

WHEN RECORDED RETURN TO:

**U.S. ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT
ATTN: CESP-K-RE
1325 J STREET
SACRAMENTO, CA 95814-2922**

FOR RECORDER'S USE ONLY

DEPARTMENT OF THE ARMY

EASEMENT FOR RECREATIONAL USES OVER LANDFILL 26

NOVATO, CA

The **UNITED STATES OF AMERICA**, acting by and through the Secretary of the Army under and by virtue of the authority vested in the Secretary by the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. No. 100-526, and Section 9099(e) of Pub. L. No. 102-396, hereinafter referred to as Grantor, hereby grants to RHM Development, LLC, a Limited Liability Corporation, duly organized and existing under the laws of the State of California and hereinafter referred to as Grantee, a perpetual and assignable easement to be exercised in, on and over the property located in the **CITY OF NOVATO, MARIN COUNTY, and STATE OF CALIFORNIA**, as described in Exhibit A hereto (hereinafter referred to as the "Property"), for the purpose of constructing and maintaining certain recreational facilities and similar improvements (collectively the "Recreation Facilities"), including, but not limited to athletic fields, roads, trails, walkways, and parking facilities, which are subject to the Grantor's requirements for construction, operation, and maintenance of the Property as a Class II Landfill (hereafter "Landfill 26") as defined by California law, and which are subject to the advance written approval of the Grantor and applicable environmental regulatory agencies, as more specifically set forth herein in Paragraph 12.b (hereafter the "Environmental Regulatory Agencies"). (Unless the context provides otherwise, the term "Grantor" shall include the assigns of the United States and the successors and assigns of the Department of the Army, and the term "Grantee" shall include the successors and assigns of the Grantee.)

THIS EASEMENT is granted subject to the following conditions:

1. CONSIDERATION

The consideration for this easement is TEN DOLLARS (\$10.00), the receipt and sufficiency of which is hereby acknowledged.

2. RIGHTS OF THE GRANTEE

a. Subject to: (1) the Final Closure and Post Closure Maintenance Plan for Landfill 26, former Hamilton Army Airfield, Novato, CA, dated June 2011 (Final CPCMP), and notification requirements of the Environmental Regulatory Agencies concerning the construction on the Property pursuant to Title 27, Section 21190 of the California Code of Regulations or such other laws and regulations that may become applicable to such post closure and notification; (2) the Grantor's requirements for construction, operation, and maintenance of the Property as a Class II Landfill under Title 27 California Code of Regulations, Subchapter 5, Article 1, Sections 20950 through 21200, as more specifically set forth in the Final CPCMP, which Grantee has acknowledged receipt thereof; and (3) the Grantor's advance written approval as provided herein, the Grantee may occupy, hold and possess all of the Property, in perpetuity, construct, maintain and operate Recreation Facilities on the Property; build, maintain and operate access roads throughout the Property connecting public roads with Recreation Facilities located on the Property; install, maintain and operate electrical, sewer, gas, water and telephone lines upon or across or underneath the Property for the purpose of servicing Recreation Facilities thereon; and to grant others the right to occupy, hold and possess the Recreational Facilities subject to the terms and conditions of this easement.

b. The Grantee, at its sole cost and expense, shall be required to modify or amend the Grantor's Final CPCMP, as necessitated by the Grantee's activities on the Property.

3. CONDITION OF THE PROPERTY

The Grantee acknowledges that it has inspected the Property, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the Grantor. Grantee also understands and agrees that all costs associated with removing any restrictions of any kind whatsoever contained in this easement, whether necessitated by an environmental or other law or regulation, shall be the sole responsibility of Grantee, without any cost whatsoever to the Grantor.

4. RIGHT TO ENTER

a. The United States retains and reserves a right of access on, over, and through the Property, to enter upon the Property for the purposes of maintaining them a Class II Landfill, and in any case in which an environmental response or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response or corrective action is on the Property or on adjoining or nearby lands. Such right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring,

coring, test pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws. Such right of access shall be binding on the Grantee and shall run with the land.

b. In exercising such right of access, the United States shall provide the Grantee with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee, nor its successors and assigns, for the exercise of the right of access hereby retained and reserved by the United States.

c. In exercising such right of access, the Grantee shall not have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee of any remedy available under the Federal Tort Claims Act.

