



CITY OF SAN DIEGO
REAL ESTATE ASSETS – AIRPORTS DIVISION
3750 John J. Montgomery Drive
San Diego, CA 92123

REQUEST FOR PROPOSALS (RFP) COVER SHEET

Solicitation Type: Lease for the Rehabilitation/Development and Operation of 2.8 Acre Site with Aircraft Hangers located on Montgomery-Gibbs Executive Airport at 8622 Gibbs Drive, San Diego, CA 92123

Solicitation Number: RFP No.1

Solicitation Issue Date: March 15, 2017

Proposal Due Date and Time (Closing Date): 5:00 p.m. Pacific Time on Friday, April 17, 2017

City Contact: **Brandi Mulvey**, bmulvey@sanidiego.gov

Recommended Site Inspection: Monday, March 27, 2017 at 10:00 a.m. at Montgomery-Gibbs Executive Airport, 8622 Gibbs Drive, San Diego, CA 92123. Contact City Contact by Friday, March 24, 2017, at bmulvey@sanidiego.gov, phone (858) 573-1433 or fax (858) 279-0536, if you are planning to attend.

Questions and Comments Due: No later than Tuesday, April 4, 2017 at 5:00 p.m. Pacific Time.

Duration of Offer: By submitting a proposal, the proposer guarantees that the offer is firm for ninety (90) calendar days commencing the day following the Closing Date. Proposer agrees to accept a resulting lease subject to the terms and conditions stated herein. If a tentative award is not made during that period, proposer’s offer shall automatically extend for another ninety (90) calendar days unless the proposer indicates otherwise in writing thirty (30) calendar days prior to the end of the first ninety (90) calendar day period to the City Contact.

PROPOSER’S AUTHORIZED REPRESENTATIVE. Proposer is required to sign this document and return one (1) original (suitable for reproduction) and seven (7) bound copies of their proposal in sealed envelopes or cartons to the City Contact. Proposer shall also include an electronic copy of their proposal. Proposer agrees to rehabilitate/develop, operate and lease the Premises set forth or otherwise identified above subject to the terms and conditions specified herein. An original signature below is required. By signing below, the signer declares under penalty of perjury that she/he is authorized to submit and sign this proposal.

Signature of Proposer’s Authorized Representative

Print Name

Title

Signature

Date

The City of San Diego (City) is requesting proposals from qualified firms or individuals, (hereinafter referred to as “Proposers”) to rehabilitate/develop, operate and lease the City-owned real property located on Lot 8A (approximately 2.8 acres) at 8622 Gibbs Drive, San Diego, California 92123 (Premises). The City is seeking proposals that serve the best interest of the public while maximizing the economic viability of the Premises and ensuring a sustainable revenue source to the City. The rehabilitation/development, operation and leasing of the Premises shall be in accordance with the terms and conditions contained in this RFP, and, if awarded, pursuant to a lease agreement (Lease) for the Premises to be negotiated with the City and subject to approval by the San Diego City Council.

A. TYPE OF PROPOSALS SOUGHT

The City is seeking proposals to rehabilitate/develop, operate and lease the Premises on Montgomery-Gibbs Executive Airport (“Airport” or “MYF”). The Premises is paved and fenced with the main access from Gibbs Drive and is improved with 34 T-hangars ranging in size from 950 to 1,600 square feet, four (4) tie-downs and a freestanding hangar of approximately 9,250 square feet, and is more specifically described as Lot 8A on the Airport as set forth on attached **Exhibit A and Exhibit B**.

Proposals should reflect the City’s desire to have an operator who provides a high level of service to the public while it manages, rehabilitates/develops, leases, operates, and maintains the Premises for use of general aviation aircraft with a certificated gross weight of 12,500 lbs. or less and related activities in a fiscally responsible manner that produces the most revenue for the City. The Proposer selected by the City (“Selected Proposer”) shall demonstrate the ability to manage, rehabilitate/develop, maintain and operate the Premises in a manner that will meet or exceed the objectives of the City. Pre-Proposal Inspections are scheduled so that proposers may inspect the facilities with representatives from the City available to answer questions.

B. AREA OVERVIEW AND BACKGROUND

1. Kearny Mesa Community. Kearny Mesa is located between the communities of Clairemont to the west, Tierrasanta to the east, Miramar/Mira Mesa to the north, and Linda Vista/Serra Mesa to the south. The area is bordered by the following major highways of San Diego: Highway 52 on the north; Interstate 805 and Highway 163 to the west; and Interstate 15 to the east.

Beginning in 1955 with General Dynamics, numerous aerospace, electronics, and other industrial and office firms have located in the area. Portions of Kearny Mesa, predominantly west of Highway 163, also include commercial development. Residential development is limited but increasing in recent years, particularly with the development of Stonecrest in the southeast corner of the community and the redevelopment of the General Dynamics site, now known as Spectrum.

2. Montgomery-Gibbs Executive Airport. MYF is located at 3750 John J. Montgomery Drive, San Diego, CA 92123. MYF is centrally located in the Kearny Mesa area of San Diego, California with its main entrance off of Aero Drive, which connects to Interstate 15 to the east and Highway 163 to the west. MYF consists of 456 gross acres. MYF has three runways with one being a precision approach runway (28R). MYF is the busiest general aviation airport in San Diego County and the Federal Aviation Administration (FAA) has classified MYF as a reliever airport to the San Diego International Airport. A reliever airport is an airport that serves general aviation aircraft that might otherwise use a congested air carrier airport. Airline passengers benefit by experiencing fewer delays due to air traffic congestion.

