party, Optionor shall return the Option Period Payments to Optionee within twenty (20) days of such termination, and (2) if Optionee is the breaching party, Optionor shall retain the Option Period Payments made by Optionee.

4. Lender Requirements. Optionor, at Optionee's sole cost and expense, agrees to use reasonably practicable efforts to execute such documents and take such actions as Optionee or Optionee's lender(s) may from time to time request to accommodate any financing or credit facility of Optionee and/or its successors' assigns and affiliates, including, without limitation, (i) subordinating this Agreement and the Lease to the liens, rights and interests of such lenders, including obtaining a Nondisturbance Agreement, (ii) amending the Lease to conform to such lenders' requirements, (iii)

executing estoppel certificates from time to time covering matters as such lenders may request, and (iv) joining the execution of or consenting to a leasehold deed of trust whereby such lenders take a security interest in the leasehold interest created by a Lease. For purposes of this Agreement, "Nondisturbance Agreements" mean nondisturbance agreements (in recordable form and otherwise in form and substance reasonably acceptable to Optionee and Optionor) from any party reasonably requested by Optionee when needed for Lender Requirements. By way of example and not limitation, the Nondisturbance Agreements shall provide that the applicable counterparty agrees that upon any enforcement of its interest in the Property, (1) this Agreement would remain in full force and effect as a direct agreement between such counterparty and Optionor and (2) any Lease then in effect would become a direct lease between such counterparty, as landlord, and the lessee thereunder, as tenant. The provisions of this Section shall survive the Closing.

5. Permitted Encumbrances. Optionee acknowledges that it has had an opportunity to perform any due diligence on the Property and an opportunity to object to any encumbrances that would unduly interfere with the use and enjoyment of the Leased Property. Upon delivery of the Option Notice, Optionor agrees that it will lease to Optionee the Leased Property under a Lease Agreement. Optionor is not obligated to effect any change or clear any title matters. During the Option Period, Optionor shall not grant or permit any easement, lien or other encumbrance to be filed against the Property except those permitted under Optionor's reserved rights in the Lease Agreement (a) without the prior written notice to Optionee or (b) that will unduly interfere with the use of the Leased Property. Optionee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring.

6. No Interference: No Third Party Rights. During the Option Period, Optionor will not construct or install or permit the construction or installation of any structure or other improvement on the Property that would unduly interfere with or impair Optionee's access to the Property for the purposes set forth in this Agreement or with Optionee's intended use of the Property. Optionor further agrees that Optionor will not take any action or grant any third party any rights in any portion of the Property that could materially interfere with Optionee's intended uses of the Property. The provisions of this Section shall survive the Closing.

7. Cooperation. Optionor agrees to cooperate with Optionee in all reasonable respects in connection with seeking and obtaining all necessary or appropriate approvals for the Project, or any other project that Optionee may plan with respect to the Property provided that such cooperation shall impose no expense or liability upon Optionor.

8. Brokers. Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction. Each party hereto agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property (or any portion thereof) by Optionor to Optionee, and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith. The provisions of this Section shall survive Closing or any termination of this Agreement.

9. Condemnation. If, before the Closing Date, proceedings are commenced or threatened for the taking by exercise of the power of eminent domain of the Property (or any portion thereof) by an entity other than Optionor, Optionee shall have the right to terminate this Agreement by delivering written notice thereof to Optionor, whereupon this Agreement shall terminate, the Option Period Payment shall be promptly returned to Optionee in accordance with Section 1. herein, and the parties shall have no

further obligations to each other than Surviving Obligations. If only a portion of the Property is subject to eminent domain and Optionee's projects are still viable in Optionee's judgment, then Optionee may elect to maintain the validity of this Agreement and receive the return of a pro rata portion of the Option Period Payment based on the acreage of the Land subject to eminent domain as it relates to the entire acreage of the Land.

10. General Provisions. The parties hereby agree to the following general provisions:

(a) Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein. This Agreement may not be amended without the written consent of all parties.

(b) Confidentiality and Public Disclosure. Optionee acknowledges that Optionor is a public entity subject to public disclosure laws. To the extent permitted by law, including but not limited to the Public Records Act, Optionee and Optionor agree that the "Confidential Information" (as hereinafter defined) shall be maintained confidential between Optionee and Optionor and their respective consultants, prospective lenders, advisors and legal counsel (the forgoing parties collectively, "Consultants"). The parties agree that they and their Consultants shall not disclose any of the Confidential Information to any other third parties. The parties agree to provide copies of this Agreement to each of their respective Consultants and require each of the Consultants to agree to be bound by the terms herein. Notwithstanding the foregoing, this paragraph shall not apply if any party is required to disclose any Confidential Information, with advice of counsel, under applicable law or Optionor's contractual obligations existing as of the Effective Date. The term "Confidential Information" for purposes of this Section 11(b) shall include: (i) information provided or exchanged between the parties to this Agreement relating to the potential terms of the transaction including any offers, counteroffers and agreements (including this Agreement) exchanged between Optionee and Optionor; (ii) information disclosing that Optionee and Optionor are in agreement for the Lease of the Property; and (iii) information regarding Optionee's proposed uses of the Property. Confidential Information shall not include public information including title information, information submitted for approval by the governing body of the Optionor, information not exempt from disclosure by Optionor and information previously intentionally released by Optionee to the general public regarding the Property. The provisions of this Section 11(b) shall survive the Closing or any termination of this Agreement.

(c) Memorandum. Concurrently with the mutual execution of this Agreement (or as soon thereafter as reasonably practicable), Optionor shall execute, acknowledge and deliver to Optionee a fully executed and notarized memorandum of option in the form attached hereto as Exhibit C (the "Memorandum of Agreement"), thereafter Optionee may cause it to be promptly recorded in the Official Records of Riverside County, California. If this Option Agreement is terminated, Optionee shall execute, acknowledge and deliver a quitclaim deed to Optionor within ten (10) days after termination and to execute, acknowledge and deliver any other documents required by any title company to remove the cloud of this Agreement from the Property.

(d) Attorney's Fees. For actions for the enforcement of this Agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

(e) Governing Law. This Agreement, and the rights and obligations of the parties hereunder, shall be construed and enforced in accordance with the laws of the State of California, without regard to such state's choice of law provisions.

(f) Further Assurances. Each party agrees to perform in good faith, any and all further steps and actions, and shall execute and acknowledge any and all further documents, as may be reasonably necessary and/or expedient in order to effectuate the intents and purposes of this Agreement.

(g) Assignment. Optionee may not assign its rights or obligations under this Agreement without the prior written consent of Optionor, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that Optionee may, without Optionor's prior consent, assign its rights and obligations under this Agreement, in whole or in part, to any party that Optionee controls, is under common control with Optionee or that controls Optionee. In the event of any assignment, Optionee shall remain liable for all duties and obligations of this Agreement.

(h) Notices. All notices, demands, requests, and exercises under this Option Agreement by either party shall be hand delivered or sent by United States Mail registered or certified, postage prepaid, addressed to the other party as follows:

If to Optionor:

Economic Development Agency  
Aviation Division  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-8916  
Facsimile: (951) 698-7920

With a copy to:

Economic Development Agency  
Real Estate Division - Leasing  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-4820  
Facsimile: (951) 955-4837

If to Optionee:

NRG SOLAR BLYTHE II  
1015 West Hays Street  
Boise, Idaho 83702  
Attn: Bob Mooney  
Telephone: (208) 338-2603  
Facsimile: (208) 890-0369

With a copy to:

Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, CA 90067  
Attn: Stephane Nguyen  
Telephone: (310) 734-5231  
Facsimile: (310) 734-5299

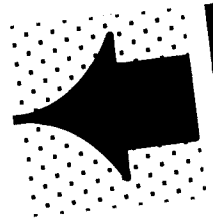
Notices, demands, requests, and exercises served in this manner shall be considered sufficiently given or served for all purposes under this option at the time the notice, demand or request is hand-delivered or when postmarked to the addresses shown. These addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of this notice.

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement and made it as of the Effective Date.

OPTIONOR:

THE COUNTY OF RIVERSIDE,  
*a political subdivision  
of the State of California*



By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

OPTIONEE:

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 12-13-10  
SYNTHIA M. GUNZEL DATE



IN WITNESS WHEREOF, the parties have executed this Agreement and made it as of the Effective Date.

OPTIONOR:

THE COUNTY OF RIVERSIDE,  
*a political subdivision  
of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

OPTIONEE:

NRG SOLAR BLYTHE II,  
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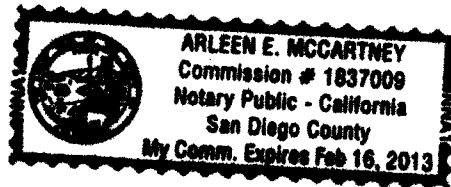
State of California )  
County of SAN DIEGO

On December 8, 2010, before me, ARLEEN E. MCCARTNEY, a notary public for said county and said state, personally appeared TIM HEMIG 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 Arleen E Mc Cartney (Seal)



State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

EXHIBIT A

Form of Lease

[Attached hereto and made a part hereof]

## LEASE AGREEMENT

This LEASE AGREEMENT (this "**Lease**"), effective as of the Closing (the "**Effective Date**"), is by and between THE COUNTY OF RIVERSIDE, as lessor, a political subdivision of the State of California (the "**County**"), and \_\_\_\_\_, a Delaware limited liability company, as lessee ("**Lessee**"), with reference to the following facts and objectives:

A. The County is the owner of record of all of that certain real property consisting of approximately 3,904 acres of land and improvements therein, (the "**Property**") situated at 17710 W. Hobsonway, Riverside County, California, more commonly known as "**Blythe Airport**".

B. The County and Lessee entered into that certain Option Agreement (the "**Option Agreement**") dated as of December \_\_, 2010, whereby Lessee has been granted the right to lease from the County portions of the Blythe Airport when and if Lessee exercises any or all of the Option described therein.

C. The County desires to lease to Lessee, and Lessee desires to lease, a portion of real property within the Blythe Airport, consisting of approximately \_\_\_\_\_ acres of land for the use and purposes provided herein.

D. For purposes of this Lease, "**Governing Authority**" means any appropriate federal, state or local agency that has jurisdiction over the matters to be reviewed and approved. Capitalized terms used, and not otherwise defined, herein shall have the same meanings ascribed to them in the Option Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Lessee hereby agree as follows:

### **ARTICLE I** LEASE OF PROPERTY

**Section 1.1** Leased Property. The County, in consideration of the Rent which Lessee hereby agrees shall be paid, does hereby lease unto Lessee, and Lessee does hereby lease from the County, the Leased Property as legally described in Exhibit "A" and as depicted on Exhibit "B", attached hereto and by this reference incorporated herein, which Leased Property shall include all of the County's rights and privileges in and to the real property comprising the Leased Property and the Appurtenant Rights. For sake of clarity, this Lease does not grant any water or mineral rights to Lessee.

### **ARTICLE II** TERM OF LEASE

**Section 2.1** Term. Unless sooner terminated as expressly herein provided, this Lease shall continue in effect for a term commencing on the Effective Date and ending at midnight, Pacific Standard Time, on the date that is thirty (30) years after the Effective Date (the "**Initial Term**"). The Initial Term, as it may be extended in accordance with Section 2.2 below, is referenced to herein as the "**Term**".

**Section 2.2** Extension Term. Lessee shall have four (4) options (each, an "**Option**" and collectively, the "**Options**") to extend the Term for an additional period of five (5) years per Option (each, an "**Extension**" and collectively, the "**Extensions**") by delivering written notice to the County exercising such Option to extend the Term prior to then-scheduled expiration of the Term.

**Section 2.3** Lessee Termination Right. Lessee shall have the right to terminate this Lease at any time during the Term, with or without cause, upon not less than three (3) months prior written notice to

the County (the "**Termination Notice**"), provided that Lessee pays the County three (3) months' Rent as a termination fee and without any refund of Rent paid to date.

**Section 2.4 County Termination Right.** Notwithstanding the terms provided in Articles XI and XIII, County shall have the right to terminate, without cause, in the event (a) the Federal Aviation Administration ("**FAA**") does not within two (2) years of the Effective Date approve the land use change for Lessee's proposed use of the Leased Property and the National Environmental Policy Act ("**NEPA**") Environmental Assessment Document, in each case if and to the extent required by applicable FAA laws, rules or regulations or (b) in the event that Lessee does not perform within the five (5) year period pursuant to Article V.

### **ARTICLE III** **RENT**

**Section 3.1 Base Rent.** Commencing upon the Effective Date of this Lease, Lessee shall pay to the County the base rent ("**Rent**") in the amount of Two Hundred Seventy Dollars (\$270) per gross acre per year of the Leased Property due quarterly during the Term of this Lease. Gross acre shall include the total number of acres used, reserved for mitigation or designated as avoidance areas. The quarterly Rent amount is calculated by multiplying the per gross acre amount times the number of acres leased divided by 4. For example, \$270 per gross acre  $\times$  100 acres  $\div$  4 = \$6,750 each quarter. The Rent is due in advance on or before the first day of the first month of each calendar quarter during the Term of this Lease and shall be considered delinquent, if not paid by the fifteenth (15<sup>th</sup>) of such month. If the Rent becomes delinquent, Lessee will be charged a late fee equivalent to ten percent (10%) of the delinquent rental amount, exclusive of late fees, for each month that Rent is delinquent. Lessee may pre-pay any Rent due during the Term.

**Section 3.2 Base Rent Adjustment.**

(a) On each anniversary of the Effective Date, the Rent shall increase by two and one-half (2½%) above the Rent from the prior year.

(b) After the fifth (5th) anniversary of the Effective Date and at five (5) year intervals thereafter (but not more frequently than once every five (5) years), County has the right, but not the obligation, at its sole cost to have an third party appraisal ("**Leased Property Appraisal**") prepared by an appraiser licensed in the State of California with not less than fifteen (15) years of experience appraising raw land in Riverside County to determine the fair market value of the Leased Property. Each such Leased Property Appraisal shall be completed, if at all, by not later than the date that is nine (9) months prior to each five (5) year anniversary of the Effective Date, and, subject to the terms of this Section 3.2(b), any Rent increase resulting therefrom shall go into effect on the following five (5) year anniversary of the Effective Date. The Leased Property Appraisal will be determined without taking into account the existence of this Lease and assuming that there are no improvements on the Leased Property (*i.e.*, the Leased Property as unimproved and unoccupied raw land) and that the Leased Property is only permitted for Airport use. Rent shall increase to the greater of (i) the Rent from the prior year increased by two and one-half (2½ %); or (ii) seven percent (7%) of the fair market value of the Leased Property as set forth in the Leased Property Appraisal. In no event shall application of this paragraph result in a monthly Rent for the Leased Property which is (a) lower than the highest previous Rent for the Lease Property, or (b) greater than one hundred ten percent (110%) of the Rent during the prior year of the Term.

**ARTICLE IV**  
**PROPERTY TAXES, UTILITIES; DEVELOPMENT EASEMENTS**

**Section 4.1** **Property Tax.** The Blythe Airport is owned by the County and is not subject to any real estate taxes or assessments because the County is a governmental agency. However, Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and Lessee shall pay any such property taxes.

**Section 4.2** **Utilities.** Lessee shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Leased Property and the Improvements, and all water rents, sewer service charges, or other similar charges levied or charged against, or in connection with, the Leased Property and the Improvements.

**Section 4.3** **Development Easements.** Lessee may determine it is necessary, desirable, or required that, in order to construct, operate, own and/or finance Lessee's Facility (as hereinafter defined) and/or serve the Leased Property (and Lessee's project thereon), streets, water pipelines, sewer, drainage, gas or power lines, and other easements, dedications and similar rights be granted or dedicated over or within portions of other property owned by the County for the benefit of the Leased Property (the "**Development Easements**"). The County will reasonably cooperate with Lessee by granting Lessee such Development Easements provided that (a) any Development Easements shall be in a location reasonably acceptable to the County, (b) Lessee pays all of the County's reasonable out of pocket costs in connection with the same (*i.e.*, third party consultant, escrow and recording fees), (c) the County has no cost or liability in connection with the same, (d) Lessee pays reasonable compensation to the County for such Development Easements (at a per acre price equal to the per acre Rent value set forth in Article III hereto), and (e) Lessee obtains all the necessary permits, entitlements and approvals for Lessee's installation of any improvements on granted Development Easements. The County shall, on request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term, in accordance with this paragraph.

**ARTICLE V**  
**IMPROVEMENTS**

**Section 5.1** **Lessee's Facility.** Without limitation upon the other provisions of this Article 5, and subject to Lessee obtaining all entitlements and permits required by applicable law, the County agrees that Lessee, at Lessee's sole cost and expense, shall construct, own, operate, maintain, replace, repower and improve upon the Leased Property one or more photovoltaic electrical generating facilities together with related improvements, appurtenances, streets, sidewalks and facilities (together, "**Lessee's Facility**") within five years after the Effective Date subject to Force Majeure (as defined below). In the event that Lessee has not completed construction of and is operating Lessee's Facility by the date that is five (5) years after the Effective Date, subject to Force Majeure, then the County shall have the right as its sole remedy to terminate this Lease upon not less than ninety (90) days written notice to Lessee, whereupon this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

**Section 5.2** **Construction of Improvements.** Lessee shall, at its sole cost, risk and expense, construct Improvements (as hereinafter defined) upon the Leased Property (including, without limitation, Lessee's Facility) in accordance with all applicable laws (including, but not limited to, the California Environmental Quality Act ("**CEQA**"), the National Environmental Protection Act ("**NEPA**") if applicable, and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority as may be reasonably necessary for the same, and otherwise in the following manner:

(a) Lessee shall submit a development plan for the entire proposed development to the appropriate Governmental Authority and construct the development in accordance to the agreed upon schedule. Such Improvement, and any other improvements, alterations and installation of fixtures, to be undertaken by Lessee shall have the prior written approval of County after Lessee has submitted to County proposed plot and building plans and specifications therefor in writing. Upon such approval, Lessee shall complete such improvements in strict compliance with said plans and specifications. Lessee shall not be permitted to complete improvements of any kind in any environmentally sensitive areas or avoidance areas, in each case as designated by applicable law, of the Leased Property and such limitation does not operate to abate or adjust the acreage leased or the Rent for the Leased Property.

(b) Prior to commencement of construction of the Improvements, Lessee shall designate in writing to the County an individual that will be involved in such construction and who has the authority to bind Lessee in connection with such construction (the "**Lessee's Designated Representative**"). The County shall within a reasonable amount of time after receipt of such notice from Lessee designate an individual who has authority to bind the County with regards to the construction of the Improvements (the "**County's Designated Representative**"; and together with the Lessee's Designated Representative, the "**Designated Representatives**").

(c) The Designated Representatives shall meet from time to time, as often as necessary, in order to coordinate the construction of the Improvements so as to reduce disturbance to the County's use of the balance of the Blythe Airport during such construction. Such coordination may include, among other things, scheduling for delivery of equipment and materials, providing staging areas for construction, storage of equipment and materials, and use of access routes on the Leased Property.

(d) Lessee shall repair all damage to Blythe Airport or any of the County's property, including but not limited to, personal property or improvements made by the County ("**County Personal Property**") (not including the Leased Property or any other property leased by Lessee from the County) caused by Lessee during the construction of the Improvements; *provided, however, that* Lessee's repair obligation shall not extend to or include any damage arising from or related to (i) conditions in, on, under or about any of the County Personal Property, the Leased Property or Blythe Airport that existed prior to the commencement of such construction or were not otherwise caused or introduced by Lessee, (ii) Lessee's discovery of such existing conditions on the Blythe Airport or County Personal Property, (iii) negligence or willful misconduct of the County, or (iv) any violation of applicable law or this Agreement by the County.

(e) Lessee complies with applicable Regulations (as hereinafter defined) relating to the Blythe Airport in connection with such construction.

(f) It is specifically acknowledged that Lessee intends to, as part of its development plan, construct Improvements located upon the Leased Property and upon adjoining parcels of real estate in which Lessee has ownership, leasehold or other interests so long as such Improvements are constructed in accordance with any applicable laws. As used hereafter, the term "**Improvements**" means any buildings, structures, transmission lines or other improvements located at any time upon the Leased Property (including, without limitation, the Lessee's Facility). The Improvements, and any fixtures, equipment or other property placed on the Leased Property by Lessee shall be the sole and exclusive property of Lessee and the County waives any and all lien rights it may have in the foregoing.

**Section 5.3 Alterations.** At any time and from time to time during the Term, Lessee may perform such minor alteration, maintenance, renovation, repair, refurbishment, replacement, repowering, removal, and other work with regard to any Improvements as Lessee may elect provided that Lessee complies with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any

applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. Minor alterations shall mean any physical modification to a structure that is limited in scope or has a minor visual impact in relation to the total design of the project. Minor alterations normally include such changes as replacement of the type of solar panels as was provided in the approved plans. If any such work is not related to Lessee's Facility or is a "**Substantial Alteration**", then Lessee shall be required to obtain the consent of the County for such Improvements and (2) comply with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. "Substantial Alteration" shall mean any physical modification to a structure that involves a major portion of the structure or has a substantial visual impact on the structure or its surroundings. Substantial Alterations normally include such changes as a replacement of solar panels that is a change in technology type or a type not approved by the plans.

**Section 5.4** **Liens.** Lessee shall have no right, authority, or power to bind the County or any interest of the County in the Leased Property for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render the County's interest in the Leased Property liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of the County in the construction, erection, or operation of any such Improvements. Lessee shall give to the County not less than twenty (20) days written notice prior to the commencement of any construction in or to the Leased Property, and the County shall have the right to post notices of non-responsibility in or on the Leased Property as provided by law. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Leased Property shall be filed, Lessee shall promptly pay or bond such liens to the County's reasonable satisfaction or otherwise obtain the release or discharge thereof.

**Section 5.5** **Removal of Property.** Title to and ownership of all Improvements constructed by, on behalf of, or at the direction of Lessee shall be and remain in Lessee. Upon expiration or termination of this Lease, Lessee shall surrender the Leased Property. Unless otherwise agreed to in writing by the County, Lessee shall remove, at its own expense, any and all of Lessee's fixtures, machinery, equipment, furniture, furnishings and/or movable personal property installed in or on the Leased Property and/or the Improvements not later than one hundred eighty (180) days following the expiration of the Term, or earlier termination thereof. Lessee shall repair any damage caused by Lessee to the Leased Property to the extent reasonably practicable and leave the Property in a good, safe and clean condition with all materials from the Improvements properly removed from the Blythe Airport. In the event that Lessee does not remove such Improvements, then as the County's sole remedy, they shall become the property of the County for no consideration of any kind, and Lessee shall execute any documents that may be required or necessitated conveying its interest in such improvements, alterations, and fixtures to County.

**Section 5.6** **Compliance with CEQA and NEPA.**

(a) The County and Lessee will comply with the requirements of the CEQA and NEPA. Lessee will apply for all applicable Governmental Authorities (including the County) for all necessary permits and licenses for its project on the Leased Property.

(b) Lessee understands that the proposed development of Lessee's Facility is subject to development approvals yet to be obtained and the review and approval of the project in accordance with the CEQA and, if applicable, NEPA. It is expressly understood by the parties hereto that the County makes no representations or warranties with respect to approvals required by any governmental entity, including the County, or with respect to any approvals hereinafter required from the County or other Governmental



Authorities, with the County reserving full police power authority over the proposed facility. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within a particular time or with or without any conditions which require mitigation for any impacts the construction and operation of the facility comply with the terms and conditions might have.

**ARTICLE VI**  
**USE, CONDITIONS ON USE, MAINTENANCE, AND REPAIRS**

**Section 6.1 Use.** Subject to the terms and provisions hereof, Lessee shall have the right to use and possess the Leased Property for the development, construction, operation, ownership, maintenance, replacement, repower, power storage, improvement and removal of one or more photovoltaic electrical generating facilities, any ancillary uses and no other uses without the prior consent of the County.

**Section 6.2 Conditions on Use.**

(a) Lessee's use of the Leased Property is subject to the following: (1) Minimum Standards for Fixed Base Operators attached hereto as Exhibit "C", (2) Federally Required Lease Provisions attached hereto as Exhibit "D", (3) the Storm Water Pollution Prevention Plan described on Exhibit "E", (4) FAA Airport Compliance Requirements attached hereto as Exhibit "F", and (5) the retention by the County of an Avigation Easement in the form attached hereto as Exhibit "G".

(b) Lessee shall not use or store any flammable or polluting substance (other than small amounts of oil in proper containers) on the Blythe Airport except with the express written consent of the County. The use of combustible chemicals, cleaning solvents, paint stripper, painting or welding on Blythe Airport is strictly prohibited except as may be authorized in writing by the County.

(c) Unless authorized to enter onto the Blythe Airport's aircraft movement area by the County's issuing a gate card, all motor vehicles and trailers occupying the Blythe Airport because of Lessee's use of the Leased Property must be parked in public parking lots designated by the County, display current license tags and meet any and all California environmental and insurance requirements. Lessee must ensure the safe operation of its vehicles or trailers while on the Blythe Airport. Aircraft always have the right-of-way on Blythe Airport. Vehicles of Lessee will not enter any aircraft operations area of the Blythe Airport. Conditions may arise where it may be required under applicable law for the County to withdraw, temporarily or permanently, without prior notice, the privilege of parking motor vehicles in any assigned area on the Blythe Airport.

(d) Lessee shall not exercise the rights granted herein in any manner, which would interfere with the departure or arrival of aircraft at the Blythe Airport.

(f) Lessee agrees to and shall, at Lessee's sole expense, promptly comply with all statutes, ordinances, resolutions, rules, and regulations of any applicable Federal, State or local agencies, the covenants and restrictions of this Lease, any and all directives concerning airport operations and flight safety issued by the County, and requirements of any applicable fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in law or policy from that now existing, during the Term or any part of the Term hereof relating in any manner to the occupation or use by the Lessee of the Leased Property.

(g) Lessee understands and agrees that it is subject to severe restrictions on its activities at the Blythe Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to use the Leased Property for lawful uses only.

(h) Lessee, in utilizing the Leased Property, shall not discriminate against any person or class of persons by reason of race, color, creed, sex or national origin and shall be bound by the provisions of Part 15 of the Federal Aviation Regulations and any amendments thereto which are incorporated by reference as if set forth herein in full.

(i) Other than safety materials, informative materials or public warnings relating to Lessee's Facility or the Improvements, Lessee shall not erect, maintain or display any signs or other forms of advertising upon the Leased Property without first obtaining the written approval of the County, which approval shall not be unreasonably withheld.

(j) Secure, at Lessee's expense, all necessary permits and licenses as it may be required to obtain the same, and pay for all fees and taxes levied against Lessee or required to be paid by Lessee by any authorized public entity. Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

### **Section 6.3 The County's Reserved Rights.**

(a) The Leased Property is accepted by Lessee subject to any and all existing record easements or other record encumbrances. Subject to (i) the requirements in Section 7 of the Option Agreement and (ii) the County's compliance with applicable laws and Lessee's rules and standards relating to the siting, operations and safety of Lessee's Facility and the Improvements, County shall have the right to enter upon the Leased Property and to install, lay, construct, maintain, repair, monitor and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, wells, oil and gas pipeline, and telephone and telegraph power lines and such other facilities and appurtenances necessary or convenient to use in connection therewith, over, in, upon, through, across and along the Leased Property or any part hereof so long as it does not unreasonably interfere with Lessee's use of the Leased Property. Lessee shall provide its rules and standards relating to the siting, operations and safety prior to any such entry by the County, its representatives or agents. Such rules and standards shall be reasonable and County shall have the right to provide input on Lessee's rules and standards. Lessee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring. County also reserves the right to grant franchises, easements, rights of way and permits in, over and upon, along or across any and all portions of said Leased Property as County may elect; provided, however, that no right of the County provided for in this Section 6.3 shall be so executed as to interfere unreasonably with Lessee's use hereunder, or impair the security or rights of any secured creditor or financier of Lessee. County shall cause the surface of the Leased Property to be restored to its original condition (as they existed prior to any such entry) upon the completion of any construction by County or its agents. In the event that such construction may adversely affect any of Lessee's Improvements or operations made upon the Leased Property, County shall meet and discuss the proposed construction so that the Parties may come to an agreed upon resolution. County will provide thirty (30) days advance written notice to Lessee before County exercises any of County's rights set forth in this Section 6.3; provided, however, in the event such right must be exercised by reason of emergency, then County shall give Lessee such notice as soon as is reasonably practicable under the existing circumstances.

(b) The County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as it deems appropriate provided such development or improvements do not unreasonably interfere with Lessee's Facility, including, but not limited to, blocking or impairing the access (whether direct or indirect) to sunlight. The County reserves the right to take any action it reasonably considers necessary to protect the aerial approaches of the Blythe Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other

structure on the Blythe Airport, which in the reasonable opinion of the County, would constitute a hazard to aircraft. The foregoing rights of the County shall not adversely affect the Improvements or Lessee's rights under this Lease.

(c) During the time of war or national emergency, the County shall have the right, if mandated by the United States Government, to lease the landing area of the Blythe Airport, or any part thereof, to the United States Government for military use and, if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of such lease to the Government, shall be suspended. In that event, a just and proportionate part of the Rent hereunder shall be abated, and the period of such closure shall be added to the term of this Lease, or any extensions thereof, so as to extend and postpone the expiration thereof unless Lessee otherwise elects to terminate this Lease.

(d) Notwithstanding any provisions herein, this Lease shall be subordinate to the provisions of any existing agreement between the County and the United States, relative to the operation or maintenance of the Blythe Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure of reimbursement to the County of Federal funds for the development of said airport. A list of such agreements is attached hereto as Schedule 6.3, and the County represents and warrants that true and complete copies of such agreements have been provided by the County to Lessee.

**Section 6.4     Maintenance and Repairs.**

(a) The County shall have no obligation to maintain or repair the Leased Property and Improvements. Lessee shall have no obligation to exercise control over, maintain, repair or protect any improvements or property placed on, under or above the Leased Property or Blythe Airport other than those improvements or property that are owned by Lessee.

(b) Lessee shall maintain the Leased Property and the Improvements to be constructed thereon by or on behalf of Lessee in a neat, safe, orderly and attractive condition during the Term of this Lease, and Lessee shall provide for the sanitary handling and disposal of all refuse accumulated as a result of Lessee use of the Leased Property and the Improvements thereon. In addition, the exterior and the interior of the Improvements (to be constructed upon) on the Leased Property shall be maintained by Lessee(s) in good working condition and repair during the Term of this Lease. If and to the extent that any improvements and/or property are placed on the Leased Property as a result of the County's exercise of its rights under Section 6.3, the County shall maintain and keep in good order (or caused to be maintained and kept in good order) such improvements and/or property, and will do so in a manner that does not unreasonably interfere with Lessee's use of the Leased Property.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.4 OR ELSEWHERE IN THIS LEASE, LESSEE SHALL HAVE NO RESPONSIBILITY FOR, OR LIABILITY OR OBLIGATION WITH RESPECT TO, THE ENVIRONMENTAL CONDITION OF, ON OR UNDER THE LEASED PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF HAZARDOUS OR CONTROLLED SUBSTANCES) EXCEPT SOLELY TO THE EXTENT CAUSED, CREATED OR EXACERBATED BY LESSEE.

**Section 6.5     No Waste.** Lessee shall not use or permit the use of the Leased Property in any manner that will tend to create waste or a private or public nuisance. Without limiting the foregoing, Lessee shall not use steer manure or other malodorous fertilizers without the prior written permission of the County.

## ARTICLE VII

### INSURANCE AND INDEMNITY

**Section 7.1 Insurance.** Without limiting or diminishing the Lessee's obligation to indemnify or hold the County harmless as provided in this Lease, Lessee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's, in the amounts of not less than that specified herein or in minimum amounts as may be subsequently uniformly by the County to all lessees at the Blythe Airport in the exercise of the County's reasonable commercial business judgment and consistent with airport industry practice for similar kinds of activities, during the Term. These requirements, with the approval of the County's Risk Manager, may be modified to reflect the activities associated with the Lessee provided that any changes are reasonable in nature and consistent with industry standards. Lessee shall have, or cause to have, all insurance required under this Lease, in place within thirty (30) days after the date of commencement of the Term.

**Section 7.2 Workers' Compensation.** If the Lessee has employees as defined by the State of California, the Lessee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County, which waiver can be provided by blanket endorsement.

**Section 7.3 Leased Property; Commercial General Liability.** Lessee shall maintain Commercial General Liability insurance coverage, with an endorsement modifying the policy to delete the aircraft exclusion as it relates to the Lessee's occupancy, operation, maintenance or use of the Blythe Airport Property, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Lessee's performance of its obligations hereunder. Policy shall include the County as an additional insured. Policy limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit.

**Section 7.4 Vehicle Liability.** If vehicles or mobile equipment are used in the performance of Lessee's obligations under this Lease, then Lessee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit. Policy shall include the County as an additional insured.

**Section 7.5 Excess Liability.** Lessee shall maintain \$10,000,000 of Excess Liability coverage that will respond excess of the scheduled underlying Commercial General Liability and Vehicle Liability policies, with coverage that is no less broad than the underlying policies. County shall be an additional insured under said policy, pursuant to policy wording which defines an Insured to include any person or organization that the Named Insured has agreed to provide insurance to, in writing, prior to the occurrence of the loss.

**Section 7.6 Course of Construction Insurance.** During the full term of construction of the planned Improvements, Lessee shall purchase and maintain or cause to be purchased and maintained All Risk Builder's Risk insurance (Completed Value Form). The Course of Construction coverage limit of insurance shall equal or exceed the highest values exposed to loss at any one time during the Project term. Policy shall include the County as an additional insured, to the extent of its interest.

**Section 7.7 Real and Personal Property Insurance.** All-Risk real and personal insurance coverage for the full replacement cost value of building, structures, fixtures, equipment, improvements/alterations and systems on the premises for property that the Lessee owns or is contractually responsible for. Policy shall provide a Waiver of Subrogation in favor of each Landlord Party. Policy shall include business interruption, extra expense, and expediting expense to cover the actual loss of business income sustained during the restoration period.

**Section 7.8 General Insurance Provisions - All lines.**

(a) All insurance maintained in accordance with the provisions of Sections 7.1 through 7.6 shall be issued by creditworthy and commercially reasonable licensed companies, shall be carried in the name of the Lessee, with County as additional insured, but only to the extent of its interest. The additional insured status can be provided through the use of blanket additional insured endorsements.

(b) It is understood and agreed to by the parties hereto that the Lessee's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(c) Lessee shall require all contractors and subcontractors used on the Leased Property to maintain reasonable types and amounts of insurance. Lessee shall also require that the contractors and subcontractors to waive subrogation for workers' compensation insurance and include the County as additional insureds thereunder.

(d) Lessee shall not commence operations until the County has been furnished original Certificates of Insurance as well as the insurance endorsements and policy wordings, as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the Certificate of Insurance.

(e) If during the Term of this Lease or any extension thereof, there is a material change in the scope of use of the Leased Property, the County reserves the right to reasonably adjust the types of insurance required under this Lease and the monetary limits of liability for the insurance coverages currently required herein, if, upon advice of the County's Risk Manager, the amount or type of insurance carried by the Lessee has become inadequate.

(f) Lessee agrees to notify the County of any claim by a third party or any incident or event that may give rise to a claim arising from this Lease.

**Section 7.9     Indemnity.**

(a) Lessee shall hereby release, indemnify and hold harmless the County, its successors, assigns, legal representatives, officers, directors, employees, agents, representatives agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, and elected and appointed officials (“**Indemnified Parties**”) from all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, costs and attorneys’ fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity, any liability whatsoever (collectively, “**Losses**”), based upon (i) the use, occupancy or presence of Lessee, its employees, members, agents, representatives, contractors, subcontractors in, on, or about the Leased Property; (ii) the performance, or failure to perform by the Lessee, its employees, members, agents, representatives, contractors, subcontractors, its work or any obligation under this Lease; (iii) any act or omission of Lessee, its officers, employees, subcontractors, agents or representatives directly or indirectly arising out of or in any way relating to or in any way connected with the Leased Premises or this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Lessee shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnified Parties in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Lessee, Lessee shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the County; *provided, however, that* any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Lessee’s indemnification to Indemnified Parties as set forth herein.

Lessee’s obligation hereunder shall be satisfied when Lessee has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved.

The specified insurance limits required in this Lease shall in no way limit or circumscribe Lessee’s obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Lessee from indemnifying the Indemnified Parties to the fullest extent allowed by law.

Lessee shall require each contractor of every tier to indemnify the County of Riverside in respects to any claims arising from their contract.

Notwithstanding anything to the contrary in this Lease, Lessee shall have no obligation to indemnify, defend or hold any Indemnified Party harmless from or against any Losses to the extent of the negligence, willful misconduct, violation of law or breach of this Agreement by any Indemnified Party.

(b) The County shall indemnify, defend and hold harmless Lessee, its parents, affiliates, subsidiaries and each of their respective officers, directors, managers, members,

partners, employees, agents, contractors and consultants from any Losses whatsoever based or asserted upon (i) any services, or activities of, or permitted by, any Indemnified Party on the Blythe Airport, Leased Property or Lessee's Facility, and (ii) the performance, or failure to perform by any Indemnified Party of any right or obligation of the County under this Lease. Such Losses may include, but are not limited to, property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Notwithstanding anything to the contrary in this Lease, the County shall have no obligation to indemnify Lessee to the extent of Lessee's, its officers, agents, employees, contractors, subcontractors agents or representatives sole negligence, willful misconduct, violation of law or breach of this Agreement.

