

STAFF REPORT*CITY OF OCEANSIDE*

DATE: January 6, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department

SUBJECT: **APPROVAL OF A LICENSE AGREEMENT WITH THE U.S. GOVERNMENT TO OPERATE A NATIONAL WEATHER SERVICE TOWER ON HARBOR DISTRICT PROPERTY, EXTENDING THE TERM OF THE PRIOR LEASE THROUGH SEPTEMBER 30, 2028**

SYNOPSIS

Staff recommends that the City Council approve a 20-year license agreement with the U.S. Government, for the use of a 36-square-foot portion of Harbor District property at 1540 Harbor Drive North for the continued operation and maintenance of the weather service tower and wind-monitoring equipment; and authorize the City Manager to execute the license agreement.

BACKGROUND

The U.S. Government entered into a lease agreement with the Oceanside Small Craft Harbor District to install and operate a fifty-five foot-high national weather service tower with wind instruments on August 23, 1988. The tower and weather monitoring equipment has been operated and maintained by the U.S. Government throughout their twenty-year renewable lease agreement term. This new license agreement would be retroactive from October 1, 2008, terminating September 30, 2028.

ANALYSIS

The current tower and weather monitoring equipment is located on an approximately thirty-six (6' X 6') square foot plot of land west of the Harbor Police and Administration Offices located at 1540 Harbor Drive North. The tower provides the Oceanside Small Harbor District with invaluable benefits, far exceeding the benefits provided to the National Weather Service. The City's Information Technologies Department (IT), utilizes the tower for the Harbor's Surveillance Camera System to relay data from the Harbor to the Lifeguard Headquarters and provide computer and phone services to the Harbor Police and Administration Offices.

The U.S. Government or the Oceanside Small Craft Harbor District may terminate the license agreement at any time by giving at least sixty (60) days written notice.

FISCAL IMPACT

There is no cost to the Harbor District. The U.S. Government is responsible for any maintenance or repairs to weather service tower and equipment.

INSURANCE REQUIREMENTS

U. S. Government is self-insured

COMMISSION OR COMMITTEE REPORT

Does not apply.

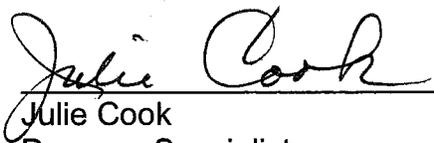
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

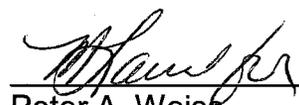
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PREPARED BY:



Julie Cook
Program Specialist

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

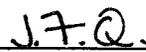
Jane McVey, Economic & Community Development Director

Frank Quan, Harbor & Beaches Coordinator

Douglas E. Eddow, Real Property Manager

Michael Sherwood, Chief Information Officer









U.S. GOVERNMENT LICENSE FOR USE OF REAL PROPERTY



DATE OF LICENSE:

LICENSE NO: 08-ABWJ-222

THIS LICENSE under the authority of 40 U.S.C. 585, is made and entered into this date by and between
The Oceanside Small Craft Harbor District

whose address is: 1540 Harbor Drive North, Oceanside, CA 92054

hereinafter called the Licensor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for considerations hereinafter mentioned, covenant and agree as follows:

1. **License of Premises.** Licensor licenses to the Government a certain portion of the Property consisting of (a) a ground area space of approximately 36 (6' X 6') square feet for the installation and operation of a 55 foot high tower with wind instruments and communications equipment described on attached **Exhibit "A"**
2. **Term.** TO HAVE AND TO HOLD the said premises for the 20 year term beginning on October 1, 2008 through September 30, 2028, subject to termination and renewal rights as may be hereinafter set forth.
3. **Rent.** The licensed premises will be provided for use by the Government at no cost for the term of this license
4. **Termination.** The Government may terminate this agreement without penalty or further liability by giving 60 days notice in writing to the Licensor. Said notice shall be computed commencing with the day after the date of mailing.
5. **Holdover.** If, after expiration of the license, the Government shall retain possession of the premises, the license shall continue in force and effect on a month-to-month basis not to exceed 120 days. Rent payment shall be paid monthly in arrears on a prorated basis at the rate paid during the previous license term.
6. **Permitted Use.** The Government may use the Premises for the transmission and reception of weather broadcast communications and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications antenna and related equipment, cables, accessories and improvements collectively, the "**Permitted Use**". The Government's Antenna Facility is shown on **Exhibit "A"**. Licensor's execution of this Agreement will signify Licensor's approval of **Exhibit "A"**. The Government has the right to install and operate transmission cables from the transmitters to the antennas and electric lines from the main feed to the transmitters. The Government may take appropriate means to secure the Premises. The Government has the right to modify, supplement, replace, or upgrade the Antenna Facility at any time during the term of this Agreement with prior approval from Licensor. The Government shall have the right to perform routine maintenance, repairs, replacement, and upgrades to the Antenna Facility within the Premises without the consent of Licensor.
7. **Interference.** (a) Where there are existing radio frequency user(s) on the Property, the Licensor will provide the Government with a list of all existing radio frequency user(s) on the Property to allow the Government to evaluate the potential for interference. The Government represents and warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Licensor, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. (b) Licensor will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Antenna Facility, the operations of the Government or the rights of the Government under this Agreement. Licensor will notify the Government in writing prior to granting any third party the right to install and operate communications equipment on the Property. (c) Licensor will not use, nor will Licensor permit its employees, licensees, invitees or agents to use, any portion of the Property in any way that interferes with the Antenna Facility, the operations of the Government or the rights of the Government under this Agreement.

The radio frequency utilized by the Government equipment governed by this license is within the range of: **NA**

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

LICENSOR:

BY _____ Title _____

Signature

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
BARBARA L. HAMILTON
Assistant City Attorney

IN THE PRESENCE OF:

BY _____ Title _____

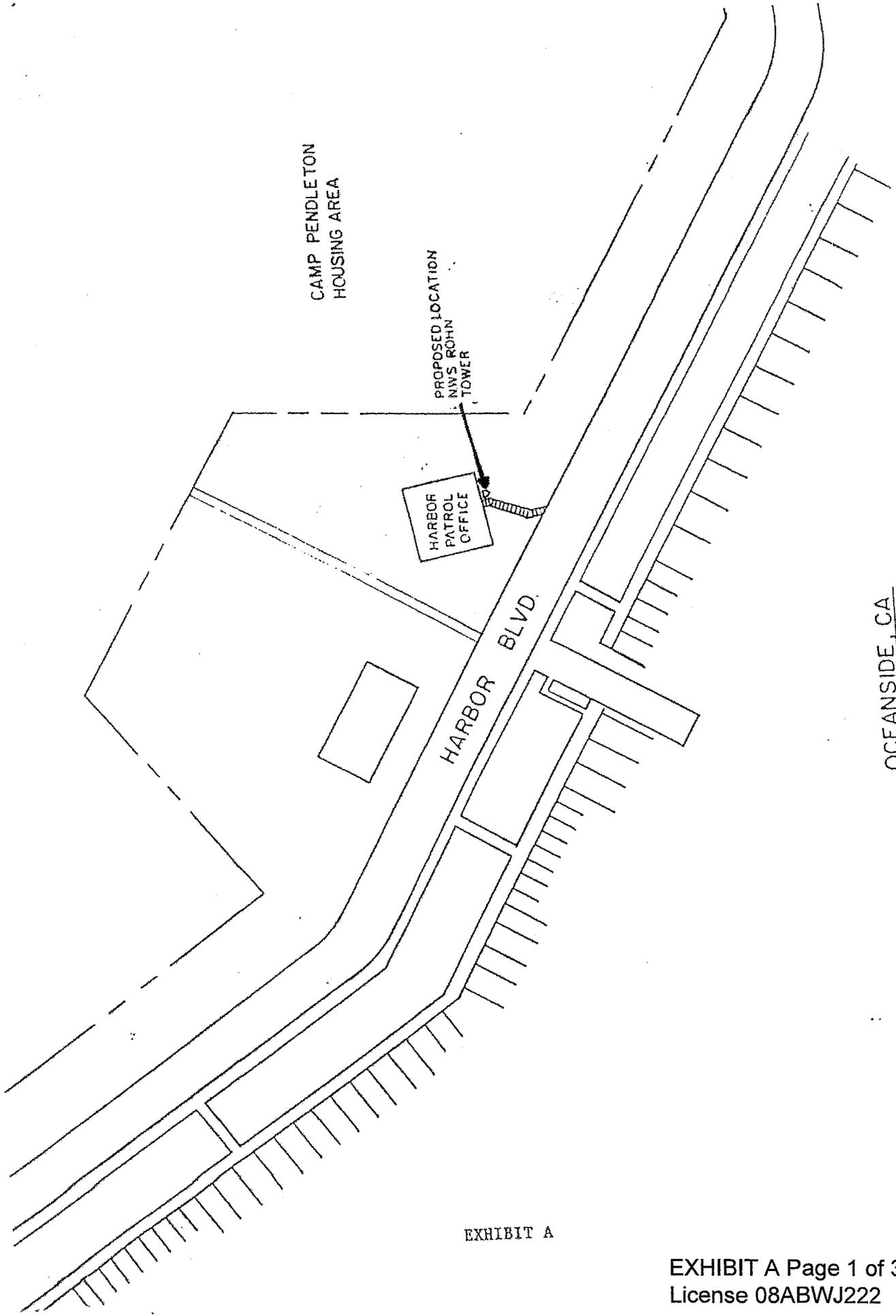
Signature

UNITED STATES OF AMERICA

Signature _____

Department of Commerce
Real Property Contracting Officer

Name of Contracting Officer



CAMP PENDLETON
HOUSING AREA

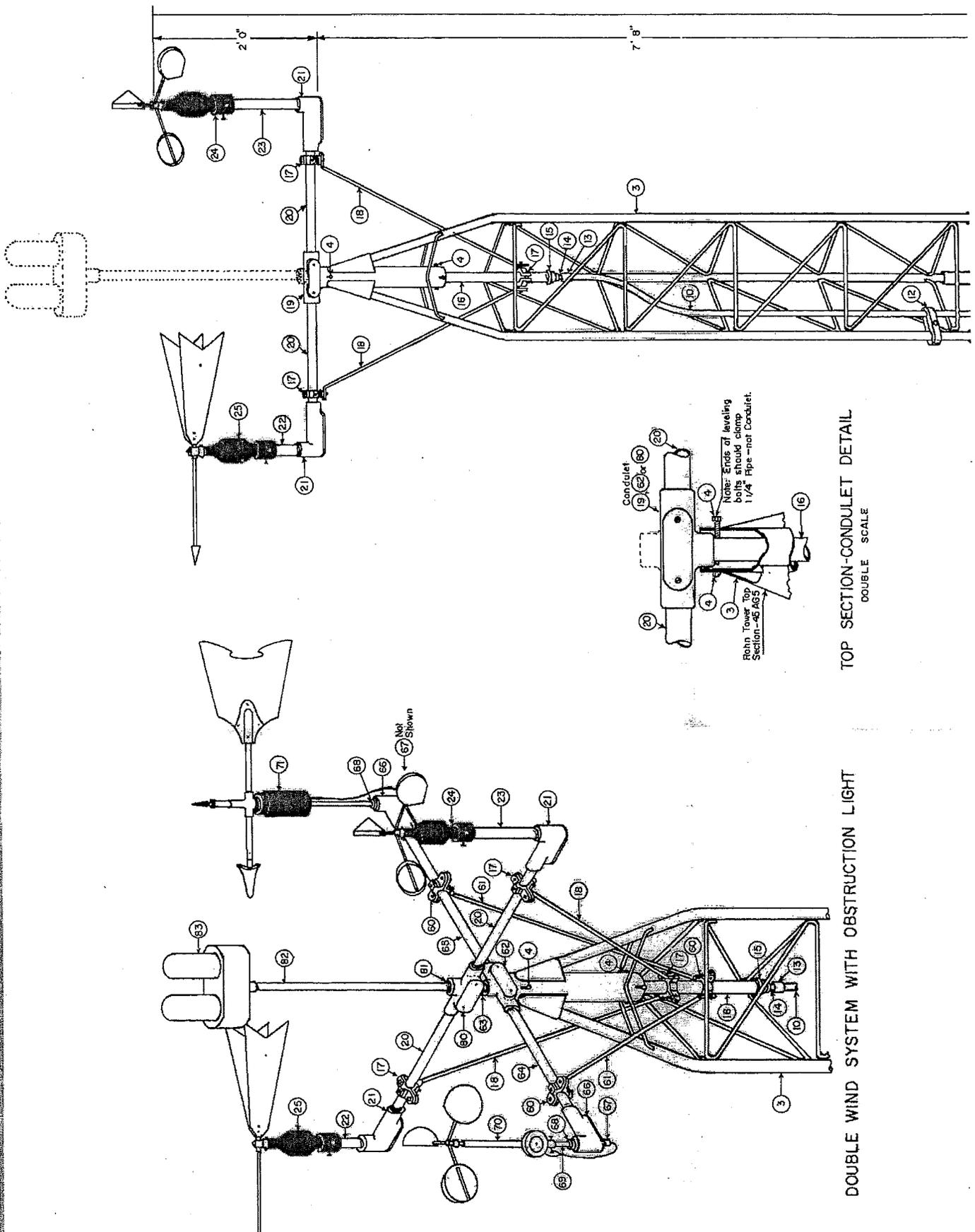
PROPOSED LOCATION
NWS ROHIN
TOWER

HARBOR
PATROL
OFFICE

HARBOR BLVD.

OCEANSIDE, CA
NC SC7-E

EXHIBIT A



6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

See General Terms and Conditions
Exhibit A

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

General Terms and Conditions
Exhibit A

8. The following changes were made in this lease prior to its execution:

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

LESSOR

BY

J. L. Manues
.....
(Signature)

.....
(Signature)

J.L. Manues, Chief Executive Officer

IN PRESENCE OF:

1540 Harbor Drive North
Oceanside CA 92054
.....
(Address)

.....
(Signature)

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

Alfred E. Carlisle
.....
(Signature)