The City purchased the airport from William (Bill) Gibbs in 1947. The Airport, originally known as Gibbs Field, opened in 1937 with a single runway. In 1940 Bill Gibbs leased the Airport to Ryan

School of Aeronautics to train Army Air Corps cadets to fly.

On May 20, 1950 the City named the Airport “Montgomery Field” in honor of John J. Montgomery who is credited with making the first controlled flight in a fixed wing aircraft. Mr. Montgomery's first glider flight took place in the Otay Mesa area of San Diego in 1883.

On January 12, 2016 the City re-named the Airport to the name it has now, “Montgomery-Gibbs Executive Airport” to honor the original developer of the airport Mr. William Gibbs and to provide a vision for the future of the Airport.

Today, MYF is a busy general aviation airport. General aviation encompasses all aviation except air carrier and military. The types of general aviation aircraft that operate at MYF include: private, corporate, charter, air ambulance, law enforcement, fire rescue, flight training, and cargo.

MYF consists of a great mix of aeronautical and non-aeronautical users, including;

- Fixed Base Operators (FBO’s) with pilots lounge, rental cars and restrooms
- Aviation fuel providers
- Aircraft parking
- Hangar leasing
- Aircraft sales/maintenance
- Flight training
- Helicopter flight training/maintenance
- Restaurants
- Hotel
- Law enforcement and fire-rescue air operations
- Air ambulance
- Air charter
- Flying clubs
- Light cargo
- Pilot shop

The Airport is open for aircraft takeoffs and landings 24 hours a day, 7 days a week. The control tower is open from 6:00 AM - 9:00 PM daily. After hours, MYF is an uncontrolled airport.

Additional information regarding the Airport is available on the City’s website at:

<http://www.sandiego.gov/airports>

C. DEVELOPMENT/OPERATING PLAN

The City is seeking a Proposer to rehabilitate/develop the Premises and to lease, operate, and maintain the Premises. Each Proposer should demonstrate the ability to support the City’s desire to rehabilitate/develop and lease the Premises for the benefit of the general public, users and visitors of the Premises and the surrounding community.

Proposals must include a conceptual rehabilitation/development plan for the Premises, along with any proposed changes or additions to the existing facilities. Proposals should identify the services to be provided at the Premises. Proposals should include, at a minimum, detailed responses for the following requirements (Development/Operating Plan):

1. A preliminary site and floor plan showing the general location of all of the existing and any proposed capital improvements and/or major equipment on the Premises including

the schedule of all work, a description of any demolition proposed, narrative description, preliminary plot plan, a projection of construction costs, and compatibility of the improvements with the entire Airport. Drawings do not need to be detailed construction drawings but should be drawings to a consistent scale in sufficient detail to clearly show the types, dimensions and locations of all proposed improvements and facilities.

2. The necessary trade fixtures and equipment, if any, to be provided by the Proposer needed to provide the level of service to be required under the Lease. Title to those fixtures and equipment would remain vested in the Selected Proposer unless negotiated otherwise.
3. A proposed lease term not to exceed fifteen (15) years and a statement justifying the proposed lease term, which shall include a statement of annual gross revenue projections from all operations for the proposed term of the Lease.
4. A proposed rental amount to be paid to City, appropriate to the proposed use of the Premises, including the value of the public benefit to the community and the City if rent is below market value (see Section D.4, below, for further information).
5. A proposed operating plan, which shall include at a minimum the following: proposed uses; hours of operation; fees and charges, if any; proposed services; and/or benefit to the community including a description of how the Proposer will operate, the community need that will be met, and the anticipated number of clients that will be served.
6. Pro-forma financial statements to include balance sheets, income statements and cash flow statements and should be based on one, five and ten year periods for the operation.

All aspects of the Development/Operating Plan, including proposed uses, fees, improvements, and demolition, are subject to approval by the City.

Proposals shall consider all applicable laws and available industry guidelines as they apply to liability, public health standards, operations, Americans with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment. Proposals must address any required off-site improvements, including but not limited to, curbs, gutters, sidewalks, utilities, landscaping, and ADA compliance for the Premises.

Additionally, each Proposer in preparing his/her proposal should consider all available industry guidelines as they apply to liability, public health standards, FAA standards, including Safety Management Systems (SMS) Compliance. Although the use of SMS are not required by the FAA as of the date of this RFP, it is anticipated that during the term of a lease with the Selected Proposer that the FAA will mandate SMS compliance for general aviation airports, which would include the Airport. Each Proposer should also consider ADA access, and what will be needed for the highest standards of maintenance of all facilities and equipment.

If applicable, the Selected Proposer will be responsible to bring all buildings up to code and make all necessary ADA improvements. The Selected Proposer will need to provide adequate aircraft parking outside of any taxiway on the Premises. The Selected Proposer will be required to landscape and maintain the landscape and watering systems on the Premises, install a restroom on the Premises, paint all existing improvements and rehabilitate the pavement located on the Premises.

The Selected Proposer may assume leases, permits and/or invoices, if any, for the free-standing hangar, T-hangars and/or tie-downs on the Premises subject to the rights of the parties in possession.