**Section 7.10 Subrogation.** Anything in this Lease to the contrary notwithstanding, the County and Lessee each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of casualty insurance or worker's compensation insurance that Lessee is required to provide hereunder, or under any policies of insurance maintained by the County, to the extent, and only to the extent, of any proceeds actually received by the County or Lessee, respectively, with respect thereto, regardless of cause or origin, including the negligence of either party hereto, its agents, contractors, invitees or licensees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**Section 7.11 Coverage.** All insurance described in this Article 7 may be obtained by Lessee by endorsement or equivalent means under any blanket insurance policies maintained by Lessee, provided that the coverage and other terms of such insurance otherwise comply with this Article 7.

## **ARTICLE VIII CASUALTY LOSS**

**Section 8.1 Lessee's Obligation to Restore.** Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, Lessee may (at Lessee's discretion) repair, replace, remove, restore, reconstruct, improve, modify and/or expand the same; *provided, however, that* Lessee shall make its decision with respect to the foregoing not later than one (1) year after the event of casualty by written notice to the County, and shall thereafter diligently pursue the completion of the same.

**Section 8.2** In the event that Lessee chooses to remove the Improvements, the Leased Property shall be restored to a good, safe and clean condition and all materials from the Improvements properly removed from the Blythe Airport and in accordance with Section 5.5.

## **ARTICLE IX CONDEMNATION**

**Section 9.1 Statement of Intent.** The parties represent and warrant that it is their intention that neither the Leased Property, Improvements, nor any portion thereof, shall be subject to a condemnation action or proceeding at anytime during the Term. However, the balance of the provisions of this Article 9 apply in the event that circumstances affecting the Leased Property substantially change in the future to the extent that a condemnation action or proceeding affecting the Leased Property becomes necessary.

**Section 9.2 Total Taking.** Should the entire Leased Property or Improvements be taken (which term, as used in this Article 9, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (a) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (b) next, the balance of the award shall be equitably apportioned between the County and Lessee based on the then respective fair market values of the County's interest in the Leased Property (appraised by reference to all relevant factors including the then present value of the County's reversionary interest in the entire Leased Property after expiration of the Term) and Lessee's interest in the Leased Property and the Improvements (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Leased Property and Improvements for the remainder of the Term). After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate.

**Section 9.3 Partial Taking.** Should a portion of the Leased Property or Improvements be taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall nevertheless continue in effect as to the remainder of the Leased Property or Improvements unless, in Lessee's good faith judgment, so much of the Leased Property or Improvements shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Property and Improvements had thus been taken, and the award therefor shall be distributed as provided in Section 9.2.

**Section 9.4 Award on Partial Taking; Rent Reduction.** In the event of a partial taking where this Lease is not terminated, and as a result thereof Lessee will need to restore, repair, or refurbish the remainder of the Leased Property and the Improvements in order to put them in a useable condition, then the award shall first be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property and the Improvements taken. If a portion of the Leased Property or the Improvements is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property taken. In the event of a partial taking where this Lease is not terminated, the Rent shall be proportionately reduced, as of the date of such taking, for the remainder of the Term based on the number of acres of the Leased Property which were taken.

**Section 9.5 Temporary Taking.** If the whole or any portion of the Leased Property or the Improvements shall be taken for temporary use or occupancy, the Term shall not be reduced or affected. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. Rent shall continue to be paid during the temporary taking. In the event of any temporary taking, Lessee shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to the County therefrom for the estimated cost of restoration of the Leased Property and the Improvements to the extent that any such award is intended to compensate for damage to the Leased Property and the Improvements, shall be apportioned between the County and Lessee as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. In the event that the County receives an award for the estimated cost of restoration of the Leased Property, then Lessee shall be relieved from its obligations to restore the Leased Property.



**Section 9.6 Parties to Condemnation Proceeding.** Lessee, if it so desires, shall be made a party to any condemnation proceeding.

**Section 9.7 Notice of Taking, Cooperation.** Lessee and the County shall immediately notify each other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Leased Property or the Improvements of which Lessee or the County (as the case may be) has actual knowledge. The County and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **ARTICLE X SUBLETTING AND ASSIGNMENT**

**Section 10.1 Prohibition.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, neither Lessee nor any trustee, receiver or other successor to Lessee shall, either voluntarily or by operation of law, assign sell, encumber, pledge or otherwise transfer all or any part of Lessee's leasehold estate hereunder, or permit the Leased Property to be occupied by anyone other than Lessee or Lessee's employees, contractors, or sublet the leasehold estate or any portion thereof, without the County's prior written consent in each instance.

**Section 10.2. Consent Mandatory.** The consent of the County shall be mandatory if the assignment is, in whole or in part to (collectively, "**Mandatory Consent Transactions**"): (i) any other party or entity that is controlled by, under common control with or that controls Lessee, (ii) in connection with the sale or all or substantially all of the assets of Lessee, (iii) in connection with any financing (including, but not limited to, construction and permanent financings and refinancings), funding or sale-leaseback transactions. In connection with any Mandatory Consent Transaction, Lessee shall provide the County with written notice of such transaction on the form of Consent to Mandatory Consent Transaction in the form attached hereto as Exhibit "H" (the "**Form of Mandatory Consent**") and the County shall deliver to Lessee the County's written acknowledgement of the same within sixty (60) calendar days of such delivery. In the event that the County does not provide to Lessee with such written acknowledgement within such 60 days, the County shall be deemed to have given its consent to the Mandatory Consent Transaction described in the Form of Mandatory Consent. If and to the extent that Lessee receives rent from any assignee or Lessee of this Lease in excess of the Rent required hereunder, then such excess shall be paid to the County.

**Section 10.3 Required Information.** In connection with requesting the County's consent to an assignment of this Lease or a subletting of the Leased Property or any portion thereof for which the County's consent is required other than with respect to a Mandatory Consent Transaction, Lessee shall submit in writing to the County: (i) the name of the proposed assignee or subtenant; (ii) the terms and provisions of the proposed sublease or assignment; and (iii) such reasonable information as the County may request concerning the proposed subtenant or assignee, including but not limited to a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for the County's consent, statements of income or profit and loss of the proposed subtenant or assignee for the two year period preceding the request for the County's consent and a written statement in reasonable detail as to the business experience of the proposed subtenant or assignee during the five years preceding the request for the County's consent.

**Section 10.4 The County's Options.** Subject to Section 6.2, at any time with the sixty (60) days after the County's receipt of the information specified in Section 10.3 above, the County shall by written notice to Lessee elect to (i) consent to the subletting or assignment upon the terms and to the subtenant or

assignee proposed; (ii) condition such consent upon the assumption by such assignee or Lessee of all obligations hereunder and such other reasonable conditions as the County may impose, including but not limited to adjustment of the rental payable hereunder up to the amount of any rent received by Lessee is to receive in excess of the Rent required hereunder; or (iii) refuse to give its consent. In the event that the County does not respond to Lessee in writing in such sixty (60) day period, then the County shall be deemed to have approved the proposed assignment or subletting, as applicable. Lessee and the County agree that the County shall not unreasonably withhold, condition or delay its consent to a proposed subletting or assignment. Lessee further agrees that no assignment or subletting consented to by the County shall impair or diminish any covenant, condition or obligation imposed upon Lessee by this Lease or any right, remedy or benefit afforded the County by this Lease.

**Section 10.5 Manner of Notifying the County.** If the County consents to such assignment or subletting, Lessee may thereafter within ninety (90) days after the expiration of said sixty (60) day period enter into a valid assignment or sublease of the premises or portion thereof, upon the terms and conditions described in the information required to be furnished by Lessee to the County pursuant to Section 10.3 above or other terms not less favorable to Lessee, provided however, that any material change in the terms of such subletting or assignment from those approved by the County shall be subject to the County's consent as provided herein.

**Section 10.6 Invalidity.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, no transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, or otherwise, other than pursuant to a foreclosure as defined in this Lease shall be valid or effective without such prior written consent and approval.

## **ARTICLE XI** **LESSEE'S FINANCING**

**Section 11.1 Lessee's Right to Encumber.** Lessee may, without the County's consent or joinder, encumber its interest in this Lease and the leasehold estate hereby created with one or more deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Lessee or Lessee's affiliates. Any such mortgages, deeds of trust, and/or other lien instruments, and the indebtedness secured thereby, provided that the County has been given notice thereof as set forth in Section 14.1, are herein referred to as "**Permitted Mortgages,**" and the holder or other beneficiary thereof are herein referred to as "**Permitted Mortgagees.**" No lien of Lessee upon its interest in this Lease and the leasehold estate hereby created shall encumber or affect in any way the interest of the County hereunder or in and to the Leased Property, except insofar as the County is obligated to take certain actions as to Permitted Mortgagees as provided in this Article XI. The Improvements and the leasehold estate created hereby shall at all times remain separate and apart from the title to the Leased Property for all purposes relating to the interests of any mortgagees of the County and Lessee.

**Section 11.2 Mortgage Protective Provisions.** If Lessee encumbers its interest in this Lease and the leasehold estate hereby created with liens as above provided, then Lessee shall notify the County thereof, providing with such notice the name and mailing address of the Permitted Mortgagee in question, the County shall, upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) The County shall give to the Permitted Mortgagee a duplicate copy of any and all notices which the County gives to Lessee pursuant to the terms hereof, including notices of default, and no such notice shall be effective until such duplicate copy is actually received by such Permitted Mortgagee, in the manner provided in Section 14.1.

(b) There shall be no cancellation, surrender, or modification of this Lease by joint action of the County and Lessee without the prior written consent of the Permitted Mortgagee.

(c) In the event of a Default (as hereinafter defined) should occur hereunder, then the County specifically agrees that:

(1) The County shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Lease or Lessee's right to possession hereunder, until a notice specifying the Default and the event giving rise to such Default has been received by the Permitted Mortgagee, in the manner provided in Section 14.1, and if the Permitted Mortgagee proceeds to cure the Default within a period of 30 days after the later of receipt of such notice or the occurrence of such Default, as to events of Default which Permitted Mortgagee cannot reasonably cure within such time period, the Permitted Mortgagee, to the extent it is reasonably able to do so, commences curing such Default within such time period and thereafter diligently pursues such cure to completion, then any payments made and all things done by the Permitted Mortgagee to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by the County as if done by Lessee;

(2) if the Default is a nonmonetary default that a Permitted Mortgagee cannot reasonably cure without being in possession of the Leased Property, then for so long as the Permitted Mortgagee is diligently attempting to secure possession of the Leased Property (whether by foreclosure or other procedures), provided the Permitted Mortgagee cures any monetary Defaults as well as any other Defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, then the County shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Leased Property in order to cure such Default, and during such time the County shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder; and

(3) if the Default is a non monetary default of such a nature that it is not reasonably susceptible of being cured by the Permitted Mortgagee, then the County shall not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Permitted Mortgagee pays all Rent then due and thereafter keeps the monetary obligations of Lessee hereunder current and complies with those other provisions of this Lease which, by their nature, Permitted Mortgagee may then reasonably comply with.

(d) Should this Lease be terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to the County not later than 60 days after receipt from the County of written notice of such termination (which notice the County agrees to give) to elect to receive, in its own name or in the name of its nominee or assignee, a new lease of the Leased Property for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and the County agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder.

(e) No Permitted Mortgagee shall be or become liable to the County as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Lessee under this Lease or shall actually take possession of the Leased Property, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(f) From time to time during the Term, the County shall, within sixty (60) business days after receipt, execute and deliver to a Permitted Mortgagee, or a prospective Permitted Mortgagee, any estoppel, nondisturbance agreement, recognition agreement, consent, lien waiver or other commercially reasonable document requested by any Permitted Mortgagee or prospective Permitted Mortgagee, in each case in form and substance reasonably acceptable to the County.

**Section 11.3 Modifications.** If any prospective Permitted Mortgagee requires modifications to this Lease as a condition to granting a Permitted Mortgage, the County shall not unreasonably withhold its consent to such modifications, provided that the County shall not be required to consent to any such modification pertaining to Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease the County's rights or increase its burdens or obligations hereunder. Any out of pocket cost incurred by the County in connection with any such proposed modification shall be borne by Lessee.

## **ARTICLE XII**

### **WARRANTY OF PEACEFUL POSSESSION**

The County covenants that Lessee shall peaceably, and quietly have, hold, occupy, use and control to enjoy the Leased Property during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations; and the County agrees to defend Lessee's right to such occupancy, use, and enjoyment to the Leased Property against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof, by, through or under the County, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

## **ARTICLE XIII**

### **DEFAULT AND REMEDIES**

**Section 13.1 Default.** Each of the following shall be deemed a "Default" by Lessee hereunder and a material breach of this Lease:

(a) Whenever Lessee shall fail in the payment of Rent, or any other monies required to be paid by Lessee under the express terms of this Lease when the same are due under the terms hereof ("**Monetary Default**"), if the County shall deliver to Lessee a written notice ("**Default Notice**") specifying such Monetary Default, and if the Monetary Default as specified in the Default Notice shall continue for a period of fifteen (15) days after the date of Lessee's receipt of the Default Notice, then Lessee shall be in Default.

(b) In the event of any breach of this Lease by Lessee other than a Monetary Default ("**Other Default**"), if the County shall deliver to Lessee a Default Notice specifying such Other Default and if the Other Default so specified by the Default Notice shall not be removed or cured after a period of sixty (60) days from the date of Lessee's receipt of the Default Notice then Lessee shall be in Default; *provided, however, that* as to any Other Default that Lessee cannot reasonably cure with reasonable diligence within such period, Lessee shall not be in Default if Lessee proceeds in a commercially reasonable manner to remedy the same within such sixty (60) day period.

**Section 13.2 Remedies.** If a Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Article XI, the County may at any time thereafter prior to the curing thereof

pursue any rights and remedies available to the County hereunder, at law, in equity or otherwise (including, but not limited to, the termination of this Lease). Upon the County's election to terminate this Lease, and provided that the County has complied with the provisions of Article XI in connection with such Default, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term hereof.

**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 14.1 Notices.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) facsimile transmission (followed by next day overnight delivery service) or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section 14.1. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service or if sent via registered or certified mail, (ii) upon transmission with a printed receipt from the transmitting facsimile machine in the event sent via facsimile transmission and (iii) on the next business day if sent via an overnight delivery service, if sent to each party at the address set forth below with the required proper postage:

**To the County:** Economic Development Agency  
Aviation Division  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-8916  
Facsimile: (951) 698-7920

**To Lessee:** NRG Solar Blythe II  
1015 West Hays Street  
Boise, Idaho 83702  
Attention: Bob Mooney  
Telephone: 208.338.2603  
Facsimile: 208.890.0369

With a copy to: Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, California 90067  
Attention: Stephane D. Nguyen  
Telephone: 310.734.5200  
Facsimile: 310.734.5299

Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth above. Notices required pursuant to the terms of this Agreement shall be delivered prior to 5 p.m. on the date such notice is due.

**Section 14.2 Modification and Non Waiver.** No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by the County of any Rent at any time or in

any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

**Section 14.3 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

**Section 14.4 Number and Gender; Captions; References.** Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease.

**Section 14.5 Estoppel Certificate.** The County and Lessee shall execute and deliver to each other, within sixty (60) days after request therefor by the other party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably acceptable to the Landlord Parties (to the extent each of them is a party to the estoppel certificate) and Lease.

**Section 14.6 Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**Section 14.7 Attorney Fees.** For actions for the enforcement of the agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

**Section 14.8 Surrender of Leased Property; Holding Over.** Upon termination or the expiration of this Lease, Lessee shall peaceably quit, deliver up, and surrender the Leased Property and, subject to the provisions of this Agreement, the Improvements that are then located on the Leased Property. If Lessee does not surrender possession of the Leased Property and the Improvements at the end of the Term, such action shall not extend the Term, Lessee shall be a Lessee at sufferance, and during such time

of occupancy Lessee shall pay to the County, as damages, an amount equal to 125% the amount of Rent that was being paid immediately prior to the end of the Term, prorated on a daily basis. The County shall not be deemed to have accepted a surrender of the Leased Property by Lessee, or to have extended the Term, other than by execution of a written agreement specifically so stating. In addition, Lessee's obligations to restore the Leased Property shall be in accordance with Section 5.5 and Article VIII.

**Section 14.9 Relation of Parties.** It is the intention of the County and Lessee to hereby create the relationship of lessor and lessee, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make the County and Lessee partners or joint venturers or to render either party hereto liable for any obligation of the other.

**Section 14.10 Force Majeure.** As used herein "**Force Majeure**" means the occurrence of any event or circumstance (including, but not limited to, any aircraft accidents on or near the Leased Property or any restriction by a governmental authority which restricts Lessee's use of the Leased Property) which prevents or delays the performance by the County or Lessee of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Lessee shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Lessee shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Lessee:

(a) Lessee shall give prompt written notice of such occurrence to the County; and

(b) Lessee shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the County advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Lessee shall not be relieved by any event of Force Majeure from Lessee's obligations to pay Rent hereunder, nor shall the Term be extended thereby.

**Section 14.11 Entireties.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements (whether written or oral) with respect thereto are merged herein. Any agreements entered into between the County and Lessee of even date herewith are not, however, merged herein.

**Section 14.12 Consents and Approvals.** If and to the extent the consent, approval or similar action of any of the parties hereto is required under this Agreement or applicable law, the County and Lessee agree that such consent shall not be unreasonably withheld, conditioned or delayed.

**Section 14.13 Recordation.** The County and Lessee will, at the request of the other, promptly execute an instrument in recordable form constituting a memorandum or short form of this Lease (or any amendment hereto), which shall be filed for record in the County of Riverside, or at the request of either party this Lease shall be so filed for record. In addition, Lessee may, at its sole cost, obtain a leasehold policy of title insurance with respect to its interest in this Lease. Upon expiration or termination of this Lease, Lessee shall execute and record in the County of Riverside a release of this leasehold interest.

**Section 14.14 Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Leased Property, and, subject to the provisions hereof pertaining to Lessee's rights to assign, sublet, or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

**Section 14.15 No Third Parties Benefited.** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, right to execute a new lease, and certain other enumerated rights granted to Permitted Mortgagees, the terms and provisions of this Lease are for the sole benefit of the County and Lessee, and no third party whatsoever, is intended to benefit herefrom.

**Section 14.16 Survival.** Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

*[remainder of page intentionally left blank – signature page follows]*

**EXHIBITS:**

- Exhibit “A”:** Legal Description of Leased Property
- Exhibit “B”:** Depiction of Leased Property
- Exhibit “C”:** Minimum Standards for Fixed Base Operators
- Exhibit “D”:** Federally Required Lease Provisions
- Exhibit “E”:** The Storm Water Pollution Prevention Plan
- Exhibit “F”:** FAA Airport Compliance Requirements
- Exhibit “G”:** Avigation Easement Form
- Exhibit “H”:** Consent to Mandatory Consent Transaction Form



IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

\_\_\_\_\_

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

EXHIBIT B

Description of Optioned Land

[Attached hereto and made a part hereof]

**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

THOSE PORTIONS OF TRACTS 2, 3, 4, 10, 11, 12, 15, 16, 17, 18 AND 19 AS DESCRIBED IN QUITCLAIM DEED RECORDED DECEMBER 14, 1948, IN BOOK 1035, PAGE 520, OFFICIAL RECORDS OF RIVERSIDE COUNTY, LYING WITHIN PORTIONS OF SECTIONS 19, 20, 30 AND 29, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE EAST QUARTER CORNER OF SAID SECTION 19;

**THENCE** SOUTH 89°35'40" WEST 1368.35 FEET ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, ALSO BEING THE SOUTH LINE OF PARCELS 32 AND 33 OF PARCEL MAP NO. 14293 AS SHOWN ON FILE IN BOOK 108 OF PARCEL MAPS, PAGE 11 THROUGH 20, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY TO A POINT LYING PARALLEL WITH AND 1368.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;

**THENCE** SOUTH 01°41'54" EAST 2672.15 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1368.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30;

**THENCE** SOUTH 01°40'50" EAST 398.63 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 430.00 FEET SOUTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF THE EAST HALF OF SAID SECTION 30;

**THENCE** NORTH 89°37'44" EAST 750.20 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 618.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF SAID EAST HALF;

**THENCE** SOUTH 01°40'50" EAST 3604.77 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1270.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF SAID EAST HALF;

**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**THENCE NORTH 89°15'08" EAST 638.56 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1270.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29;**

**THENCE NORTH 89°14'05" EAST 1229.68 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1250.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID SOUTHWEST QUARTER;**

**THENCE SOUTH 01°40'50" EAST 750.10 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF SAID SOUTHWEST QUARTER;**

**THENCE NORTH 89°14'05" EAST 1397.21 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29;**

**THENCE NORTH 88°44'21" EAST 1456.49 FEET ALONG SAID PARALLEL LINE TO A POINT ON THE WEST LINE OF PARCEL 9 OF PARCEL MAP NO. 14093 AS SHOWN ON FILE IN BOOK 105 OF PARCEL MAPS, PAGE 78 THROUGH 87, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY;**

**THENCE NORTH 00°59'12" WEST 2104.95 FEET ALONG SAID WEST LINE;**

**THENCE NORTH 01°39'08" WEST 2664.64 FEET ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SAID PARCEL 9, ALSO BEING A POINT ON THE SOUTHWEST CORNER OF PARCEL 8 OF SAID PARCEL MAP NO. 14093;**

**THENCE NORTH 01°45'01" WEST 2641.16 FEET ALONG THE WEST LINE OF SAID PARCEL 8 TO THE NORTHWEST CORNER THEREOF, ALSO BEING A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 20;**

**THENCE SOUTH 89°13'07" WEST 4128.40 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;**

**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**EXCEPTING THEREFROM** THAT PORTION CONVEYED TO BALLARD JENKINS, ET AL, BY DEED RECORDED OCTOBER 1, 1959 AS INSTRUMENT NO. 84235 OF OFFICIAL RECORDS.

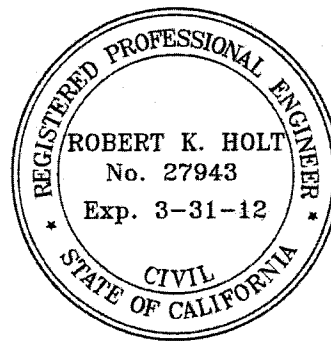
**ALSO EXCEPTING THEREFROM** ALL URANIUM, THORIUM AND ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (80 STAT. 763) TO BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIAL AS RESERVED BY THE UNITED STATES OF AMERICA IN INSTRUMENT RECORDED DECEMBER 14, 1984 IN BOOK 1035, PAGE 520 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA

DESCRIBED PARCEL CONTAINS 828.86 ACRES.

FOR GRAPHICAL PURPOSES SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under the supervision of:

\_\_\_\_\_ Date: \_\_\_\_\_  
Robert K Holt, RCE 27943  
Expires 3/31/2012  
The Holt Group, Inc  
201 E Hobsonway  
Blythe, CA 92225  
(760) 922-4658

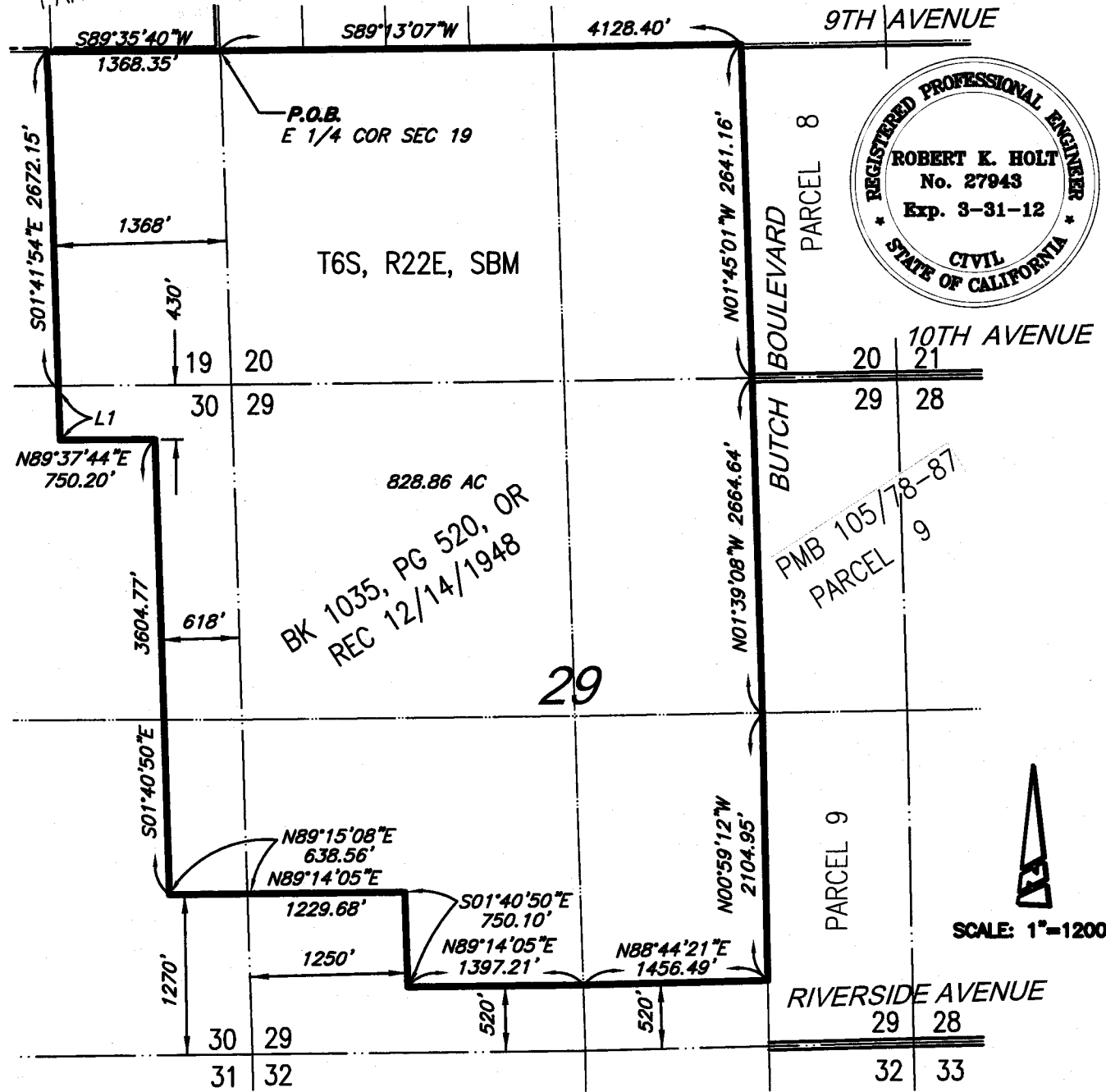
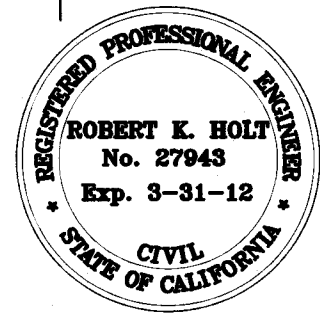


PMB 108/11-20  
PARCEL 33

# EXHIBIT "B"

US SOLAR LEASE BOUNDARY

SHEET 1 OF 1



LINE DATA

NO.	BEARING	DISTANCE
L1	S01°40'50"E	398.63'

THG # 1088.001  
DATE: 08/24/10

PREPARED UNDER  
THE SUPERVISION OF:

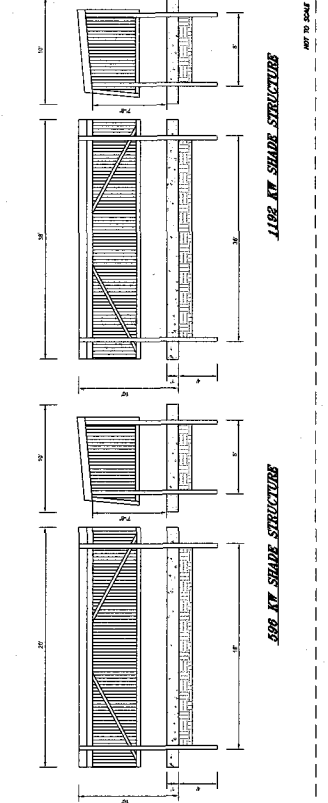
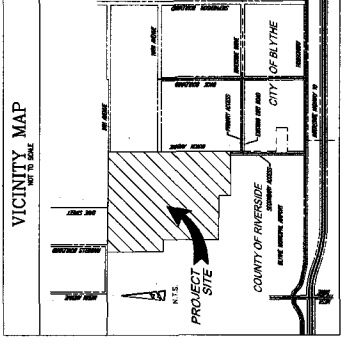
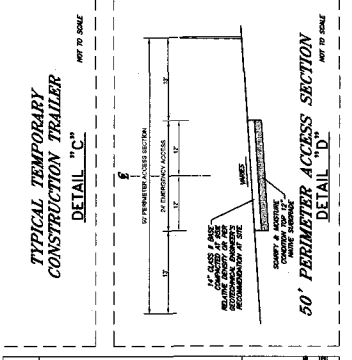
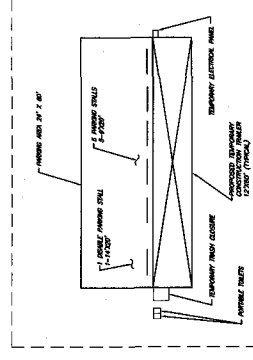
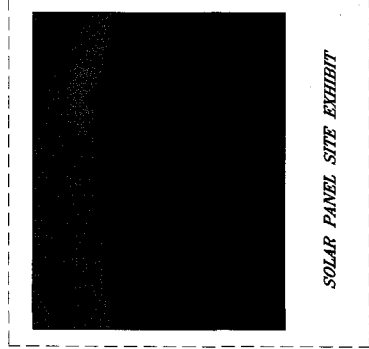
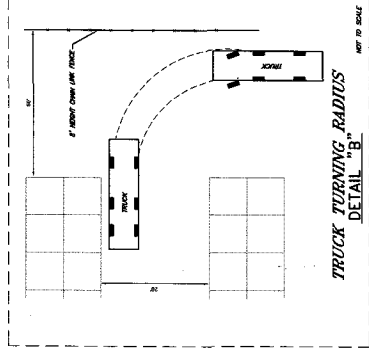
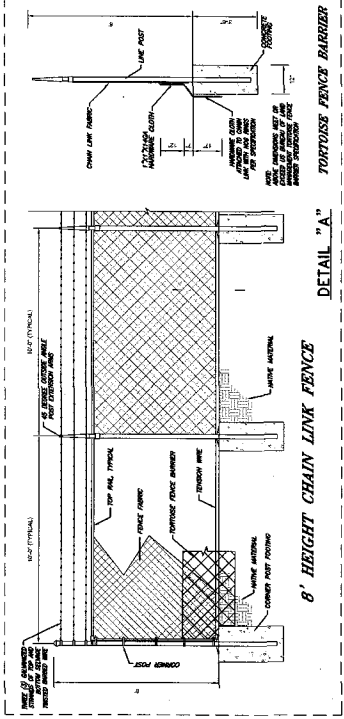
**THE HOLT GROUP**  
ENGINEERING, PLANNING & SURVEYING

201 E HOBSONWAY TEL (760) 922-4658  
BLYTHE, CA 92225 FAX (760) 922-4660

ROBERT K HOLT DATE  
RCE 27943

EXHIBIT B-1

SITE PHASING PLAN



**LEGEND**

- 8" DIA. IRON PIPE
- 12" DIA. IRON PIPE
- 18" DIA. IRON PIPE
- 24" DIA. IRON PIPE
- 30" DIA. IRON PIPE
- 36" DIA. IRON PIPE
- 42" DIA. IRON PIPE
- 48" DIA. IRON PIPE
- 54" DIA. IRON PIPE
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- 564" DIA. IRON PIPE
- 570" DIA. IRON PIPE
- 576" DIA. IRON PIPE
- 582" DIA. IRON PIPE
- 588" DIA. IRON PIPE
- 594" DIA. IRON PIPE
- 600" DIA. IRON PIPE

**The Holt Group**  
 ENGINEERING · PLANNING · SURVEYING  
 1100 W. 15th St., Suite 100, Riverside, CA 92504  
 (951) 514-1100

APPROVED FOR THE COUNTY OF RIVERSIDE  
 DATE: 8/17/10  
 DESIGN BY: T. J. H.  
 DRAWN BY: J. L. H.  
 CHECKED BY: R. S. H.

PROJECT NO. 08-01-10  
 SHEET NO. 2 OF 2  
 DATE: 11/02/10

IN THE COUNTY OF RIVERSIDE  
 SHEET CONTENT:  
 BLYTHE SOLAR PLOT PLAN

PROJECT NO. 08-01-10  
 SHEET NO. 2 OF 2  
 DATE: 11/02/10

PREPARED UNDER THE DIRECT SUPERVISION OF:  
 ROBERT S. HOLT, P.E.  
 11/02/10  
 DATE

PROPOSED UNDER THE DIRECT SUPERVISION OF:  
 ROBERT S. HOLT, P.E.  
 11/02/10  
 DATE



**PROJECT INFORMATION**

**LEGAL DESCRIPTION**

THOSE PORTIONS OF TRACTS 3, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19 OF THE BLTYHE TRACT, COUNTY OF RIVERSIDE, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: [Detailed legal description text]

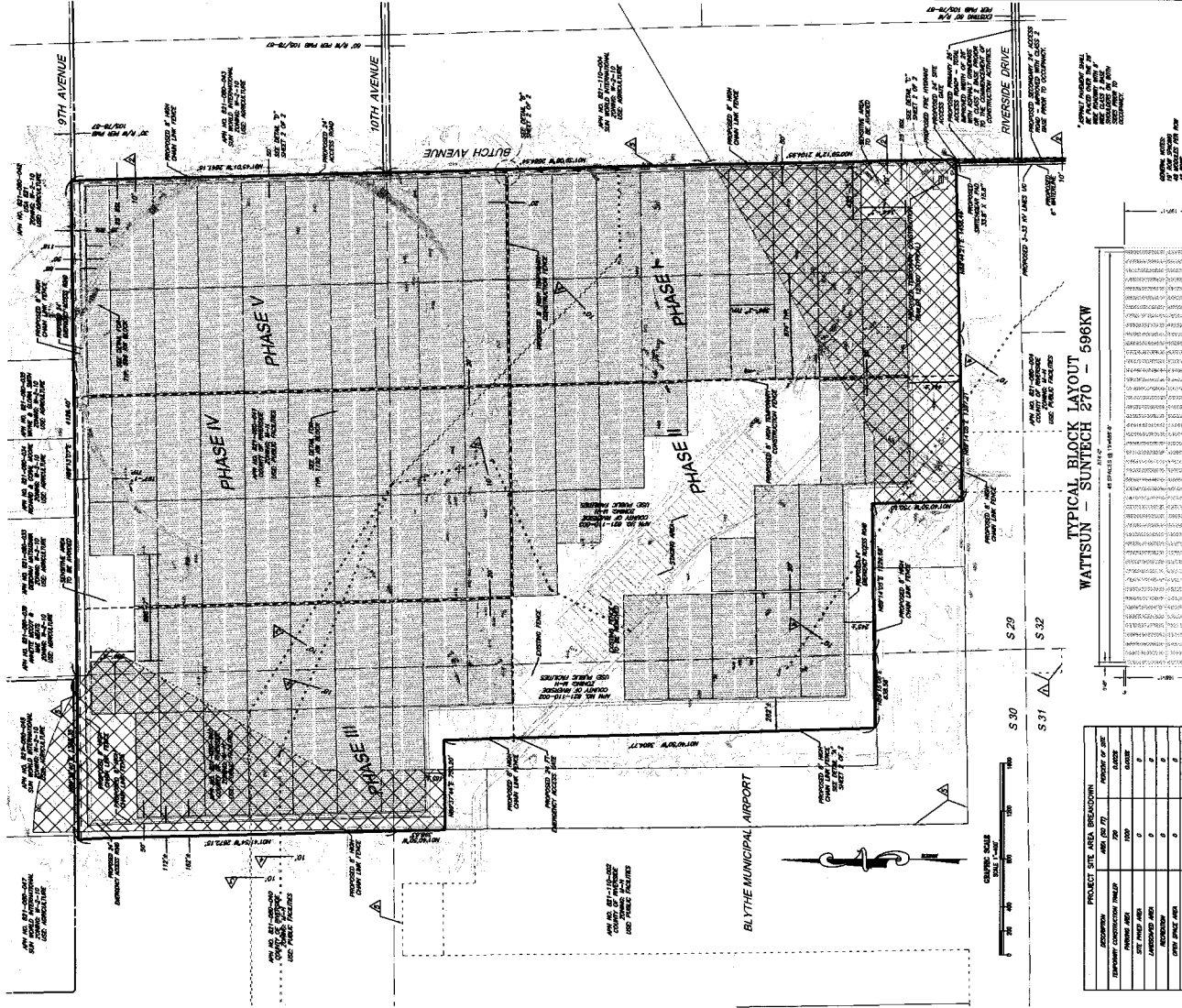
**APPLICANT:** [Name]  
**LAND OWNER:** [Name]  
**EXHIBIT PREPARER:** [Name]  
**ASSessor's PARCEL NOS.:** [List]  
**PROPERTY ADDRESS:** [Address]

**EXISTING ZONING:** [Zoning Code]  
**PROPOSED ZONING:** [Zoning Code]  
**EXISTING ACCESS TO PROJECT SITE:** [Access Description]  
**FEMA MAPPED FLOOD PLAINS AND FLOODWAYS:** [Flood Information]  
**FLAMMABLE OR COMBUSTIBLE LIQUIDS:** [Regulation Reference]  
**COUNTY'S WATER QUALITY MANAGEMENT PLAN:** [Plan Reference]  
**EXISTING PARCEL ACERAGE:** [Acreage Data]

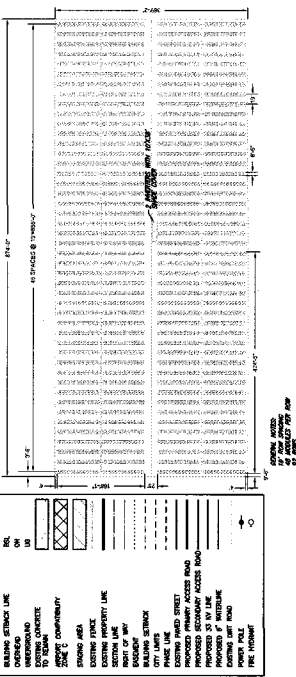
**THOMAS GUIDE 2005:** [Guide Reference]  
**UTILITIES:** [Utility Lines]  
**OCCUPANCY GROUP:** [Occupancy Code]

**THE PROJECT DOES NOT INVOLVE FOLLOWING ITEMS:** [List of Excluded Items]

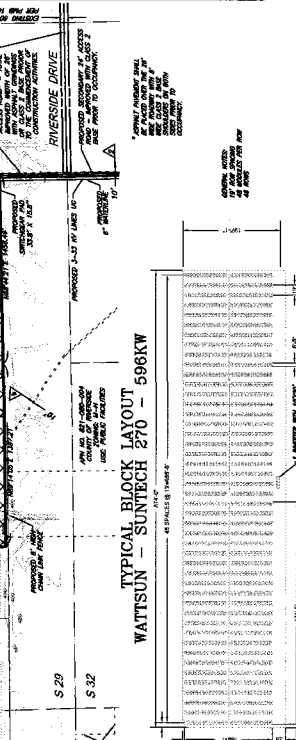
**VENUCULAR CIRCULATION:** [Circulation Details]



**TYPICAL BLOCK LAYOUT WATTSUN - SUNTECH 270 - 1192KW**



**TYPICAL BLOCK LAYOUT WATTSUN - SUNTECH 270 - 596KW**



**DATE REVISIONS:** [Table with columns for date and description]

**PROJECT SITE AREA BREAKDOWN:** [Table with columns for area type and square feet]

**DESIGN BY:** [Name]  
**DRAWN BY:** [Name]  
**CHECKED BY:** [Name]

**THE HOLT GROUP ENGINEERING - PLANNING - SURVEYING**

**IN THE COUNTY OF RIVERSIDE**

**BLTYHE SOLAR PLOT PLAN**

**SHEET 1 OF 2**

**JOB NO. 1088.009**

EXHIBIT C

Form of Memorandum of Agreement

[Attached hereto and made a part hereof]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, California 90067  
Attn: Stephane D. Nguyen

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MEMORANDUM OF AGREEMENT

By this Memorandum, the County of Riverside (“Optionor”) evidences that it has granted to NRG SOLAR BLYTHE II, a Delaware limited liability company (“Optionee”) the option (the “Option”) to lease certain real property situated in the County of Riverside, State of California, as more particularly described on Schedule 1 attached hereto (the “Property”) and made a part hereof, on terms and conditions set forth in that certain Option Agreement (the “Agreement”) executed concurrently herewith between Optionor and Optionee.