UNITED STATES OF AMERICA

BY

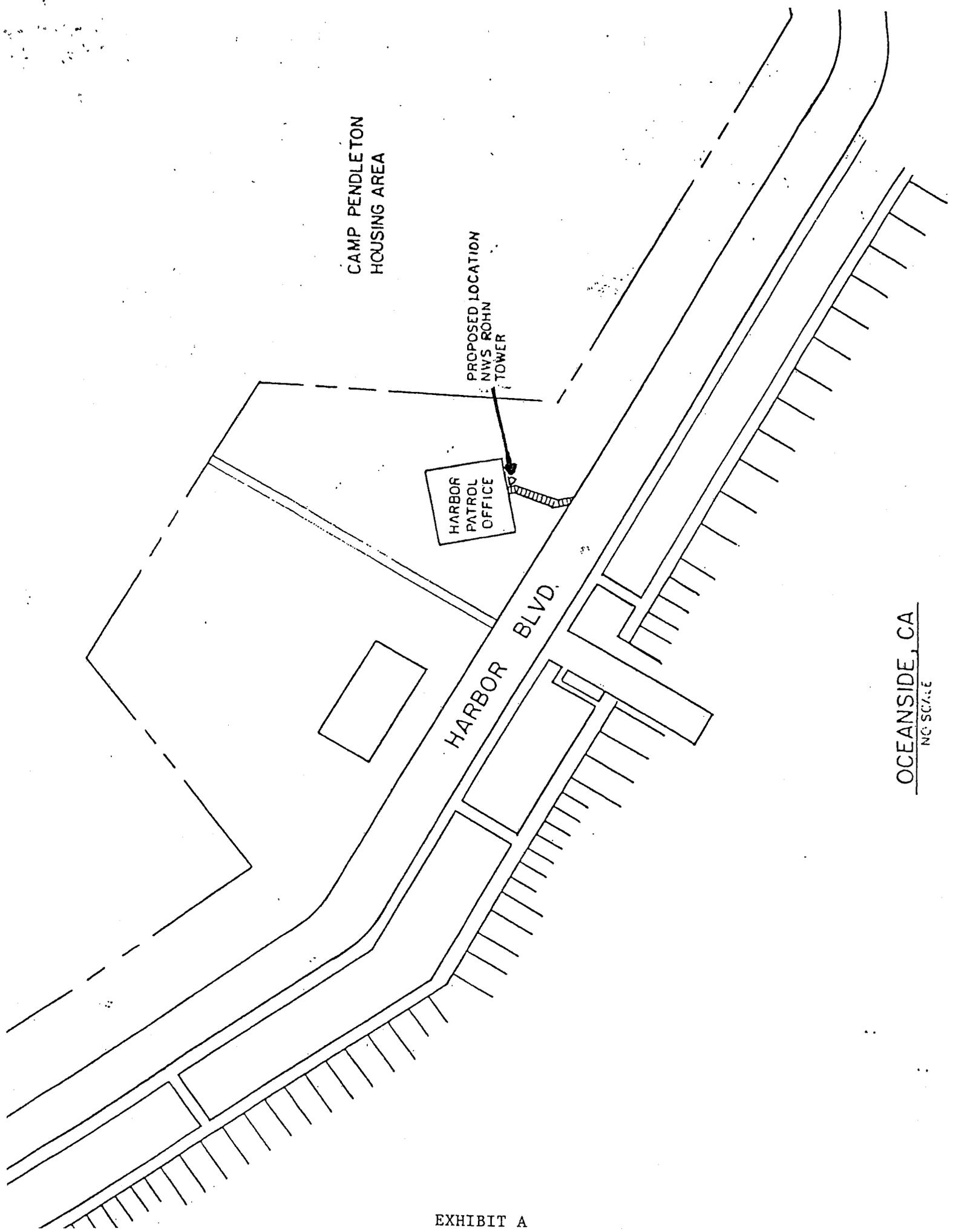
Dean Stewart
.....
(Signature)

Real Property Contracting Officer
.....
(Official title)

General Conditions and Terms

LEASE NUMBER 88-ABF-638

1. The National Weather Service (NWS) shall install and maintain a 55 foot tall tower with wind and communications equipment on a parcel of bare land next to the Harbor Patrol Office (Harbor Master's Building) at Oceanside, California. All work activities connected with the NWS tower shall be performed in a professional and workmanlike manner.
2. The Lessor will, at its own expense, mount an antenna and necessary wiring and electrical connections to the NWS tower, provided that the antenna is mounted below wind and other meteorological equipment affixed to the tower. The Lessor will be responsible for maintaining its antenna.
3. The NWS tower and equipment shall remain the property of the U.S. Government, and upon termination of this lease or succeeding terms, NWS shall remove all equipment and restore the site to its original condition.
4. Government personnel and contractors shall have access to the tower site at all times for maintenance and repair purposes.
5. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.
6. Any claims for damages resulting from the activities of the Department of Commerce, National Oceanic and Atmospheric Administration, under this Lease will be promptly processed by the Department of Commerce under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq, and the Contracts Disputes Act of 1978, 41 U.S.C. 601-613, or other applicable Federal authorities.



CAMP PENDLETON
HOUSING AREA

PROPOSED LOCATION
NWS ROHN
TOWER

HARBOR
PATROL
OFFICE

HARBOR BLVD.

OCEANSIDE, CA
NO SCALE

EXHIBIT A