D. LEASE TERMS

The City anticipates entering into a Lease with the Selected Proposer to memorialize in detail the elements of the selected proposal. The Premises will be leased to the Selected Proposer in its present condition without representation or warranty, and subject to the rights of parties in possession, if any. The following terms and conditions will be incorporated into the Lease to be negotiated and executed between the Selected Proposer and the City. The Lease will be substantially in the form of **Exhibit C**, which is subject to modification, deletion, and additional terms and conditions as determined by the City, in the City's sole discretion. The Lease in **Exhibit C** should be reviewed by all Proposers. If the Proposer intends to request a deviation from the terms and conditions of the Lease in **Exhibit C**, the proposal must specifically identify the terms and conditions being deviated from and address the requested deviation(s). The City is not obligated to accept any proposal, whether conforming or non-conforming. Proposers must include a proposal for each of the following terms of the Lease:

1. Uses. The Proposer's primary use of the Premises shall be limited to the management, rehabilitation/development, operation and maintenance of the Premises for use of general aviation aircraft with a certificated gross weight of 12,500 lbs. or less and related activities and incidental uses associated with its successful operation. Acceptability of proposed uses is at the discretion of the City.
2. Term. The proposed term of the Lease must be justified by the Proposer on the basis of capital investment in equipment, facilities and in promoting the Premises and services to the general public. The proposed term of the Lease shall not exceed fifteen (15) years.
3. Rent. The Proposer should offer in his/her proposal an initial annual rental rate. The initial annual rental rate offered shall not be less than One Hundred Fifty Thousand Dollars (\$150,000).

The initial annual rental rate shall be adjusted upward annually during the term of the Lease based on the Consumer Price Index or Market Rent Adjustment, as further described in the Lease in **Exhibit C**. In no event shall the adjusted rent be less than the rent in existence immediately preceding the adjustment.

4. Utilities. The Selected Proposer shall order, obtain and pay for all utilities and service and installation charges in connection with the Premises, subject to obtaining all applicable approvals and permits. All utilities shall be installed underground.
5. Public Safety. The Selected Proposer will be responsible to comply with all applicable local, state and federal laws, rules and regulations, including the CITY's rules and regulations pertaining to Real Estate Assets Department's Airports Division.

E. DEVELOPMENT AND MAINTENANCE REQUIREMENTS

By signing this RFP and submitting a proposal, the Proposer certifies that he or she is aware of the following development requirements.

1. Construction Requirements. The Selected Proposer will construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not

limited to, competitive bidding requirements, the California Environmental Quality Act and ADA.

2. Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under the Lease is subject to State prevailing wage laws. For construction work performed under the Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under the Lease cumulatively exceeding \$15,000 (public works contracts), the selected Proposer and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

a. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the selected Proposer and its contractors and subcontractors shall ensure that all workers who perform work under the Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(i) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The selected Proposer and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

(ii) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of the Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the Lease, each successive predetermined wage rate shall apply to the Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the Lease, such wage rate shall apply to the balance of the Lease.

b. Penalties for Violations. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.

c. Payroll Records. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them

available for inspection. The selected Proposer shall require its contractors and subcontractors to also comply with section 1776. The selected Proposer and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. The selected Proposer is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. The selected Proposer, its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- d. Apprentices. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The selected Proposer shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- e. Working Hours. The selected Proposer and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- f. Required Provisions for Subcontracts. The selected Proposer shall include at a minimum a copy of the following provisions in any public works contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- g. Labor Code Section 1861 Certification. The selected Proposer in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Lease, the selected Proposer will certify that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- h. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will instruct the selected Proposer to withhold contract payments pursuant to a public works contract with the selected Proposer's contractor when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- i. Contractor and Subcontractor Registration Requirements. Certain work performed pursuant to the Lease is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not engage in the performance of any public work

contract unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5.

- (i) The selected Proposer's inadvertent error in listing a contractor or subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to this RFP shall not be grounds for filing a protest or grounds for considering the proposal non-responsive provided that any of the following apply: (1) the contractor or subcontractor is registered prior to the Proposal Due Date; (2) within twenty-four hours after the Proposal Due Date, the contractor or subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the contractor or subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
 - (ii) A public works contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, selected Proposer, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
 - (iii) By submitting a proposal to the City, the selected Proposer is certifying that he or she has verified that all contractors and subcontractors used on any public works project at the Premises are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and the selected Proposer shall provide proof of registration to the City upon request.
3. **Performance and Payment Bond.** The Selected Proposer shall provide to City, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to City. The bond shall insure that the construction to be commenced by the Selected Proposer shall be completed in accordance with the plans approved by City or, at the option of City that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the Selected Proposer.

Prior to the commencement of any work on the Premises, the Selected Proposer shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. The Selected Proposer shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, the Selected Proposer shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

4. Community Meetings. Upon request, the Selected Proposer shall present the proposed lease of the Premises to the Airports Advisory Committee and City Council for review and approval and be available to answer questions.
5. Environmental Documents. The Selected Proposer shall be responsible for preparing all required environmental documents to the satisfaction of the City.
6. Site Inspections. All costs relating to site inspections and remediation shall be the sole and complete responsibility of the Selected Proposer.
7. Ownership of Improvements. All improvements, except trade fixtures and equipment installed by the Selected Proposer, shall become the property of the City, at the City's option, upon termination of the Lease. If the City elects, all improvements shall be removed from the Premises at the termination or expiration of the Lease, at the Selected Proposer's sole cost and expense. If the City elects to retain the improvements, the Selected Proposer must remove all trade fixtures and personal property upon termination without cost to the City or damage to the Premises.