The parties have executed and recorded this instrument for the purpose of imparting notice to all third parties of the Agreement.

This Memorandum and the Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns.

This Memorandum and the Agreement are governed by California law.

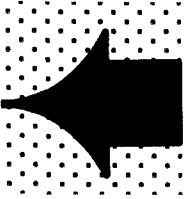
This Memorandum may be executed in any number of counterparts, all of which together shall constitute one instrument.

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, Optionee and Optionor have executed this Memorandum as of the date of the acknowledgements below, but to be effective first above written.

OPTIONOR:

THE COUNTY OF RIVERSIDE,  
*a political subdivision  
of the State of California*



By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

OPTIONEE:

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL

BY: Anita C. Willis 12-31-10  
ANITA C. WILLIS DATE

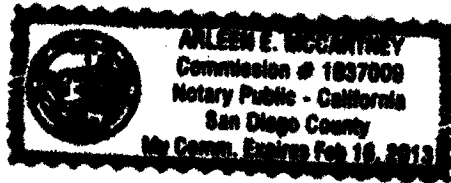
State of California )  
County of SAN DIEGO

On DECEMBER 8, 2010, before me, ARLEEN E. MCCARTNEY, a notary public for said county and said state, personally appeared TIM HEMIG 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 Arleen E Mc Cartney (Seal)



State of California )  
County of \_\_\_\_\_

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

---

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**Schedule 1**

**Legal Description of Property**

**[See Exhibit B to Option Agreement]**

## LEASE AGREEMENT

This LEASE AGREEMENT (this "**Lease**"), effective as of the Closing (the "**Effective Date**"), is by and between THE COUNTY OF RIVERSIDE, as lessor, a political subdivision of the State of California (the "**County**"), and NRG SOLAR BLYTHE II, a Delaware limited liability company, as lessee ("**Lessee**"), with reference to the following facts and objectives:

A. The County is the owner of record of all of that certain real property consisting of approximately 3,904 acres of land and improvements therein, (the "**Property**") situated at 17710 W. Hobsonway, Riverside County, California, more commonly known as "**Blythe Airport**".

B. The County and Lessee entered into that certain Option Agreement (the "**Option Agreement**") dated as of December \_\_\_, 2010, whereby Lessee has been granted the right to lease from the County portions of the Blythe Airport when and if Lessee exercises any or all of the Option described therein.

C. The County desires to lease to Lessee, and Lessee desires to lease, a portion of real property within the Blythe Airport, consisting of approximately 156 acres of land for the use and purposes provided herein.

D. For purposes of this Lease, "**Governing Authority**" means any appropriate federal, state or local agency that has jurisdiction over the matters to be reviewed and approved. Capitalized terms used, and not otherwise defined, herein shall have the same meanings ascribed to them in the Option Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Lessee hereby agree as follows:

### **ARTICLE I** LEASE OF PROPERTY

**Section 1.1 Leased Property.** The County, in consideration of the Rent which Lessee hereby agrees shall be paid, does hereby lease unto Lessee, and Lessee does hereby lease from the County, the Leased Property as legally described in Exhibit "A" and as depicted on Exhibit "B", attached hereto and by this reference incorporated herein, which Leased Property shall include all of the County's rights and privileges in and to the real property comprising the Leased Property and the Appurtenant Rights. For sake of clarity, this Lease does not grant any water or mineral rights to Lessee.

### **ARTICLE II** TERM OF LEASE

**Section 2.1 Term.** Unless sooner terminated as expressly herein provided, this Lease shall continue in effect for a term commencing on the Effective Date and ending at midnight, Pacific Standard Time, on the date that is thirty (30) years after the Effective Date (the "**Initial Term**"). The Initial Term, as it may be extended in accordance with Section 2.2 below, is referenced to herein as the "**Term**".



**Section 2.2**     **Extension Term.** Lessee shall have four (4) options (each, an “**Option**” and collectively, the “**Options**”) to extend the Term for an additional period of five (5) years per Option (each, an “**Extension**” and collectively, the “**Extensions**”) by delivering written notice to the County exercising such Option to extend the Term prior to then-scheduled expiration of the Term.

**Section 2.3**     **Lessee Termination Right.** Lessee shall have the right to terminate this Lease at any time during the Term, with or without cause, upon not less than three (3) months prior written notice to the County (the “**Termination Notice**”), provided that Lessee pays the County three (3) months’ Rent as a termination fee and without any refund of Rent paid to date.

**Section 2.4**     **County Termination Right.** Notwithstanding the terms provided in Articles XI and XIII, County shall have the right to terminate, without cause, in the event (a) the Federal Aviation Administration (“**FAA**”) does not within two (2) years of the Effective Date approve the land use change for Lessee’s proposed use of the Leased Property and the National Environmental Policy Act (“**NEPA**”) Environmental Assessment Document, in each case if and to the extent required by applicable FAA laws, rules or regulations or (b) in the event that Lessee does not perform within the five (5) year period pursuant to Article V.

**ARTICLE III**  
**RENT**

**Section 3.1**     **Base Rent.** Commencing upon the Effective Date of this Lease, Lessee shall pay to the County the base rent (“**Rent**”) in the amount of Two Hundred Seventy Dollars (\$270.00) per gross acre per year of the Leased Property due quarterly during the Term of this Lease. Gross acre shall include the total number of acres used, reserved for mitigation or designated as avoidance areas. The quarterly Rent amount is calculated by multiplying the per gross acre amount times the number of acres leased divided by 4. For example, \$270 per gross acre × 100 acres ÷ 4 = \$6,750 each quarter. The Rent is due in advance on or before the first day of the first month of each calendar quarter during the Term of this Lease and shall be considered delinquent, if not paid by the fifteenth (15<sup>th</sup>) of such month. If the Rent becomes delinquent, Lessee will be charged a late fee equivalent to ten percent (10%) of the delinquent rental amount, exclusive of late fees, for each month that Rent is delinquent. Lessee may pre-pay any Rent due during the Term.

**Section 3.2**     **Base Rent Adjustment.**

(a)     On each anniversary of the Effective Date, the Rent shall increase by two and one-half (2½%) above the Rent from the prior year.

(b)     After the fifth (5th) anniversary of the Effective Date and at five (5) year intervals thereafter (but not more frequently than once every five (5) years), County has the right, but not the obligation, at its sole cost to have an third party appraisal (“**Leased Property Appraisal**”) prepared by an appraiser licensed in the State of California with not less than fifteen (15) years of experience appraising raw land in Riverside County to determine the fair market value of the Leased Property. Each such Leased Property Appraisal shall be completed, if at all, by not later than the date that is nine (9) months prior to each five (5) year anniversary of the Effective Date, and, subject to the terms of this Section 3.2(b), any Rent increase resulting therefrom shall go into effect on the

following five (5) year anniversary of the Effective Date. The Leased Property Appraisal will be determined without taking into account the existence of this Lease and assuming that there are no improvements on the Leased Property (*i.e.*, the Leased Property as unimproved and unoccupied raw land) and that the Leased Property is only permitted for Airport use. Rent shall increase to the greater of (i) the Rent from the prior year increased by two and one-half (2½ %); or (ii) seven percent (7%) of the fair market value of the Leased Property as set forth in the Leased Property Appraisal. In no event shall application of this paragraph result in a monthly Rent for the Leased Property which is (a) lower than the highest previous Rent for the Lease Property, or (b) greater than one hundred ten percent (110%) of the Rent during the prior year of the Term.

#### **ARTICLE IV**

#### **PROPERTY TAXES, UTILITIES; DEVELOPMENT EASEMENTS**

**Section 4.1** **Property Tax.** The Blythe Airport is owned by the County and is not subject to any real estate taxes or assessments because the County is a governmental agency. However, Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and Lessee shall pay any such property taxes.

**Section 4.2** **Utilities.** Lessee shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Leased Property and the Improvements, and all water rents, sewer service charges, or other similar charges levied or charged against, or in connection with, the Leased Property and the Improvements.

**Section 4.3** **Development Easements.** Lessee may determine it is necessary, desirable, or required that, in order to construct, operate, own and/or finance Lessee's Facility (as hereinafter defined) and/or serve the Leased Property (and Lessee's project thereon), streets, water pipelines, sewer, drainage, gas or power lines, and other easements, dedications and similar rights be granted or dedicated over or within portions of other property owned by the County for the benefit of the Leased Property (the "**Development Easements**"). The County will reasonably cooperate with Lessee by granting Lessee such Development Easements provided that (a) any Development Easements shall be in a location reasonably acceptable to the County, (b) Lessee pays all of the County's reasonable out of pocket costs in connection with the same (*i.e.*, third party consultant, escrow and recording fees), (c) the County has no cost or liability in connection with the same, (d) Lessee pays reasonable compensation to the County for such Development Easements (at a per acre price equal to the per acre Rent value set forth in Article III hereto), and (e) Lessee obtains all the necessary permits, entitlements and approvals for Lessee's installation of any improvements on granted Development Easements. The County shall, on request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term, in accordance with this paragraph.

#### **ARTICLE V**

#### **IMPROVEMENTS**

**Section 5.1** **Lessee's Facility.** Without limitation upon the other provisions of this Article 5, and subject to Lessee obtaining all entitlements and permits required by applicable law, the County agrees that Lessee, at Lessee's sole cost and expense, shall construct, own, operate,

maintain, replace, repower and improve upon the Leased Property one or more photovoltaic electrical generating facilities together with related improvements, appurtenances, streets, sidewalks and facilities (together, "**Lessee's Facility**") within five years after the Effective Date subject to Force Majeure (as defined below). In the event that Lessee has not completed construction of and is operating Lessee's Facility by the date that is five (5) years after the Effective Date, subject to Force Majeure, then the County shall have the right as its sole remedy to terminate this Lease upon not less than ninety (90) days written notice to Lessee, whereupon this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

**Section 5.2 Construction of Improvements.** Lessee shall, at its sole cost, risk and expense, construct Improvements (as hereinafter defined) upon the Leased Property (including, without limitation, Lessee's Facility) in accordance with all applicable laws (including, but not limited to, the California Environmental Quality Act ("**CEQA**"), the National Environmental Protection Act ("**NEPA**") if applicable, and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority as may be reasonably necessary for the same, and otherwise in the following manner:

(a) Lessee shall submit a development plan for the entire proposed development to the appropriate Governmental Authority and construct the development in accordance to the agreed upon schedule. Such Improvement, and any other improvements, alterations and installation of fixtures, to be undertaken by Lessee shall have the prior written approval of County after Lessee has submitted to County proposed plot and building plans and specifications therefor in writing. Upon such approval, Lessee shall complete such improvements in strict compliance with said plans and specifications. Lessee shall not be permitted to complete improvements of any kind in any environmentally sensitive areas or avoidance areas, in each case as designated by applicable law, of the Leased Property and such limitation does not operate to abate or adjust the acreage leased or the Rent for the Leased Property.

(b) Prior to commencement of construction of the Improvements, Lessee shall designate in writing to the County an individual that will be involved in such construction and who has the authority to bind Lessee in connection with such construction (the "**Lessee's Designated Representative**"). The County shall within a reasonable amount of time after receipt of such notice from Lessee designate an individual who has authority to bind the County with regards to the construction of the Improvements (the "**County's Designated Representative**"; and together with the Lessee's Designated Representative, the "**Designated Representatives**").

(c) The Designated Representatives shall meet from time to time, as often as necessary, in order to coordinate the construction of the Improvements so as to reduce disturbance to the County's use of the balance of the Blythe Airport during such construction. Such coordination may include, among other things, scheduling for delivery of equipment and materials, providing staging areas for construction, storage of equipment and materials, and use of access routes on the Leased Property.

(d) Lessee shall repair all damage to Blythe Airport or any of the County's property, including but not limited to, personal property or improvements made by the County ("**County Personal Property**") (not including the Leased Property or any other property leased by Lessee from the County) caused by Lessee during the construction of the Improvements; *provided,*

however, that Lessee's repair obligation shall not extend to or include any damage arising from or related to (i) conditions in, on, under or about any of the County Personal Property, the Leased Property or Blythe Airport that existed prior to the commencement of such construction or were not otherwise caused or introduced by Lessee, (ii) Lessee's discovery of such existing conditions on the Blythe Airport or County Personal Property, (iii) negligence or willful misconduct of the County, or (iv) any violation of applicable law or this Agreement by the County.

(e) Lessee complies with applicable Regulations (as hereinafter defined) relating to the Blythe Airport in connection with such construction.

(f) It is specifically acknowledged that Lessee intends to, as part of its development plan, construct Improvements located upon the Leased Property and upon adjoining parcels of real estate in which Lessee has ownership, leasehold or other interests so long as such Improvements are constructed in accordance with any applicable laws. As used hereafter, the term "**Improvements**" means any buildings, structures, transmission lines or other improvements located at any time upon the Leased Property (including, without limitation, the Lessee's Facility). The Improvements, and any fixtures, equipment or other property placed on the Leased Property by Lessee shall be the sole and exclusive property of Lessee and the County waives any and all lien rights it may have in the foregoing.

**Section 5.3** Alterations. At any time and from time to time during the Term, Lessee may perform such minor alteration, maintenance, renovation, repair, refurbishment, replacement, repowering, removal, and other work with regard to any Improvements as Lessee may elect provided that Lessee complies with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. Minor alterations shall mean any physical modification to a structure that is limited in scope or has a minor visual impact in relation to the total design of the project. Minor alterations normally include such changes as replacement of the type of solar panels as was provided in the approved plans. If any such work is not related to Lessee's Facility or is a "**Substantial Alteration**", then Lessee shall be required to obtain the consent of the County for such Improvements and (2) comply with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. "**Substantial Alteration**" shall mean any physical modification to a structure that involves a major portion of the structure or has a substantial visual impact on the structure or its surroundings. Substantial Alterations normally include such changes as a replacement of solar panels that is a change in technology type or a type not approved by the plans.

**Section 5.4** Liens. Lessee shall have no right, authority, or power to bind the County or any interest of the County in the Leased Property for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render the County's interest in the Leased Property liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of the County in the construction, erection, or operation of any such Improvements. Lessee shall give to the County not less than twenty (20) days written notice prior to the commencement of any construction in or to the Leased Property, and the County shall have the right to post notices of

non-responsibility in or on the Leased Property as provided by law. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Leased Property shall be filed, Lessee shall promptly pay or bond such liens to the County's reasonable satisfaction or otherwise obtain the release or discharge thereof.

**Section 5.5 Removal of Property.** Title to and ownership of all Improvements constructed by, on behalf of, or at the direction of Lessee shall be and remain in Lessee. Upon expiration or termination of this Lease, Lessee shall surrender the Leased Property. Unless otherwise agreed to in writing by the County, Lessee shall remove, at its own expense, any and all of Lessee's fixtures, machinery, equipment, furniture, furnishings and/or movable personal property installed in or on the Leased Property and/or the Improvements not later than one hundred eighty (180) days following the expiration of the Term, or earlier termination thereof. Lessee shall repair any damage caused by Lessee to the Leased Property to the extent reasonably practicable and leave the Property in a good, safe and clean condition with all materials from the Improvements properly removed from the Blythe Airport. In the event that Lessee does not remove such Improvements, then as the County's sole remedy, they shall become the property of the County for no consideration of any kind, and Lessee shall execute any documents that may be required or necessitated conveying its interest in such improvements, alterations, and fixtures to County.

**Section 5.6 Compliance with CEQA and NEPA.**

(a) The County and Lessee will comply with the requirements of the CEQA and NEPA. Lessee will apply for all applicable Governmental Authorities (including the County) for all necessary permits and licenses for its project on the Leased Property.

(b) Lessee understands that the proposed development of Lessee's Facility is subject to development approvals yet to be obtained and the review and approval of the project in accordance with the CEQA and, if applicable, NEPA. It is expressly understood by the parties hereto that the County makes no representations or warranties with respect to approvals required by any governmental entity, including the County, or with respect to any approvals hereinafter required from the County or other Governmental Authorities, with the County reserving full police power authority over the proposed facility. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within a particular time or with or without any conditions which require mitigation for any impacts the construction and operation of the facility comply with the terms and conditions might have.

**ARTICLE VI**

**USE, CONDITIONS ON USE, MAINTENANCE, AND REPAIRS**

**Section 6.1 Use.** Subject to the terms and provisions hereof, Lessee shall have the right to use and possess the Leased Property for the development, construction, operation, ownership, maintenance, replacement, repower, power storage, improvement and removal of one or more photovoltaic electrical generating facilities, any ancillary uses and no other uses without the prior consent of the County.

**Section 6.2 Conditions on Use.**

(a) Lessee's use of the Leased Property is subject to the following: (1) Minimum Standards for Fixed Base Operators attached hereto as Exhibit "C", (2) Federally Required Lease Provisions attached hereto as Exhibit "D", (3) the Storm Water Pollution Prevention Plan described on Exhibit "E", (4) FAA Airport Compliance Requirements attached hereto as Exhibit "F", and (5) the retention by the County of an Avigation Easement in the form attached hereto as Exhibit "G".

(b) Lessee shall not use or store any flammable or polluting substance (other than small amounts of oil in proper containers) on the Blythe Airport except with the express written consent of the County. The use of combustible chemicals, cleaning solvents, paint stripper, painting or welding on Blythe Airport is strictly prohibited except as may be authorized in writing by the County.

(c) Unless authorized to enter onto the Blythe Airport's aircraft movement area by the County's issuing a gate card, all motor vehicles and trailers occupying the Blythe Airport because of Lessee's use of the Leased Property must be parked in public parking lots designated by the County, display current license tags and meet any and all California environmental and insurance requirements. Lessee must ensure the safe operation of its vehicles or trailers while on the Blythe Airport. Aircraft always have the right-of-way on Blythe Airport. Vehicles of Lessee will not enter any aircraft operations area of the Blythe Airport. Conditions may arise where it may be required under applicable law for the County to withdraw, temporarily or permanently, without prior notice, the privilege of parking motor vehicles in any assigned area on the Blythe Airport.

(d) Lessee shall not exercise the rights granted herein in any manner, which would interfere with the departure or arrival of aircraft at the Blythe Airport.

(f) Lessee agrees to and shall, at Lessee's sole expense, promptly comply with all statutes, ordinances, resolutions, rules, and regulations of any applicable Federal, State or local agencies, the covenants and restrictions of this Lease, any and all directives concerning airport operations and flight safety issued by the County, and requirements of any applicable fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in law or policy from that now existing, during the Term or any part of the Term hereof relating in any manner to the occupation or use by the Lessee of the Leased Property.

(g) Lessee understands and agrees that it is subject to severe restrictions on its activities at the Blythe Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to use the Leased Property for lawful uses only.

(h) Lessee, in utilizing the Leased Property, shall not discriminate against any person or class of persons by reason of race, color, creed, sex or national origin and shall be bound by the provisions of Part 15 of the Federal Aviation Regulations and any amendments thereto which are incorporated by reference as if set forth herein in full.

(i) Other than safety materials, informative materials or public warnings relating to Lessee's Facility or the Improvements, Lessee shall not erect, maintain or display any signs or other forms of advertising upon the Leased Property without first obtaining the written approval of the County, which approval shall not be unreasonably withheld.

(j) Secure, at Lessee's expense, all necessary permits and licenses as it may be required to obtain the same, and pay for all fees and taxes levied against Lessee or required to be paid by Lessee by any authorized public entity. Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

**Section 6.3 The County's Reserved Rights.**

(a) The Leased Property is accepted by Lessee subject to any and all existing record easements or other record encumbrances. Subject to (i) the requirements in Section 7 of the Option Agreement and (ii) the County's compliance with applicable laws and Lessee's rules and standards relating to the siting, operations and safety of Lessee's Facility and the Improvements, County shall have the right to enter upon the Leased Property and to install, lay, construct, maintain, repair, monitor and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, wells, oil and gas pipeline, and telephone and telegraph power lines and such other facilities and appurtenances necessary or convenient to use in connection therewith, over, in, upon, through, across and along the Leased Property or any part hereof so long as it does not unreasonably interfere with Lessee's use of the Leased Property. Lessee shall provide its rules and standards relating to the siting, operations and safety prior to any such entry by the County, its representatives or agents. Such rules and standards shall be reasonable and County shall have the right to provide input on Lessee's rules and standards. Lessee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring. County also reserves the right to grant franchises, easements, rights of way and permits in, over and upon, along or across any and all portions of said Leased Property as County may elect; provided, however, that no right of the County provided for in this Section 6.3 shall be so executed as to interfere unreasonably with Lessee's use hereunder, or impair the security or rights of any secured creditor or financier of Lessee. County shall cause the surface of the Leased Property to be restored to its original condition (as they existed prior to any such entry) upon the completion of any construction by County or its agents. In the event that such construction may adversely affect any of Lessee's Improvements or operations made upon the Leased Property, County shall meet and discuss the proposed construction so that the Parties may come to an agreed upon resolution. County will provide thirty (30) days advance written notice to Lessee before County exercises any of County's rights set forth in this Section 6.3; provided, however, in the event such right must be exercised by reason of emergency, then County shall give Lessee such notice as soon as is reasonably practicable under the existing circumstances.

(b) The County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as it deems appropriate provided such development or improvements do not unreasonably interfere with Lessee's Facility, including, but not limited to, blocking or impairing the access (whether direct or indirect) to sunlight. The County reserves the right to take any action it reasonably considers necessary to protect the aerial approaches of the Blythe Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Blythe Airport, which in the reasonable opinion of the County, would constitute a hazard to aircraft. The foregoing rights of the County shall not adversely affect the Improvements or Lessee's rights under this Lease.

(c) During the time of war or national emergency, the County shall have the right, if mandated by the United States Government, to lease the landing area of the Blythe Airport, or any part thereof, to the United States Government for military use and, if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of such lease to the Government, shall be suspended. In that event, a just and proportionate part of the Rent hereunder shall be abated, and the period of such closure shall be added to the term of this Lease, or any extensions thereof, so as to extend and postpone the expiration thereof unless Lessee otherwise elects to terminate this Lease.

(d) Notwithstanding any provisions herein, this Lease shall be subordinate to the provisions of any existing agreement between the County and the United States, relative to the operation or maintenance of the Blythe Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure of reimbursement to the County of Federal funds for the development of said airport. A list of such agreements is attached hereto as Schedule 6.3, and the County represents and warrants that true and complete copies of such agreements have been provided by the County to Lessee.

#### **Section 6.4 Maintenance and Repairs.**

(a) The County shall have no obligation to maintain or repair the Leased Property and Improvements. Lessee shall have no obligation to exercise control over, maintain, repair or protect any improvements or property placed on, under or above the Leased Property or Blythe Airport other than those improvements or property that are owned by Lessee.

(b) Lessee shall maintain the Leased Property and the Improvements to be constructed thereon by or on behalf of Lessee in a neat, safe, orderly and attractive condition during the Term of this Lease, and Lessee shall provide for the sanitary handling and disposal of all refuse accumulated as a result of Lessee use of the Leased Property and the Improvements thereon. In addition, the exterior and the interior of the Improvements (to be constructed upon) on the Leased Property shall be maintained by Lessee(s) in good working condition and repair during the Term of this Lease. If and to the extent that any improvements and/or property are placed on the Leased Property as a result of the County's exercise of its rights under Section 6.3, the County shall maintain and keep in good order (or caused to be maintained and kept in good order) such improvements and/or property, and will do so in a manner that does not unreasonably interfere with Lessee's use of the Leased Property.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.4 OR ELSEWHERE IN THIS LEASE, LESSEE SHALL HAVE NO RESPONSIBILITY FOR, OR LIABILITY OR OBLIGATION WITH RESPECT TO, THE ENVIRONMENTAL CONDITION OF, ON OR UNDER THE LEASED PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF HAZARDOUS OR CONTROLLED SUBSTANCES) EXCEPT SOLELY TO THE EXTENT CAUSED, CREATED OR EXACERBATED BY LESSEE.

**Section 6.5 No Waste.** Lessee shall not use or permit the use of the Leased Property in any manner that will tend to create waste or a private or public nuisance. Without limiting the



foregoing, Lessee shall not use steer manure or other malodorous fertilizers without the prior written permission of the County.

**ARTICLE VII**  
**INSURANCE AND INDEMNITY**

**Section 7.1 Insurance.** Without limiting or diminishing the Lessee's obligation to indemnify or hold the County harmless as provided in this Lease, Lessee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's, in the amounts of not less than that specified herein or in minimum amounts as may be subsequently uniformly by the County to all lessees at the Blythe Airport in the exercise of the County's reasonable commercial business judgment and consistent with airport industry practice for similar kinds of activities, during the Term. These requirements, with the approval of the County's Risk Manager, may be modified to reflect the activities associated with the Lessee provided that any changes are reasonable in nature and consistent with industry standards. Lessee shall have, or cause to have, all insurance required under this Lease, in place within thirty (30) days after the date of commencement of the Term.

**Section 7.2 Workers' Compensation.** If the Lessee has employees as defined by the State of California, the Lessee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County, which waiver can be provided by blanket endorsement.

**Section 7.3 Leased Property; Commercial General Liability.** Lessee shall maintain Commercial General Liability insurance coverage, with an endorsement modifying the policy to delete the aircraft exclusion as it relates to the Lessee's occupancy, operation, maintenance or use of the Blythe Airport Property, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Lessee's performance of its obligations hereunder. Policy shall include the County as an additional insured. Policy limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit.

**Section 7.4 Vehicle Liability.** If vehicles or mobile equipment are used in the performance of Lessee's obligations under this Lease, then Lessee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit. Policy shall include the County as an additional insured.

**Section 7.5 Excess Liability.** Lessee shall maintain \$10,000,000 of Excess Liability coverage that will respond excess of the scheduled underlying Commercial General Liability and Vehicle Liability policies, with coverage that is no less broad than the underlying policies. County shall be an additional insured under said policy, pursuant to policy wording which defines an

Insured to include any person or organization that the Named Insured has agreed to provide insurance to, in writing, prior to the occurrence of the loss.

**Section 7.6 Course of Construction Insurance.** During the full term of construction of the planned Improvements, Lessee shall purchase and maintain or cause to be purchased and maintained All Risk Builder's Risk insurance (Completed Value Form). The Course of Construction coverage limit of insurance shall equal or exceed the highest values exposed to loss at any one time during the Project term. Policy shall include the County as an additional insured, to the extent of its interest.

**Section 7.7 Real and Personal Property Insurance.** All-Risk real and personal insurance coverage for the full replacement cost value of building, structures, fixtures, equipment, improvements/alterations and systems on the premises for property that the Lessee owns or is contractually responsible for. Policy shall provide a Waiver of Subrogation in favor of each Landlord Party. Policy shall include business interruption, extra expense, and expediting expense to cover the actual loss of business income sustained during the restoration period.

**Section 7.8 General Insurance Provisions - All lines.**

(a) All insurance maintained in accordance with the provisions of Sections 7.1 through 7.6 shall be issued by creditworthy and commercially reasonable licensed companies, shall be carried in the name of the Lessee, with County as additional insured, but only to the extent of its interest. The additional insured status can be provided through the use of blanket additional insured endorsements.

(b) It is understood and agreed to by the parties hereto that the Lessee's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(c) Lessee shall require all contractors and subcontractors used on the Leased Property to maintain reasonable types and amounts of insurance. Lessee shall also require that the contractors and subcontractors to waive subrogation for workers' compensation insurance and include the County as additional insureds thereunder.

(d) Lessee shall not commence operations until the County has been furnished original Certificates of Insurance as well as the insurance endorsements and policy wordings, as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the Certificate of Insurance.

(e) If during the Term of this Lease or any extension thereof, there is a material change in the scope of use of the Leased Property, the County reserves the right to reasonably adjust the types of insurance required under this Lease and the monetary limits of liability for the insurance coverages currently required herein, if, upon advice of the County's Risk Manager, the amount or type of insurance carried by the Lessee has become inadequate.

(f) Lessee agrees to notify the County of any claim by a third party or any incident or event that may give rise to a claim arising from this Lease.

**Section 7.9     Indemnity.**

(a) Lessee shall hereby release, indemnify and hold harmless the County, its successors, assigns, legal representatives, officers, directors, employees, agents, representatives agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, and elected and appointed officials ("**Indemnified Parties**") from all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, costs and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity, any liability whatsoever (collectively, "**Losses**"), based upon (i) the use, occupancy or presence of Lessee, its employees, members, agents, representatives, contractors, subcontractors in, on, or about the Leased Property; (ii) the performance, or failure to perform by the Lessee, its employees, members, agents, representatives, contractors, subcontractors, its work or any obligation under this Lease; (iii) any act or omission of Lessee, its officers, employees, subcontractors, agents or representatives directly or indirectly arising out of or in any way relating to or in any way connected with the Leased Premises or this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Lessee shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnified Parties in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Lessee, Lessee shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the County; *provided, however, that* any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Lessee's indemnification to Indemnified Parties as set forth herein.

Lessee's obligation hereunder shall be satisfied when Lessee has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved.

The specified insurance limits required in this Lease shall in no way limit or circumscribe Lessee's obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Lessee from indemnifying the Indemnified Parties to the fullest extent allowed by law.

Lessee shall require each contractor of every tier to indemnify the County of Riverside in respects to any claims arising from their contract.

Notwithstanding anything to the contrary in this Lease, Lessee shall have no obligation to indemnify, defend or hold any Indemnified Party harmless from or against any Losses to the extent of the negligence, willful misconduct, violation of law or breach of this Agreement by any Indemnified Party.

(b) The County shall indemnify, defend and hold harmless Lessee, its parents, affiliates, subsidiaries and each of their respective officers, directors, managers, members, partners, employees, agents, contractors and consultants from any Losses whatsoever based or asserted upon (i) any services, or activities of, or permitted by, any Indemnified Party on the Blythe Airport,

Leased Property or Lessee's Facility, and (ii) the performance, or failure to perform by any Indemnified Party of any right or obligation of the County under this Lease. Such Losses may include, but are not limited to, property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Notwithstanding anything to the contrary in this Lease, the County shall have no obligation to indemnify Lessee to the extent of Lessee's, its officers, agents, employees, contractors, subcontractors agents or representatives sole negligence, willful misconduct, violation of law or breach of this Agreement.

**Section 7.10 Subrogation.** Anything in this Lease to the contrary notwithstanding, the County and Lessee each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of casualty insurance or worker's compensation insurance that Lessee is required to provide hereunder, or under any policies of insurance maintained by the County, to the extent, and only to the extent, of any proceeds actually received by the County or Lessee, respectively, with respect thereto, regardless of cause or origin, including the negligence of either party hereto, its agents, contractors, invitees or licensees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**Section 7.11 Coverage.** All insurance described in this Article 7 may be obtained by Lessee by endorsement or equivalent means under any blanket insurance policies maintained by Lessee, provided that the coverage and other terms of such insurance otherwise comply with this Article 7.

## **ARTICLE VIII CASUALTY LOSS**

**Section 8.1 Lessee's Obligation to Restore.** Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, Lessee may (at Lessee's discretion) repair, replace, remove, restore, reconstruct, improve, modify and/or expand the same; *provided, however, that* Lessee shall make its decision with respect to the foregoing not later than one (1) year after the event of casualty by written notice to the County, and shall thereafter diligently pursue the completion of the same.

**Section 8.2** In the event that Lessee chooses to remove the Improvements, the Leased Property shall be restored to a good, safe and clean condition and all materials from the Improvements properly removed from the Blythe Airport and in accordance with Section 5.5.

## **ARTICLE IX CONDEMNATION**

**Section 9.1 Statement of Intent.** The parties represent and warrant that it is their intention that neither the Leased Property, Improvements, nor any portion thereof, shall be subject to a condemnation action or proceeding at anytime during the Term. However, the balance of the provisions of this Article 9 apply in the event that circumstances affecting the Leased Property

substantially change in the future to the extent that a condemnation action or proceeding affecting the Leased Property becomes necessary.

**Section 9.2 Total Taking.** Should the entire Leased Property or Improvements be taken (which term, as used in this Article 9, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (a) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (b) next, the balance of the award shall be equitably apportioned between the County and Lessee based on the then respective fair market values of the County's interest in the Leased Property (appraised by reference to all relevant factors including the then present value of the County's reversionary interest in the entire Leased Property after expiration of the Term) and Lessee's interest in the Leased Property and the Improvements (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Leased Property and Improvements for the remainder of the Term). After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate.

**Section 9.3 Partial Taking.** Should a portion of the Leased Property or Improvements be taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall nevertheless continue in effect as to the remainder of the Leased Property or Improvements unless, in Lessee's good faith judgment, so much of the Leased Property or Improvements shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Property and Improvements had thus been taken, and the award therefor shall be distributed as provided in Section 9.2.

**Section 9.4 Award on Partial Taking; Rent Reduction.** In the event of a partial taking where this Lease is not terminated, and as a result thereof Lessee will need to restore, repair, or refurbish the remainder of the Leased Property and the Improvements in order to put them in a useable condition, then the award shall first be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property and the Improvements taken. If a portion of the Leased Property or the Improvements is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property taken. In the event of a partial taking where this Lease is not terminated, the Rent shall be proportionately reduced, as of the date of such taking, for the remainder of the Term based on the number of acres of the Leased Property which were taken.