5. OTHER GOVERNMENT ACCESS

The Grantor currently has unrestricted access rights to and across the Property which must be maintained. Grantee may request that the Grantor abandon such current access over Todd's Road and Aberdeen Road in favor of an equivalent replacement route. The Grantor, in its sole discretion, may elect to abandon use of the existing access over Todd's Road and Aberdeen Road, subject to the Grantee's provision of an equivalent substitute, which includes all weather access and the capacity for oversized/heavy loads, at no cost to the Grantor.

6. OWNERSHIP OF RECREATIONAL FACILITIES

Grantor shall have no ownership or other interest in any Recreational Facilities and Grantee may remove any or all Recreational Facilities at any time.

7. TAXES

Grantee shall be responsible for all taxes (i.e., both real property taxes and personal property taxes) levied against the Property attributable to the establishment of this easement and associated activities by Grantee hereunder.

8. REQUIREMENTS OF GOVERNMENTAL AGENCIES

At the sole cost and expense of the Grantee, Grantor shall cooperate with Grantee in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, maintenance, operation or removal of Recreational Facilities, including execution of applications for such approvals.

9. ESTOPPEL CERTIFICATES

Within thirty (30) calendar days of Grantee's request, and at the sole cost and expense of the Grantee, Grantor shall execute such estoppel certificates as may reasonably be required by the Grantee, certifying as to the status of this Easement and the performance by the Grantee of its obligations under this Easement as of the date of such certification.

10. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee shall use reasonable efforts to cooperate in amending this Easement provided that no amendment or modification shall be inconsistent with or interfere with the Grantor's requirements for construction, operation, and maintenance of the Property as a Class II Landfill. All amendments and modifications requested by the Grantee hereunder, shall be at the sole cost and expense of the Grantee.

11. EXTINGUISHMENT

Following a development and construction period of up to five (5) years from the date of execution of this Easement, this easement may be terminated by the Secretary upon 30 days written notice to the Grantee for non-use for a period of four (4) years.

12. ENVIRONMENTAL RESTRICTIONS

a. The following environmental restrictions are being created to protect human health and the environment against residual contaminants as a component of the remedial action taken on the Property by the Grantor. Specifically, refuse and waste material within Landfill 26 is known to contain residual amounts of chemical contaminants, soil gases, consisting of methane, and contaminated groundwater. In order to prevent: (i) Humans and wildlife from exposure to contamination within Landfill 26; (ii) Degradation of surface water and groundwater at the Property boundary; (iii) Risk to human health associated with methane resulting from a buildup of such methane; and (iv) Humans and wildlife from being exposed to contaminants in groundwater, the Grantee is prohibited from undertaking the following actions with respect to the Property:

- (1) Grantee shall not use any of the Property for residential use.

(2) Grantee shall not use or extract the groundwater from the Property for any purpose, except as allowed by permit from or agreement with the Environmental Regulatory Agencies.

(3) Grantee shall not inject water into the ground or apply surface water in a manner that it percolates into the waste material of the landfill or affects the integrity of the landfill.

(4) Grantee shall not disturb, move, damage, mar, tamper with, interfere with, obstruct, or impede any monitoring wells, treatment facilities, piping, venting systems, and other facilities associated with any environmental investigation, response action or other corrective action of the Grantor on the Property.

(5) Grantee shall not excavate or move soils in a manner that affects the integrity of the Landfill 26 cap, to include any changes to the existing slope or contour of the Property.

(6) Grantee shall not construct nor create any groundwater recharge area, surface impoundments or disposal trenches.