F. RESPONSIBILITY OF PROPOSERS

1. Proposers are responsible for carefully examining this RFP and all documents incorporated into this RFP by reference before submitting a proposal. Any data furnished by the City is for informational purposes only and is not warranted. Proposer's use of any information shall be at the Proposer's own risk. Failure on the part of any Proposer to examine, inspect, and to be completely knowledgeable of the terms and conditions of a final lease agreement, operational conditions, or any other relevant documents of information shall not relieve the Selected Proposer from fully complying with this RFP. If selected for award of a lease, the Selected Proposer shall be bound by same unless the City has accepted Proposer's exceptions, if any, in writing.
2. Each Proposer is responsible for making all investigations and examinations necessary for formulating proposals for managing, rehabilitating/developing and operating the Premises. Submission of a proposal shall be considered evidence that the Proposer is familiar with the nature and extent of the requirements of this RFP and has made such investigations and examinations.
3. The Selected Proposer shall be responsible for obtaining all necessary approvals and permits to the satisfaction of the City.
4. Proposers may withdraw their proposals at any time prior to the selection of a Proposer upon written notice to the Contact Person.

G. PROPOSAL CONTENTS

All proposals must include as a minimum the information specified below. Failure to include this information shall be cause to deem a proposal non-responsive and result in its complete rejection. The inclusion of any additional information that will assist in the evaluation is encouraged. The adequacy, depth and clarity of the proposal will influence, to a considerable degree, its evaluation, as set forth in Section K herein. The proposal submitted must be complete and evaluation and selection of proposals shall be strictly based on the material contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since there will be no auction or competitive negotiation and the City reserves the right to make a selection based solely on the information contained in submitted proposals.

Each proposal **MUST** include the following items:

1. **Cover Sheet**. Proposer shall submit with its proposal the signed Request for Proposal (RFP) Cover Sheet.

2. **Experience**. A summary of the Proposer's experience and qualifications for this type of enterprise. Proposer must have a minimum of three (3) years' experience in the past five (5) years operating similar operations. If the Proposer is not going to be involved in the day-to-day operation of the Premises, then the Proposer must include qualifications and verification that the persons employed as managers at the Premises are sufficiently qualified to satisfy the requirements of this RFP.

3. **Financial Statements**. Proposer must submit either: (a) financial statements for the preceding three years that were audited or prepared by a certified public accountant; or (b) tax returns for the preceding three years. Each Proposer shall submit a full and detailed statement of their true financial condition as of January 1, 2017, or as recent as possible if that date is not available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of and operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the rehabilitation/development of the Premises, improvements and operation, and its source and terms of repayment must be included in the financial statement.

4. **The Development/Operating Plan**. Proposer shall submit the Development/Operating Plan, as set forth in Section C, above.

5. **Proposed Term**. The proposal must include a proposed term of the Lease and the justification therefore in terms of the amount of investment, as further discussed in Section C, above. The proposed term shall not exceed fifteen (15) years.

6. **Rental Offer**. Proposed initial annual rental rate. The initial annual rental rate offered shall not be less than One Hundred Fifty Thousand Dollars (\$150,000).

7. **Work Force Report**. Proposer must submit a completed Work Force Report, attached as **Exhibit D**.

8. **Lessee Questionnaire**. Proposer must submit a completed Lessee Questionnaire, attached as **Exhibit E**.

9. **Credit Information Request**. Proposer must submit a completed Credit Information Request, attached as **Exhibit F**.

10. **Certification**. By submission of a proposal, the Proposer certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local departments or agencies. Proposer shall submit with its proposal a completed Contractor Standards Pledge of Compliance. Copy of the Pledge of Compliance is attached as **Exhibit G**.

11. **Business Tax Certificate**. Proposer shall submit with its proposal a copy of its business tax certificate, or a copy of their application receipt.

H. **NONCONFORMING PROPOSALS**

Proposers requesting deviations from the provisions of this RFP should specifically identify the requirements being deviated from and address the requested deviations in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

I. PRE-PROPOSAL INSPECTIONS

To give prospective proposers an opportunity to view the site, a pre-proposal inspection of the Premises has been scheduled as set forth in the Request for Proposals (RFP) Cover Sheet. It is strongly suggested that all Proposers attend the pre-proposal inspection. Attendance is not mandatory. It is the sole responsibility of the Proposer to become familiar with the scope of City's requirements prior to submitting a Proposal.

J. PROPOSAL SUBMISSION

1. Due Date

Proposals must be received at the address listed below no later than 5:00 p.m. as set forth in the Request for Proposals (RFP) Cover Sheet.

Proposals received after that time will not be considered.

2. Place of Delivery

All proposals should be delivered to:

City of San Diego
Real Estate Assets Department - Airports Division
3750 John J. Montgomery Drive
San Diego, CA 92123
Attn: Brandi Mulvey

3. Faithful Performance Deposits

All proposals **MUST** include a cashier's check or certified check in the amount of Five Thousand Dollars (\$5,000) payable to **City Treasurer** as a faithful performance deposit to assure that if the proposal is selected by the City, that the Proposer will enter in good faith into a lease agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted and no interest will be paid on deposits.

4. Number of Copies

Proposers are required to submit their proposals as set forth in the Request for Proposals (RFP) Cover Sheet. All materials submitted by Proposers become the property of the City and may not be returned.

5. Questions and Comments

Written questions and comments must be electronically mailed (e-mailed) to the City Contact no later than the date specified on the Request for Proposal (RFP) Cover Sheet. Only written communications relative to the RFP shall be considered. E-mails are the only acceptable method for submission of questions. It is incumbent upon Proposers to verify that the City has received their questions and/or comments. All questions will be answered in writing. The City will post the questions and answers, without

identification of the inquirer(s), on the City's website at (<http://www.sandiego.gov/airports>). No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

K. PROPOSAL EVALUATION AND SELECTION

The City reserves the right to award this RFP and the prospective lease to the Proposer who submits a proposal that will provide the best value to the City given the requirements of this RFP. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals at any time, including any proposals that have been scored or been the subject of oral presentations and/or interviews. The City also reserves the right to waive minor irregularities or variations to the specifications and in the solicitation process, provided that such a waiver does not provide an unfair competitive advantage to the Selected Proposer.