**Section 9.5 Temporary Taking.** If the whole or any portion of the Leased Property or the Improvements shall be taken for temporary use or occupancy, the Term shall not be reduced or affected. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. Rent shall continue to be paid during the temporary taking. In the event of any temporary taking, Lessee shall be entitled to receive the

entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to the County therefrom for the estimated cost of restoration of the Leased Property and the Improvements to the extent that any such award is intended to compensate for damage to the Leased Property and the Improvements, shall be apportioned between the County and Lessee as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. In the event that the County receives an award for the estimated cost of restoration of the Leased Property, then Lessee shall be relieved from its obligations to restore the Leased Property.

**Section 9.6 Parties to Condemnation Proceeding.** Lessee, if it so desires, shall be made a party to any condemnation proceeding.

**Section 9.7 Notice of Taking, Cooperation.** Lessee and the County shall immediately notify each other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Leased Property or the Improvements of which Lessee or the County (as the case may be) has actual knowledge. The County and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **ARTICLE X**

### **SUBLETTING AND ASSIGNMENT**

**Section 10.1 Prohibition.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, neither Lessee nor any trustee, receiver or other successor to Lessee shall, either voluntarily or by operation of law, assign sell, encumber, pledge or otherwise transfer all or any part of Lessee's leasehold estate hereunder, or permit the Leased Property to be occupied by anyone other than Lessee or Lessee's employees, contractors, or sublet the leasehold estate or any portion thereof, without the County's prior written consent in each instance.

**Section 10.2. Consent Mandatory.** The consent of the County shall be mandatory if the assignment is, in whole or in part to (collectively, "**Mandatory Consent Transactions**"): (i) any other party or entity that is controlled by, under common control with or that controls Lessee, (ii) in connection with the sale or all or substantially all of the assets of Lessee, (iii) in connection with any financing (including, but not limited to, construction and permanent financings and refinancings), funding or sale-leaseback transactions. In connection with any Mandatory Consent Transaction, Lessee shall provide the County with written notice of such transaction on the form of Consent to Mandatory Consent Transaction in the form attached hereto as Exhibit "H" (the "**Form of Mandatory Consent**") and the County shall deliver to Lessee the County's written acknowledgement of the same within sixty (60) calendar days of such delivery. In the event that the County does not provide to Lessee with such written acknowledgement within such 60 days, the County shall be deemed to have given its consent to the Mandatory Consent Transaction described in the Form of Mandatory Consent. If and to the extent that Lessee receives rent from any assignee or Lessee of this Lease in excess of the Rent required hereunder, then such excess shall be paid to the County.

**Section 10.3 Required Information.** In connection with requesting the County's consent to an assignment of this Lease or a subletting of the Leased Property or any portion thereof for which the County's consent is required other than with respect to a Mandatory Consent Transaction, Lessee shall submit in writing to the County: (i) the name of the proposed assignee or subtenant; (ii) the terms and provisions of the proposed sublease or assignment; and (iii) such reasonable information as the County may request concerning the proposed subtenant or assignee, including but not limited to a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for the County's consent, statements of income or profit and loss of the proposed subtenant or assignee for the two year period preceding the request for the County's consent and a written statement in reasonable detail as to the business experience of the proposed subtenant or assignee during the five years preceding the request for the County's consent.

**Section 10.4 The County's Options.** Subject to Section 6.2, at any time within the sixty (60) days after the County's receipt of the information specified in Section 10.3 above, the County shall by written notice to Lessee elect to (i) consent to the subletting or assignment upon the terms and to the subtenant or assignee proposed; (ii) condition such consent upon the assumption by such assignee or Lessee of all obligations hereunder and such other reasonable conditions as the County may impose, including but not limited to adjustment of the rental payable hereunder up to the amount of any rent received by Lessee is to receive in excess of the Rent required hereunder; or (iii) refuse to give its consent. In the event that the County does not respond to Lessee in writing in such sixty (60) day period, then the County shall be deemed to have approved the proposed assignment or subletting, as applicable. Lessee and the County agree that the County shall not unreasonably withhold, condition or delay its consent to a proposed subletting or assignment. Lessee further agrees that no assignment or subletting consented to by the County shall impair or diminish any covenant, condition or obligation imposed upon Lessee by this Lease or any right, remedy or benefit afforded the County by this Lease.

**Section 10.5 Manner of Notifying the County.** If the County consents to such assignment or subletting, Lessee may thereafter within ninety (90) days after the expiration of said sixty (60) day period enter into a valid assignment or sublease of the premises or portion thereof, upon the terms and conditions described in the information required to be furnished by Lessee to the County pursuant to Section 10.3 above or other terms not less favorable to Lessee, provided however, that any material change in the terms of such subletting or assignment from those approved by the County shall be subject to the County's consent as provided herein.

**Section 10.6 Invalidity.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, no transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, or otherwise, other than pursuant to a foreclosure as defined in this Lease shall be valid or effective without such prior written consent and approval.

## **ARTICLE XI** **LESSEE'S FINANCING**

**Section 11.1 Lessee's Right to Encumber.** Lessee may, without the County's consent or joinder, encumber its interest in this Lease and the leasehold estate hereby created with one or more

deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Lessee or Lessee's affiliates. Any such mortgages, deeds of trust, and/or other lien instruments, and the indebtedness secured thereby, provided that the County has been given notice thereof as set forth in Section 14.1, are herein referred to as "**Permitted Mortgages**," and the holder or other beneficiary thereof are herein referred to as "**Permitted Mortgagees**." No lien of Lessee upon its interest in this Lease and the leasehold estate hereby created shall encumber or affect in any way the interest of the County hereunder or in and to the Leased Property, except insofar as the County is obligated to take certain actions as to Permitted Mortgagees as provided in this Article XI. The Improvements and the leasehold estate created hereby shall at all times remain separate and apart from the title to the Leased Property for all purposes relating to the interests of any mortgagees of the County and Lessee.

**Section 11.2 Mortgagee Protective Provisions.** If Lessee encumbers its interest in this Lease and the leasehold estate hereby created with liens as above provided, then Lessee shall notify the County thereof, providing with such notice the name and mailing address of the Permitted Mortgagee in question, the County shall, upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) The County shall give to the Permitted Mortgagee a duplicate copy of any and all notices which the County gives to Lessee pursuant to the terms hereof, including notices of default, and no such notice shall be effective until such duplicate copy is actually received by such Permitted Mortgagee, in the manner provided in Section 14.1.

(b) There shall be no cancellation, surrender, or modification of this Lease by joint action of the County and Lessee without the prior written consent of the Permitted Mortgagee.

(c) In the event of a Default (as hereinafter defined) should occur hereunder, then the County specifically agrees that:

(1) The County shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Lease or Lessee's right to possession hereunder, until a notice specifying the Default and the event giving rise to such Default has been received by the Permitted Mortgagee, in the manner provided in Section 14.1, and if the Permitted Mortgagee proceeds to cure the Default within a period of 30 days after the later of receipt of such notice or the occurrence of such Default, as to events of Default which Permitted Mortgagee cannot reasonably cure within such time period, the Permitted Mortgagee, to the extent it is reasonably able to do so, commences curing such Default within such time period and thereafter diligently pursues such cure to completion, then any payments made and all things done by the Permitted Mortgagee to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by the County as if done by Lessee;

(2) if the Default is a nonmonetary default that a Permitted Mortgagee cannot reasonably cure without being in possession of the Leased Property, then for so long as the Permitted Mortgagee is diligently attempting to secure possession of the Leased Property (whether by foreclosure or other procedures), provided the Permitted Mortgagee cures any monetary Defaults as well as any other Defaults that are reasonably susceptible of then being cured by the



Permitted Mortgagee, then the County shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Leased Property in order to cure such Default, and during such time the County shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder; and

(3) if the Default is a non monetary default of such a nature that it is not reasonably susceptible of being cured by the Permitted Mortgagee, then the County shall not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Permitted Mortgagee pays all Rent then due and thereafter keeps the monetary obligations of Lessee hereunder current and complies with those other provisions of this Lease which, by their nature, Permitted Mortgagee may then reasonably comply with.

(d) Should this Lease be terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to the County not later than 60 days after receipt from the County of written notice of such termination (which notice the County agrees to give) to elect to receive, in its own name or in the name of its nominee or assignee, a new lease of the Leased Property for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and the County agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder.

(e) No Permitted Mortgagee shall be or become liable to the County as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Lessee under this Lease or shall actually take possession of the Leased Property, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(f) From time to time during the Term, the County shall, within sixty (60) business days after receipt, execute and deliver to a Permitted Mortgagee, or a prospective Permitted Mortgagee, any estoppel, nondisturbance agreement, recognition agreement, consent, lien waiver or other commercially reasonable document requested by any Permitted Mortgagee or prospective Permitted Mortgagee, in each case in form and substance reasonably acceptable to the County.

**Section 11.3 Modifications.** If any prospective Permitted Mortgagee requires modifications to this Lease as a condition to granting a Permitted Mortgage, the County shall not unreasonably withhold its consent to such modifications, provided that the County shall not be required to consent to any such modification pertaining to Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease the County's rights or increase its burdens or obligations hereunder. Any out of pocket cost incurred by the County in connection with any such proposed modification shall be borne by Lessee.

**ARTICLE XII**  
**WARRANTY OF PEACEFUL POSSESSION**

The County covenants that Lessee shall peaceably, and quietly have, hold, occupy, use and control to enjoy the Leased Property during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations; and the County agrees to defend Lessee's right to such occupancy, use, and enjoyment to the Leased Property against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof, by, through or under the County, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

**ARTICLE XIII**  
**DEFAULT AND REMEDIES**

**Section 13.1 Default.** Each of the following shall be deemed a "Default" by Lessee hereunder and a material breach of this Lease:

(a) Whenever Lessee shall fail in the payment of Rent, or any other monies required to be paid by Lessee under the express terms of this Lease when the same are due under the terms hereof ("**Monetary Default**"), if the County shall deliver to Lessee a written notice ("**Default Notice**") specifying such Monetary Default, and if the Monetary Default as specified in the Default Notice shall continue for a period of fifteen (15) days after the date of Lessee's receipt of the Default Notice, then Lessee shall be in Default.

(b) In the event of any breach of this Lease by Lessee other than a Monetary Default ("**Other Default**"), if the County shall deliver to Lessee a Default Notice specifying such Other Default and if the Other Default so specified by the Default Notice shall not be removed or cured after a period of sixty (60) days from the date of Lessee's receipt of the Default Notice then Lessee shall be in Default; *provided, however, that* as to any Other Default that Lessee cannot reasonably cure with reasonable diligence within such period, Lessee shall not be in Default if Lessee proceeds in a commercially reasonable manner to remedy the same within such sixty (60) day period.

**Section 13.2 Remedies.** If a Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Article XI, the County may at any time thereafter prior to the curing thereof pursue any rights and remedies available to the County hereunder, at law, in equity or otherwise (including, but not limited to, the termination of this Lease). Upon the County's election to terminate this Lease, and provided that the County has complied with the provisions of Article XI in connection with such Default, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term hereof.

**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 14.1 Notices.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) facsimile

transmission (followed by next day overnight delivery service) or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section 14.1. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service or if sent via registered or certified mail, (ii) upon transmission with a printed receipt from the transmitting facsimile machine in the event sent via facsimile transmission and (iii) on the next business day if sent via an overnight delivery service, if sent to each party at the address set forth below with the required proper postage:

**To the County:** Economic Development Agency  
Aviation Division  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-8916  
Facsimile: (951) 698-7920

**To Lessee:** NRG Solar Blythe II  
1015 West Hays Street  
Boise, Idaho 83702  
Attention: Bob Mooney  
Telephone: (208) 338-2603  
Facsimile: (208) 890-0369

With a copy to: Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, California 90067  
Attention: Stephane D. Nguyen  
Telephone: 310.734.5200  
Facsimile: 310.734.5299

Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth above. Notices required pursuant to the terms of this Agreement shall be delivered prior to 5 p.m. on the date such notice is due.

**Section 14.2 Modification and Non Waiver.** No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by the County of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

**Section 14.3 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

**Section 14.4 Number and Gender; Captions; References.** Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease.

**Section 14.5 Estoppel Certificate.** The County and Lessee shall execute and deliver to each other, within sixty (60) days after request therefor by the other party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably acceptable to the Landlord Parties (to the extent each of them is a party to the estoppel certificate) and Lease.

**Section 14.6 Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**Section 14.7 Attorney Fees.** For actions for the enforcement of the agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

**Section 14.8 Surrender of Leased Property; Holding Over.** Upon termination or the expiration of this Lease, Lessee shall peaceably quit, deliver up, and surrender the Leased Property and, subject to the provisions of this Agreement, the Improvements that are then located on the Leased Property. If Lessee does not surrender possession of the Leased Property and the Improvements at the end of the Term, such action shall not extend the Term, Lessee shall be a Lessee at sufferance, and during such time of occupancy Lessee shall pay to the County, as damages, an amount equal to 125% the amount of Rent that was being paid immediately prior to the end of the Term, prorated on a daily basis. The County shall not be deemed to have accepted a surrender of the Leased Property by Lessee, or to have extended the Term, other than by execution

of a written agreement specifically so stating. In addition, Lessee's obligations to restore the Leased Property shall be in accordance with Section 5.5 and Article VIII.

**Section 14.9 Relation of Parties.** It is the intention of the County and Lessee to hereby create the relationship of lessor and lessee, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make the County and Lessee partners or joint venturers or to render either party hereto liable for any obligation of the other.

**Section 14.10 Force Majeure.** As used herein "**Force Majeure**" means the occurrence of any event or circumstance (including, but not limited to, any aircraft accidents on or near the Leased Property or any restriction by a governmental authority which restricts Lessee's use of the Leased Property) which prevents or delays the performance by the County or Lessee of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Lessee shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Lessee shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Lessee:

(a) Lessee shall give prompt written notice of such occurrence to the County;  
and

(b) Lessee shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the County advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Lessee shall not be relieved by any event of Force Majeure from Lessee's obligations to pay Rent hereunder, nor shall the Term be extended thereby.

**Section 14.11 Entireties.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements (whether written or oral) with respect thereto are merged herein. Any agreements entered into between the County and Lessee of even date herewith are not, however, merged herein.

**Section 14.12 Consents and Approvals.** If and to the extent the consent, approval or similar action of any of the parties hereto is required under this Agreement or applicable law, the County and Lessee agree that such consent shall not be unreasonably withheld, conditioned or delayed.

**Section 14.13 Recordation.** The County and Lessee will, at the request of the other, promptly execute an instrument in recordable form constituting a memorandum or short form of this Lease (or any amendment hereto), which shall be filed for record in the County of Riverside, or at the request of either party this Lease shall be so filed for record. In addition, Lessee may, at its sole cost, obtain a leasehold policy of title insurance with respect to its interest in this Lease. Upon expiration or termination of this Lease, Lessee shall execute and record in the County of Riverside a release of this leasehold interest.

**Section 14.14 Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Leased Property, and, subject to the provisions hereof pertaining to Lessee's rights to assign, sublet, or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

**Section 14.15 No Third Parties Benefited.** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, right to execute a new lease, and certain other enumerated rights granted to Permitted Mortgagees, the terms and provisions of this Lease are for the sole benefit of the County and Lessee, and no third party whatsoever, is intended to benefit herefrom.

**Section 14.16 Survival.** Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

**EXHIBITS:**

- Exhibit "A":** Legal Description of Leased Property
- Exhibit "B":** Depiction of Leased Property
- Exhibit "C":** Minimum Standards for Fixed Base Operators
- Exhibit "D":** Federally Required Lease Provisions
- Exhibit "E":** The Storm Water Pollution Prevention Plan
- Exhibit "F":** FAA Airport Compliance Requirements
- Exhibit "G":** Avigation Easement Form
- Exhibit "H":** Consent to Mandatory Consent Transaction Form

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 12-13-10  
SYNTHIA M. GUNZEL DATE

[SIGNATURE OF LEASE]

IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By:  \_\_\_\_\_  
Tim Hemig, Vice President



State of California )  
County of SAN DIEGO

On DECEMBER 8, 2010, before me, ALLEN E. MCCARTNEY, a notary public for said county and said state, personally appeared TIM HEMIG 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 Allen E McCartney (Seal)



State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Leased Property Legal Description**

**EXHIBIT "A"**  
**US SOLAR PHASE I LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

THOSE PORTIONS OF TRACTS 15, 17, 18 AND 19 AS DESCRIBED IN QUITCLAIM DEED RECORDED DECEMBER 14, 1948, IN BOOK 1035, PAGE 520, OFFICIAL RECORDS OF RIVERSIDE COUNTY, LYING WITHIN PORTIONS OF SECTIONS 29, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 9 OF PARCEL MAP NO. 14093 AS SHOWN ON FILE IN BOOK 105 OF PARCEL MAPS, PAGE 78 THROUGH 87, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTH 00°59'12" WEST 520.01 FEET ALONG THE WEST LINE OF SAID PARCEL 9 TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29, ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88°44'21" WEST 1456.49 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29;

THENCE SOUTH 89°14'05" WEST 351.53 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1808.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID PARCEL 9;

THENCE NORTH 00°59'12" WEST 2100.07 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1808.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID PARCEL 9;

THENCE NORTH 01°39'08" WEST 1674.38 FEET ALONG SAID PARALLEL LINE;

THENCE NORTH 89°13'07" EAST 1808.21 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 9;

THENCE SOUTH 01°39'08" EAST 1657.41 FEET ALONG SAID WEST;

THENCE SOUTH 00°59'12" WEST 2104.95 FEET ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING.

**EXHIBIT "A"**  
**US SOLAR PHASE I LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**EXCEPTING THEREFROM THAT PORTION CONVEYED TO BALLARD JENKINS, ET AL, BY DEED RECORDED OCTOBER 1, 1959 AS INSTRUMENT NO. 84235 OF OFFICIAL RECORDS.**

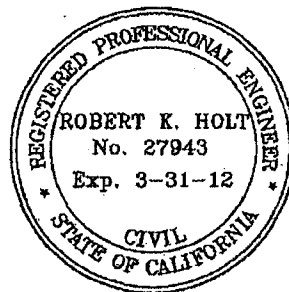
**ALSO EXCEPTING THEREFROM ALL URANIUM, THORIUM AND ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (80 STAT. 763) TO BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIAL AS RESERVED BY THE UNITED STATES OF AMERICA IN INSTRUMENT RECORDED DECEMBER 14, 1984 IN BOOK 1035, PAGE 520 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA**

DESCRIBED PARCEL CONTAINS 156.46 ACRES.

FOR GRAPHICAL PURPOSES SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under the supervision of:

Date: \_\_\_\_\_  
Robert K Holt, RCE 27943  
Expires 3/31/2012  
The Holt Group, Inc  
201 E Hobsonway  
Blythe, CA 92225  
(760) 922-4658



**EXHIBIT B**

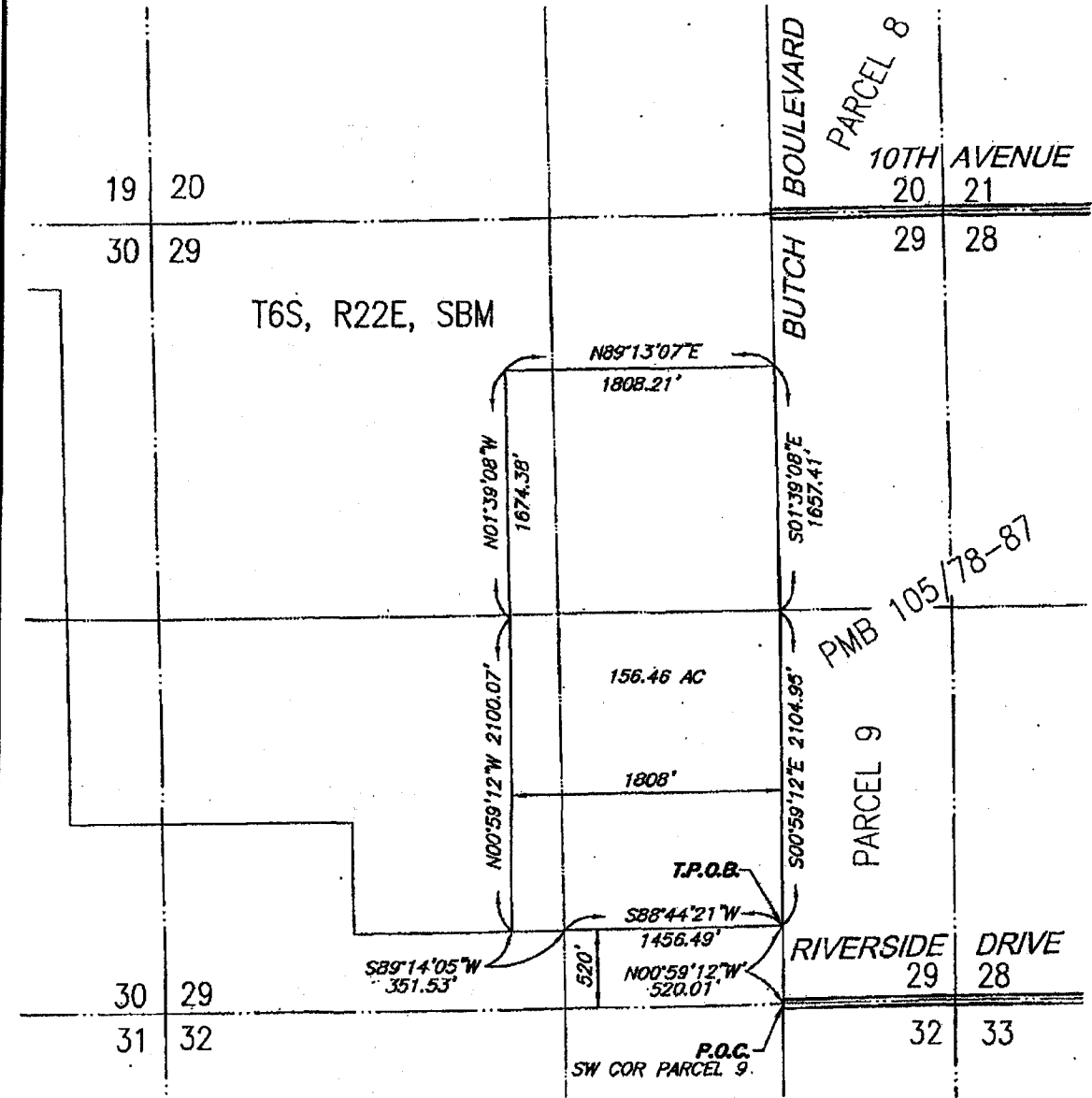
**DEPICTION OF LEASED PROPERTY**

[To be attached]

# EXHIBIT "B"

US SOLAR PHASE I

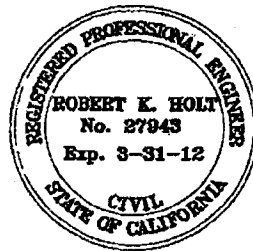
SHEET 1 OF 1



REV. 12/08/2010 BY: TJH

**The Holt Group, Inc.**  
ENGINEERING PLANNING SURVEYING

201 E. Hobsonway, Blythe, CA. 92225  
Phone: (760) 922-4658 Fax: (760) 922-4660  
1601 N. Imperial Ave., El Centro, CA. 92243  
Phone: (760) 337-3883 Fax: (760) 337-5997

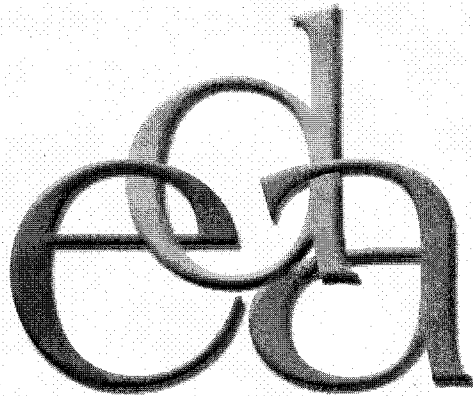


SCALE: 1"=1000'

**EXHIBIT C**  
**MINIMUM STANDARDS FOR FIXED BASE OPERATORS**

[Attached hereto and made a part hereof]

**Minimum Standards  
for  
Fixed Base Operators**  
Riverside County Airports



RIVERSIDE COUNTY  
**Economic Development Agency**

**County of Riverside  
Economic Development Agency**  
1325 Spruce St., Suite 400  
Riverside CA 92507  
Phone: (951) 955-8916  
Fax: (951) 955-6686

Adopted January 30, 2001





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## **I. INTRODUCTION**

Riverside County is the owner (sponsor) of the following five airports in Riverside County: Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan. The Riverside County Economic Development Agency (EDA) is the county agency responsible for operation of the County's airports.

Minimum standards are established to promote and attract a professional level of aviation services to the County's airports while safeguarding the public's interest. The Minimum Standards provide a framework that strengthens the relationship between the Sponsor and the Fixed Base Operator (FBO). They offer information, advice and, where necessary, they provide strict regulation so that both the prospective and experienced FBO may have a firmer understanding of the many considerations, which contribute to a safe, successful and useful operation. The standards are intended to be the minimum requirements for those wanting to provide aeronautical services to the public at Riverside County airports. Operators are encouraged to exceed the minimum requirements.

FBOs are responsible for complying with the Minimum Standards and shall be familiar with revisions made to the Standards. All FBOs on the airports must comply with the standards herein as well as all applicable government regulations; however, leases executed prior to August 16, 1988, are exempt until lease renegotiations. The County's airports are subject to federal, state and local rules and regulations. The County has adopted local rules and regulations to implement Federal Aviation Administration (FAA) requirements and to provide for safe and orderly operation on the airports. Local rules and regulations governing airport activities include, but are not limited to, applicable portions of the following:

1. Ordinance No. 576 - Rules and Regulations for Operation of County Airports
2. Fixed Base Operator Minimum Standards
3. County Airport Fueling Standards
4. Special Event Permit Policy
5. Airport Design Standards

Federal and state rules and regulations include, but are not limited to: FAA Grant Assurances; FAA Order 5190.6A - Airport Compliance Requirements; Federal Airport Regulations (FAR's); State Aeronautics Act (PUC § 21000); Government Code § 50470 - 50478; ADA Regulations; the California Environmental Quality Act (CEQA); and the National Environmental Policy Act (NEPA).

## II. DEFINITIONS

AERONAUTICAL ACTIVITY - Any activity or service that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations.

AGREEMENT, LEASE, OR PERMIT - A contractual agreement between the EDA and an entity granting a concession or otherwise authorizing the conduct of certain activities which is in writing, executed by both parties, and enforceable by law.

AIRPORT - Includes the following five (5) airports owned by Riverside County: Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan, and its environs, such as, the property, buildings, facilities, and improvements within the exterior boundaries of each airport as it now exists or as it may hereafter be extended, enlarged, or modified.

AIRPORT SPONSOR - The designated entity or duly authorized representative, appointed by the Board of Supervisors, to manage the operation and development of Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan airports.

ALP - Airport Layout Plan

APPLICANT - A person, persons, firm, partnership, or corporation desiring to acquire the use of a portion of an airport, or to establish or use any facility on an airport for an aeronautical activity or special event and who shall apply in writing and in the manner or form prescribed for authorization to establish such activities.

CEQA - California Environment Quality Act

COUNTY - County of Riverside, the FAA authorized airport sponsor.

EDA - Riverside County Economic Development Agency, the County agency designated to oversee and manage the County airports.

EQUIPMENT - All machinery, together with the supplies, tools, and apparatus necessary for the safe and proper procedure of the activity being performed.

FAA - Federal Aviation Administration

FAR - Federal Aviation Regulation

FIXED BASE OPERATOR (FBO) - Any person, firm, partnership, corporation, association, limited partnership, or any other legal entity duly licensed and authorized by written agreement with the Airport Sponsor (the County) to provide specific aeronautical services at an Airport, under strict compliance with such agreement and pursuant to these and all applicable regulations and standards.

FUEL - FAA authorized aviation fuel, including jet fuel

FUEL FARM - Any portion of an Airport, authorized by the Airport Sponsor, as an area in which gasoline or any other type of fuel may be stored.

FULL SERVICE FBO - An FBO which provides certain essential aeronautical services (e.g. aircraft maintenance and repair, flight instruction, fueling of aircraft, transient aircraft parking guidance, positioning of wheel chocks and tie-downs, fireguard for engine starts, baggage handling, standardized ground service and recovery equipment, pilots' lounge, and restrooms), subject to restrictions agreed to during lease negotiations (see Table A below for complete guidelines).

LIMITED SERVICE FBO - An FBO which provides certain of the aeronautical services provided by a Full Service FBO, subject to restrictions imposed by leasehold size requirements and to restrictions agreed to during lease negotiations (see Tables B through H below for complete guidelines).

MINIMUM STANDARDS - The qualifications and criteria set forth herein as the minimum requirements to be met as a condition for an FBO to conduct an aeronautical activity on an EDA sponsored airport.

NEPA - National Environmental Policy Act

THE BOARD - The Riverside County Board of Supervisors

TLMA - Transportation and Land Management Agency

### **III. AIRPORT RULES AND REGULATIONS**

#### **A. Lease**

All revenue generating, commercial and/or business activities, at County operated airports are required to secure a lease approved by the County Board of Supervisors (the "Board") prior to commencement of any commercial activity.

Prospective lessees should begin the process by requesting a meeting with County staff. The purpose of the initial meeting is to introduce staff, show the available sites,

and answer any questions. At the conclusion of this meeting the prospective lessee will be asked to submit a Lease Application and proposal.

Upon receipt of a lease application and proposal, County staff will review the proposal and will provide a written response. Once an agreement has been reached on the deal points and development proposal, a lease will be prepared for execution by the lessee. The lease shall be executed in three counterparts and all three copies shall be returned to the County. The County will then schedule the lease for consideration at the next available Board of Supervisors' meeting. ***Please be advised that the County Board of Supervisors is the only entity that can make a binding lease commitment and development may not proceed until the Board has approved the lease.***

Exclusive rights for any aeronautical activity will not be issued at any County airport. This is to ensure that airport patrons are offered competitive market prices for services.

#### **B. Airport Layout**

All new leases and new airport development shall comply with the current FAA approved Airport Layout Plan (ALP) for each airport. In addition, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan airports have adopted Airport Master Plans and all new development shall comply with those master plans. Lessee proposals that conflict with ALP's and Master Plans will not be approved.

#### **C. Signs**

All signs (commercial, traffic, services, advertising, etc.) must receive written approval from the Assistant County Executive Officer / EDA or Designee prior to their placement. The request for approval should include the size, location, and design of sign. All outdoor advertising shall comply with County Ordinance No. 348 and applicable federal and state laws. FAA Form 7460-1, *Building Design, Construction, and/or Alteration*, must be submitted to the FAA Western Pacific Region for review and determination, with a copy of the form sent to the Assistant County Executive Officer / EDA

#### **D. Building Design, Construction, and/or Alterations**

All design, construction and/or alterations shall be in compliance with Airport Design Guidelines. The County reserves the right to review and approve all architectural design of all construction or alterations to be performed on County operated airports.

The County reserves the right to review and approve the design and construction methods of all development at the County operated airports. All buildings shall comply with local codes and regulations as to their construction. FAA Form 7460-1, *Building Design, Construction, and/or Alteration*, must be submitted to the FAA for their review

and assessment with a copy of the form submitted to the Assistant County Executive Officer / EDA.

The County reserves the right to require a Material and Performance Bonds or a Letter of Credit prior to the construction of any facility for the return of funds expended by the County in the event that the applicant defaults on any obligations.

#### **E. Inspections**

The County reserves the right to make periodic inspections of the leased premises during reasonable hours to ensure lease compliance and Lessee's adherence with all applicable regulations. County staff, County contractors, the FAA, and/or the State of California may conduct inspections, under this provision.

#### **F. Flying Clubs**

All flying clubs located at Riverside County operated airports shall be nonprofit organizations. All rights shall be equally shared between members. No member shall share in profits, earnings, salaries, or other forms of compensation. The Flying Club shall not be engaged in any type of commercial operation. A copy of the Flying Club's Charter and By-laws, or other comparable documents, must be filed with the Aviation Division. Flying clubs must submit annual financial reports and furnish the County with proof of insurance of the types listed on Appendix A.

A minimum of one (1) aircraft, properly certified, is required for a flying club. Flight instruction shall only be offered to club members. The instructor must be a club member or an instructor who is a lessee on the airport for the purpose of flight instruction.

#### **G. Waiver from Minimum Standards**

Any tenant or prospective tenant wishing to waive any minimum standard set forth in the approved Minimum Standards must submit a letter to the Assistant County Executive Officer / EDA expressing their hardship to conform with the Minimum Standards. The Assistant County Executive Officer/EDA has the discretion of approving or disapproving the waiver as it would apply to the future viability of the airport, subject to applicable provisions, which may be contained in the tenant's lease approved by the Board. Waivers may be granted on a temporary basis, and may be withdrawn or terminated at the Director's discretion.

#### **H. Civil Rights**

All individuals using the County operated airports must comply with all the provisions of the Federal Civil Rights Act of 1964. The tenant or prospective tenant shall ensure

there shall be no discrimination in the availability of any services or commodities based on race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition or marital status.

#### **I. Insurance**

The FBO shall procure, maintain and pay premiums during the term of the agreement for insurance of the types and the minimum limits set forth by the County for each aeronautical activity. The FBO shall obtain and maintain insurance (See Appendix A), which contains an endorsement that the "County of Riverside, including its elected officials, officers, employees, and agents" are named as additional insured. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California unless such requirement is waived, in writing, by the Assistant County Executive Officer / EDA and/or the County Risk Manager. Each insurance company shall have an A.M. BEST rating of not less than A:VIII (A:8).

Proof of insurance must be submitted to the Assistant County Executive Officer / EDA prior to commencement of operations and upon each insurance renewal. The FBO shall provide either 1) a properly executed original Certificate(s) of Insurance and 'certified original' copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the Assistant County Executive Officer / EDA and/or County Risk Manager, provide original Certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Certificate(s) shall contain the covenant that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance. Certificates of Insurance and the policies shall covenant that their coverage is primary and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as primary.

If any policy contains a general aggregate limit, it shall apply separately to the Agreement with the County or be less than two (2) times the occurrence limit. All insurance policies are subject to review by the County's Department of Risk Management. The Assistant County Executive Officer / EDA, upon the advice of the County Risk Manager, reserves the right to increase the limits, or require additional insurance coverage, beyond those set forth in these Minimum Standards, subject to applicable provisions of the tenant's lease.

#### **J. Lot Size**

Lot sizes may vary according to the type of operation. If available, aircraft tie-downs and hangar space, as well as automobile parking spaces, may be leased from the County to meet these minimum standards. The number of aircraft, hangar, or automobile parking spaces shall be determined during lease negotiations.



**K. Outdoor Storage**

No outside storage will be permitted except behind enclosed block walls, screened from public view, or as approved by the Assistant County Executive Officer / EDA.

**L. Maintenance**

Lessee shall be responsible for the adequate maintenance of leased property and in compliance with all applicable Federal, State and Local health and safety regulations.

**IV. SCOPE OF SERVICES**

Each aeronautical activity has a separate scope of services. The services required of a Full-Service FBO include the Minimum Standards for all combinations of aeronautical activities. The cumulative effect of the Minimum Standards will not equate to any minimum standard greater than that applicable to the Full-Service FBO.

