

Finding of Suitability to Lease

Roadway (10 meters wide) extending from Campanilla Road to Bataan Road and the Toa Baja Landfill, LIC-O-0855

U S Naval Security Group Activity, Sabana Seca, Puerto Rico

In accordance with ASN I&E Memorandum of 22 December 1993, I have reviewed the Environmental Baseline Survey (EBS) and/or related appropriate information concerning this property.

I have determined the subject property is suitable for license to the Municipality of Toa Baja (Mayor of Toa Baja) for use as an access road to the landfill. The following statement applies to the subject property (see additional information below this section):

- Hazardous substance notice requirements do not apply to this property, since no hazardous substances were stored for one year or more, are known to have been released, or were disposed on the property. As no environmentally significant environmental concerns exist regarding the history or condition of the subject property or nature of its proposed use, it is neither appropriate nor necessary to consult regulatory agencies concerning this realty instrument.
- Hazardous substance notice requirements apply and must be complied with, which may necessitate certain restrictions which are attached. However, the property is not contaminated with hazardous substances. The appropriate regulatory agencies have been consulted concerning this realty instrument.
- This property contains some level of contamination by hazardous substances, but can be used pursuant to the proposed realty instrument without risk to human health or the environment or interference with the environmental restoration process with specified use restrictions which are attached. The appropriate regulatory agencies have been consulted concerning this realty instrument.

An Environmental Baseline Survey (EBS) was conducted for the proposed license for use of the access road to the current Toa Baja Landfill. The EBS was conducted by Baker Environmental who submitted the report titled "Environmental Baseline Survey for Bayamon/Toa Baja Landfill Access Road and Surrounding Property, NSGA Sabana Seca, Puerto Rico", dated November 21, 1995.

It is hereby determined that this parcel is suitable for transfer under the terms and conditions, and for the proposed uses, described in the license document and attachments. In addition, the agreement shall guarantee a right of access by the Navy to conduct environmental studies and investigations and to carry out any environmental response actions.

Warren D. Lewis
W. D. Lewis
Head, Environmental Support Branch
Environmental Quality Division
Atlantic Division, Naval Facilities Engineering Command

6/27/96
(Date)

LICENSE FOR NONFEDERAL USE OF REAL PROPERTY

NAVFAC 11011/29 (6-75) (Supersedes NavDocs 2280)

THIS LICENSE TO USE THE U.S. GOVERNMENT PROPERTY HEREIN DESCRIBED IS ISSUED BY THE DEPARTMENT OF THE NAVY TO THE LICENSEE NAMED BELOW FOR THE PURPOSE HEREIN SPECIFIED UPON THE TERMS AND CONDITIONS SET FORTH BELOW AND THE GENERAL PROVISIONS ON THE REVERSE SIDE HEREOF. BY THE EXECUTION HEREOF THE LICENSEE AGREES TO COMPLY WITH ALL SUCH TERMS, CONDITIONS AND GENERAL PROVISIONS.

LICENSE NUMBER LIC-0-0855

All correspondence pertaining to this document should include a reference to

1. NAVAL ACTIVITY (Property location)

U.S. Naval Security Group Activity, Sabana Seca,
Puerto Rico

2. DATES COVERED (Inclusive)

FROM 1 JUL 1996 TO 31 JUN 2001

3. DESCRIPTION OF PROPERTY (Include room and building numbers where appropriate)

Roadway (10 meters wide) extending from Campanilla Road to Bataan Road and a portion of existing Bataan as shown on U.S. Naval Security Group Activity, Sabana Seca, Puerto Real Estate Summary Map 4107671 attached hereto as Exhibit "A."

4. PURPOSE OF LICENSE

To provide Navy for the maintenance, construction of drainage culverts, and clean-up of the roadway, and to provide Toa Baja, owner/operator, access to their adjoining landfill.

5. LICENSOR

Department of the Navy

5a. LOCAL REPRESENTATIVE, DEPT. OF NAVY OFFICIAL (Title and address)

Lieutenant Scott Hinton, Public Works Officer
Public Works Department
U.S. Naval Security Group Activity
Sabana Seca, Puerto Rico FPO AA 34053-1000

6. LICENSEE (Name and address)

The Honorable Victor M. Soto Santiago
Mayor of Toa Baja
PO Box 2359
Toa Baja, PR 00952-2359

6a. LOCAL REPRESENTATIVE (Name and address)

Same as Article 5

7. CASH PAYMENT BY LICENSEE (Payable in advance)

(If no cash payment is required, enter "None" under item 7a "Amount")

a. AMOUNT (Each payment)	b. FREQUENCY PAYMENTS DUE	c. FIRST DUE DATE	d. TO (Title and address of local representative of the Government)
None	None	None	