The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of the Lease with the Selected Proposer based on the RFP and the Proposer's proposal, or award the Lease without further negotiation.

The City reserves the right to inspect the Proposer's equipment and facilities to determine if the Proposer is capable of fulfilling the obligations of the Lease. Inspection will include, but is not limited to, survey of the Proposer's physical assets and financial capability. The Proposer, by signing the Request for Proposal (RFP) Cover Sheet and submitting a proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining the Proposer's capability to perform pursuant to a Lease. Should the City conduct this inspection, the City reserves the right to disqualify a Proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform pursuant to the Lease.

Proposals will be evaluated in a two-step process by an evaluation committee of qualified City staff and if necessary other persons selected by the City.

In Step One, the committee will evaluate all responsive proposals based upon the information and materials contained in the proposals as submitted. The committee will score and rank all responsive proposals based on the evaluation criteria below.

If the score of the highest scoring proposal resulting from Step One is more than ten (10) points greater than the scores of the other proposals and the committee is satisfied that the highest scoring proposal is sufficient for recommendation, the highest scoring proposal will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Lease.

If one or more proposals score within ten (10) points of the highest scoring proposal, the process will proceed to Step Two. Only the Proposer with the highest scoring proposal and those Proposers scoring within ten (10) points or less of the highest scoring proposal (collectively the "finalists") will be asked to participate in Step Two.

In Step Two, finalists will be required to provide an oral presentation and/or participate in an interview of key personnel by appearing before the evaluation committee or by conference telephone call. The purpose of the oral presentation/interview is to provide the committee with an opportunity to

further evaluate the finalists' proposals, which may include requesting clarification to the finalists' proposals and developing rapport. Finalists are required to make the oral presentation/interview within seven (7) workdays after request by the City. The committee also may inspect the finalists' facilities and perform other due diligence as it may determine. The committee may then, at the committee's sole discretion, add up to eleven (11) additional points to the score of any finalist.

If the committee is satisfied that the first-ranked Proposer resulting from Step Two is sufficient for recommendation, it will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council and any of its committees to answer questions and for award of the Lease.

Selection of the proposal to be recommended to the City Council for award of the Lease will be based on the evaluation criteria listed below:

1. **Responsiveness to Request for Proposals (Maximum 20 points):** The extent to which a proposal clearly addresses the elements of this RFP, including the overall quality, attractiveness and thoroughness of the proposal, a complete and detailed description of plans to manage and rehabilitate/develop the Premises, a complete and detailed description of plans to operate and maintain the Premises, and the degree to which the proposal understands and meets the needs, goals and objectives of the City for the highest and best use of the Premises.
2. **Professional Experience and Qualifications (Maximum 20 points):** The extent to which a Proposer demonstrates, among other things, the following: experience and qualifications operating, managing and maintaining a general aviation facility serving aircraft with a certificated gross weight of 12,500 lbs. or less. The Proposer should include verification that his/her employees are well qualified to conduct the business. The Proposer should have as a minimum three (3) years' experience in the past 5 years operating similar operations.
3. **Attractiveness of Rental Offer and Financial Projections (Maximum 30 points):** The City will consider the amount of rent offered by the Proposer and the overall financial benefit of the proposal to the City. The proposal should provide a detailed description of the Proposer's break even analysis, setting forth the point at which the business will generate enough income to cover its expenses and begin generating an income. The proposal will be evaluated on the attractiveness of, and demonstrated ability to achieve, the revenue projections for the proposed term of the lease and the likelihood of exceeding the breakeven point.
4. **Financial Capability (Maximum 20 points).** The extent to which a Proposer demonstrates, among other things, the following: the necessary financial responsibility and strength to successfully rehabilitate/develop, manage and maintain the Premises and operate the Premises in accordance with the proposal and the Lease; the ability to adequately maintain and staff the proposed operation during the term of the Lease, including providing all necessary fixtures and equipment; and possession of, or ability to obtain, additional financing to address unexpected or emergency circumstances at the Premises.

5. **Community/Public Benefits (Maximum 10 points)**. The extent to which a Proposer demonstrates the ability to contribute to and best serve the needs of the public and the City by providing the most public benefits at the Airport.

TOTAL POINTS: 100

6. **Oral Presentation (Maximum 11 points)**.

L. ANNOUNCEMENT OF INTENT TO AWARD

1. Intent to Award Lease. The City will inform all proposers of its intent to award a Lease, subject to approval by City Council, in writing.

2. Obtaining Proposal Results. No proposal results can be obtained until the City announces the proposal best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the Request for Proposals (RFP) Cover Sheet or (2) visiting the READ e-procurement system to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number set forth in the Request for Proposals (RFP) Cover Sheet. Proposal results will not be released over the phone.

M. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request additional information from Proposers to clarify information contained in proposals submitted in response to this RFP.

N. INCURRED COSTS

Each Proposer is solely and fully responsible for any and all costs associated with submitting a response to this RFP. The City will not be responsible for any costs incurred by Proposers in the preparation and submission of proposals.

O. CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff or evaluation committee members about this RFP from the date this RFP is issued until final passage of City Council approval of the Lease to the Selected Proposer.