**Table A - FULL SERVICE FBO**

Each airport shall have a minimum of one (1) Full Service FBO. Mandatory Requirements: Full Service FBOs shall provide: aircraft maintenance & repair; flight instruction; fueling of aircraft; transient aircraft parking guidance; positioning of wheel chocks and tie-downs; fireguard for engine starts; baggage handling upon request; have available and provide standardized ground service equipment and recovery equipment for aircraft weighing up to 30,000 lbs at FVA, 40,000 lbs at HRA, and 80,000 lbs at JCRA (service and recovery equipment shall include, but not be limited to, wheel chocks, tie-down ropes or chains, aircraft jacks, tow bars, auxiliary power units, and aircraft tugs); pilots' lounge; and restrooms. Optional Requirements: In addition to the required services listed in the preceding sentence, Full Service FBOs may provide: aircraft sales or leasing (including financing), sales of aircraft parts and supplies, radio and avionics sales and repair, aircraft storage hangars and tie-downs, painting and upholstering of aircraft, leasing or renting of automobiles, and operating a restaurant or café.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 3 acres or 130,680 SF		
Hangar area	14,000 SF	For aircraft storage
Outside storage area	30,000 SF	For tie-down or apron parking
Building space	2, 000 SF	For offices, pilots' lounge and briefing area, conference rooms, classrooms, and restrooms
Automobile parking	20 spaces, with landscaping as required by Ordinance 348	For employees per shift and customer parking
Fuel farm	Refer to Fueling Standards	
Landscaping	To be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and building
<b><u>CERTIFICATION:</u></b>		
As applicable for each activity	FAA, State, and/or other responsible agency as applicable	For safe and efficient operation of airport and aeronautical activities
<b><u>PERSONNEL:</u></b>		
Staff	Adequate number	For safe and efficient operation of airport and aeronautical activities
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	7 days/week, 10 hrs/day	Or as demand may require
Fueling services	During business hours and emergency situations	One (1) hr response time during non-business hours
<b><u>EQUIPMENT:</u></b>		
Aeronautical operations	Refer to tables for equipment required for each activity	
FBOs providing aircraft fueling and servicing	Refer to Airport Fueling Standards	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table B - AIRCRAFT MAINTENANCE**

An aircraft airframe, engine, and accessory maintenance and repair FBO shall provide one or a combination of airframe, engine, and accessory overhauls and repair services on aircraft up to and may include business jet aircraft and helicopters. This category shall include the sale of aircraft parts and accessories.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> ½ acre or 21,780 SF		
Hangar area	6,000 SF	For aircraft storage
Tie-down or apron parking	One (1) per 1,000 SF of hangar space	Outside storage
Building space	400 SF	For offices, public phone, and restrooms
	200 SF	Office storage room
Automobile parking	One (1) per 1,000 SF of hangar area, with landscaping as required by Ord. 348	For employees per shift and customer parking
Landscaping	Specific plans to be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and building
<b><u>CERTIFICATION:</u></b>		
Station	Authorized repair station and certified under FAR Part 145 or Holder of an FAA inspection authorization under FAR Part 43	
<b><u>PERSONNEL:</u></b>		
Staff	Sufficient qualified technicians to meet proposal.	
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Services	5 days/week, 8 hrs/day	
	Services offered for emergency situations	One (1) hr response time during non-business hours
<b><u>EQUIPMENT:</u></b>		
Sufficient inventory and equipment available to perform maintenance and repairs to manufacturers' specifications.	Should include but is not limited to tug, tow bar, jacks, and dollies	Operator is encouraged to have the capability of aircraft removal from the airport's operational areas
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table C - RADIO AND AVIONICS REPAIR STATION & SALES**

A radio and avionics repair station FBO engages in the business of and provides a shop for the repair of aircraft avionics, instruments and accessories for general aviation aircraft. This category also includes the sale of new or used aircraft avionics, instruments and accessories.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 150 SF		
Repair station	150 SF	
Automobile parking	One (1) space per 150 SF, with landscaping as required by Ord. 348	
<b><u>CERTIFICATION:</u></b>		
Station	Authorized repair station and certified under FAR Part 145	
<b><u>PERSONNEL:</u></b>		
Staff	One (1) FAA certified repairman	
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment for at least 40 hrs/week	
<b><u>EQUIPMENT:</u></b>		
Sufficient inventory and equipment available to perform maintenance and repairs to manufacturers' specifications.		
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

### Table D - FLIGHT INSTRUCTION

A flight instruction FBO engages in instructing pilots in dual and solo flight training, in fixed and/or rotary wing aircraft, and provides such related ground school instruction as is necessary preparatory to taking a written examination and flight check ride for the category or categories of pilots' licenses and ratings involved.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<u>LOT SIZE:</u> 500 SF (not necessarily contiguous)		
Classroom space	200 SF or as appropriate to the size of student population	For classroom instruction
Office and lobby areas	300 SF	For phones, restrooms, and space for adequate customer service
Automobile parking	3 spaces per aircraft, 2 for each additional for a maximum of 10 spaces, with landscaping as required by Ord. 348	For students and employees
Other	Any additional space necessary to house all owned or leased aircraft	
<u>PERSONNEL:</u>		
Staff	One (1) certified flight instructor	To be available during normal hours of operation
	One (1) qualified ground school instructor	For classroom instruction
<u>HOURS OF OPERATION:</u>		
Business Hours	Available for appointment for at least 40 hrs/week	
<u>EQUIPMENT:</u>		
Aircraft	One (1) single-engine aircraft	Available for flight training
<u>INSURANCE:</u>		
Refer to Appendix A		

**Table E - AIRCRAFT SALES AND LEASING**

An aircraft sales and/or lease FBO engages in the sale and/or lease of aircraft to the public. New aircraft sales involve the sale of new aircraft through franchises or licensed dealerships (if required by local, county, or state authority) or distributorship (on either a retail or wholesale basis) of an aircraft manufacturer. Aircraft sales FBOs may also engage in the sale of used aircraft. This can be accomplished through various methods, including matching potential purchasers with an aircraft (brokering), assisting a customer in the purchase or sale of an aircraft, or purchasing used aircraft and marketing them to potential purchasers. A new aircraft sales and/or leasing FBO must show capability to support maintenance agreements for aircraft sold or leased. A used aircraft sales FBO may also provide such repair, services, and parts as may be necessary to support the operation of aircraft sold. Some requirements may not be appropriate to the sale of used aircraft because of each aircraft's unique operational history. An aircraft sales FBO may also finance aircraft purchases, subject to the applicable licensing requirements.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 150 SF		
Building space	150 SF	For offices, lobby area, public phone, and restrooms
Tie-down/Hangar space	Adequate number	Storage
Automobile parking	One (1) per employee One (1) per 500 SF of leased space With landscaping as required by Ord. 348	For employees per shift and customer parking
Landscaping	Specific plans to be determined during lease negotiations.	Landscaping required around vehicle parking, sidewalks, and buildings
<b><u>CERTIFICATION:</u></b>		
New aircraft	Dealers must possess sales and/or distribution franchise from a recognized aircraft manufacturer	
Aircraft available for sale and leasing	Aircraft must hold FAA registration and current airworthiness certificate	
<b><u>PERSONNEL:</u></b>		
Staff	One (1) commercial, qualified for aircraft type.	For demonstration of aircraft
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment at least 40 hrs/week	
<b><u>EQUIPMENT:</u></b>		
	Minimum equipment required shall be determined during lease negotiations.	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table F - AIRCRAFT STORAGE**

An aircraft storage FBO engages in the construction, rental, and maintenance of conventional hangars or multiple T-hangars.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b>LOT SIZE:</b> 1acre or 43,560 SF		
Storage area of the following or proportionate combination of:	<ol style="list-style-type: none"> <li>1. Minimum of ten (10) T-Hangars to max of fourteen (14) per acre, or</li> <li>2. Apron tie-down space of a minimum of 15 aircraft per acre, or</li> <li>3. Conventional hangar of 10,000 SF.</li> <li>4. Box hangars - Plot Plan subject to EDA and BOS approval</li> </ol>	
Automobile parking	One (1) for every two (2) hangars, with landscaping as required by Ord. 348	Automobile parking separate from aircraft storage area
Landscaping	Specific plans to be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and buildings
<b><u>PERSONNEL:</u></b>		
Staff	One (1) contact person	To be available during the normal work week (M-F, 8am-5pm)
<b><u>HOURS OF OPERATION:</u></b>		
Minimum via phone contact	5 days/week, 8 hrs/day	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		
<b><u>ADDITIONAL GUIDELINES:</u></b>		
The County and Full Service FBOs shall possess the right to provide and operate the public aircraft storage areas unless circumstances warrant otherwise. No business activities shall be operated from storage areas.		

**Table G - AGRICULTURAL APPLICATION**

An agricultural application FBO engages in air transportation for hire for the purpose of providing the use of aircraft for agricultural operations such as, but not limited to, crop dusting, seeding, spraying, and bird chasing.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b>LOT SIZE:</b> ½ acre or 21,780 SF		
Apron, tie-down area	6,000 SF	Storage
Building space	400 SF	For offices, lobby, public phone, and restrooms
Chemical storage	400 SF	
Automobile parking	Minimum of five (5) parking spaces, with landscaping as required by Ord. 348	For number of employees per shift and average number customers
Landscaping	Specific plans to be determined during lease negotiations	Required around vehicle parking, sidewalks, and buildings
<b><u>CERTIFICATION:</u></b>		
Permits and certificates	Must be submitted to Assistant County Executive Officer / EDA or Designee prior to operations.	
Renewals	Furnished to EDA Assistant County Executive Officer/EDA or Designee as received.	
Agricultural Application Operator	Procure and maintain FAR Part 137 Commercial Agricultural Operators Certificate.	
Hazardous Materials Management Permit	Possess Hazardous Materials Management Permit	County Ordinance No. 615
<b><u>PERSONNEL:</u></b>		
Staff	Minimum number to be determined during lease negotiations.	
Certification & training	Personnel must be knowledgeable about the safe handling of poisons and agricultural chemicals and the proper disposal of substances intended to be used in operations.	
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment for a minimum of 40 Hrs/week	Services offered 7 days/week
<b><u>EQUIPMENT:</u></b>		
To be determined during lease negotiations.		
<b><u>INSURANCE:</u></b>		
Refer to Appendix		



**Table G - AGRICULTURAL APPLICATION (continued)**

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b>ADDITIONAL GUIDELINES:</b> Storage and containment of Hazardous Materials		
<p>a. Comply with California Regional Water Quality Control Board Resolution No. 79-38, dated March 14, 1979.</p> <p>b. Comply with County Ordinance No. 546, Division VIII-Fire Protection Requirement Buildings; and Division XIV-Fire Protection Requirements relating to storage of flammable or combustible liquids used as motor fuel.</p> <p>c. Comply with the 1982 Uniform Fire Code Article 80-Hazardous Materials (section 80.107, 80.108, 80.109, and 80.111); and Article 86-Pesticides storage (all sections).</p> <p>d. Comply with all hazardous waste regulations which can be found in Title 22 of the California Administrative Code and the California Health and Safety Code.</p> <p>e. Submit a waste management plan addressing the items mentioned below with an explicit clause stating that the applicant shall be held responsible for the safe and proper cleanup of any hazardous waste spills.</p> <p>f. Comply with Riverside County Ordinance No. 615 by completing the reporting form and obtaining a Hazardous Materials Management Permit.</p> <p>g. If hazardous wastes are treated and/or stored more than 90 days, or disposed or on-site, a hazardous waste facility must be obtained from the State Department of Health.</p> <p>h. If hazardous wastes are stored 90 days or less, storage area and containment shall meet the following:</p> <ol style="list-style-type: none"> <li>1. Tanks and/or containers shall be of sound construction and compatible with waste stored (Title 22, California Administrative Code, Sections 66508, 67242, and 67247).</li> <li>2. Tanks and/or containers shall be designed, constructed, maintained, and operated to minimize the possibility of fire, explosion, or any unplanned sudden, or non-sudden release of hazardous waste or any constituents to the soil, air, or surface waste which could threaten human health or the environment (Title 22, California Administrative Code, Sections 67241, 67243, 67244, 67257, and 67259).</li> <li>3. Storage of on-site hazardous waste containers shall be in a structure that will prevent the contamination of the environment with hazardous waste. Design of the structure shall be submitted to the Assistant County Executive Officer / EDA or Designee and Hazardous Material Division prior to construction.</li> <li>4. If hazardous wastes or materials are to be stored underground, applicant must comply with County Ordinance No. 617 by completing the reporting form and obtaining the proper permits.</li> <li>5. Underground tanks shall be of proper design and construction with approved monitoring systems. Records shall be maintained concerning operations, inspections, and monitoring pursuant to County Ordinance No. 617.</li> <li>6. The applicant must take steps to minimize the quantity, toxicity, or other hazards of the waste generated. Such steps shall be submitted in writing to Assistant County Executive Officer / EDA or Designee.</li> <li>7. The facility shall be in compliance with all statutes, regulations, and ordinances pertaining to the management of hazardous waste.</li> <li>8. Operator must submit a Letter of Credit or Performance Bond covering any clean-up or fines imposed caused by the actions or the operator.</li> </ol>		

**Table H - OTHER AERONAUTICAL ACTIVITIES**

All aeronautical activities that were not included in previous sections are required to comply with these minimum standards. Activities include, but are not limited to, Air Tours, Air Charter, Banner Towing, Gliders, Ultra Lights, Parachuting, Airship Operations, and Ballooning.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b>LOT SIZE:</b> ½ acre or 21,780 SF		
Building space	400 SF	For offices, lobby area, and restrooms. Additional space may be required depending on the operation
Aircraft storage	To be determined during lease negotiations	Hangar or outside storage to accommodate the operational activities desired.
Automobile parking	Minimum of five (5) parking spaces or 810 SF, with landscaping as required by Ord. 348	For number of employees per shift and average number customers.
Landscaping	Specific plans to be determined during lease negotiations.	Required around vehicle parking, sidewalks, and buildings.
<b><u>CERTIFICATION:</u></b>		
As applicable for each activity	FAA, State, and local certification and licensing as applicable	For safe and efficient operation of airport and aeronautical activities
<b><u>PERSONNEL:</u></b>		
Staff	Sufficient number during normal hours of operation	
Certification & training	Properly trained and, if applicable, certified or licensed to perform the activities or a normal course of operation.	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Services	To be determined during lease negotiations.	Minimum requirements would be: normal telephone contact five (5) days a week (M-F) eight (8) hours a day.
<b><u>EQUIPMENT:</u></b>		
	To be determined during lease negotiations depending on the type of activity proposed.	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**EXHIBIT D**  
**FEDERALLY REQUIRED LEASE PROVISIONS**

1. The Lessee for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease agreement for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
  
2. The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
  
3. That in the event of breach of any of the above nondiscrimination covenants, the County of Riverside, herein called the "County", shall have the right to terminate the lease agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
  
4. The Lessee shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, however, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.
  
5. Non-compliance with Provision 4 above shall constitute a material breach thereof, and in the event of such noncompliance, the County shall have the right to terminate this lease agreement and the estate thereby created without liability therefore or, at the election of the

County or the United States, either or both said Governments shall have the right to judicially enforce these Provisions.

6. The Lessee agrees that it shall insert the above five provisions in any sublease agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.
7. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.
8. The County reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance, but subject to the terms and conditions of the Lease.
9. The County reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.
10. This lease agreement shall be subordinate to the provisions and requirements of any existing agreement between the County and the United States relative to the development, operation, or maintenance of the airport.
11. There is hereby reserved to the County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating on the Jacqueline Cochran Regional Airport.
12. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
13. The Lessee, by accepting this lease agreement, expressly agrees for itself, its successors and assigns that it will neither erect nor permit the erection of any structure or object, nor permit the growth of any tree, on land leased hereunder with a height that exceeds the height limitation formula specified in Part 77 of the Federal Aviation Regulations without first obtaining the approval of the DOT and the County, which approval can be sought by

submitting FAA Form 7460-1 (copy attached). In the event that the aforesaid covenants are breached, the County reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

14. The Lessee, by accepting this lease agreement, agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner, which might interfere with the landing and taking off of aircraft from Jacqueline Cochran Regional Airport or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, the County reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.
15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 USC 1349a)
16. This lease agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during time of war or national emergency.

**EXHIBIT D**  
**FEDERALLY REQUIRED LEASE PROVISIONS**

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2. The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, the County of Riverside, herein called the "County", shall have the right to terminate the lease agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
4. The Lessee shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, however, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.
5. Non-compliance with Provision 4 above shall constitute a material breach thereof, and in the event of such noncompliance, the County shall have the right to terminate this lease agreement and the estate thereby created without liability therefore or, at the election of the

County or the United States, either or both said Governments shall have the right to judicially enforce these Provisions.

6. The Lessee agrees that it shall insert the above five provisions in any sublease agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.
7. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.
8. The County reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance, but subject to the terms and conditions of the Lease.
9. The County reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.
10. This lease agreement shall be subordinate to the provisions and requirements of any existing agreement between the County and the United States relative to the development, operation, or maintenance of the airport.
11. There is hereby reserved to the County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating on the Jacqueline Cochran Regional Airport.
12. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
13. The Lessee, by accepting this lease agreement, expressly agrees for itself, its successors and assigns that it will neither erect nor permit the erection of any structure or object, nor permit the growth of any tree, on land leased hereunder with a height that exceeds the height limitation formula specified in Part 77 of the Federal Aviation Regulations without first obtaining the approval of the DOT and the County, which approval can be sought by

submitting FAA Form 7460-1 (copy attached). In the event that the aforesaid covenants are breached, the County reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

14. The Lessee, by accepting this lease agreement, agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner, which might interfere with the landing and taking off of aircraft from Jacqueline Cochran Regional Airport or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, the County reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.
15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 USC 1349a)
16. This lease agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during time of war or national emergency.



**EXHIBIT E**

**STORM WATER POLLUTION PREVENTION PLAN**

[Attached hereto and made a part hereof]

**BARNES & THORNBURG LLP**

http://www.btlaw.com

Jeffrey S. Longworth

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E-mail: jlongworth@btlaw.com

*Confidential Correspondence*

**October 2, 2008**

**MEMORANDUM**

**TO: Airport California Monitoring Group Members**  
**FROM: Jeffrey S. Longworth, Group Administrator**  
**RE: Monitoring Program Update**

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As we enter the 2008-09 Wet Season under the California General Industrial Stormwater Permit, I wanted to provide a brief update. Recently, we filed this Group's Annual Group Evaluation Report ("AGAR") with the State and Regional Water Boards, and indicated our intent to continue the Airport Group for 2008-09. We will continue to be assisted in our compliance program by Tim Simpson and Matt Lentz from Geomatrix Consultants, Inc., and Sarah Yount Hoffman from EC Options. Thus, you have multiple points of reference for help and assistance with any stormwater-related issues that arise at your airport.

As you review the attached documents, I believe you will recognize that the Group had a very successful year last year and I want to thank all of you for your efforts, input, good questions, and dedication to the stormwater program and protecting your local environments. Many airports were inspected by various government authorities and, generally, passed with flying colors. Yes, there still are things that we need to work on, but on the whole, our stormwater program is a model not only in California, but around the country.

Please review this short memorandum and the attached documents, and forward to me or anyone on the team any questions or concerns.

**Group and Airport Specific Documents**

I have attached several documents for your review. These include:

- The AGAR (without attachments) that I filed with the State and Regional Boards on behalf of the entire group;

- Any airport-specific monitoring (sampling) data and inspection reports conducted at your airport during the 2007-08 monitoring year (remember that we sample or inspect only 40 percent of the airports on an annual basis). These documents would have been attached to the AGAR I filed with the State and Regional Boards and have been pulled out only for your airport (if appropriate); and
- Your own airport-specific annual report that you completed (with assistance from Sarah Yount Hoffman) and filed.

### **Immediate Needs**

The California Airport Monitoring Group airports must continue to comply with the established stormwater monitoring program for the 2008–2009 extended permit year. Stormwater training sessions will be conducted this fall. Please watch for the Update (coming soon) outlining training dates and locations.

The sampling airports for the upcoming wet season have been contacted and are ready to collect the first flush runoff of the 2008-2009 stormwater season. If Sarah Hoffman has not contacted you this year then you are not a required to collect analytical stormwater samples for laboratory analysis. However, all airports in the Monitoring Group are required to conduct monthly stormwater runoff inspections and quarterly non-stormwater inspections.

### **Stormwater Inspection Record Submittal Schedule**

Please review the following information and schedule carefully. The California Airport Monitoring Group is continuing the quarterly submission of the stormwater observations and non-stormwater observations. Please post the schedule listed below so that your airport can comply with the new document submittal timeline. The intent of quarterly due dates is to provide more airport-specific technical assistance and timely guidance, and to ease the stress of drafting Annual Reports as we approach June 2009.

1. October 13<sup>th</sup>
  - July – September quarter Non-Stormwater Observations
2. January 12<sup>th</sup>
  - October – December quarter Non-Stormwater Observations
  - October, November, December Stormwater Observations
3. April 13<sup>th</sup>
  - January – March quarter Non-Stormwater Observations
  - January, February, March Stormwater Observations

4. JUNE 1<sup>ST</sup> (Regularly scheduled due date)

1/1

- April – June quarter Non-Stormwater Observations *for*
- April, May Stormwater Observations *3*
- Annual Comprehensive Site Compliance Evaluation (ACSCE) forms

The requested forms can be submitted three different ways; mail to the address listed below, fax to 603-783-3382 or email to [ecoptions@aol.com](mailto:ecoptions@aol.com). If electronic copies of the forms are needed please request them via email at [ecoptions@aol.com](mailto:ecoptions@aol.com).

Sarah Hoffman  
Environmental Compliance Options  
P.O. Box 46  
Canterbury NH 03224

Sarah will review and track all observation forms and contact airports with any issues or problems when/if they arise. Documents will be reviewed for completeness, accuracy and consistency from quarter-to-quarter. Airports having problems with observation results or documentation will be contacted and provided with timely assistance. Please contact Jeffery Longworth 202-408-6918 or Sarah Y. Hoffman-603-783-4188 with any questions.

*OUT OF SERVICE*

\* \* \* \* \*

Thanks again for your dedication to the program and your efforts to reduce pollutants in stormwater discharges from your airports. Please call with any questions.

99MP07-1 B-120100

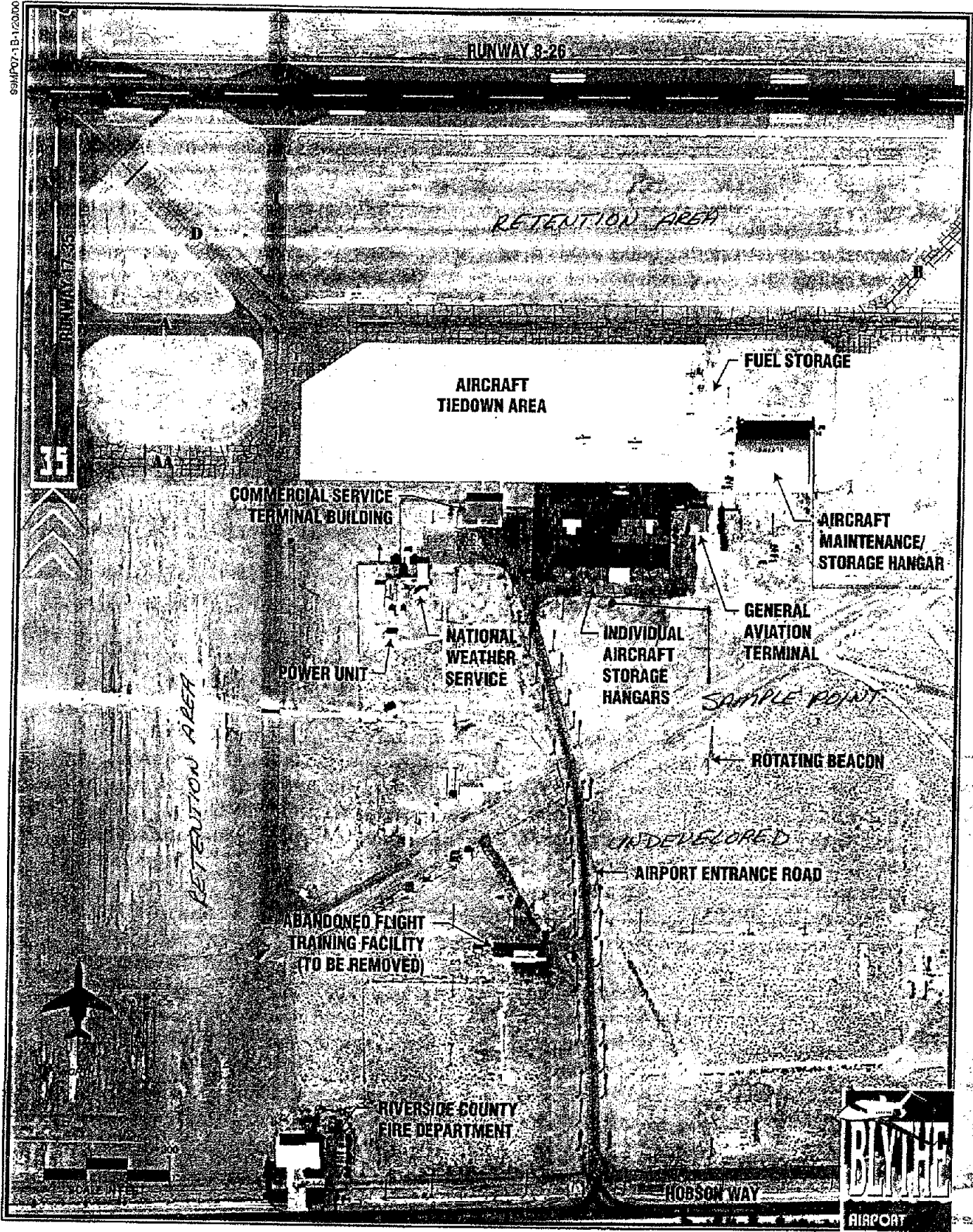


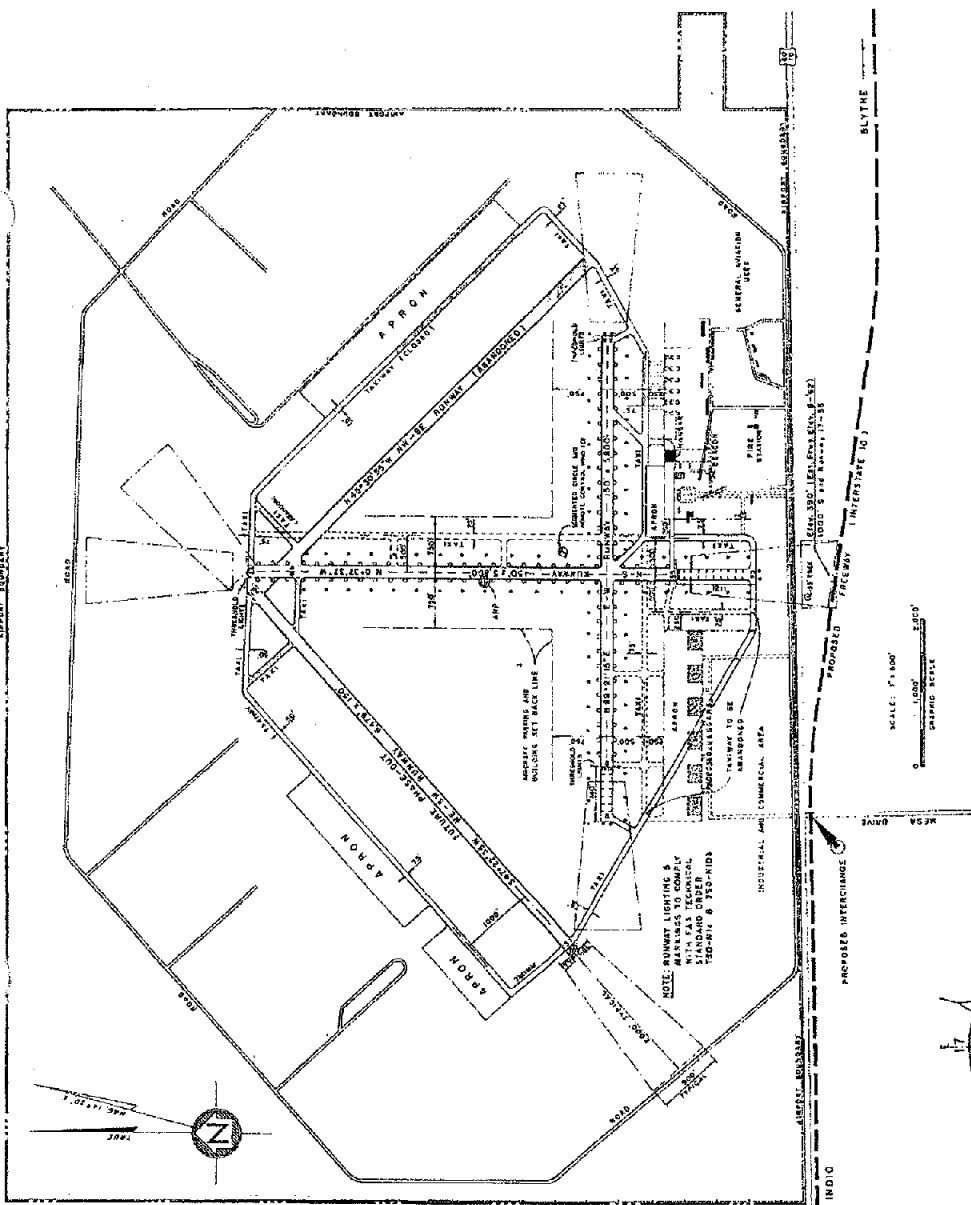
Exhibit 1B  
TERMINAL AREA FACILITIES

## FACILITY DATA COLLECTION

The general permit requires that the following information be gathered in order to determine and evaluate pollution sources:

- \* Site map
- \* Topographic map
- \* Description of significant material handling
- \* List of pollutants with potential to be present
- \* Size of airport and percentage of impervious areas
- \* Spill history
- \* Summary of existing sampling data

**Topographic Map**

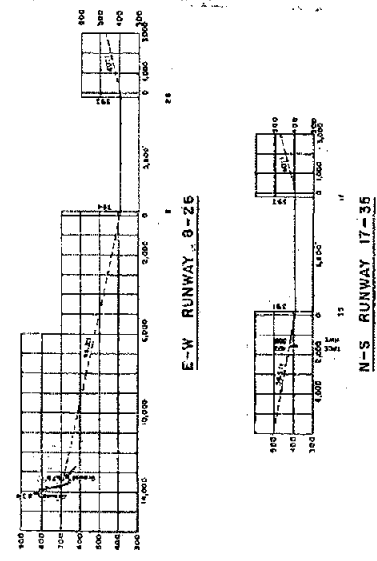
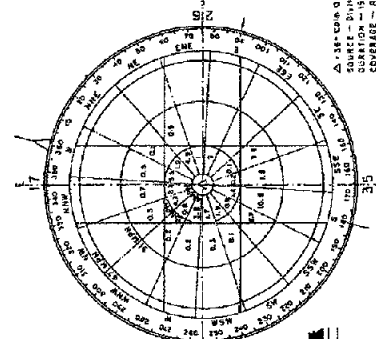
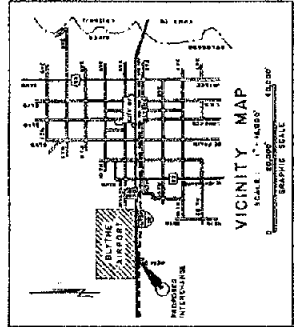


4	3-2-64	FAA Rpt 1028-63	BP
3	9-24-63	AS BULLY CHANGE 10-1-64	H B
2	9-1-63	FAA Rpt 2-28-63	BP
1	2-9-53	FAA Rpt 1-19-53	BY

APPROVED BY: *[Signature]*  
COUNTY SUPERVISOR

DATE OF SUPERVISIONS: *[Signature]*  
DATE OF SUPERVISIONS: *[Signature]*

**BLYTE AIRPORT**  
BLYTE, CALIFORNIA  
RIVERSIDE COUNTY AIRPORT DEPARTMENT  
**MASTER PLAN B-I**



**PROFILES AND OBSTRUCTIONS**

- SCALE: 1" = 100'
- EXISTING PAVEMENT
  - PROPOSED PAVEMENT
  - EXISTING FENCE
  - PROPOSED FENCE
  - EXISTING BUILDING
  - PROPOSED BUILDING
  - EXISTING TREE
  - PROPOSED TREE
  - PROPOSED POWER LINE
  - PROPOSED TELEPHONE LINE
  - PROPOSED FUTURE HIGHWAY
  - PROPOSED FUTURE AIRWAY
  - PROPOSED FUTURE AIRWAY CENTERLINE
  - PROPOSED FUTURE AIRWAY CENTERLINE
  - PROPOSED FUTURE AIRWAY CENTERLINE

**AIRPORT DATA**

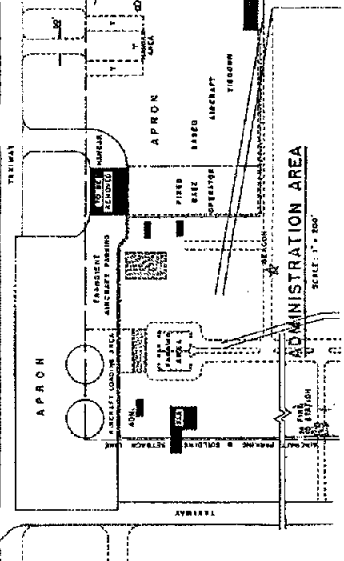
SERVICE CATEGORY—AIR CARRIER TRUNK

ELEVATION 387'-5000' U.S. CASS 1956  
MEAN MAXIMUM TEMPERATURE 108.5°F  
ALL CLEAR ZONES FROM CATEGORY

APR LAT 33° 37' 16.3" LONG 114° 42' 56.4" CGS 83-15493

RUNWAY DATA	17/35	8/26	3/21
USABLE RUNWAY LENGTH	2500'	2500'	407'
EFFECTIVE GRADIENT	0.00%	0.017%	0.031%
CONNECTION FACTOR	1.00	1.00	1.00
BASIC RUNWAY LENGTH	2524'	2524'	430'
GLIDE SLOPE EXISTING	1.7%	1.7%	1.7%
GLIDE SLOPE PROPOSED	1.7%	1.7%	1.7%

NOTE: SURFACE TOWARD WEST END OF RUNWAY 17-35 TO BE SUBGRADE TOWARD WEST END OF RUNWAY 17-35 + 112'



## Description of Significant Material Handling

### Significant Materials Treated or Stored

#### Significant Materials Stored:

- 1.) <sup>12,000</sup> 10,000 gallons of AvGas maximum (<sup>ABOVEGROUND TANK</sup> ~~underground~~ tanks).
- 2.) 10,000 gallons of Jet-A maximum (<sup>ABOVEGROUND TANK</sup> ~~underground~~ tanks).
- 3.) Various types of fertilizers and pesticides stored on agricultural lease  
(Co-permittee)
- 4.) Used motor oil.
- 5.) 150 GALLONS DIESEL FUEL FOR MAINTENANCE EQUIPMENT
- 6.) 2,000 GALLONS ABOVE GROUND STORAGE TANK (AUTOMOTIVE)  
- ALL UNDERGROUND STORAGE TANK INFORMATION WILL BE  
UPDATED FOR AUTO AND AIRCRAFT FUELING AS SOON AS  
WORK IS COMPLETED
- 7.) 2,000 GALLON ABOVEGROUND TANK (L) IS USED AS A BACKUP  
GENERATOR AT CLOX TRUCK TERMINAL

#### Significant Materials Disposed:

- 1.) Fuel from <sup>ABOVEGROUND</sup> ~~underground~~ tank is used in aircraft. ~~Underground~~ and above-ground tanks are regulated by Title 23 of the California Health and Safety Code, EPA <sup>ABOVEGROUND</sup> ~~Underground~~ Tank Regulations, and Riverside County Ordinance No. 617.
- 2.) Fertilizer and pesticides are controlled by EPA, State, and County regulations. Fertilizers and pesticides are disposed of off airport property.
- 3.) Used motor oil is recycled through a licensed contractor.



Methods of On-Site Storage of Significant Materials:

- 1.) Aviation fuels are stored in ~~underground~~<sup>ABOVE GROUND</sup> tanks or in fuel trucks.
- 2.) Motor vehicle oils are stored inside buildings.
- 3.) All pesticides and fertilizers are stored in building or on covered concrete slabs.
- 4.) Automobile and truck fuels are stored underground or above ground to meet all regulations.

Activities that Generate Significant Quantities of Dust or Particulates (unpaved access roads or emissions from industrial processes):

- 1.) All main access roads and parking lots are paved. Some airport maintenance roads are dirt but are rarely used.
- 2.) There are no significant industrial processes on the airport.

**Pollutant Lists**

The airport is required to list any pollutants that have a reasonable potential to be present in the storm water discharge in significant quantities. The definition of significant quantities varies depending on the material. In general, a significant quantity is a quantity of material larger than that consumed within a normal days's operations or a quantity resulting in spills beyond the immediate clean-up capabilities of the individual charged with the use of the materials. For regulated substances, a significant quantity is a "reportable" quantity of those substances. An estimate of the annual quantities of these pollutants in the discharge is also required. List substances and quantities in the following table (Table 3-1) and retain a copy in the SWPPP documentation.

TABLE 3-1

Date	Pollutant present	Use	Quantity Estimate
10/1/92	Aviation Fuels	Aircraft	
10/1/92	Anti Freeze	Ground vehicles	No significant
10/1/92	Engine oil	Aircraft and Ground vehicles	spill history.
1/12/98	Aviation fuels	Aircraft	20,000 annually
1/12/98	Engine oils	Aircraft and Ground vehicles	2,000 annually
1/12/98	Anti Freeze	Ground vehicles	1,000 annually
1/12/98	Auto fuel	Ground vehicles	750,000 annually
1/12/98	Diesel fuel	Ground vehicles	850,000 annually
12-4-00	DIESEL FUEL	BACK UP GENERATOR	2,000 GAL.

**Airport Size**

**Airport Size (acres or square feet):**

3904 ACRES

**Impervious Area (acres or square feet):**

.156 ACRES

**Percentage of Impervious Area (impervious are/total area x 100):**

4%

**Significant Spills or Leaks**

Table 3-2 should be used to record the lists described above.

**Summary of Sampling Data**

Record the sampling event(s) information on Table 3-3 and include only a one-page summary from the sampling data report package.

Significant Materials Spilled Or Leaked (in significant quantities to storm water after November 19, 1988):

1.) To our knowledge, no materials of significant quantity have been leaked or spilled on airport property.

**Materials Management Practices:**

1.) An area of the airport is designated for explosives and hazardous materials loading and unloading. (See map, Attachment B).

2.) All hazardous material spills must be reported to airport management, County Health, and County Fire Department to insure immediate and proper clean-up and disposal. Liquid absorbent material is stored at the airport.

3.) Areas where materials are stored and/or have the possibility to spill are inspected monthly, with spot inspections during the daily airport safety inspections.

4.) Insure material handlers have proper licenses and/or training for each product being used.

## **STORM WATER MANAGEMENT CONTROLS**

This section of the SWPPP describes storm water management controls which are appropriate for the identified potential pollutant sources at the facility.