(7) Grantee shall not engage in any activities that will disturb the soil (e.g. excavation, grading, removal, trenching, filling, earth movement or mining) without the approval of the Grantor and the Environmental Regulatory Agencies as provided in this easement. All landscaping and irrigation activities on the landfill cap will be subject to approval of the Grantor and the Environmental Regulatory Agencies, including the requirements defined in the site's Waste Discharge Requirements (SF Bay Regional Water Board Permit).

b. Construction of any improvements on the Property shall be subject to the notification and the advance written approval of: (i) the Department of Toxic Substances Control; (ii) the California Regional Water Quality Control Board, San Francisco Bay Region; (iii) the California Department of Resources, Recycling, and Recovery; (iv) the Bay Area Air Quality Management District; (v) the Marin County Environmental Health Services; (vi) and the Grantor, or any of their successors, to ensure the construction of any such improvements on the Property do not interfere with the Landfill 26 remedy.

c. Grantee shall comply, at its sole cost and expense, with all Environmental Laws that are or may become applicable to the Property or Grantee's activities on the Property, including but not limited to all applicable federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. Grantee shall at its own expense maintain in effect any permits, license or other governmental approvals relating to Hazardous Substances, if any, required for the Grantee's use.

d. The term "Hazardous Substance" means any substance that is at any pertinent time defined or listed in, or otherwise classified, designated, or regulated pursuant to, any Environmental Law as a hazardous substance, hazardous material, extremely hazardous substance, hazardous waste, hazardous chemical, infectious waste, toxic substance, toxic pollutant or solid waste, or any other legislative or regulatory formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, including, without limitation, friable asbestos and polychlorinated biphenyls and also including oil and petroleum, petroleum products, by-products and wastes, and by-products associated with the extraction, refining, or use of petroleum or petroleum products, whether or not so defined, listed, classified, designated or regulated in "Environmental Laws."

e. The term "Environmental Law" means any statute, law, act, ordinance, rule, regulation, order, decree, or ruling of any Federal, State and/or local governmental, quasi-governmental, administrative or judicial body, agency, board, commission or other authority relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release, and/or transportation of Hazardous Substances, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Emergency Planning and Community Right To Know Act, and the environmental control laws of the State of California, each as now or hereafter amended, and all regulations and interpretive guidelines respectively promulgated thereunder.

13. RELOCATION OF GRANTOR FACILITIES

Grantee may request that the Grantor abandon the former Landfill 26 treatment facility, located at 737 Todd's Road, Novato, CA 94949 on the Property. The former Landfill 26 treatment facility is currently being used as a field office and plant nursery for the Hamilton Wetland Restoration Project and as a field office for Landfill 26 monitoring activities. Future uses of this facility by the Grantee are undetermined at this time. The Grantor, in its sole discretion, may elect to abandon such facility, subject to the Grantee's provision of substitute facilities which include equivalent security, ingress and egress, and functional utilities and their rights-of-way, at no cost to the Grantor. The relocation of equipment used at the former Landfill 26 treatment facility, at the time of abandonment under this clause, shall be facilitated by the Grantee at no cost to the Grantor.

14. ACCESS.

a. Grantor also grants to Grantee the right of ingress to and egress from Recreation Facilities (whether located on the Property, on adjacent property, or elsewhere) over and across the Property by means of existing or future roads or lanes on the Property constructed by Grantor or otherwise by such route or routes as Grantee may construct from time to time, so long as such access does not interfere with the Grantor's

requirements for construction, operation, and maintenance of the Property as a Class II Landfill.

b. The Grantee shall grant to the Grantor and the Environmental Regulatory Agencies, any necessary rights of access (including easements or rights of way) that may be reasonably necessary for the Grantor and the Environmental Regulatory Agencies to access Landfill 26 and adjacent property, including the groundwater treatment system, and monitoring wells for the long-term management of the landfill.

15. PROTECTION OF GOVERNMENT PROPERTY

The Grantee will be responsible for any damage that may be caused to property of the Grantor by the activities of the Grantee under this easement. Any property of the Grantor damaged or destroyed by the Grantee incident to the exercise of privileges herein granted shall promptly be repaired or replaced by the Grantee to the satisfaction of the designated officer of the Grantor, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer within One Hundred Eighty (180) days of such damage, or such other time as agreed to by the Grantor, in the Grantor's sole discretion.