P. ADDENDA

The City may issue addenda to this RFP as necessary. All addenda are incorporated into the RFP. The Proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

Q. PUBLIC RECORDS

All proposals and all contents thereof received shall be considered confidential until the City's Real Estate Assets Department recommends a proposal to the City Council. By signing this RFP and submitting a proposal, the Proposer acknowledges that any information submitted in response to this

RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the Proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the Proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the Proposer must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the Proposer does not provide a specific and detailed legal basis for requesting the City to withhold Proposer's confidential or proprietary information at the time of proposal submittal, the City will release the information as required by the CPRA and Proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the Proposer's obligation to defend, at Proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the Proposer's request. Furthermore, the Proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at Proposer's request. Nothing in the Lease resulting from the proposal creates any obligation on the part of the City to notify the Proposer or obtain the Proposer's approval or consent before releasing information subject to disclosure under the CPRA.

R. CITY RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject all offers and proposals regarding this RFP and the Premises, including those submitted by the Proposers who have any outstanding debt with the City. The City reserves the right to determine which proposal it deems in the best interest of the City to accept. The City also reserves the right to waive any informality not material to cost or performance in any proposal provided that any such waiver is deemed to be inconsequential and does not provide an unfair competitive advantage to any Proposer.

S. QUALIFICATION OF PROPOSAL

THIS IS NOT A BID SOLICITATION AND THE CITY IS NOT OBLIGATED TO ACCEPT ANY PROPOSAL OR TO NEGOTIATE WITH ANY PROPOSER. THE CITY COUNCIL RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS WITHOUT CAUSE OR LIABILITY. ALL TRANSACTIONS DISCUSSED, REFERENCED, OR IMPLIED HEREIN ARE SUBJECT TO FINAL APPROVAL BY THE CITY COUNCIL.

T. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to encourage equal opportunity in its contracts and leases. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

U. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Proposer understands that failure to comply with the following requirements and/or submitting false information in response to these requirements may result in rejection of the proposal by the City and debarment of the Proposer from participating in City contracts for a period of not less than one (1) year:

1. Equal Opportunity Contracting. Proposer acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Proposer and all of its contractors and subcontractors are individually responsible to abide by its contents.

Proposer shall comply with Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereafter enacted. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Proposer shall insert the foregoing provisions in all contracts and subcontracts for any work covered by the proposal so that such provisions will be binding upon each contractor and subcontractor. Proposer agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

Proposer shall submit a current Work Force Report, attached as **Exhibit D**, or a current Equal Employment Opportunity (EEO) Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities.

2. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the Lease.
3. Local Business and Employment. Proposer acknowledges that the City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

4.

V. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

All good faith deposits will be returned to unsuccessful Proposers within thirty (30) days of final passage of City Council approval of the Lease to the Selected Proposer. For the Selected Proposer, the deposit will be applied to the Lease deposit upon completion of negotiations and execution of the Lease between City and the Selected Proposer. Should the Selected Proposer unilaterally withdraw from negotiations after selection, the entire deposit of the Selected Proposer shall be forfeited to the City.

W. PROTESTS

The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code and San Diego Council Policy 000-29, as amended from time to time. These procedures shall apply to this RFP and provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

X. ASBESTOS DISCLOSURE

Portions of the structural components of the Premises may contain asbestos. By virtue of its submission of a proposal, Proposer acknowledges having received notice from City of the presence of such asbestos in accordance with Health and Safety Code section 25915. Proposer shall indemnify and hold City harmless from any loss or claim which may result from existence of asbestos on the Premises.

Y. REAL ESTATE BROKER'S COMMISSION

The City will not pay a brokerage commission in this RFP.

Z. SCHEDULE OF EXHIBITS

- Exhibit "A" – Site Location, Aerial View of the Premises
- Exhibit "B" - View of the Premises Exterior
- Exhibit "C" - Form of Lease
- Exhibit "D" – Work Force Report
- Exhibit "E" – Credit Information Request
- Exhibit "F" - City of San Diego Lessee's Questionnaires for all Leases
- Exhibit "G" - Contractor Standards Pledge of Compliance

The foregoing forms listed as Exhibits "D" through "G" are required to be completed. Failure to submit any of the forms listed as Exhibit "D" through "G" will result in the City deeming the proposal incomplete and non-responsive.