The regulations require the following descriptions and information to be included in the storm water management control portion of the SWPPP:

- \* Prevention Maintenance and Inspections
- \* Good Housekeeping
- \* Spill Prevention and Response
- \* Storm Water Management Practices
- \* Sediment and Erosion Prevention
- \* Employee training

### **Preventative Maintenance**

The preventative maintenance program should include the following:

- \* Identification of the equipment and systems targeted for the PM program
- \* Periodic inspections of identified equipment and systems
- \* Periodic testing of equipment and systems
- \* Appropriate adjustments, repair, or replacement of parts
- \* Record keeping documenting inspections and follow-up action

Documentation and retention of records is a critical element of a good preventative maintenance and inspection program. A tracking and follow-up procedure is recommended to ensure that an appropriate response to the inspection findings has been made. All inspection documentation and records must be maintained with SWPPP for a period of 5 years. Table 4-1 should be used to record inspection and maintenance activities, and any corrective actions implemented.

Equipment Management Practices:

- 1.) All equipment inspected monthly.
- 2.) Routine maintenance to repair leaks and preventive maintenance scheduled to prevent leaks.
- 3.) Drip pans installed under areas where leaks may occur.

Vehicle Management Practices:

- 1.) Scheduled preventative maintenance.
- 2.) Cleaning vehicles with only biodegradable solvents and soaps, in designated areas only.
- 3.) Routine daily inspections on vehicles.

Material Loading, Unloading, and Access Areas:

- 1.) Insure all personnel are trained and/or have proper licensing.
- 2.) Restrict material handling areas to trained personnel only.
- 3.) Inspect equipment monthly to insure it is working properly and that the responsible party is notified so that repairs can be made on faulty equipment.

Existing Structural Controls (to reduce pollutants in storm water):

- 1.) Monthly inspections of all aircraft tiedowns, auto parking lots, streets, and hangar areas.
- 2.) Daily spot inspections done during routine airport safety inspections.

Existing Non-Structural Controls (to reduce pollutants in storm water):

- 1.) Use of dirt roads restricted to airport employees for inspections and/or emergency response to aircraft accidents.
- 2.) Monthly inspections of all drains, ditches, flood control berms, and outfalls to insure no dry weather signs of runoff water is present.

Airport Industrial Storm Water Treatment Facilities:

- 1.) No facilities are now on the airport.

Methods of On-Site Disposal of Significant Materials:

- 1.) All hazardous materials are disposed if in State approved sites or recycled. No hazardous materials are disposed of on the airport.

## Good Housekeeping

### Written Protocol

The protocols should be developed to meet the site specific requirements of the airport.  
The protocols should cover:

- 1.) Daily inspections of the tiedown areas to look for leaks and spills.
- 2.) Notices sent to lessees, aircraft and equipment owners to inform them of problems that need correcting.
- 3.) Vehicle and equipment washing be done in designated areas. All loose oil be wiped from all surfaces before washing.
- 4.) No hangars, equipment storage, or maintenance facilities will be hosed out with water. All oil and fuel leaks will be cleaned up with liquid absorbent materials or biodegradable solvents and soap, then disposed of properly.
- 5.) Drip pans and 100 lbs. of liquid absorbent material stored at each F.B.O. site near fueling facilities and maintenance areas.
- 6.) Drums and tanks containing used oil, solvents, and coolants checked weekly for material levels. All full containers to be closed and secured to prevent overfilling.
- 7.) The City of Blythe Airport Personnel and each Co-Permittee will train personnel in the proper handling, identification, and clean-up practices. List of agencies to notify when a spill does occur, etc.
- 8.) The designated airport representative to inspect the airport monthly to include Co-Permittees leaseholds, notify responsible parties not in compliance with storm water plan.
- 9.) All non-paved roads to be restricted to only necessary traffic.
- 10.) All vehicle fueling to take place on concrete or asphalt to simplify clean-up if a spill does occur. Also keeps clean-up cost down.

A protocol document should be included with the SWPPP document; Table 4-3 can be used for this purpose.



## Spill Prevention and Response

Table 4-4 will be used to record the spill control and countermeasures established by the airport. Please add any additional documentation relating to spill prevention countermeasures and control to this document.

See Protocols and Management Practices.

1. LOCATION OF SPILL

2. TYPE OF SPILL

3. NOTIFY COB AIRPORT EMPLOYEE

4. NOTIFY COB PUBLIC WORKS DIRECTOR

5. NOTIFY COB FIRE DEPT.

6. NOTIFY HAZ. MAT.

## Emergency Response Coordinator

The designated person will be named below. This information should be kept on file as part of the SWPPP documentation.

Designated Individual Steve Foley  
Title Lead Airport Operations / Maintenance  
Phone (760)921-7812 24 hr Phone (760)574-3003 cell

Alternate Jim Rodkey  
Title Public Works Director  
Phone (760)922-6161 24 hr Phone (760)574-1146

Alternate Billy Kem  
Title CITY OF BLYTHE FIRE CHIEF  
Phone 760-922-6117 24 hr Phone 760-922-6116

## Storm Water Management

1. Daily inspections of tiedown areas to look for leaks.
2. Notices sent to lessees, aircraft, and equipment owners to inform them of problems that need correcting.
3. Vehicle and equipment washing be done in designated areas. All loose oil be wiped from all surfaces before washing.
4. No hangars, equipment storage, or maintenance facilities will be hosed out with water. All oil and fuel leaks will be cleaned up with liquid absorbent materials or biodegradable solvents and soap, than disposed of properly.
5. Drip pans and 100 lbs. of liquid absorbent material stored at the airport near fueling facilities and maintenance areas.
6. Drums and tanks containing used oil, solvents, and coolants checked weekly for material levels. All full containers to be closed and secured to (next page)

prevent overfilling.

- 7.) The City of Blythe Airport Personnel and each Co-Permittee will train personnel in the proper handling, identification, and clean-up practices. List of agencies to notify when a spill does occur, etc.
- 8.) The designated airport representative to inspect the airport monthly to include Co-Permittees' leaseholds and notify responsible parties not in compliance with storm water plan.
- 9.) All non-paved roads to be restricted to only necessary traffic.
- 10.) All vehicle fueling to take place on concrete or asphalt to simplify clean-up if a spill does occur.
- 11.) All hazardous material spills must be reported to airport management, County Health, and County Fire Dept. to insure immediate and proper clean-up and disposal. Liquid absorbent material is stored at the airport.
- 12.) All equipment inspected monthly.
- 13.) Routine maintenance to repair leaks and preventive scheduled maintenance to prevent leaks.
- 14.) Drip pans installed under areas where leaks may occur.
- 15.) Scheduled preventive maintenance.
- 16.) Cleaning vehicles with only biodegradable solvents and soaps, in designated areas only.
- 17.) Routine daily inspections on vehicles.
- 18.) Insure all personnel are trained and/or have proper licensing.
- 19.) Restrict material handling areas to trained personnel only.
- 20.) Inspect equipment monthly to insure it is working properly and that the responsible party is noticed so that the repair can be made on faulty equipment.
- 21.) Require catch basins to be designed into all future construction projects where applicable.
- 23.) Rip-rap all applicable outfalls, embankments and drain ditches.
- 24.) Keep cracks in parking lots and tiedowns filled with crack fillers.
- 25.) *OBSERVE NON-STORM DISCHARGE WHEN POSSIBLE*



**PLANNING AND ORGANIZATION**

**POLLUTION PREVENTION PERSONNEL**

**POLLUTION PREVENTION COMMITTEE MEMBERS**

Airport Manager/Representative Jim Rodkey

Phone (760) 922-6116

24 hr Phone 760-574-1140

**Designated Individuals**

Name Steve Foley

Title Lead Maintenance and Operations Worker

Phone (760) 921-7812

24 hr Phone (760) 574-3063 cell

Name Billy Kern

Title CITY OF BLYTHE FIRE

Phone 760-922-6117

24 hr Phone 760-922-6116

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

24 hr Phone \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

24 hr Phone \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

24 hr Phone \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_

24 hr Phone \_\_\_\_\_



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Quality  
1001 I Street • Sacramento, California 95814 • (916) 341-5538  
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977  
FAX (916) 341-5543 • Internet Address: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/](http://www.waterboards.ca.gov/water_issues/programs/stormwater/)

Arnold Schwarzenegger  
Governor

To: STORM WATER DISCHARGER  
SUBJECT: CHECKLIST FOR SUBMITTING A NOTICE OF INTENT

In order for the State Water Resources Control Board to expeditiously process your Notice of Intent (NOI), the following items must be submitted to either of the addresses indicated below:

1. \_\_\_\_\_ NOI (please keep a copy for your files) with all applicable sections completed and original signature of the facility operator;
2. \_\_\_\_\_ Check made out to the "State Water Resources Control Board" with the appropriate fee. The total annual fee is \$1008.00.
3. \_\_\_\_\_ Site Map of the facility (see NOI instructions). DO NOT SEND BLUEPRINTS

U.S. Postal Service Address

State Water Resources Control Board  
Division of Water Quality  
Attn: Storm Water Section  
P.O. Box 1977  
Sacramento, CA 95812-1977

Overnight Mailing Address

State Water Resources Control Board  
Division Of Water Quality  
Attn: Storm Water, 15<sup>th</sup> Floor  
1001 I Street  
Sacramento, CA 95814

NOIs are processed in the order they are received. A NOI receipt letter will be mailed to the facility operator within approximately two weeks. Incomplete NOI submittals will be returned to the facility operator within the same timeframe and will specify the reason(s) for return. If you need a receipt letter by a specific date (for example, to provide to a local agency), we advise that you submit your NOI thirty (30) days prior to the date the receipt letter is needed.

Please do not call us to verify your NOI status. A copy of your NOI receipt letter will be available on our web page within twenty-four (24) hours of processing. Go to: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/databases.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/databases.shtml) to retrieve an electronic copy of your NOI receipt letter. If you have any questions regarding this matter, please contact us at (916) 341-5538.

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)  
FOR

DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES  
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# FACT SHEET

FOR

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)  
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FOR

DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES  
EXCLUDING CONSTRUCTION ACTIVITIES

## BACKGROUND

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (U.S. EPA) published final regulations that establish application requirements for storm water permits. The regulations require that storm water associated with industrial activity (storm water) that discharges either directly to surface waters or indirectly through municipal separate storm sewers must be regulated by an NPDES permit.

U.S. EPA developed a four-tier permit issuance strategy for storm water discharges associated with industrial activity as follows:

Tier I, Baseline Permitting--One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.

Tier II, Watershed Permitting--Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III, Industry-Specific Permitting--Specific industry categories will be targeted for individual or Industry-specific general permits.

Tier IV, Facility-Specific Permitting--A variety of factors will be used to target specific facilities for individual permits.

The regulations allow authorized states to issue general permits or individual permits to regulate storm water discharges.



Consistent with Tier I, Baseline Permitting, of the U.S. EPA permitting strategy, the State Water Board issued a statewide General Permit on November 19, 1991 that applied to all storm water discharges requiring a permit except construction activity. The monitoring requirements of this General Permit were amended September 17, 1992. A separate statewide general permit has been issued for construction activity.

To obtain authorization for continued and future storm water discharge under this General Permit, each facility operator must submit a Notice of Intent (NOI). This approach is consistent with the four-tier permitting strategy described in Federal regulations, i.e., Tier 1, Baseline Permitting. Tier 1, Baseline Permitting, enables the State to begin reducing pollutants in industrial storm water in the most efficient manner possible.

This General Permit generally requires facility operators to:

1. Eliminate unauthorized non-storm water discharges;
2. Develop and implement a storm water pollution prevention plan (SWPPP); and
3. Perform monitoring of storm water discharges and authorized non-storm water discharges.

#### TYPES OF STORM WATER DISCHARGES COVERED BY THIS GENERAL PERMIT

This General Permit is intended to cover all new or existing storm water discharges and authorized non-storm water discharges from facilities required by Federal regulations to obtain a permit including those (1) facilities previously covered by the San Francisco Bay Regional Water Quality Control Board Order No. 92-011 (as amended by Order No. 92-116), (2) facilities designated by the Regional Water Quality Control Boards (Regional Water Boards), (3) facilities whose operators seek coverage under this General Permit, (4) and facilities required by future U.S. EPA storm water regulations.

The General Permit is intended to cover all facilities described in Attachment 1, whether the facility is primary or is auxiliary to the facility operator's function. For example, although a school district's primary function is education, a facility that it operates for vehicle maintenance of school buses is a transportation facility that is covered by this General Permit.

The definition of "storm water associated with industrial activity" is provided in Attachment 4, Definition 9, of this General Permit. Facilities that discharge storm water associated with industrial activity requiring a General Permit are listed by category in 40 Code of Federal Regulations (CFR) Section 122.26(b)(14) (Federal Register, Volume 55 on

Pages 48065-66) and in Attachment 1 of this General Permit. The facilities can be publicly or privately owned. General descriptions of these categories are:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N);
2. Manufacturing facilities;
3. Mining/oil and gas facilities;
4. Hazardous waste treatment, storage, or disposal facilities;
5. Landfills, land application sites, and open dumps that receive industrial waste;
6. Recycling facilities such as metal scrap yards, battery reclaimers, salvage yards, automobile yards;
7. Steam electric generating facilities;
8. Transportation facilities that conduct any type of vehicle maintenance such as fueling, cleaning, repairing, etc.;
9. Sewage treatment plants;
10. Construction activity (covered by a separate general permit); and
11. Certain facilities (often referred to as "light industry") where industrial materials, equipment, or activities are exposed to storm water.

For the most part, these facilities are identified in the Federal regulations by a Standard Industrial Classification (SIC).

#### Category 1 Dischargers

The following categories of facilities currently have storm water effluent limitation guidelines for at least one of their subcategories. They are cement manufacturing (40 CFR Part 411); feedlots (40 CFR Part 412); fertilizer manufacturing (40 CFR Part 418); petroleum refining (40 CFR Part 419); phosphate manufacturing (40 CFR Part 422); steam electric power generation (40 CFR Part 423); coal mining (40 CFR Part 434); mineral mining and processing (40 CFR Part 436); ore mining and dressing (40 CFR Part 440); and asphalt emulsion (40 CFR Part 443). A facility operator whose facility falls into one of these general categories should examine the effluent guidelines to determine if the facility is categorized in one of the subcategories that have storm water effluent guidelines. If

a facility is classified as one of those subcategories, that facility is subject to the standards listed in the CFR for that category and is subject to this General Permit. This General Permit contains additional requirements (see Section B.6.) for facilities with storm water effluent limitations guidelines.

#### Category 5 Dischargers

Inactive or closed landfills, land application sites, and open dumps that have received industrial wastes (Category 5) may be subject to this General Permit unless the storm water discharges from the sites are already regulated by an NPDES permit issued by the appropriate Regional Water Board. Facility operators of closed landfills that are regulated by waste discharge requirements (WDRs) may be required to comply with this General Permit. In some cases, it may be appropriate for closed landfills to be covered by the State Water Board's General Permit during closure activities. The Construction Activities General Permit should cover new landfill construction. Facility operators should contact their Regional Water Board to determine the appropriate permit coverage.

#### Category 10 Dischargers

Facility operators of Category 10 (light industry) facilities are not subject to this General Permit if they can certify that the following minimum conditions at their facilities are met:

1. All prohibited non-storm water discharges have been eliminated or otherwise permitted.
2. All areas of past exposure have been inspected and cleaned, as appropriate.
3. All materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.
4. All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.
5. There is no exposure of materials associated with industrial activity through other direct or indirect pathways such as particulates from stacks and exhaust systems.
6. There is periodic re-evaluation of the facility to ensure Conditions 1, 3, 4, and 5 are continuously met.

Currently, facility operators that can certify that the above conditions are met are not required to notify the State Water

Board or Regional Water Board. These facility operators are advised to retain such certification documentation on site.

The Ninth Circuit Court of Appeals invalidated the exemption granted by U.S. EPA for storm water discharges from facilities in Category 11 that do not have exposure and remanded the regulation to U.S. EPA for further action. The State Water Board, at this time, is not requiring storm water discharges from facilities in Category 11 that do not have exposure to be covered by this General Permit. Instead, the State Water Board will await future U.S. EPA or court action clarifying the types of storm water discharges that must be permitted. If necessary, the State Water Board will reopen the General Permit to accommodate such a clarification.

Section 1068 of the Intermodal Surface Transportation Act of 1991 exempts municipal agencies serving populations of less than 100,000 from Phase I permit requirements for most facilities they operate (uncontrolled sanitary landfills, power plants, and airports are still required to be permitted in Phase I). Phase II of the Permit Program scheduled to begin August 7, 2001 will cover the facilities that are exempt from Phase I permit requirements.

#### TYPES OF DISCHARGES NOT COVERED BY THIS GENERAL PERMIT

1. CONSTRUCTION ACTIVITY: Discharges from construction activity of five acres or more, including clearing, grading, and excavation. A separate general permit was adopted on August 20, 1992 for this industrial category.
2. FACILITIES WHICH HAVE NPDES PERMITS CONTAINING STORM WATER PROVISIONS: Some storm water discharges may be regulated by other individual or general NPDES permits issued by the State Water Board or the Regional Water Boards. This General Permit shall not regulate these discharges. When the individual or general NPDES permits for such discharges expire, the State Water Board or Regional Water Board may authorize coverage under this General Permit or another general NPDES permit, or may issue a new individual NPDES permit consistent with the Federal and State storm water regulations. Interested parties may petition the State Water Board or appropriate Regional Water Board to issue individual or General NPDES Permits. General Permits may be issued for a particular industrial group or watershed area.
3. FACILITIES DETERMINED INELIGIBLE BY REGIONAL WATER BOARDS: Regional Water Boards may determine that discharges from a facility or groups of facilities, otherwise eligible for coverage under this General Permit, have potential water quality impacts that may not be appropriately addressed by

this General Permit. In such cases, a Regional Water Board may require such discharges to be covered by an individual or general NPDES permit. Interested persons may petition the appropriate Regional Water Board to issue individual NPDES permits. The applicability of this General Permit to such discharges will be terminated upon adoption of an individual NPDES permit or a different general NPDES permit.

4. FACILITIES WHICH DO NOT DISCHARGE STORM WATER TO WATERS OF THE UNITED STATES: The discharges from the following facilities are not required to be permitted:
  - a. FACILITIES THAT DISCHARGE STORM WATER TO MUNICIPAL SANITARY SEWER SYSTEMS: Facilities that discharge storm water to municipal sanitary sewer systems or combined sewer systems are not required by Federal regulations to be covered by an NPDES storm water permit or to submit an NOI to comply with this General Permit. (It should be noted that many municipalities have sewer use ordinances that prohibit storm drain connections to their sanitary sewers.)
  - b. FACILITIES THAT DO NOT DISCHARGE STORM WATER TO SURFACE WATERS OR SEPARATE STORM SEWERS: Storm water that is captured and treated and/or disposed of with the facility's NPDES permitted process wastewater and storm water that is disposed of to evaporation ponds, percolation ponds, or combined sewer systems are not required to obtain a storm water permit. To avoid liability, the facility operator should be certain that no discharge of storm water to surface waters would occur under any circumstances.
5. MOST SILVICULTURAL ACTIVITIES: Storm water discharges from most silvicultural activities such as thinning, harvesting operations, surface drainage, or road construction and maintenance are exempt from this permit. Log sorting or log storage facilities that fall within SIC 2411 are required to be permitted.
6. MINING AND OIL AND GAS FACILITIES: Oil and gas facilities that have not released storm water resulting in a discharge of a reportable quantity (RQ) for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 19, 1987 are not required to be permitted unless the industrial storm water discharge contributed to a violation of a water quality standard. Mining facilities that discharge storm water that does not come into contact with any overburden, raw materials, intermediate product, finished product, by-product, or waste product located at the facility are not required to be permitted. These facilities must be permitted if they have a new release of storm water resulting in a discharge of an RQ.

7. FACILITIES ON INDIAN LANDS: the U.S. EPA will regulate Discharges from facilities on Indian lands.

NOTIFICATION REQUIREMENTS

Storm water discharges from facilities described in the section titled "Types of Storm Water Discharges Covered by This General Permit" must be covered by an NPDES permit. An NOI must be submitted by the facility operator for each individual facility to obtain coverage. Certification of the NOI signifies that the facility operator intends to comply with the provisions of the General Permit. Facility operators who have filed NOIs for the State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-011 (as amended by Order No. 92-116) will be sent an abbreviated NOI soon after adopting this General Permit that must be completed and returned within 45 days of receipt. Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. A landowner may also file an NOI for a facility if the landowner, rather than the facility operator(s), is responsible for compliance with this General Permit.

A facility operator that does not submit an NOI for a facility must submit an application for an individual NPDES permit. U.S. EPA's regulations [40 CFR 122.21 (a)] exclude facility operators covered by a general permit from requirements to submit an individual permit application unless required by the Regional Water Board. The NOI requirements of this General Permit are intended to establish a mechanism which can be used to establish a clear accounting of the number of facility operators complying with the General Permit, their identities, the nature of operations at the facilities, and location.

All facility operators filing an NOI after the adoption of this General Permit must comply with this General Permit. Existing facility operators who have filed NOIs prior to the adoption of this General Permit shall continue to complete the requirements of the previous General Permit through June 30, 1997 including submitting annual reports to the Regional Water Boards by July 1, 1997. Group Leaders are required to submit a 1996-97 Group Evaluation Report by August 1, 1997.

DESCRIPTION OF GENERAL PERMIT CONDITIONS

Prohibitions

This General Permit authorizes storm water and authorized non-storm water discharges from facilities that are required to be covered by a storm water permit. This General Permit prohibits discharges of material other than storm water (non-storm water discharges) that are not authorized by the General Permit and discharges containing hazardous substances in storm water in excess of reportable quantities established at 40 CFR 117.3 and 40 CFR 302.4. Authorized non-storm water discharges are addressed in the Special Conditions of the General Permit.

#### Effluent Limitations

NPDES Permits for storm water discharges must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to prevent and reduce pollutants and any more stringent controls necessary to meet water quality standards.

U.S. EPA regulations (40 CFR Subchapter N) establish effluent limitation guidelines for storm water discharges from facilities in ten industrial categories. For these facilities, compliance with the effluent limitation guidelines constitutes compliance with BAT and BCT for the specified pollutants and must be met to comply with this General Permit.

For storm water discharges from facilities not among the ten industrial categories listed in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. The reasons why establishment of numeric effluent limitations is not feasible are discussed in detail in State Water Board Orders No. WQ 91-03 and WQ 91-04. Therefore, this General Permit allows the facility operator to implement best management practices (BMPs) to comply with the requirements of this General Permit. This approach is consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits".

#### Receiving Water Limitations

Storm water discharges shall not cause or contribute to a violation of an applicable water quality standard. The General Permit requires facility operators to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges through the development and implementation of BMPs which constitutes compliance with BAT and BCT and, in most cases, compliance with water quality standards. If receiving water quality standards are exceeded, facility operators are required to submit a written report providing additional BMPs that will be implemented to achieve water quality standards.

Storm Water Pollution Prevention Plans (SWPPPs)

All facility operators must prepare, retain on site, and implement an SWPPP. The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges.

This General Permit requires development and implementation of an SWPPP emphasizing BMPs. This approach provides the flexibility necessary to establish appropriate BMPs for different types of industrial activities and pollutant sources. As this General Permit covers vastly different types of facilities, the State Water Board recognizes that there is no single best way of developing or organizing an SWPPP. The SWPPP requirements contain the essential elements that all facility operators must consider and address in the SWPPP. This General Permit's SWPPP requirements are more detailed than the previous general permit's SWPPP requirements, and the suggested order of the SWPPP elements have been rearranged (1) to correspond more closely with other storm water permits in effect throughout the country, and (2) to generally follow a more logical path. Facility operators that have already developed and implemented SWPPPs under previous general permits are required to review the SWPPP's requirements contained in this General Permit and then review their existing SWPPP for adequacy. If the existing SWPPP adequately identifies and assesses all potential sources of pollutants and describes the appropriate BMPs necessary to reduce or prevent pollutants, the facility operator is not required to revise the existing SWPPP.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to the facility's storm drain system. Unauthorized non-storm water discharges can be generated from a wide variety of potential pollutant sources. They include waters from the rinsing or washing of vehicles, equipment, buildings, or pavement; materials that have been improperly disposed of or dumped, and spilled; or leaked materials. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping can often be addressed through BMPs. Unauthorized non-storm water discharges may enter the storm drain system via conveyances such as floor drains. All conveyances should be evaluated to determine whether they convey unauthorized non-storm water discharges to the storm drain system. Unauthorized non-storm water discharges (even when commingled with storm water) shall be eliminated or covered by a separate NPDES Permit.

There are many non-storm water discharges that, under certain conditions, should not contain pollutants associated with



industrial activity (i.e., air conditioning condensate, potable water line testing, landscaping overflow, etc.). Item D, Special Conditions, provides the conditions where certain listed non-storm water discharges are authorized by this General Permit.

#### Monitoring Program

The General Permit requires development and implementation of a monitoring program. The objectives of the monitoring program are to (1) demonstrate compliance with the General Permit, (2) aid in the implementation of the SWPPP, and (3) measure the effectiveness of the BMPs in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

All facility operators (with the exception of inactive mining operations) are required to:

1. Perform visual observations of storm water discharges and authorized storm water discharges.
2. Collect and analyze samples of storm water discharges. Analysis must include pH, total suspended solids (TSS), total organic carbon (TOC), specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities, and those parameters listed in Table D of this General Permit. The Table D parameters are those listed in the U.S. EPA Multi-Sector General Permit. Facility operators subject to Federal storm water effluent limitation guidelines in 40 CFR Subchapter N must also sample and analyze for any pollutant specified in the appropriate category of 40 CFR Subchapter N.

Facility operators are not required to collect samples or perform visual observations during adverse climatic conditions. Sample collection and visual observations are required only during scheduled facility operating hours. Visual observations are required only during daylight hours. Facility operators that are unable to collect any of the required samples or visual observations because of the above circumstances must provide documentation to the Regional Water Board in their annual report.

Facility operators may be exempt from performing sampling and analysis if they: (1) do not have areas of industrial activity exposed to storm water, (2) receive an exemption from a local agency which has jurisdiction over the storm sewer system, or (3) receive an exemption from the appropriate Regional Water Board. Facility operators must always perform sampling and analysis for any pollutant specified in storm water effluent limitation guidelines.

This General Permit contains a new procedure where facility operators, if they meet certain minimum conditions, may certify compliance with the General Permit and reduce the number of

sampling events required to be sampled for the remaining term of the General Permit. Each Regional Water Board may develop instructions, guidance, and checklists to assist facility operators to complete sampling reduction requests.

Local agencies that wish to provide sampling and analysis exemptions or reductions to facility operators within their jurisdiction shall develop a certification program that clearly indicates the certification procedures and criteria used by the local agency. At a minimum, these programs should include site inspections, a review of the facility operator's SWPPP, and a review of other records such as monitoring data, receiving water data, etc. The certification program shall be approved by the local Regional Water Board before implementation.

#### Alternative Monitoring

Facility operators are required to develop a facility-specific monitoring program that satisfies both the minimum monitoring program requirements and the objectives of the monitoring program. Some facility operators have indicated that cost-effective alternative monitoring programs can be developed that provide equivalent or more accurate indicators of pollutants and/or BMP performance than a monitoring program based upon the minimum monitoring program requirements. An example of such an alternative monitoring program would be one that identifies sample locations at or near pollutant sources rather than sampling an entire drainage area where the storm water discharge has been diluted with storm water from areas with little or no industrial activity.

The State Water Board does not want to preclude facility operators from developing better, and perhaps more cost-effective, monitoring programs. This General Permit allows facility operators to submit alternative monitoring programs for approval by the Regional Water Board. For individual facilities, these proposals must be facility specific and demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness. Facility operators with similar industrial activities may also propose alternative monitoring programs for approval by the Regional Water Boards. These proposals must demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness for all of the participating facilities.

Facility operators shall continue to comply with the existing monitoring program requirements until receiving approval by the Regional Water Board.

### Group Monitoring

Each facility operator may either perform sampling and analysis individually or participate in a group monitoring program. A group monitoring program may be developed either by a group leader representing a group of similar facilities or by a local agency which holds a storm water permit for a municipal separate storm sewer system for industrial facilities within its jurisdiction. The group leader or local agency responsible for the group monitoring program must schedule all participating facilities to sample two storm events over the life of this General Permit. Facility operators subject to Federal effluent limitations guidelines in 40 CFR Subchapter N must individually sample and analyze for pollutants listed in the appropriate Federal regulations.

Participants within a group may be located within the jurisdiction of more than one Regional Water Board. Multi-Regional Water Board groups must receive the approval of the State Water Board Executive Director (with the concurrence of the appropriate Regional Water Boards).

Each group leader or local agency responsible for group sampling must: (1) provide guidance or training so that the monitoring is done correctly, (2) recommend appropriate BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges from group participants, (3) evaluate and report the monitoring data to the State Water Board and/or the appropriate Regional Water Board(s), and (4) conduct two on-site inspections at each facility over the five year term of this General Permit to evaluate facility compliance and recommend BMPs to achieve compliance with this General Permit. The group leader or local agency may designate, hire, or train inspectors to conduct these inspections that are or are not directly affiliated with the group leader or local agency. It is the group leader's or local agency's responsibility to select inspectors that are capable of evaluating each facility's compliance with the General Permit and can recommend appropriate BMPs. All group monitoring plans are subject to State Water Board and/or Regional Water Board(s) review. Consistent with the four-tier permitting strategy described in the Federal regulations, the Regional Water Board(s) may evaluate the data and results from group monitoring to establish future permitting decisions. As appropriate, the State Water Board and/or the Regional Water Board(s) may terminate or require substantial amendment to the group monitoring plans. The State Water Board and/or the Regional Water Board(s) may terminate a facility's participation in group monitoring or require additional monitoring activities.

### Retention of Records

The facility operator is required to retain records of all monitoring information, copies of all reports required by this General Permit, and records of all data used to complete the NOI for a period of five years from the date of measurement, report, or monitoring activity. This period may be extended by the State and/or Regional Water Boards. All records are public documents and must be provided to the Regional Water Boards on request.

#### Watershed Management

The State and Regional Water Boards are undertaking a focussed effort in watershed management throughout the State. In reissuing this General Permit, the State Water Board recognizes both the evolving nature of watershed management and the long-term desirability of structuring monitoring programs to support the Watershed Management Initiative. Therefore, the amended monitoring and reporting provisions provide flexibility for individual facility operators or groups of facility operators to propose and participate in, subject to Regional Water Board approval, watershed monitoring programs in lieu of some or all of the monitoring requirements contained in this General Permit.

#### Facility Operator Compliance Responsibilities

This General Permit has been written to encourage individual facility operators to develop their own SWPPP and monitoring programs. Many facility operators, however, choose to obtain compliance assistance either by hiring a consultant on an individual basis or by participating in a group monitoring plan. Regardless of how a facility operator chooses to pursue compliance, it is the facility operator that is responsible for compliance with this General Permit.

The State Water Board recognizes that industrial activities and operating conditions at many facilities change over time. In addition, new and more effective BMPs are being developed by various facility operators and by industrial groups. The SWPPP and monitoring program requirements include various inspections, reviews, and observations all of which recognize, encourage, and mandate an iterative self-evaluation process that is necessary to consistently comply with this General Permit. In general, facility operators that develop and implement SWPPPs that comply with this General Permit should not be penalized when discovering minor violations through this iterative self-evaluation process. The General Permit provides facility operators up to 90 days to revise and implement the SWPPP to correct such violations.

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)  
WATER QUALITY ORDER NO. 97-03-DWQ  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)  
FOR  
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES  
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.
2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.
3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.
5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.
6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.
7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.
8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.
9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."
10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.
12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.
13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.
14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.
15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.
16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.
2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.
3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.
2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.
3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:
  - a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.
  - b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.
4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:



- a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;
- b. Submit a report that is approved by the Regional Water Board; or
- c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

- a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.
- b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:
  - i. The non-storm water discharges are in compliance with Regional Water Board requirements.
  - ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.
  - iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.
  - iv. The non-storm water discharges do not contain significant quantities of pollutants.
  - v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

- vi. The non-storm water discharges are reported and described annually as part of the annual report.
- c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.
- d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.
2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.
3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in

accordance with Section B of this General Permit when industrial activities begin.

4. Facility operators of feedlots as defined in 40 CFR Part 412 that are in full compliance with Section 2560 to Section 2565, Title 23, California Code of Regulations (Chapter 15) will be in compliance with all effluent limitations and prohibitions contained in this General Permit. Facility operators of feedlots that comply with Chapter 15, however, must perform monitoring in compliance with the requirements of Section B.4.d. and B.14. of this General Permit. Facility operators of feedlots must also comply with any Regional Water Board WDRs or NPDES general permit regulating their storm water discharges.
5. All facility operators must comply with lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding storm water discharges and non-storm water discharges entering storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the Regional Water Boards to local agencies.
6. All facility operators must comply with the standard provisions and reporting requirements for each facility covered by this General Permit contained in Section C, Standard Provisions.
7. Facility operators that operate facilities with co-located industrial activities (facilities that have industrial activities that meet more than one of the descriptions in Attachment 1) that are contiguous to one another are authorized to file a single NOI to comply with the General Permit. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities are authorized if the SWPPP and Monitoring Program addresses each co-located industrial activity.
8. Upon reissuance of a successor NPDES general permit by the State Water Board, the facility operators subject to this reissued General Permit may be required to file an NOI.
9. Facility operators may request to terminate their coverage under this General Permit by filing a Notice of Termination (NOT) with the Regional Water Board. The NOT shall provide all documentation requested by the Regional Water Board. The facility operator will be notified when the NOT has been approved. Should the NOT be denied, facility operators are responsible for continued compliance with the requirements of this General Permit.

10. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall:
  - a. Complete the 1996-97 activities required by those general permits. These include, but are not limited to, conducting any remaining visual observations, sample collection, annual site inspection, annual report submittal, and (for group monitoring leaders) Group Evaluation Reports; and
  - b. Comply with the requirements of this General Permit no later than August 1, 1997.
11. If the Regional Water Board determines that a discharge may be causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, the Regional Water Board may order the facility operator to comply with the requirements described in Receiving Water Limitation C.3. The facility operator shall comply with the requirements within the time schedule established by the Regional Water Board.
12. If the facility operator determines that its storm water discharges or authorized non-storm water discharges are causing or contributing to an exceedance of any applicable water quality standards, the facility operator shall comply with the requirements described in Receiving Water Limitation C.3.
13. State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) and San Francisco Bay Regional Water Board Order No. 91-011 (as amended by Order No. 92-116) are hereby rescinded.

F. REGIONAL WATER BOARD AUTHORITIES

1. Following adoption of this General Permit, Regional Water Boards shall:
  - a. Implement the provisions of this General Permit, including, but not limited to, reviewing SWPPPs, reviewing annual reports, conducting compliance inspections, and taking enforcement actions.
  - b. Issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities, or facility operators in a watershed or geographic area. Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer

be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.

2. Regional Water Boards may provide guidance to facility operators on the SWPPP and the Monitoring Program and reporting implementation.
3. Regional Water Boards may require facility operators to conduct additional SWPPP and Monitoring Program and reporting activities necessary to achieve compliance with this General Permit.
4. Regional Water Boards may approve requests from facility operators whose facilities include co-located industrial activities that are not contiguous within the facilities (e.g., some military bases) to comply with this General Permit under a single NOI. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities and from other sources within the facility that may generate significant quantities of pollutants are authorized provided the SWPPP and Monitoring Program addresses each co-located industrial activity and other sources that may generate significant quantities of pollutants.

#### CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1997.

AYE: John P. Caffrey  
John W. Brown  
James M. Stubchaer  
Marc Del Piero  
Mary Jane Forster

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché

-10-

Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. Implementation Schedule

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

- a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.
- b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.

2. Objectives

The SWPPP has two major objectives: (a) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and (b) to identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. BMPs may include a variety of pollution prevention measures or other low-cost and pollution control measures. They are generally categorized as non-structural BMPs (activity schedules, prohibitions of practices, maintenance procedures, and other low-cost measures) and as structural BMPs (treatment measures, run-off controls, over-head coverage.) To achieve these objectives, facility operators should consider the five phase process for SWPPP development and implementation as shown in Table A.

The SWPPP requirements are designed to be sufficiently flexible to meet the needs of various facilities. SWPPP requirements that are not applicable to a facility should not be included in the SWPPP.

A facility's SWPPP is a written document that shall contain a compliance activity schedule, a description of industrial activities and pollutant sources, descriptions of BMPs, drawings, maps, and relevant copies or references of parts of other plans. The SWPPP shall be revised whenever appropriate and shall be readily available for review by facility employees or Regional Water Board inspectors.