8. DEPOSIT FOR UTILITIES AND SERVICES (Payable in advance)

(If no cash payment is required, enter "None" under item 8a "Amount")

a. AMOUNT (Each deposit)	b. FREQUENCY PAYMENTS DUE	c. FIRST DUE DATE	d. TO (Mailing Address)
None	None	None	

9. INSURANCE REQUIRED AT EXPENSE OF LICENSEE

(If any of all insurance requirements have been waived, enter "None" in a, b, c, and d as appropriate)

TYPE	MINIMUM AMOUNT	TYPE	MINIMUM AMOUNT
a. FIRE AND EXTENDED COVERAGE	\$ None	c. THIRD PARTY PERSONAL INJURY PER PERSON	\$ 100,000.00
b. THIRD PARTY PROPERTY DAMAGE	\$ 50,000.00	d. THIRD PARTY PERSONAL INJURY PER ACCIDENT	\$ 200,000.00

10. GENERAL PROVISIONS (See Reverse Side)

General Provision 10.d was deleted and General Provisions 10.o - 10.x were added prior to execution of this license.

II. EXECUTION OF LICENSE

FOR	BY		DATE
	NAME AND TITLE (Typed)	SIGNATURE	
DEPARTMENT OF THE NAVY			
LICENSEE			

10. GENERAL PROVISIONS

- a. The Licensor hereby grants to the Licensee the right to use the premises or facilities described in Item 3, together with the necessary rights of ingress and egress.
- b. This License shall be effective for the period stated in Item 2 and is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.
- c. The use shall be limited to the purposes specified herein.
- d. This License shall be neither assignable nor transferable by the Licensee.
- e. If utilities and services are furnished the Licensee for its use of the premises, the Licensee shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.
- f. The Licensee, at its own cost and expense, shall protect, maintain, and keep in good order, the premises or facilities licensed hereby. At the discretion of the Licensor, this obligation shall include, but not be limited to, contribution toward the expense of long-term maintenance of the premises or facilities, the necessity for which accrued during the period of Licensee's use. The amount of expense to be borne by the Licensee shall be determined by prorating the total expense of the item of long-term maintenance on the basis of fractional use by the Licensee. This fractional part of the total expense shall be prorated further if the item of long-term maintenance did not accrue in its entirety during the Licensee's use. Upon a determination by the Licensor that the necessity exists for an expenditure of funds for maintenance, protection, preservation or repair, the Licensee shall pay to the Licensor its proportionate share, on demand.
- g. No additions to, or alterations of, the premises or facilities shall be made without the prior consent of the Licensor. Upon revocation or surrender of this License, to the extent directed by the Licensor, the Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the premises or facilities to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.
- h. The Licensee shall be liable for any loss of, or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the Licensor. The Licensee's liability for loss or damage to the premises resulting from risks expressly required to be insured hereunder shall not exceed the amount of insurance so required. The Licensee shall not be liable for loss of, or damage to, the premises arising from causes beyond the control of the Licensee and occasioned by a risk not in fact covered by insurance and not customarily covered by insurance in the locality in which the premises are situated. Nothing contained herein, however, shall relieve the Licensee of liability with respect to any loss or damage to the premises, not fully compensated for by insurance, which results from willful misconduct, lack of good faith, or failure to exercise due diligence, on the part of the Licensee. All insurance required of the Licensee on the premises shall be for the protection of the Licensor and the Licensee against their respective risks and liabilities in connection with the premises. Each policy of insurance against loss or damage to Government property shall name the Licensee and the United States of America, Department of the Navy, as the insured and shall contain a loss payable clause reading substantially as follows:
- "Loss, if any, under this policy shall be adjusted with (Name of Licensee) and the proceeds, at the direction of the Government, shall be payable to (Name of Licensee), and proceeds not paid to (Name of Licensee) shall be payable to the Treasurer of the United States of America."
- In the event that any item or part of the premises or facilities shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this paragraph h, the Licensee shall promptly give notice thereof to the Licensor and, to the extent of its liability as provided in this paragraph, shall upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the item or items of the premises or facilities so lost or damaged, as the Licensor may elect. If the cost of such repair, rebuilding, or replacement exceeds the liability of the Licensee for such loss or damage, the Licensee shall effect such repair, rebuilding or replacement if required so to do by the Licensor, and such excess of cost shall be reimbursed to the Licensee by the Licensor. In the event the Licensee shall have effected any repair, rebuilding or replacement which the Licensee is required to effect pursuant to this paragraph, the Licensor shall direct payment to the Licensee of so much of the proceeds of any insurance carried by the Licensee and made available to the Government on account of loss of or damage to any item or part of the premises or facilities as may be necessary to enable the Licensee to effect such repair, rebuilding or replacement. In event the Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to the Licensee, the Licensee shall promptly refund to the Licensor the amount of such proceeds.
- i. The Licensee shall indemnify and save harmless the Government, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869, 982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the Licensee, and shall furnish the insurance specified in Item 9. Each policy of insurance required in Item 9 covering bodily injuries and third party property damage shall contain an endorsement reading substantially as follows:
- "The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."
- j. All insurance required by this License shall be in such form, for such periods of time, and with such insurers as the Licensor may require or approve. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited with the Licensor's local representative prior to use of the premises and facilities. The Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to the Licensor's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks.
- k. No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this License or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this License if made with a corporation for its general benefit.
- l. The Licensee warrants that it has not employed any person to solicit or secure this License upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this License or in its discretion to recover from the Licensee the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Licensee upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business.
- m. In connection with the performance of work under this License, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the Licensor setting forth the provisions of the nondiscrimination clause. The Licensee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
- n. All activities authorized hereunder shall be subject to such rules and regulations as regards supervision or otherwise, as may, from time to time, be prescribed by the local representative of the Licensor as designated in Item 5a.