EXHIBIT "A" – SITE LOCATION, AERIAL VIEW OF THE PREMISES

8622 Gibbs Drive, San Diego, CA 92123

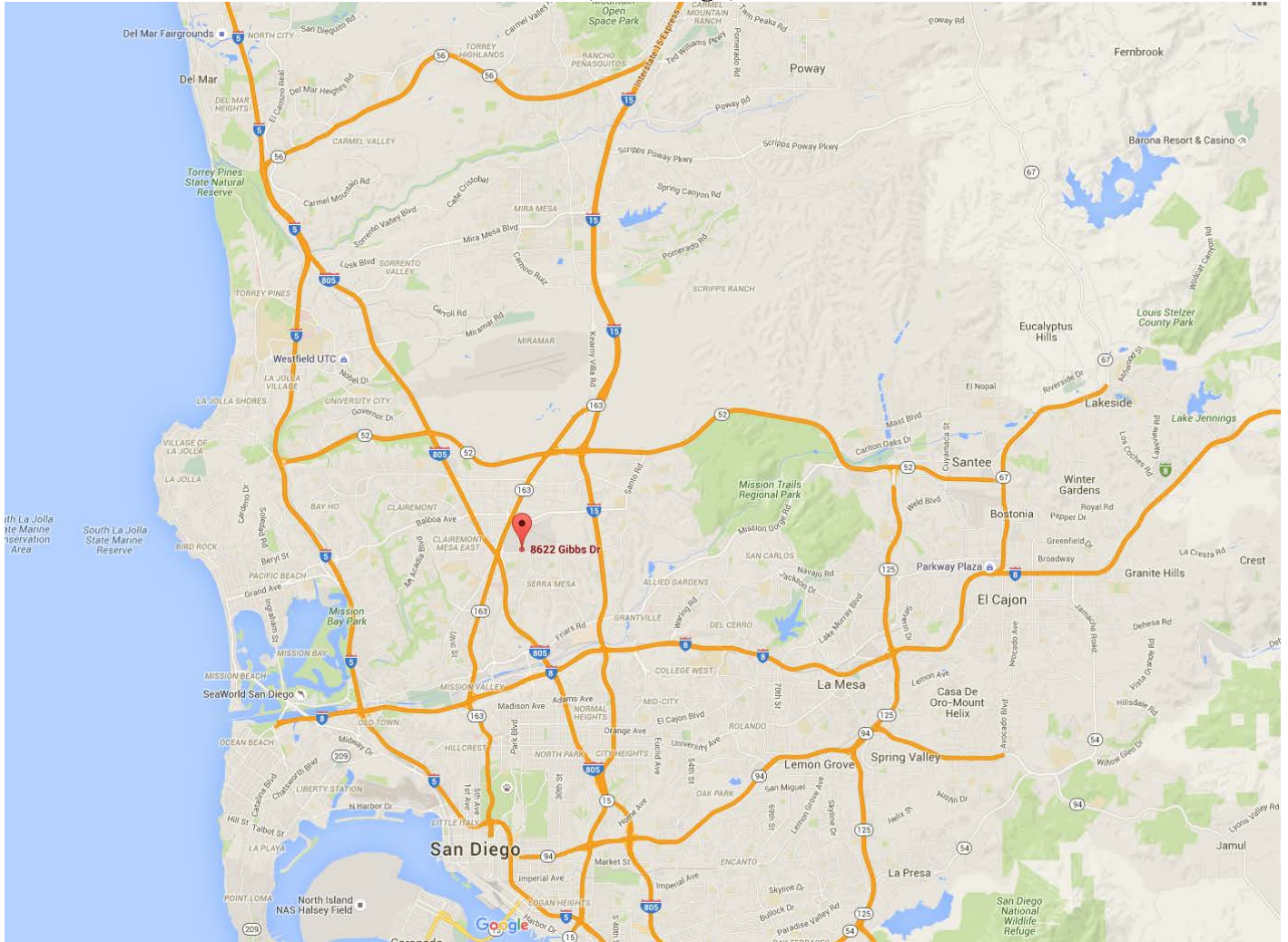


EXHIBIT "A" – SITE LOCATION, AERIAL VIEW OF THE PREMISES

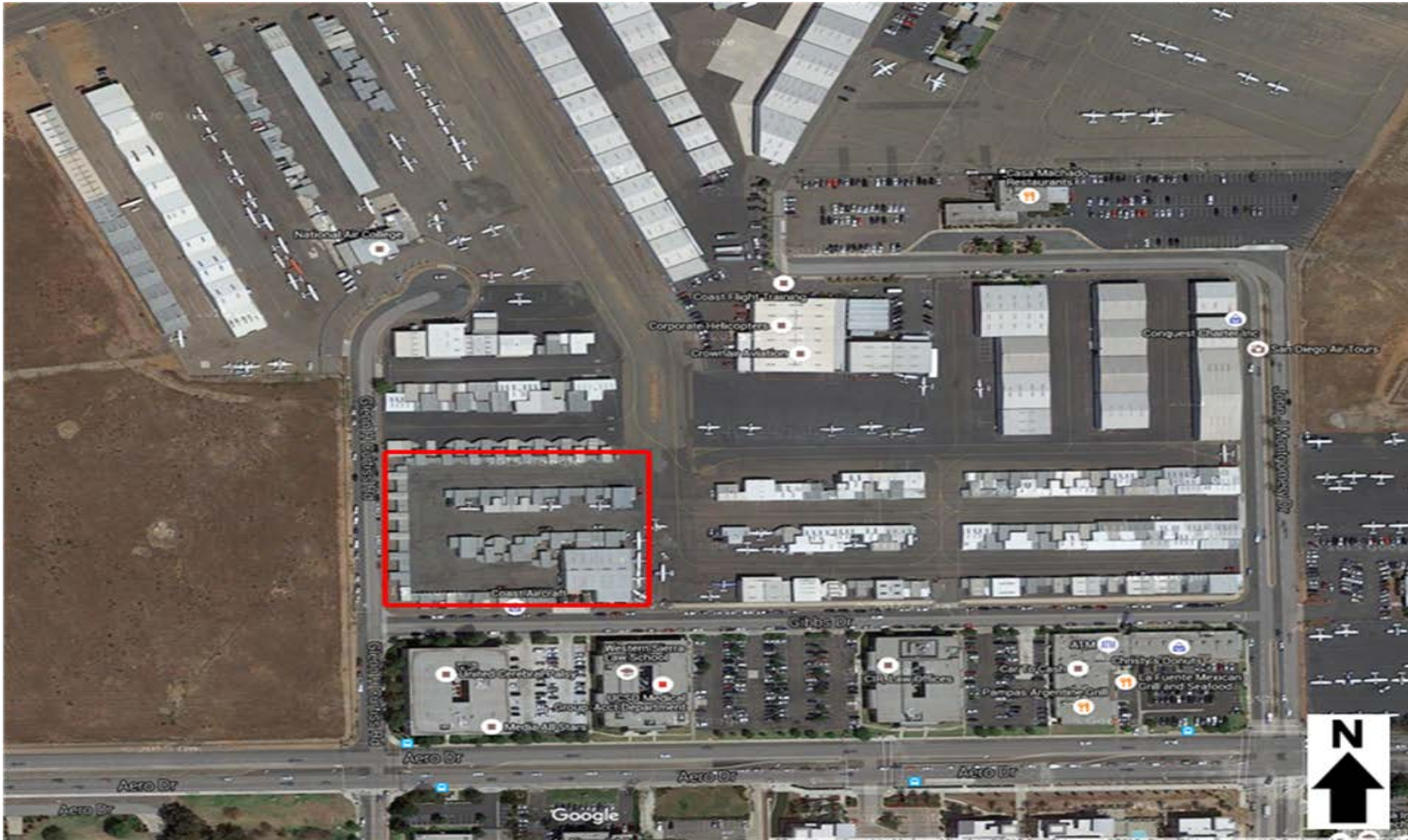


EXHIBIT "A" – SITE LOCATION, AERIAL VIEW OF THE PREMISES



EXHIBIT "B"

View of the Premises Exterior - #1



View of the Premises Exterior - #2



EXHIBIT "B"

View of the Premises Exterior - #3



View of the Premises Exterior - #4



EXHIBIT "B"

View of the Premises Exterior - #5



View of the Premises Exterior - #6



EXHIBIT “C” – Form of Lease

CITY OF SAN DIEGO FLAT RATE LEASE

THIS LEASE AGREEMENT (“**Lease**”) is hereby executed between THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called “**City**,” and _____ hereinafter called “**Lessee**”, to be effective _____ (The “**Effective Date**”) when signed by the parties and approved by the San Diego City Attorney. City and Lessee being herein sometimes referred to as a “**Party**” or “**Parties**,” all with reference to the following:

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, Lessee agrees that Lessee’s use of Premises (as defined in Section 1.1, below) is subject to the following terms and conditions, as well as all applicable provisions of the San Diego Municipal Code and state and federal laws, rules and regulations, all of which will be strictly enforced.

PREMISES AND USES

1.1 Premises. Effective as of the Commencement Date (as defined in Section 2.1, below), City hereby leases to Lessee and Lessee hereby leases from City all of that certain real property situated at Montgomery-Gibbs Executive Airport (the “**Airport**”) in the City of San Diego, County of San Diego, State of California, described as Lot 8A (2.83 acres of land) with thirty-four (34) individual hangars (T-Hangars), four (4) tie-downs and one (1) maintenance hangar with office (9,250 S.F.) (**Premises**), as more particularly depicted on **Exhibits A and A-1**. Lessee accepts all “approximations” set forth in this Lease as being accurate and agrees not to use any future recalculations (however determined) of the Premises to attempt to adjust or otherwise affect the rents or other obligations contained in this Lease.

1.2 Uses. It is expressly agreed that the Premises are leased to Lessee solely and exclusively for the following allowed uses (“**Allowed Uses**”): solely for the purpose of a general aviation facility serving aircraft with a certificated gross weight of 2,500 lbs. or less. This aviation facility may offer aircraft maintenance, repair services, hangar rentals and all other uses associated with or incidental to the general aviation facility described above, and such other uses as may be first approved in writing by the City.

Any use of the Premises other than as permitted pursuant to this Section 1.2 shall constitute a default, and if such default is not cured by Lessee pursuant to Section 5.1 of this Lease, this Lease shall be subject to termination at the sole option of the City.