3. Planning and Organization

a. Pollution Prevention Team

The SWPPP shall identify a specific individual or individuals and their positions within the facility organization as members of a storm water pollution prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP implementation and revision, and conducting all monitoring program activities required in Section B of this General Permit. The SWPPP shall clearly identify the General Permit related responsibilities, duties, and activities of each team member. For small facilities, storm water pollution prevention teams may consist of one individual where appropriate.

b. Review Other Requirements and Existing Facility Plans

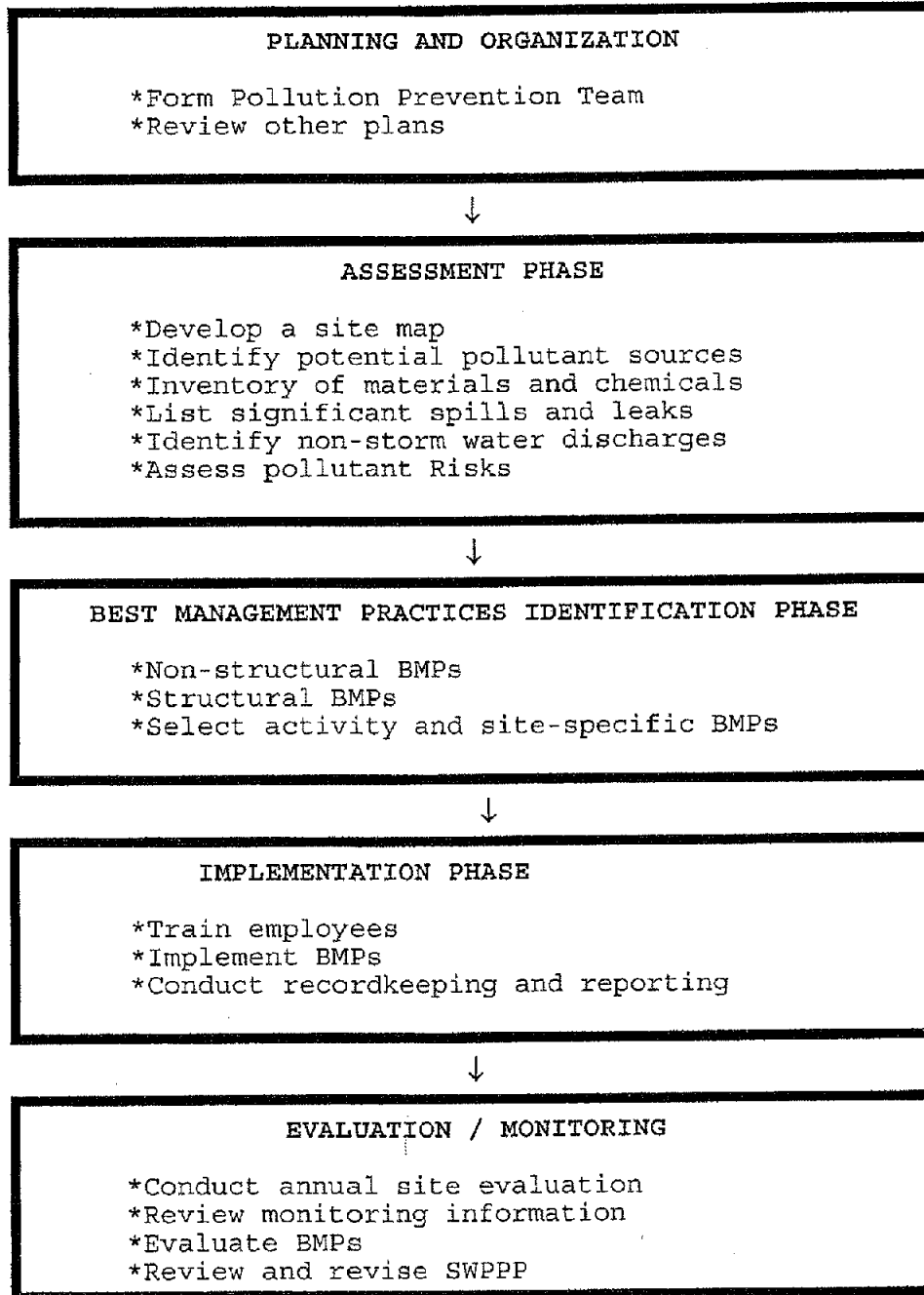
The SWPPP may incorporate or reference the appropriate elements of other regulatory requirements. Facility operators should review all local, State, and Federal requirements that impact, complement, or are consistent with the requirements of this General Permit. Facility operators should identify any existing facility plans that contain storm water pollutant control measures or relate to the requirements of this General Permit. As examples, facility operators whose facilities are subject to Federal Spill Prevention Control and Countermeasures' requirements should already have instituted a plan to control spills of certain hazardous materials. Similarly, facility operators whose facilities are subject to air quality related permits and regulations may already have evaluated industrial activities that generate dust or particulates.

4. Site Map

The SWPPP shall include a site map. The site map shall be provided on an 8-½ x 11 inch or larger sheet and include notes, legends, and other data as appropriate to ensure that the site map is clear and understandable. If necessary, facility operators may provide the required information on multiple site maps.

**TABLE A**  
**FIVE PHASES FOR DEVELOPING AND IMPLEMENTING INDUSTRIAL**  
**STORM WATER POLLUTION PREVENTION PLANS**





The following information shall be included on the site map:

- a. The facility boundaries; the outline of all storm water drainage areas within the facility boundaries; portions of the drainage area impacted by run-on from surrounding areas; and direction of flow of each drainage area, on-site surface water bodies, and areas of soil erosion. The map shall also identify nearby water bodies (such as rivers, lakes, and ponds) and municipal storm drain inlets

where the facility's storm water discharges and authorized non-storm water discharges may be received.

- b. The location of the storm water collection and conveyance system, associated points of discharge, and direction of flow. Include any structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on. Examples of structural control measures are catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers, etc.
- c. An outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures.
- d. Locations where materials are directly exposed to precipitation and the locations where significant spills or leaks identified in Section A.6.a.iv. below have occurred.
- e. Areas of industrial activity. This shall include the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources.

#### 5. List of Significant Materials

The SWPPP shall include a list of significant materials handled and stored at the site. For each material on the list, describe the locations where the material is being stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials shall include raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials.

#### 6. Description of Potential Pollutant Sources

- a. The SWPPP shall include a narrative description of the facility's industrial activities, as identified in Section A.4.e above, associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. At a minimum, the following items related to a facility's industrial activities shall be considered:

i. Industrial Processes

Describe each industrial process, the type, characteristics, and quantity of significant materials used in or resulting from the process, and a description of the manufacturing, cleaning, rinsing, recycling, disposal, or other activities related to the process. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

ii. Material Handling and Storage Areas

Describe each handling and storage area, type, characteristics, and quantity of significant materials handled or stored, description of the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

iii. Dust and Particulate Generating Activities

Describe all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle.

iv. Significant Spills and Leaks

Describe materials that have spilled or leaked in significant quantities in storm water discharges or non-storm water discharges since April 17, 1994. Include toxic chemicals (listed in 40 CFR, Part 302) that have been discharged to storm water as reported on U.S. Environmental Protection Agency (U.S. EPA) Form R, and oil and hazardous substances in excess of reportable quantities (see 40 Code of Federal Regulations [CFR], Parts 110, 117, and 302).

The description shall include the type, characteristics, and approximate quantity of the material spilled or leaked, the cleanup or remedial actions that have occurred or are planned, the approximate remaining quantity of materials that may be exposed to storm water or non-storm water

discharges, and the preventative measures taken to ensure spill or leaks do not reoccur. Such list shall be updated as appropriate during the term of this General Permit.

v. Non-Storm Water Discharges

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse water, wash water, etc.). Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

vi. Soil Erosion

Describe the facility locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges.

- b. The SWPPP shall include a summary of all areas of industrial activities, potential pollutant sources, and potential pollutants. This information should be summarized similar to Table B. The last column of Table B, "Control Practices", should be completed in accordance with Section A.8. below.

7. Assessment of Potential Pollutant Sources

- a. The SWPPP shall include a narrative assessment of all industrial activities and potential pollutant sources as described in A.6. above to determine:
- i. Which areas of the facility are likely sources of

pollutants in storm water discharges and authorized non-storm water discharges, and

- ii. Which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. Facility operators shall consider and evaluate various factors when performing this assessment such as current storm water BMPs; quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources.
- b. Facility operators shall summarize the areas of the facility that are likely sources of pollutants and the corresponding pollutants that are likely to be present in storm water discharges and authorized non-storm water discharges.

Facility operators are required to develop and implement additional BMPs as appropriate and necessary to prevent or reduce pollutants associated with each pollutant source. The BMPs will be narratively described in Section 8 below.

#### 8. Storm Water Best Management Practices

The SWPPP shall include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source identified in the site assessment phase (Sections A.6. and 7. above). The BMPs shall be developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Each pollutant and its source may require one or more BMPs. Some BMPs may be implemented for multiple pollutants and their sources, while other BMPs will be implemented for a very specific pollutant and its source.

**TABLE B**  
**EXAMPLE**  
**ASSESSMENT OF POTENTIAL POLLUTION SOURCES AND**  
**CORRESPONDING BEST MANAGEMENT PRACTICES**  
**SUMMARY**

Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Vehicle & Equipment Fueling	Fueling	Spills and leaks during delivery	fuel oil	<ul style="list-style-type: none"> <li>- Use spill and overflow protection</li> <li>- Minimize run-on of storm water into the fueling area</li> <li>- Cover fueling area</li> <li>- Use dry cleanup methods rather than hosing down area</li> <li>- Implement proper spill prevention control program</li> <li>- Implement adequate preventative maintenance program to preventive tank and line leaks</li> <li>- Inspect fueling areas regularly to detect problems before they occur</li> <li>- Train employees on proper fueling, cleanup, and spill response techniques.</li> </ul>
		Spills caused by topping off fuel tanks	fuel oil	
		Hosing or washing down fuel area	fuel oil	
		Leaking storage tanks	fuel oil	
		Rainfall running off fueling area, and rainfall running onto and off fueling area	fuel oil	

The description of the BMPs shall identify the BMPs as (1) existing BMPs, (2) existing BMPs to be revised and implemented, or (3) new BMPs to be implemented. The description shall also include a discussion on the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. The SWPPP shall provide a summary of all BMPs implemented for each pollutant source. This information should be summarized similar to Table B.

Facility operators shall consider the following BMPs for implementation at the facility:

a. Non-Structural BMPs

Non-structural BMPs generally consist of processes, prohibitions, procedures, schedule of activities, etc., that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures. Facility operators should consider all possible non-structural BMPs options before considering additional structural BMPs (see Section A.8.b. below). Below is a list of non-structural BMPs that should be considered:

i. Good Housekeeping

Good housekeeping generally consist of practical procedures to maintain a clean and orderly facility.

ii. Preventive Maintenance

Preventive maintenance includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

iii. Spill Response

This includes spill clean-up procedures and necessary clean-up equipment based upon the quantities and locations of significant materials that may spill or leak.

iv. Material Handling and Storage

This includes all procedures to minimize the potential for spills and leaks and to minimize exposure of significant materials to storm water and authorized non-storm water discharges.

v. Employee Training

This includes training of personnel who are responsible for (1) implementing activities identified in the SWPPP, (2) conducting inspections, sampling, and visual observations, and (3) managing storm water. Training should address topics such as spill response, good housekeeping, and material handling procedures, and actions necessary to implement all BMPs identified in the SWPPP. The SWPPP shall identify periodic dates for such training. Records shall be maintained of all training sessions held.

vi. Waste Handling/Recycling

This includes the procedures or processes to handle, store, or dispose of waste materials or recyclable materials.

vii. Recordkeeping and Internal Reporting

This includes the procedures to ensure that all records of inspections, spills, maintenance activities, corrective actions, visual observations, etc., are developed, retained, and provided, as necessary, to the appropriate facility personnel.

viii. Erosion Control and Site Stabilization

This includes a description of all sediment and erosion control activities. This may include the planting and maintenance of vegetation, diversion of run-on and runoff, placement of sandbags, silt screens, or other sediment control devices, etc.

ix. Inspections

This includes, in addition to the preventative maintenance inspections identified above, an inspection schedule of all potential pollutant sources. Tracking and follow-up procedures shall be described to ensure adequate corrective actions are taken and SWPPPs are made.

x. Quality Assurance

This includes the procedures to ensure that all elements of the SWPPP and Monitoring Program are adequately conducted.



b. Structural BMPs

Where non-structural BMPs as identified in Section A.8.a. above are not effective, structural BMPs shall be considered. Structural BMPs generally consist of structural devices that reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Below is a list of structural BMPs that should be considered:

i. Overhead Coverage

This includes structures that provide horizontal coverage of materials, chemicals, and pollutant sources from contact with storm water and authorized non-storm water discharges.

ii. Retention Ponds

This includes basins, ponds, surface impoundments, bermed areas, etc. that do not allow storm water to discharge from the facility.

iii. Control Devices

This includes berms or other devices that channel or route run-on and runoff away from pollutant sources.

iv. Secondary Containment Structures

This generally includes containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills.

v. Treatment

This includes inlet controls, infiltration devices, oil/water separators, detention ponds, vegetative swales, etc. that reduce the pollutants in storm water discharges and authorized non-storm water discharges.

9. Annual Comprehensive Site Compliance Evaluation

The facility operator shall conduct one comprehensive site compliance evaluation (evaluation) in each reporting period (July 1-June 30). Evaluations shall be conducted within 8-16 months of each other. The SWPPP shall be revised, as appropriate, and the revisions implemented within 90 days of the evaluation. Evaluations shall include the following:

- a. A review of all visual observation records, inspection records, and sampling and analysis results.
- b. A visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system.
- c. A review and evaluation of all BMPs (both structural and non-structural) to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed. A visual inspection of equipment needed to implement the SWPPP, such as spill response equipment, shall be included.
- d. An evaluation report that includes, (i) identification of personnel performing the evaluation, (ii) the date(s) of the evaluation, (iii) necessary SWPPP revisions, (iv) schedule, as required in Section A.10.e, for implementing SWPPP revisions, (v) any incidents of non-compliance and the corrective actions taken, and (vi) a certification that the facility operator is in compliance with this General Permit. If the above certification cannot be provided, explain in the evaluation report why the facility operator is not in compliance with this General Permit. The evaluation report shall be submitted as part of the annual report, retained for at least five years, and signed and certified in accordance with Standard Provisions 9. and 10. of Section C. of this General Permit.

10. SWPPP General Requirements

- a. The SWPPP shall be retained on site and made available upon request of a representative of the Regional Water Board and/or local storm water management agency (local agency) which receives the storm water discharges.
- b. The Regional Water Board and/or local agency may notify the facility operator when the SWPPP does not meet one or more of the minimum requirements of this Section. As requested by the Regional Water Board and/or local agency, the facility operator shall submit an SWPPP revision and implementation schedule that meets the minimum requirements of this section to the Regional Water Board and/or local agency that requested the SWPPP revisions. Within 14 days after implementing the required SWPPP revisions, the facility operator shall provide written certification to the Regional Water Board and/or local agency that the revisions have been implemented.

- c. The SWPPP shall be revised, as appropriate, and implemented prior to changes in industrial activities which (i) may significantly increase the quantities of pollutants in storm water discharge, (ii) cause a new area of industrial activity at the facility to be exposed to storm water, or (iii) begin an industrial activity which would introduce a new pollutant source at the facility.
- d. Other than as provided in Provisions B.11, B.12, and E.2 of the General Permit, the SWPPP shall be revised and implemented in a timely manner, but in no case more than 90 days after a facility operator determines that the SWPPP is in violation of any requirement(s) of this General Permit.
- e. When any part of the SWPPP is infeasible to implement by the deadlines specified in Provision E.2 or Sections A.1, A.9, A.10.c, and A.10.d of this General Permit due to proposed significant structural changes, the facility operator shall submit a report to the Regional Water Board prior to the applicable deadline that (i) describes the portion of the SWPPP that is infeasible to implement by the deadline, (ii) provides justification for a time extension, (iii) provides a schedule for completing and implementing that portion of the SWPPP, and (iv) describes the BMPs that will be implemented in the interim period to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Such reports are subject to Regional Water Board approval and/or modifications. Facility operators shall provide written notification to the Regional Water Board within 14 days after the SWPPP revisions are implemented.
- f. The SWPPP shall be provided, upon request, to the Regional Water Board. The SWPPP is considered a report that shall be available to the public by the Regional Water Board under Section 308(b) of the Clean Water Act.

SECTION B. MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. Implementation Schedule

Each facility operator shall develop a written monitoring program for each facility covered by this General Permit in accordance with the following schedule:

- a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement a monitoring program no later than October 1, 1992. Facility operators beginning operations after October 1, 1992 shall develop and implement a monitoring program when the industrial activities begin.
- b. Facility operators that submitted a Notice Of Intent (NOI) pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing monitoring program and implement any necessary revisions to their monitoring program in a timely manner, but in no case later than August 1, 1997. These facility operators may use the monitoring results conducted in accordance with those expired general permits to satisfy the pollutant/parameter reduction requirements in Section B.5.c., Sampling and Analysis Exemptions and Reduction certifications in Section B.12., and Group Monitoring Sampling credits in B.15.k. For facilities beginning industrial activities after the adoption of this General Permit, the monitoring program shall be developed and implemented when the facility begins the industrial activities.

2. Objectives

The objectives of the monitoring program are to:

- a. Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit.
- b. Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges are evaluated and revised to meet changing conditions.
- c. Aid in the implementation and revision of the SWPPP required by Section A of this General Permit.
- d. Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water

discharges and authorized non-storm water discharges. Much of the information necessary to develop the monitoring program, such as discharge locations, drainage areas, pollutant sources, etc., should be found in the Storm Water Pollution Prevention Plan (SWPPP). The facility's monitoring program shall be a written, site-specific document that shall be revised whenever appropriate and be readily available for review by employees or Regional Water Board inspectors.

3. Non-storm Water Discharge Visual Observations

- a. Facility operators shall visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges;
- b. Facility operators shall visually observe the facility's authorized non-storm water discharges and their sources;
- c. The visual observations required above shall occur quarterly, during daylight hours, on days with no storm water discharges, and during scheduled facility operating hours<sup>1</sup>. Quarterly visual observations shall be conducted in each of the following periods: January-March, April-June, July-September, and October-December. Facility operators shall conduct quarterly visual observations within 6-18 weeks of each other.
- d. Visual observations shall document the presence of any discolorations, stains, odors, floating materials, etc., as well as the source of any discharge. Records shall be maintained of the visual observation dates, locations observed, observations, and response taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

4. Storm Water Discharge Visual Observations

- a. With the exception of those facilities described in Section B.4.d. below, facility operators shall visually

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<sup>1</sup> "Scheduled facility operating hours" are the time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed.

observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These visual observations shall occur during the first hour of discharge and at all discharge locations. Visual observations of stored or contained storm water shall occur at the time of release.

- b. Visual observations are only required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days<sup>2</sup> without storm water discharges and that occur during scheduled facility operating hours.
- c. Visual observations shall document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants. Records shall be maintained of observation dates, locations observed, observations, and response taken to reduce or prevent pollutants in storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.
- d. Feedlots (subject to Federal effluent limitations guidelines in 40 Code of Federal Regulations [CFR] Part 412) that are in compliance with Sections 2560 to 2565, Article 6, Chapter 15, Title 23, California Code of Regulations, and facility operators with storm water containment facilities shall conduct monthly inspections of their containment areas to detect leaks and ensure maintenance of adequate freeboard. Records shall be maintained of the inspection dates, observations, and any response taken to eliminate leaks and to maintain adequate freeboard.

5. Sampling and Analysis

- a. Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled. Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.

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<sup>2</sup> Three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm water discharges occur during the three (3) working days and the non-working days.

- b. Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least (3) three working days without storm water discharge.
- c. The samples shall be analyzed for:
  - i. Total suspended solids (TSS) pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC; and
  - ii. Toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. If these pollutants are not detected in significant quantities after two consecutive sampling events, the facility operator may eliminate the pollutant from future sample analysis until the pollutant is likely to be present again; and
  - iii. Other analytical parameters as listed in Table D (located at the end of this Section). These parameters are dependent on the facility's standard industrial classification (SIC) code. Facility operators are not required to analyze a parameter listed in Table D when the parameter is not already required to be analyzed pursuant to Section B.5.c.i. and ii. or B.6 of this General Permit, and either of the two following conditions are met: (1) the parameter has not been detected in significant quantities from the last two consecutive sampling events, or (2) the parameter is not likely to be present in storm water discharges and authorized non-storm water discharges in significant quantities based upon the facility operator's evaluation of the facilities industrial activities, potential pollutant sources, and SWPPP. Facility operators that do not analyze for the applicable Table D parameters shall certify in the Annual Report that the above conditions have been satisfied.
  - iv. Other parameters as required by the Regional Water Board.

6. Facilities Subject to Federal Storm Water Effluent Limitation Guidelines

Facility operators with facilities subject to Federal storm water effluent limitation guidelines, in addition to the requirements in Section B.5. above, must complete the following:

- a. Collect and analyze two samples for any pollutant specified in the appropriate category of 40 CFR Subchapter N. The sampling and analysis exemptions and reductions described in Section B.12. of this General Permit do not apply to these pollutants.
- b. Estimate or calculate the volume of storm water discharges from each drainage area;
- c. Estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 CFR Subchapter N; and
- d. Identify the individual(s) performing the estimates or calculations in accordance with Subsections b. and c. above.

7. Sample Storm Water Discharge Locations

- a. Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.
- b. If the facility's storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event.
- c. If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event.
- d. Facility operators that determine that the industrial activities and BMPs within two or more drainage areas are substantially identical may either (i) collect samples from a reduced number of substantially identical drainage areas, or (ii) collect samples from each substantially identical drainage area and analyze a combined sample from each substantially identical drainage area. Facility operators must document such a determination in the annual report.

8. Visual Observation and Sample Collection Exceptions

Facility operators are required to be prepared to collect samples and conduct visual observations at the beginning of the wet season (October 1) and throughout the wet season



until the minimum requirements of Sections B.4. and B.5. are completed with the following exceptions:

- a. A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual Report why the sampling or visual observations could not be conducted.
- b. A facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied. The facility operator shall include an explanation in the Annual Report why the visual observations and sample collection should be conducted after the first hour of discharge.

9. Alternative Monitoring Procedures

Facility operators may propose an alternative monitoring program that meets Section B.2 monitoring program objectives for approval by the Regional Water Board. Facility operators shall continue to comply with the monitoring requirements of this Section and may not implement an alternative monitoring plan until the alternative monitoring plan is approved by the Regional Water Board. Alternative monitoring plans are subject to modification by the Regional Water Boards.

10. Monitoring Methods

- a. Facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of Section B.2. This shall include:
  - i. Rationale and description of the visual observation methods, location, and frequency.
  - ii. Rationale and description of the sampling methods, location, and frequency; and

- iii. Identification of the analytical methods and corresponding method detection limits used to detect pollutants in storm water discharges. This shall include justification that the method detection limits are adequate to satisfy the objectives of the monitoring program.
  
- b. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association). All monitoring instruments and equipment (including a facility operator's own field instruments for measuring pH and Electro Conductivity) shall be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements. All laboratory analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this General Permit or by the Regional Water Board. All metals shall be reported as total metals. With the exception of analysis conducted by facility operators, all laboratory analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Facility operators may conduct their own sample analyses if the facility operator has sufficient capability (qualified employees, laboratory equipment, etc.) to adequately perform the test procedures.

11. Inactive Mining Operations

Inactive mining operations are defined in Attachment 1 of this General Permit. Where comprehensive site compliance evaluations, non-storm water discharge visual observations, storm water discharge visual observations, and storm water sampling are impracticable, facility operators of inactive mining operations may instead obtain certification once every three years by a Registered Professional Engineer that an SWPPP has been prepared for the facility and is being implemented in accordance with the requirements of this General Permit. By means of these certifications, the Registered Professional Engineer having examined the facility and being familiar with the provisions of this General Permit shall attest that the SWPPP has been prepared in accordance with good engineering practices. Facility operators of mining operations who cannot obtain a certification because of noncompliance must notify the appropriate Regional Water Board and, upon request, the local agency which receives the storm water discharge.

12. Sampling and Analysis Exemptions and Reductions

A facility operator who qualifies for sampling and analysis exemptions, as described below in Section B.12.a.i., or who qualifies for reduced sampling and analysis, as described below in Section B.12.b., must submit the appropriate certifications and required documentation to the Regional Water Boards prior to the wet season (October 1) and recertify as part of the Annual Report submittal. A facility operator that qualifies for either the Regional Water Board or local agency certification programs, as described below in Section B.12.a.ii. and iii., shall submit certification and documentation in accordance with the requirements of those programs. Facility operators who provide certifications in accordance with this Section are still required to comply with all other monitoring program and reporting requirements. Facility operators shall prepare and submit their certifications using forms and instructions provided by the State Water Board, Regional Water Board, or local agency or shall submit their information on a form that contains equivalent information. Facility operators whose facility no longer meets the certification conditions must notify the Regional Water Boards (and local agency) within 30 days and immediately comply with the Section B.5. sampling and analysis requirements. Should a Regional Water Board (or local agency) determine that a certification does not meet the conditions set forth below, facility operators must immediately comply with the Section B.5. sampling and analysis requirements.

a. Sampling and Analysis Exemptions

A facility operator is not required to collect and analyze samples in accordance with Section B.5. if the facility operator meets all of the conditions of one of the following certification programs:

i. No Exposure Certification (NEC)

This exemption is designed primarily for those facilities where all industrial activities are conducted inside buildings and where all materials stored and handled are not exposed to storm water. To qualify for this exemption, facility operators must certify that their facilities meet all of the following conditions:

- (1) All prohibited non-storm water discharges have been eliminated or otherwise permitted.
- (2) All authorized non-storm water discharges have been identified and addressed in the SWPPP.
- (3) All areas of past exposure have been inspected and cleaned, as appropriate.
- (4) All significant materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.
- (5) All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.
- (6) There is no exposure of storm water to significant materials associated with industrial activity through other direct or indirect pathways such as from industrial activities that generate dust and particulates.
- (7) There is periodic re-evaluation of the facility to ensure conditions (1), (2), (4), (5), and (6) above are continuously met. At a minimum, re-evaluation shall be conducted once a year.

ii. Regional Water Board Certification Programs

The Regional Water Board may grant an exemption to the Section B.5. Sampling and Analysis Requirements if it determines a facility operator has met the conditions set forth in a Regional Water Board certification program. Regional Water Board certification programs may include conditions to (1) exempt facility operators whose facilities infrequently discharge storm water to waters of the United States, and (2) exempt facility operators

that demonstrate compliance with the terms and conditions of this General Permit.

iii. Local Agency Certifications

A local agency may develop a local agency certification program. Such programs must be approved by the Regional Water Board. An approved local agency program may either grant an exemption

from the Section B.5. Sampling and Analysis Requirements or reduce the frequency of sampling if it determines that a facility operator has demonstrated compliance with the terms and conditions of this General Permit.

b. Sampling and Analysis Reduction

i. A facility operator may reduce the number of sampling events required to be sampled for the remaining term of this General Permit if the facility operator provides certification that the following conditions have been met:

- (1) The facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;
- (2) All prohibited non-storm water discharges have been eliminated or otherwise permitted;
- (3) The facility operator demonstrates compliance with the terms and conditions of the General Permit for the previous two years (i.e., completed Annual Reports, performed visual observations, implemented appropriate BMPs, etc.);
- (4) The facility operator demonstrates that the facility's storm water discharges and authorized non-storm water discharges do not contain significant quantities of pollutants; and
- (5) Conditions (2), (3), and (4) above are expected to remain in effect for a minimum of one year after filing the certification.

ii. Unless otherwise instructed by the Regional Water Board, facility operators shall collect and analyze samples from two additional storm events (or one additional storm event when certification filed for the wet season beginning October 1, 2001) during the remaining term of this General Permit in accordance with Table C below. Facility operators shall collect samples of the first

storm event of the wet season. Facility operators that do not collect samples from the first storm event of the wet season shall collect samples from another storm event during the same wet season. Facility operators that do not collect a sample in a required wet season shall collect the sample from another storm event in the next wet season. Facility operators shall explain in the Annual Report why the first storm event of a wet season was not sampled or a sample was not taken from any storm event in accordance with the Table C schedule.

Table C  
REDUCED MONITORING SAMPLING SCHEDULE

Facility Operator Filing Sampling Reduction Certification By	Samples Shall be Collected and Analyzed in These Wet Seasons	
	Sample 1	Sample 2
Oct. 1, 1997	Oct. 1, 1997-May 31, 1998	Oct. 1, 1999-May 31, 2000
Oct. 1, 1998	Oct. 1, 1998-May 31, 1999	Oct. 1, 2000-May 31, 2001
Oct. 1, 1999	Oct. 1, 1999-May 31, 2000	Oct. 1, 2001-May 31, 2002
Oct. 1, 2000	Oct. 1, 2000-May 31, 2001	Oct. 1, 2001-May 31, 2002
Oct. 1, 2001	Oct. 1, 2001-May 31, 2002	-

13. Records

Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years. These records shall include:

- a. The date, place, and time of site inspections, sampling, visual observations, and/or measurements;
- b. The individual(s) who performed the site inspections, sampling, visual observations, and or measurements;
- c. Flow measurements or estimates (if required by Section B.6);
- d. The date and approximate time of analyses;
- e. The individual(s) who performed the analyses;
- f. Analytical results, method detection limits, and the analytical techniques or methods used;
- g. Quality assurance/quality control records and results;

- h. Non-storm water discharge inspections and visual observations and storm water discharge visual observation records (see Sections B.3. and 4.);
- i. Visual observation and sample collection exception records (see Section B.5.a, 7.d, 8, and 12.b.ii.);
- j. All calibration and maintenance records of on-site instruments used;
- k. All Sampling and Analysis Exemption and Reduction certifications and supporting documentation (see Section B.12);
- l. The records of any corrective actions and follow-up activities that resulted from the visual observations.

14. Annual Report

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).

The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit." The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

15. Group Monitoring

Facility operators may participate in group monitoring as described below. A facility operator that participates in group monitoring shall develop and implement a written site-specific SWPPP and monitoring program in accordance with the General Permit and must satisfy any group monitoring requirements. Group monitoring shall be subject to the following requirements:

- a. A group monitoring plan (GMP) shall be developed and implemented by a group leader representing a group of

similar facility operators regulated by this General Permit or by a local agency which holds an NPDES permit (local agency permittee) for a municipal separate storm sewer system. GMPs with participants that discharge storm water within the boundaries of a single Regional Water Board shall be approved by that Regional Water Board. GMPs with participants that discharge storm water within the boundaries of multiple Regional Water Boards shall be approved by the State Water Board. The State Water Board and/or Regional Water Board(s) may disapprove a facility's participation in a GMP or require a GMP participant to conduct additional monitoring activities.

- b. Each GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5. over the five-year period of this General Permit. The two storm event minimum applies to new and existing members. The group leader or local agency permittee shall schedule sampling to meet the following conditions: (i) to evenly distribute the sample collection over the five-year term of this General Permit, and (ii) to collect samples from the two storm events at each participant's facility in different and non-consecutive wet seasons. New participants who join in Years 4 and 5 of this General Permit are not subject to Condition (ii) above. Group leaders shall explain in the annual Group Evaluation Report why any scheduled samples were not collected and reschedule the sampling so that all required samples are collected during the term of this General Permit.
- c. The group leader or local agency permittee must have the appropriate resources to develop and implement the GMP. The group leader or local agency permittee must also have the authority to terminate any participant who is not complying with this General Permit and the GMP.
- d. The group leader or local agency permittee is responsible for:
  - i. Developing, implementing, and revising the GMP;
  - ii. Developing and submitting an annual Group Evaluation Report to the State Water Board and/or Regional Water Board by August 1 of each year that includes:
    - (1) An evaluation and summary of all group monitoring data,
    - (2) An evaluation of the overall performance of the GMP participants in complying with this General Permit and the GMP,



- (3) Recommended baseline and site-specific BMPs that should be considered by each participant based upon Items (1) and (2) above, and
  - (4) A copy of each evaluation report and recommended BMPs as required in Section B.15.d.v. below.
- iii. Recommending appropriate BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges;
  - iv. Assisting each participant in completing their Annual Comprehensive Site Compliance Evaluation and Annual Report;
  - v. Conducting a minimum of two on-site inspections of each participant's facility (it is recommended that these inspections be scheduled during the Annual Comprehensive Site Compliance Evaluation) during the term of this General Permit to evaluate the participant's compliance with this General Permit and the GMP, and to recommend any additional BMPs necessary to achieve compliance with this General Permit. Participants that join in Years 4 and 5 shall be scheduled for one evaluation. A copy of the evaluation and recommended BMPs shall be provided to the participants;
  - vi. Submitting a GMP (or revisions, as necessary), to the appropriate Regional Water Board(s) and State Water Board no later than September 1, 1997 (or August 1 in subsequent years). Once approved, a group leader or local agency permittee shall submit a letter of intent by August 1 of each year to continue the approved GMP. The letter of intent must include a roster of participants, participant's Waste Discharge Identification number (WDID#), updated sampling schedules, and any other revisions to the GMP;
  - vii. Revising the GMP as instructed by the Regional Water Board or the State Water Board; and
  - viii. Providing the State Water Board and/or Regional Water Board with quarterly updates of any new or deleted participants and corresponding changes in the sampling and inspection schedule.
- e. The GMP shall:

- i. Identify the participants of the GMP by name, location, and WDID number;
  - ii. Include a narrative description summarizing the industrial activities of participants of the GMP and explain why the participants, as a whole, have sufficiently similar industrial activities and BMPs to be covered by a group monitoring plan;
  - iii. Include a list of typical potential pollutant sources associated with the group participant's facilities and recommended baseline BMPs to prevent or reduce pollutants associated with industrial activity in the storm water discharges and authorized non-storm water discharges;
  - iv. Provide a five-year sampling and inspection schedule in accordance with Subsections b. and d.v. above.
  - v. Identify the pollutants associated with industrial activity that shall be analyzed at each participant's facility in accordance with Section B.5. The selection of these pollutants shall be based upon an assessment of each facility's potential pollutant sources and likelihood that pollutants associated with industrial activity will be present in storm water discharges and authorized non-storm water discharges in significant quantities.
- f. Sampling and analysis shall be conducted in accordance with the applicable requirements of this Section.
  - g. Unless otherwise instructed by the Regional Water Board or the State Water Board Executive Director, the GMPs shall be implemented at the beginning of the wet season (October 1).
  - h. All participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section including the submittal of an Annual Report by July 1 of each year to the appropriate Regional Water Board.
  - i. GMP participants subject to Federal storm water effluent limitation guidelines must perform the monitoring described in Section B.6. and submit the results of the monitoring to the appropriate Regional Water Board within the facility operator's Annual Report.

- j. GMPs and Group Evaluation Reports should be prepared in accordance with State Water Board (or Regional Water Board) guidance.
- k. GMP participants may receive Sampling and Analysis Reduction sampling credit in accordance with the following conditions:
  - i. Current or prior participants (group participants) of approved GMPs, who have not collected and analyzed samples from six storm events as required in Section B.7.b.i.(1), may substitute credit earned through participation in a GMP for up to four of the six required storm events. Credits for GMP participation shall be calculated as follows:
    - (1) Credit may only be earned in years of participation where the GMP participant was not scheduled to sample and the GMP was approved.
    - (2) One credit will be earned for each year of valid GMP participation.
    - (3) One additional credit may be earned for each year the overall GMP sample collection performance is greater than 75 percent.
  - ii. GMP participants substituting credit as calculated above shall provide proof of GMP participation and certification that all the conditions in Section B.12.b.i. have been met. GMP participants substituting credit in accordance with Section B.15.k.i.(3) shall also provide GMP sample collection performance documentation.
  - iii. GMP participants that qualify for Sampling and Analysis Reduction and have already sampled a storm event after October 1, 1997 shall only be required to sample one additional storm event during the remainder of this General Permit in accordance with the "Sample 2" schedule (or "Sample 1" schedule when certification filed for the wet season beginning October 1, 2001) in Table C of this Section.
- n. Group leaders shall furnish, within 60 days of receiving a request from the State Water Board or Regional Water Board, any GMP information and documentation necessary to verify the Section B.15.k. sampling credits. Group leaders may also provide this information and documentation to the group participants.

16. Watershed Monitoring Option

Regional Water Boards may approve proposals to substitute watershed monitoring for some or all of the requirements of this Section if the Regional Water Board finds that the watershed monitoring will provide substantially similar monitoring information in evaluating facility operator compliance with the requirements of this General Permit.