Additional General Provisions:

10.o. This license incorporates the environmental guidelines for maintenance and required clean-up that have been identified in the Environmental Baseline Survey for the Landfill Access Road and Surrounding Property at NSGA Sabana Seca.

10.p. As a condition of this license, Licensee will perform the following: (1) restoration of the damage to the access road that resulted from the illegal road construction that was initiated by Licensee in July, 1994; (2) restoration of the Navy-owned land which has been spoiled by dumpage by the Licensee; (3) plans to control the flow of leachate onto the Navy-owned property; and (4) submission of the plans for closure of the dump. Initial plans to be submitted to the NSGA Sabana Seca Public Works Officer within sixty (60) days after signature of this license.

10.q. General provision 10.d is deleted, and the following is substituted: Licensee as owner/operator of the adjacent landfill is to provide Public Works Officer, U.S. Naval Security Group Activity, Sabana Seca the following documentation: (1) a copy of the contract with the Puerto Rico Land Authority for use of the landfill, (2) a copy of the contract with Bayamon for use of the landfill, and (3) a list of all authorized users of the landfill. These sub-contractors and/or authorized users are deemed to have assumed all the obligations of the Licensee. However, no sub-contract or authorized use shall relieve Licensee of any of its obligations.

10.r. As stated in General Provision 10.j, a certificate of insurance covering the dollar liabilities as shown in Article 9 shall be submitted on annual basis prior to the expiration of the then-current certificate.

10.s. All plans for construction and improvement of the roads must be submitted in writing to the Public Works Officer for approval prior to start of work.

10.t. The new road and segments of the existing roads which are used for hauling refuse and fill material and are described in Article 3 of this license shall be maintained in good condition and repair by the Licensee at its sole cost and expense. The roadways shall be maintained free of litter.

10.u. Licensee will comply with air, water, and environmental quality standards established by the Federal law and/or Puerto Rican Commonwealth law. If more stringent than the Federal standards, Licensee will comply with the Commonwealth of Puerto Rico standards for public health and safety, environmental protection, siting, construction, operation, and maintenance as they they relate to Licensor's use of the property.

10.v. The Licensee shall maintain a gate at the junction of the new roadway with Campanilla Road (Route 865), fences along both sides of the new roadway, and drainage culverts where necessary.

10.w. The Licensee shall station a watchman at the junction of the new roadway with Campanilla Road (Route 865) when the road is in use. The Licensee shall ensure that the gate at this location is locked at all times when not attended by a watchman. A key to the gate lock shall be furnished to the Public Works Officer.

10.x. The Licensee hereby waives and surrenders all rights it has under the indemnification provisions contained in Section 330 of the National Defense Authorization Act, 1933, P.L. 102-484, and agrees that it will seek no remedy from the United States of America under authority of the Indemnification Provision. The Licensee further agrees it will indemnify and hold the United States of America harmless from and against any claim or demand by any successor, assignee, transferee, lender, or sublessee or any other person or entity under the Indemnification Provisions. The foregoing waiver and surrender of rights by the Licensee shall not operate as or be construed to be a waiver or surrender by the Licensee of any rights under any other applicable laws or regulations.

10.y. This license is expressly made subject to Easement NF(R)-18884 to the Commonwealth of Puerto Rico covering the use of 21.8387 acres of land (the De Diego Expressway/Route 22).