16. GRANTEE OBLIGATIONS REGARDING ACTIONS ADVERSELY AFFECTING LANDFILL 26

a. Grantee shall notify the Grantor immediately of the discovery of any activities conducted by Grantee, its agents, employees or others who may be on the Property at their invitation or the invitation of any one of them interfering with or adversely affecting Landfill 26 or any remedial systems associated with Landfill 26, to include groundwater or soil vapor extraction, treatment, or monitoring systems on the Property. Upon the discovery of any such activities, Grantee will immediately secure the site, and will not further disturb the affected area without the written permission of the Grantor.

b. In the event the Grantee's activities cause the failure of the landfill, regardless of whether the Grantee has obtained approvals from either the Grantor or any of the Environmental Regulatory Agencies, the Grantee will nevertheless be responsible for any corrective action necessary to restore the landfill remedy and to bring the landfill back into compliance with all applicable environmental laws as defined below.

c. As operator of the Recreational Facilities, Grantee shall agree to be a responsible party, for compliance with all approvals and permits with respect to the landfill, or the Grantee's activities on the landfill.

17. LIABILITY

a. The Grantor shall not be responsible for damages to property or injuries to persons which may arise from or incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents,

or employees or others who may be on the Property at their invitation or the invitation of any one of them, and the Grantee shall hold the Grantor harmless from any and all such claims.

b. Grantee shall indemnify and hold the United States harmless from all claims, liability, loss, cost, environmental contamination, or damage arising out of or resulting from any improvements made to or work conducted on the Property by the Grantee, its agents, employees, or contractors, except where such claims, liability, loss, cost, environmental contamination, or damage is the result of the gross negligence or willful misconduct of the Grantor or its employees, agents, or contractors.


18. DISCLAIMER

This Grant is effective insofar as the rights of the Grantor in the Property are concerned and is subject to existing utility and other public and private easements, rights, and rights-of-way, and restrictions, covenants, and conditions, whether or not of record. Grantor hereby covenants and agrees that it shall not hereafter grant to other persons any rights in the Property that are incompatible with Grantee's use of the Property as contemplated herein.

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IN WITNESS WHEREOF, I have set my hand by authority of the Secretary of the Army, this 16th day of July, 2012.

UNITED STATES OF AMERICA

By: 
SCOTT L. WHITEFORD
Director of Real Estate
Headquarters U.S. Army Corps of Engineers

NOTARIAL CERTIFICATE

DISTRICT OF COLUMBIA: SS

I, Joan M. Markley, a Notary Public in and for the District of Columbia, do hereby certify that this 16th day of July, 2012, Scott L. Whiteford, Director of Real Estate, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by him for the purposes therein stated and that he had due authority to sign the document in the capacity therein stated.


Notary Public

My Commission expires the _____ day of _____
Joan M. Markley
Notary Public, District of Columbia
My Commission Expires 10/14/2014

EXHIBIT A

LEGAL DESCRIPTION

BEGINNING at a point which bears South 87° 24' 36" West 710.96 feet from the most Northerly corner of Lot 1 as shown on the Map of Hamilton Field, recorded December 18, 1995, in Book 21 of Maps, at Page 45, Marin County Records; thence South 37° 52' 54" West 361.02 feet; thence North 72° 10' 53" West 47.54 feet; thence South 17° 49' 07" West 96.13 feet; thence South 06° 57' 39" West 187.39 feet; thence South 28° 22' 37" West 615.49 feet; thence South 80° 04' 37" West 453.18 feet; thence along a curve to the right tangent to the preceding course, having a radius of 270.00 feet; through a central angle of 57° 51' 06", an arc length of 272.62 feet; thence North 42° 04' 17" West 18.05 feet; thence along a curve to the right tangent to the preceding course, having a radius of 290.00 feet, through a central angle of 47° 55' 43", an arc length of 242.59 feet; thence North 05° 51' 26" East 423.59 feet; thence North 13° 53' 28" West 153.07 feet; thence North 16° 01' 13" West 417.48 feet; thence North 39° 48' 20" East 838.72 feet; thence North 39° 00' 27" East 326.67 feet; thence South 51° 10' 25" East 561.68 feet; thence South 28° 29' 09" East 194.22 feet; thence South 24° 17' 15" East 550.03 feet to the Point of Beginning.