TABLE D  
ADDITIONAL ANALYTICAL PARAMETERS

<u>Subsector</u>	<u>SIC</u>	<u>Activity Represented</u>	<u>Parameters</u>
<b>SECTOR A. TIMBER PRODUCTS</b>			
A1	2421	General Sawmills and Planing Mills .....	COD;TSS;Zn
A2	2491	Wood Preserving .....	As;Cu
A3	2411	Log Storage and Handling.....	TSS
A4	2426	Hardwood Dimension and Flooring Mills.....	COD;TSS
A4	2429	Special Product Sawmills, Not Elsewhere Classified.....	COD;TSS
A4	243X	Millwork, Veneer, Plywood, and Structural Wood .....	COD;TSS
A4	(except 2434--	Wood Kitchen Cabinet Manufacturers)	
A4	244X	Wood Containers .....	COD;TSS
A4	245X	Wood Buildings and Mobile Homes .....	COD;TSS
A4	2493	Reconstituted Wood Products .....	COD;TSS
A4	2499	Wood Products, Not Elsewhere Classified	
<b>SECTOR B. PAPER AND ALLIED PRODUCTS MANUFACTURING</b>			
B1	261X	Pulp Mills .....	
B2	262X	Paper Mills .....	
B3	263X	Paperboard Mills .....	COD
B4	265X	Paperboard Containers and Boxes.....	
B5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes .....	
<b>SECTOR C. CHEMICAL AND ALLIED PRODUCTS MANUFACTURING</b>			
C1	281X	Industrial Inorganic Chemicals.....	Al;Fe;N+N
C2	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic, and Other Manmade Fibers Except Glass .....	Zn
C3	283X	Drugs .....	
C4	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations .....	N+N;Zn
C5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products	
C6	286X	Industrial Organic Chemicals .....	
C7	287X	Nitrogenous and Phosphatic Basic Fertilizers, Mixed Fertilizer, Pesticides, and Other Agricultural Chemicals .....	Fe;N+N;Pb;Zn;P
C8	289X	Miscellaneous Chemical Products.....	
	3952	Inks and Paints, Including China Painting Enamels, India Ink, (limited to list) Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints, and Artist's Watercolors .....	
<b>SECTOR D. ASPHALT PAVING/ROOFING MATERIALS MANUFACTURERS AND LUBRICANT MANUFACTURERS</b>			
D1	295X	Asphalt Paving and Roofing Materials.....	TSS
D2	2992	Lubricating Oils and Greases.....	

Al - Aluminum	Cd - Cadmium	Cu - Copper	<u>Parameter Names</u>	BOD - Biochemical Oxygen Demand
As - Arsenic	CN - Cyanide	Fe - Iron	Mg - Magnesium	N + N - Nitrate & Nitrite Nitrogen
NH <sub>3</sub> - Ammonia	Hg - Mercury	P - Phosphorus	Ag - Silver	Pb - Lead
Zn - Zinc	TSS - Total Suspended Solids	COD - Chemical Oxygen Demand	Se - Selenium	

<u>subsector</u>	<u>SIC</u>	<u>Activity Represented</u>	<u>Parameters</u>
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**SECTOR E. GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCT MANUFACTURING**

E1	3211	Flat Glass .....	
E1	322X	Glass and Glassware, Pressed or Blown .....	
E1	323X	Glass Products Made of Purchased Glass .....	
E2	3241	Hydraulic Cement .....	
E3	325X	Structural Clay Products .....	Al
E3	326X	Pottery and Related Products .....	Al
E3	3297	Non-Clay Refractories .....	Al
E4	327X	Concrete, Gypsum, and Plaster Products (Except Lime)..... (except 3274).	TSS;Fe
E4	3295	Minerals and Earths, Ground, or Otherwise Treated .....	TSS;Fe

**SECTOR F. PRIMARY METALS**

F1	331X	Steel Works, Blast Furnaces, Rolling & Finishing Mill.....	Al;Zn
F2	332X	Iron and Steel Foundries.....	Al;TSS;Cu;Fe;Zn
F3	333X	Primary Smelting and Refining of Nonferrous Metals.....	
F4	334X	Secondary Smelting and Refining of Nonferrous Metals.....	
F5	335X	Rolling, Drawing, and Extruding of Nonferrous Metals.....	Cu;Zn
F6	336X	Nonferrous Foundries (Castings).....	Cu;Zn
F7	339X	Miscellaneous Primary Metal Products	

**SECTOR G. METAL MINING (ORE MINING AND DRESSING) EXCEPT INACTIVE METAL MINING ACTIVITIES ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED**

G1	101X	Iron Ores.....	
G2	102X	Copper Ores.....	TSS;COD;N+N
G3	103X	Lead and Zinc Ores.....	
G4	104X	Gold and Silver Ores .....	
G5	106X	Ferroalloy Ores, Except Vanadium .....	
G6	108X	Metal Mining Services.....	
G7	109X	Miscellaneous Metal Ores .....	

**SECTOR H. COAL MINES AND COAL MINING-RELATED FACILITIES**

NA	12XX	Coal Mines and Coal Mining-Related Facilities.....	TSS;Al;Fe
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**SECTOR I. COAL MINES AND COAL MINING-RELATED FACILITIES**

I1	131X	Crude Petroleum and Natural Gas .....	
I2	132X	Natural Gas Liquids.....	
I3	138X	Oil and Gas Field Services .....	

**SECTOR J. MINERAL MINING AND DRESSING EXCEPT INACTIVE MINERAL MINING ACTIVITIES OCCURRING ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED**

J1	141X	Dimension Stone .....	TSS
J1	142X	Crushed and Broken Stone, Including Rip Rap.....	TSS
J1	148X	Nonmetallic Minerals, Except Fuels.....	TSS
J2	144X	Sand and Gravel .....	TSS;N+N
J3	145X	Clay, Ceramic, and Refractory Materials .....	
J4	147X	Chemical and Fertilizer Mineral Mining .....	
J4	149X	Miscellaneous Nonmetallic Minerals, Except Fuels.....	

<u>Subsector</u>	<u>SIC</u>	<u>Activity Represented</u>	<u>Parameters</u>
<b>SECTOR K. HAZARDOUS WASTE TREATMENT STORAGE OR DISPOSAL FACILITIES</b>			
NA	4953	Hazardous Waste Treatment Storage or Disposal .....	NH <sub>3</sub> ;Mg;COD;As Cd;CN;Pb Hg;Se;Ag
<b>SECTOR L. LANDFILLS AND LAND APPLICATION SITES</b>			
NA	4953	Landfills and Land Application Sites That Receive or..... Have Received Industrial Wastes, Except Inactive Landfills or Land Applications Sites Occurring on Federal Lands Where an Operator Cannot be Identified	TSS;Fe
<b>SECTOR M. AUTOMOBILE SALVAGE YARDS</b>			
NA	5015	Facilities Engaged in Dismantling or Wrecking Used Motor .....	TSS;Fe;Pb;Al Vehicles for Parts Recycling or Resale and for Scrap
<b>SECTOR N. SCRAP RECYCLING FACILITIES</b>			
NA	5093	Processing, Reclaiming, and Wholesale Distribution of Scrap .....	TSS;Fe;Pb and Waste Materials..... Al;Cu;Zn;COD
<b>SECTOR O. STEAM ELECTRIC GENERATING FACILITIES</b>			
NA	4911	Steam Electric Power Generating Facilities .....	Fe
<b>SECTOR P. LAND TRANSPORTATION FACILITIES THAT HAVE VEHICLE AND EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS</b>			
P1	40XX	Railroad Transportation .....	
P2	41XX	Local and Highway Passenger Transportation .....	
P3	42XX	Motor Freight Transportation and Warehousing .....	
P4	43XX	United States Postal Service .....	
P5	5171	Petroleum Bulk Stations and Terminals .....	
<b>SECTOR Q. WATER TRANSPORTATION FACILITIES THAT HAVE VEHICLE (VESSEL) &amp; EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS</b>			
NA	44XX	Water Transportation .....	Al;Fe;Pb;Zn
<b>SECTOR R. SHIP AND BOAT BUILDING OR REPAIRING YARDS</b>			
NA	373X	Ship and Boat Building or Repairing Yards .....	
<b>SECTOR S. AIR TRANSPORTATION FACILITIES</b>			
NA	45XX	Air Transportation Facilities That Have Vehicle..... Maintenance Ships, Material Handling Facilities, Equipment Cleaning Operations, or Airport and/or Aircraft Deicing/Anti-icing Operations	BOD;COD;NH <sub>3</sub> ;pH

<u>Subsector</u>	<u>SIC</u>	<u>Activity Represented</u>	<u>Parameters</u>
<b>SECTOR T. TREATMENT WORKS</b>			
NA	4952	Treatment Works Treating Domestic Sewage or Any Other Sewage Sludge or Wastewater Treatment Device or System Used in the Storage, treatment, recycling, or Reclamation of Municipal or Domestic Sewage with a Design Flow of 1.0 MGD or More or Required to Have an Approved Pretreatment Program.....	
<b>SECTOR U. FOOD AND KINDRED PRODUCTS</b>			
U1	201X	Meat Products .....	
U2	202X	Dairy Products.....	
U3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties .....	
U4	204X	Grain Mill Products.....	TSS
U5	205X	Bakery Products .....	
U6	206X	Sugar and Confectionery Products .....	
U7	207X	Fats and Oils.....	BOD;COD;TSS;N+N
U8	208X	Beverages .....	
U9	209X	Miscellaneous Food Preparations and Kindred Products.....	
NA	21XX	Tobacco Products .....	
<b>SECTOR V. TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING</b>			
	22XX	Textile Mill Products.....	
V2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials.....	
<b>SECTOR W. FURNITURE AND FIXTURES</b>			
NA	25XX	Furniture and Fixtures .....	
NA	2434	Wood Kitchen Cabinets .....	
<b>SECTOR X. PRINTING AND PUBLISHING</b>			
NA	2732	Book Printing.....	
NA	2752	Commercial Printing, Lithographic .....	
NA	2754	Commercial Printing, Gravure .....	
NA	2759	Commercial Printing, Nor Elsewhere Classified .....	
NA	2796	Platemaking and Related Services .....	
<b>SECTOR Y. RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISC. MANUFACTURING INDUSTRIES</b>			
Y1	301X	Tires and Inner Tubes .....	Zn
Y1	302X	Rubber and Plastics Footwear.....	Zn
Y1	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting .....	Zn
Y1	306X	Fabricated Rubber Products, Not Elsewhere Classified.....	Zn
Y2	308X	Miscellaneous Plastics Products .....	



<u>Subsector</u>	<u>SIC</u>	<u>Activity Represented</u>	<u>Parameters</u>
Y2	393X	Musical Instruments .....	
Y2	394X	Dolls, Toys, Games, and Sporting and Athletic Goods .....	
Y2	395X	Pens, Pencils, and Other Artists' Materials .....	
Y2	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal .....	
Y2	399X	Miscellaneous Manufacturing Industries .....	

**SECTOR Z. LEATHER TANNING AND FINISHING**

NA	311X	Leather Tanning and Finishing .....	
NA	NA	Facilities that Make Fertilizer Solely From Leather Scraps and Leather Dust .....	

**SECTOR AA. FABRICATED METAL PRODUCTS**

AA1	3429	Hardware, Not Elsewhere Classified .....	Zn;N+N;Fe;Al
AA1	3441	Fabricated Structural Metal .....	Zn;N+N;Fe;Al
AA1	3442	Metal Doors, Sash, Frames, Molding, and Trim .....	Zn;N+N;Fe;Al
AA1	3443	Fabricated Plate Work (Boiler Shops) .....	Zn;N+N;Fe;Al
AA1	3444	Sheet Metal Work .....	Zn;N+N;Fe;Al
AA1	3451	Screw Machine Products .....	Zn;N+N;Fe;Al
AA1	3452	Bolts, Nuts, Screws, Rivets, and Washers .....	Zn;N+N;Fe;Al
AA1	3462	Iron and Steel Forgings .....	Zn;N+N;Fe;Al
AA1	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring .....	Zn;N+N;Fe;Al
AA1	3494	Valves and Pipe Fittings, Not Elsewhere Classified .....	Zn;N+N;Fe;Al
AA1	3496	Miscellaneous Fabricated Wire Products .....	Zn;N+N;Fe;Al
AA1	3499	Fabricated Metal Products, Not Elsewhere Classified .....	Zn;N+N;Fe;Al
AA1	391X	Jewelry, Silverware, and Plated Ware .....	Zn;N+N;Fe;Al
AA2	3479	Coating, Engraving, and Allied Services .....	Zn;N+N

**SECTOR AB. TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY**

NA	35XX	Industrial and Commercial Machinery (except 357X Computer and Office Equipment) .....	
NA	37XX	Transportation Equipment (except 373X Ship and Boat Building and Repairing) .....	

**SECTOR AC. ELECTRONIC, ELECTRICAL, PHOTOGRAPHIC, AND OPTICAL GOODS**

NA	36XX	Electronic and Other Electrical Equipment and Components, Except Computer Equipment .....	
NA	38XX	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks .....	
NA	357X	Computer and Office Equipment .....	

Section C: STANDARD PROVISIONS

1. Duty to Comply

The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for (a) enforcement action for (b) General Permit termination, revocation and reissuance, or modification or (c) denial of a General Permit renewal application.

The facility operator shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the facility operator for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition, and the facility operator so notified.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a facility operator in an enforcement action that it would have been necessary to halt or reduce the general permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The facility operator shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The facility operator at all times shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the facility operator to achieve compliance with the conditions of this General Permit and with the requirements of storm water pollution prevention plans (SWPPPs). Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a facility operator when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The facility operator shall furnish the Regional Water Quality Control Board (Regional Water Board), State Water Resources Control Board (State Water Board), U.S. Environmental Protection Agency (U.S. EPA), or local storm water management agency, within a reasonable time specified by the agencies, any requested information to determine compliance with this General Permit. The facility operator shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The facility operator shall allow the Regional Water Board, State Water Board, U.S. EPA, and local storm water management agency, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the facility operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;
- b. Have access to and copy at reasonable times any records that must be kept under the conditions of this General Permit;

- c. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized non-storm water discharge; and
- d. Conduct monitoring activities at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

- a. All Notices of Intent (NOIs) submitted to the State Water Board shall be signed as follows:
  - (1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
  - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - (3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).
- b. All reports, certifications, or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:
  - (1) The authorization is made in writing by a person described above and retained as part of the SWPPP.

- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for named position.)
- (3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be attached to the SWPPP prior to submittal of any reports, certifications, or information signed by the authorized representative.

#### 10. Certification

Any person signing documents under Provision 9. above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### 11. Reporting Requirements

- a. Planned changes: The facility operator shall give advance notice to the Regional Water Board and local storm water management agency of any planned physical alteration or additions to the general permitted facility. Notice is required under this provision only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.
- b. Anticipated noncompliance: The facility operator will give advance notice to the Regional Water Board and local storm water management agency of any planned changes at the permitted facility which may result in noncompliance with General Permit requirements.

- c. Compliance schedules: Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this General Permit shall be submitted no later than 14 days following each scheduled date.
- d. Noncompliance reporting: The facility operator shall report any noncompliance at the time monitoring reports are submitted. The written submission shall contain (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce and prevent recurrence of the noncompliance.

12. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the facility operator from any responsibilities, liabilities, or penalties to which the facility operator is or may be subject under Section 311 of the CWA.

13. Severability

The provisions of this General Permit are severable; and if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

14. Reopener Clause

This General Permit may be modified, revoked, and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5. This General Permit may be reopened to modify the provisions regarding authorized non-storm water discharges specified in Section D. Special Conditions.

15. Penalties for Violations of General Permit Conditions.

- a. Section 309 of the CWA provides significant penalties for any person who violates a General Permit condition

implementing Sections 301, 302, 306, 307 308, 318, or 405 of the CWA, or any General Permit condition or limitation implementing any such section in a General Permit issued under Section 402. Any person who violates any General Permit condition of this General Permit is subject to a civil penalty not to exceed \$25,000 per day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

- b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties in some cases greater than those under the CWA.

16. Availability

A copy of this General Permit shall be maintained at the facility and be available at all times to the appropriate facility personnel and to Regional Water Board and local agency inspectors.

17. Transfers

This General Permit is not transferable from one facility operator to another facility operator nor may it be transferred from one location to another location. A new facility operator of an existing facility must submit an NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit.

18. Continuation of Expired General Permit

This General Permit continues in force and effect until a new general permit is issued or the State Water Board rescinds the General Permit. Facility operators authorized to discharge under the expiring general permit are required to file an NOI to be covered by the reissued General Permit.

19. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both.

FACILITIES COVERED BY THIS GENERAL PERMIT

Industrial facilities include Federal, State, municipally owned, and private facilities from the following categories:

1. FACILITIES SUBJECT TO STORM WATER EFFLUENT LIMITATIONS GUIDELINES, NEW SOURCE PERFORMANCE STANDARDS, OR TOXIC POLLUTANT EFFLUENT STANDARDS (40 Code of Federal Regulations (CFR) SUBCHAPTER N). Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443).
2. MANUFACTURING FACILITIES: Standard Industrial Classifications (SICs) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441, and 373.
3. OIL AND GAS/MINING FACILITIES: SICs 10 through 14 including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1) because of performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for area of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990); oil and gas exploration, production, processing, or treatment operations; or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mined sites that are not being actively mined but which have an identifiable facility operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.
4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: Includes those operating under interim status or a general permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act (RCRA).
5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: Sites that receive or have received industrial waste from any of



the facilities covered by this General Permit, sites subject to regulation under Subtitle D of RCRA, and sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).

6. RECYCLING FACILITIES: SICs 5015 and 5093. These codes include metal scrapyards, battery reclaimers, salvage yards, motor vehicle dismantlers and wreckers, and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc.
7. STEAM ELECTRIC POWER GENERATING FACILITIES: Includes any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.
8. TRANSPORTATION FACILITIES: SICs 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.
9. SEWAGE OR WASTEWATER TREATMENT WORKS: Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of one million gallons per day or more or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.
10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE EXPOSED TO STORM WATER: SICs 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225.

STORM WATER CONTACTS FOR  
THE STATE AND REGIONAL WATER BOARDS

See Storm Water Contacts at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/contact.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/contact.shtml)

## NOTICE OF INTENT (NOI) INSTRUCTIONS

TO COMPLY WITH STATE WATER RESOURCES CONTROL BOARD  
WATER QUALITY ORDER NO. 97-03-DWQ  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
GENERAL PERMIT NO. CAS000001

### Who Must Submit

The facility operator must submit an NOI for each industrial facility that is required by U.S. Environmental Protection Agency (U.S.EPA) regulations to obtain a storm water permit. The required industrial facilities are listed in Attachment 1 of the General Permit and are also listed in 40 Code of Federal Regulations Section 122.26(b)(14).

The facility operator is typically the owner of the business or operation where the industrial activities requiring a storm water permit occur. The facility operator is responsible for all permit related activities at the facility.

Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. Landowners may also file an NOI for a facility if the landowner, rather than the facility operator, is responsible for compliance with this General Permit.

### How and Where to Apply

The completed NOI form, a site map, and appropriate fee must be mailed to the State Water Resources Control Board (State Water Board) at the following address:

State Water Resources Control Board  
Division of Water Quality  
P.O. Box 1977  
Sacramento, CA 95812-1977  
Attn: Storm Water Permitting Unit

Please Note: Do not send the original or copies of the NOI submittal to the Regional Water Quality Control Board (Regional Water Board). The original NOI will be forwarded to the Regional Water Board after processing.

Do not send a copy of your Storm Water Pollution Prevention Plan (SWPPP) with your NOI submittal. Your SWPPP is to be kept on site and made available for review upon request.

When to Apply

Facility operators of existing facilities must file an NOI in accordance with these instructions by March 30, 1992. Facility

operators of new facilities (those beginning operations after March 30, 1992) must file an NOI in accordance with these instructions at least 14 days prior to the beginning of operations.

Once the completed NOI, site map, and appropriate fee have been submitted to the State Water Board, your NOI will be processed and you will be issued a receipt letter with a Waste Discharge Identification (WDID) Number. Please refer to this number when you contact either the State or Regional Water Boards.

Fees

The total annual fee is \$1008.00. Checks should be made payable to: SWRCB

Change of Information

If the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form. Section I of the line-by-line instructions includes information regarding changes to the NOI.

Questions

If you have any questions completing the NOI, please call the appropriate Regional Water Board (Attachment 2) or the State Water Board at (916) 341-5538.

NOI LINE-BY-LINE INSTRUCTIONS

Please type or print your responses on the NOI. Please complete the NOI form in its entirety and sign the certification.

Section I--NOI STATUS

Check box "A" if this is a new NOI registration.

Check box "B" if you are reporting changes to the NOI (e.g., new contact person, phone number, mailing address). Include the facility WDID #. Highlight all the information that has been changed.

Please note that a change of information does not apply to a change of facility operator or a change in the location of the facility. These changes require a Notice of Termination (NOT) and submittal of a new NOI and annual fee. Contact the State Water Board or Regional Water Boards for more information on the NOT Form and instructions.

Regardless of whether you are submitting a new or revised NOI, you must complete the NOI in its entirety and the NOI must be signed.

**Section II--Facility Operator Information**

Part A: The facility operator is the legal entity that is responsible for all permit-related compliance activities at the facility. In most cases, the facility operator is the owner of the business or operation where the industrial activity occurs. Give the legal name and the address of the person, firm, public organization, or any other entity that is responsible for complying with the General Permit.

Part B: Check the box that indicates the type of operation.

**Section III--Facility Site Information**

Part A: Enter the facility's official or legal name and provide the address. Facilities that do not have a street address must provide cross-streets or parcel numbers. Do not include a P.O. Box address in Part A.

Part B: Enter the mailing address of the facility if different than Part A. This address may be a P.O. Box.

The contact person should be the plant or site manager who is familiar with the facility and responsible for overseeing compliance of the General Permit requirements.

Part C: Enter the total size of the facility in either acres or square feet. Also include the percentage of the site that is impervious (areas that water cannot soak into the ground, such as concrete, asphalt, and rooftops).

Part D: Determine the Standard Industrial Classification (SIC) code which best identifies the industrial activity that is taking place at the facility. This information can be obtained by referring to the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget which is available at public libraries. The code you determine should identify the industrial activity that requires you to submit the NOI. (For example, if the business is high school education and the activity is school bus maintenance, the code you choose would be bus maintenance, not education.) Most facilities have only one code; however, additional spaces are provided for those facilities that have more than one activity.

Part E: Identify the title of the industrial activity that requires you to submit the NOI (e.g., the title of SIC Code 2421 is Sawmills and Planing Mills, General). If you cannot identify the title, provide a description of the regulated activity(s).

#### Section IV--Address for Correspondence

Correspondence relative to the permit will be mailed occasionally. Check the box which indicates where you would like such correspondence delivered. If you want correspondence sent to another contact person or address different than indicated in Section II or Section III then include the information on an extra sheet of paper.

#### Section V--Billing Address Information

To continue coverage under the General Permit, the annual fee must be paid. Use this section to indicate where the annual fee invoices should be mailed. Enter the billing address if different than the address given in Sections II or III.

#### Section VI--Receiving Water Information

Provide the name of the receiving water where storm water discharge flows from your facility. A description of each option is included below.

1. Directly to waters of the United States: Storm water discharges directly from the facility to a river, creek, lake, ocean, etc. Enter the name of the receiving water (e.g., Boulder Creek).
2. Indirectly to waters of the United States: Storm water discharges over adjacent properties or right-of-ways prior to discharging to waters of the United States. Enter the name of the closest receiving water (e.g., Clear Creek).

#### Section VII--Implementation of Permit Requirements

Parts A and B: Check the boxes that best describe the status of the Storm Water Pollution Prevention Plan (SWPPP) and the Monitoring Program.

Part C: Check yes or no to questions 1 through 4. If you answer no to any question, you need to assign a person to these tasks immediately.

As a permit holder you are required to have an SWPPP and Monitoring Program in place prior to the beginning of facility operations. Failure to do so is in direct violation of the General Permit. Do not send a copy of your SWPPP with your NOI submittal.

Please refer to Sections A and B of the General Permit for additional information regarding the SWPPP and Monitoring Program.

#### Section VIII--Site Map

Provide a "to scale" drawing of the facility and its immediate surroundings. Include as much detail about the site as possible. At a minimum, indicate buildings, material handling and storage areas, roads, names of adjacent streets, storm water discharge points, sample collection points, and a north arrow. Whenever

possible limit the map to a standard size sheet of paper (8.5" x 11" or 11" x 17"). Do not send blueprints unless you are sending one page and it meets the size limits as defined above.

A location map may also be included, especially in cases where the facility is difficult to find, but are not to be submitted as a substitute for the site map. The location map can be created from local street maps and U.S. Geological Survey (USGS) quadrangle maps, etc.

A revised site map must be submitted whenever there is a significant change in the facility layout (e.g., new building, change in storage locations, boundary change, etc.).

#### Section IX--Certification

This section should be read by the facility operator. The certification provides assurances that the NOI and site map were completed by the facility operator in an accurate and complete fashion and with the knowledge that penalties exist for providing false information. It also requires the Responsible Party to certify that the provisions in the General Permit will be complied with.

The NOI must be signed by:

**For a Corporation:** a responsible corporate officer (or authorized individual).

**For a Partnership or Sole Proprietorship:** a general partner or the proprietor, respectively.

**For a Municipality, State, or other non-Federal Public Agency:** either a principal executive officer or ranking elected official.

**For a Federal Agency:** either the chief or senior executive officer of the agency.

## NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE  
GENERAL PERMIT TO DISCHARGE STORM WATER  
ASSOCIATED WITH INDUSTRIAL ACTIVITY (WQ ORDER No. 97-03-DWQ)  
(Excluding Construction Activities)

### SECTION I. NOI STATUS (please check only one box)

A. <input type="checkbox"/> New Permittee	B. <input type="checkbox"/> Change of Information    WDID # <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>
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### SECTION II. FACILITY OPERATOR INFORMATION (See Instructions)

A. NAME: <span style="border-bottom: 1px solid black; display: inline-block; width: 90%;"></span>		Phone: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
Mailing Address: <span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>		
City: <span style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></span>	State: <span style="border-bottom: 1px solid black; display: inline-block; width: 10%;"></span>	Zip Code: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
Contact Person: <span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>		
B. OPERATOR TYPE: (check one)    1. <input type="checkbox"/> Private Individual    2. <input type="checkbox"/> Business    3. <input type="checkbox"/> Municipal    4. <input type="checkbox"/> State    5. <input type="checkbox"/> Federal    6. <input type="checkbox"/> Other		

### SECTION III. FACILITY SITE INFORMATION

A. FACILITY NAME <span style="border-bottom: 1px solid black; display: inline-block; width: 90%;"></span>		Phone: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
Facility Location: <span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>		County: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
City: <span style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></span>	State: C I A	Zip Code: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
B. MAILING ADDRESS: <span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>		
City: <span style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></span>	State: <span style="border-bottom: 1px solid black; display: inline-block; width: 10%;"></span>	Zip Code: <span style="border-bottom: 1px solid black; display: inline-block; width: 100%;"></span>
Contact Person: <span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>		
C. FACILITY INFORMATION ( check one ) Total Size of Site:                      Acres                      Sq. Ft. <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span> <span style="border-bottom: 1px solid black; display: inline-block; width: 10px;"></span> <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>		Percent of Site Impervious (including rooftops) <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span> %
D. SIC CODE(S) OF REGULATED ACTIVITY:                      E. REGULATED ACTIVITY (describe each SIC code):		
1. <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>	<span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>	
2. <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>	<span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>	
3. <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>	<span style="border-bottom: 1px solid black; display: inline-block; width: 95%;"></span>	

FOR STATE USE ONLY:



**SECTION IV. ADDRESS FOR CORRESPONDENCE**

Facility Operator Mailing Address (Section II)       Facility Mailing Address (Section III, B.)       Both

**SECTION V. BILLING ADDRESS INFORMATION**

SEND BILL TO:     Facility Operator Mailing Address (Section II)     Facility Mailing Address (Section III, B.)     Other (enter information below)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**SECTION VI. RECEIVING WATER INFORMATION**

Your facility's storm water discharges flow: (check one)     Directly    OR     Indirectly to waters of the United States.

Name of receiving water: \_\_\_\_\_  
(river, lake, stream, ocean, etc.)

**SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS**

**A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)**  
 A SWPPP has been prepared for this facility and is available for review.  
 A SWPPP will be prepared and ready for review by (enter date): \_\_\_\_/\_\_\_\_/\_\_\_\_.

**B. MONITORING PROGRAM (check one)**  
 A Monitoring Program has been prepared for this facility and is available for review.  
 A Monitoring Program will be prepared and ready for review by (enter date): \_\_\_\_/\_\_\_\_/\_\_\_\_.

**C. PERMIT COMPLIANCE RESPONSIBILITY**  
 Has a person been assigned responsibility for:

1. Inspecting the facility throughout the year to identify any potential pollution problems? .....	YES	NO
2. Collecting storm water samples and having them analyzed? .....	YES	NO
3. Preparing and submitting an annual report by July 1 of each year? .....	YES	NO
4. Eliminating discharges other than storm water (such as equipment or vehicle wash-water) into the storm drain? .....	YES	NO

**SECTION VIII. SITE MAP**

I HAVE ENCLOSED A SITE MAP    YES     A new NOI submitted without a site map will be rejected.

**SECTION IX. CERTIFICATION**

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that I have read the entire General Permit, including all attachments, and agree to comply with and be bound by all of the provisions, requirements, and prohibitions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."

Printed Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

## DEFINITIONS

1. "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment measures, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may include any type of pollution prevention and pollution control measure necessary to achieve compliance with this General Permit.
2. Clean Water Act (CWA) means the Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; 33 USC. 1251 et seq.
3. "Facility" is a collection of industrial processes discharging storm water associated with industrial activity within the property boundary or operational unit.
4. "Non-Storm Water Discharge" means any discharge to storm sewer systems that is not composed entirely of storm water.
5. "Significant Materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); any chemical the facility is required to report pursuant to Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.
6. "Significant Quantities" is the volume, concentrations, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance; adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable water quality standards for the receiving water.
7. "Significant Spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 CFR 110.10 and 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).
8. "Storm water" means storm water runoff, snow melt runoff, and storm water surface runoff and drainage. It excludes infiltration and runoff from agricultural land.

9. "Storm Water Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the facilities identified in Categories 1 through 9 of Attachment 1 of this General Permit, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials; manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the facilities identified in Category 10 of Attachment 1 of this General Permit, the term only includes storm water discharges from all areas listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

Material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph) include those facilities designated under 40 CFR 122.26(a)(1)(v).

## ACRONYM LIST

BAT	Best Available Technology Economically Achievable
BCT	Best Conventional Pollutant Control Technology
BMPs	Best Management Practices
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Federal Superfund)
CFR	Code of Federal Regulations
CWA	Clean Water Act
General Permit	General Industrial Activities Storm Water Permit
GMP	Group Monitoring Plan
NEC	No Exposure Certification
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
O&G	Oil and Grease
RCRA	Resource, Conservation, and Recovery Act
Regional Water Board	Regional Water Quality Control Board
RQ	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act of 1986
SIC	Standard Industrial Classification
SMCRA	Surface Mining Control and Reclamation Act
SPCC	Spill Prevention Control and Countermeasures
State Water Board	State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
TOC	Total Organic Carbon
TSS	Total Suspended Solids
U.S. EPA	U.S. Environmental Protection Agency
WDID	Waste Discharger Identification
WDRs	Waste Discharge Requirements

**EXHIBIT F**

**FAA AIRPORT COMPLIANCE REQUIREMENTS**

[Attached hereto and made a part hereof]

**ASSURANCES**  
**Airport Sponsors**

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**A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

**B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

**C. Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

**Federal Legislation**

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.<sup>2</sup>

- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1,2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49 ,U.S.C., Section 303, (formerly known as Section 4(f)
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- t. Copeland Anti kickback Act - 18 U.S.C. 874.<sup>1</sup>
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

#### **Executive Orders**

- Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11988 – Flood Plain Management
- Executive Order 12372 - Intergovernmental Review of Federal Programs.
- Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- Executive Order 12898 - Environmental Justice

#### **Federal Regulations**

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>

- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.<sup>1,2</sup>
- m. 49 CFR Part 26 - Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.<sup>1</sup>
- o. 49 CFR Part 29 - Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.<sup>1</sup>

#### Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

## 2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the *grant*, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the *grant* and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person



to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

- 3. Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
  - f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.
6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
  7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
  8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
  9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
  10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
  11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.
13. **Accounting System, Audit, and Record Keeping Requirements.**
  - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
  - b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved

plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
18. **Planning Projects.** In carrying out planning projects:
  - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
  - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
  - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
  - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
  - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
  - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
  - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
  - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.
19. **Operation and Maintenance.**
  - a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
  - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
  - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.
- It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

**24. Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

**25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

**26. Reports and Inspections.** It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
  - d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
    - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
    - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.
27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-
- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
  - b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.
28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.
29. **Airport Layout Plan.**
- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall



be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. **Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

- 32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.
- 33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
- 35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
- 36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
- 37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure

non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. **Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.
39. **Competitive Access.**
- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
    1. Describes the requests;
    2. Provides an explanation as to why the requests could not be accommodated; and
    3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
  - b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date

**EXHIBIT G**

**AVIGATION EASEMENT**

[Attached hereto and made a part hereof]

**AVIGATION EASEMENT**

WHEREAS, \_\_\_\_\_.

Herein called Grantor, is the owner in fee of that certain parcel of land situated in the County of Riverside, State of California, more particularly described as:

(See attached Exhibit A)

Herein called the Servient Tenement.

NOW, THEREFORE, for the valuable consideration, the receipt and sufficiency of which is hereby acknowledged, successors and assigns, does hereby grant and convey unto the County of Riverside, California, herein called Grantee, its successors and assigns, lessees, sub lessees, licensees and invitees, for the use and benefit of the public, an easement and right-of-way, appurtenant to the \_\_\_\_\_ Airport, herein called Dominant Tenement, and Avigation easement.

For the free and unobstructed passage of all aircraft("aircraft" being defined for the purposes of this instrument as any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air),by whomsoever owned and operated, in the airspace over, through across and adjacent to the Servient Tenant.

Together with the right to cause in said airspace such noise, sound or shock waves, vibrations, odors, fumes dust, fuel, particles, smoke, light , thermal waves, air quality changes and other results transmitted from the operation of aircraft of all types known or hereafter designed and used for navigation of or flight in the air. By reason of any use ancillary or incidental to the operation of the Dominant Tenement and by reason of any operational incidental effects thereof including such as may occur in and from take-off, landing and approach patterns into and from the Dominant Tenement.

To have and to hold said easement and right-of-way and all rights appertaining thereto unto Grantee, its successors, assigns, lessees, sub lessees, licensees and invitees, until the Dominant Tenement shall be abandoned and shall cease to be used for public airport purposes, it being understood and agree that these covenants and agreements shall run with the land.

Grantor, for itself, its heirs, administrators, executors, successors and assigns does hereby waive, remise and release and right of cause of action which it may now have or which it may have in the future against Grantee, its successors and assigns, due to such noise sound or shock waves, vibrations, odors, fumes, dust fuel particles, smoke, light thermal waves, air quality changes and other results in said airspace that may be caused or may have been caused by the operation of aircraft of all types now known or hereafter designed and used for navigation of or flight in the air, by reason of any use ancillary or incidental to the operational incidental effects thereof including such as may occur in and from take-off, landing and approach patterns into and from the Dominant Tenement. Said waiver and release shall include but shall not be limited to, claims known or unknown damages physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, diminution of property values, nuisance or inverse condemnation or for injunctive or other extraordinary or equitable relief. Grantor, for itself, its heirs, administrators, executors, successors and assigns, agrees that Grantee shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations.

Grantor, for itself, its heirs, administrators, executors, successors and assigns, agree not to construct or permit the construction or growth of any structure, tree or other object that obstructs or interferes with the use of the rights herein granted or that creates electrical interference with radio communication between any installation within said airport and in the vicinity of said airport, or to otherwise endanger the landing, take-off or maneuvering of aircraft. Grantor for itself, its heirs, administrators, executors, successors and assigns, agrees that Grantee shall have the right to mark and structure, tree or other object now upon, or that in the future may be upon the Servient Tenement, together with the right of ingress to, egress from and passage over and within the Servient Tenement for the purpose of accomplishing such marketing and lighting.

Executed this \_\_\_\_\_ day of \_\_\_\_\_.

GRANTOR

\_\_\_\_\_

(Title here – President/Vice President of Company, etc)

\_\_\_\_\_

(Deputy Company Signor, etc)

**For Documents Acknowledged On or After January 1, 2008**

**CALIFORNIA**  
**CIVIL Code 1189**

(a) (1) Any certificate of acknowledgment taken within this state shall be in the following form:

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)  
personally appeared \_\_\_\_\_

\_\_\_\_\_ ,  
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 \_\_\_\_\_

(Seal)



**EXHIBIT H**

**FORM OF MANDATORY CONSENT**

This CONSENT, dated as of \_\_\_\_\_, 200\_\_, is entered into by and between THE COUNTY OF RIVERSIDE, a political subdivision of the State of California (“County”) and \_\_\_\_\_ (“Lessee”).

Reference is hereby made to that certain Lease Agreement dated \_\_\_\_\_, 20\_\_ (the “Lease”) between the County and Lessee.

Reference is also hereby made to the following proposed transaction (collectively, the “Proposed Transaction”): [Describe Mandatory Consent Transaction].

The Proposed Transaction qualifies as a Mandatory Consent Transaction pursuant to Section 10.2 of the Lease.

With regard to the Proposed Transaction, the County hereby consents to the extent such consent is required under Article X of the Lease in connection with the consummation of the Proposed Transaction; *provided, however, that*, pursuant to Section 10.2 of the Lease, such consent is mandatory and the County’s failure to expressly provide such consent by acknowledging this Consent within 60 calendar days of Lessee’s delivery of the same shall be deemed to be the County’s approval of the Proposed Transaction.

**CONSENT APPROVED:**

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President