Lessee covenants and agrees to use the Premises continuously throughout the Term (as defined in Section 2.1, below) as permitted pursuant to this Section 1.2.

1.3 Duties and Prohibited Conduct. The Allowed Uses and the facilities and services provided for under this Lease are to serve the general public. Lessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the opinion of the City, to other airport operations of similar type. For the purposes of this subsection, “competent and efficient manner” shall mean demonstrated ability in the management, operation and maintenance of a light general aviation aircraft maintenance, repair and hangar rental aviation business and such other Allowed Uses conducted on the Premises from time to time during the Term (as defined in Section 2.1, below), consistent with industry standards and best management practices. Where Lessee is reasonably in doubt as to the propriety of any particular

use, Lessee may request the written determination from the City that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises for any use which Lessee does not have confirmation that said use is an Allowed Use; or to use the Premises, even for an Allowed Use, if that use will create waste or a nuisance. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods or services which, in the sole discretion of City, are inconsistent with the Allowed Uses of the Premises pursuant to this Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the Allowed Uses specified above, and shall comply with all local, State and Federal laws and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee and Lessee's employees, agents, sublessees, permittees, contractors and invitees ("**Lessee's Parties**"), only within receptacles provided by Lessee and located in the areas designated by City.

1.4 Compliance with Laws. Lessee, at Lessee's sole expense, shall procure, maintain and hold available for City's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the County of San Diego, of the City, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements regulating the use of the Premises in effect during the Term (as defined in Section 2.1, below). The final judgment of any court of competent jurisdiction, or the admission of Lessee or of any of Lessee's Parties in any action or proceeding against them or any of them, whether or not the City is a party to such action or proceeding, that Lessee, or any of such Lessee's Parties, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between City and Lessee for purposes of this Lease.

Lessee's duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use thereof ("**Land Use Regulations**"). City's execution of this Lease shall in no way be deemed to constitute a determination by City that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it imply any such conclusion by City, even if City is the agency which enacts or implements the Land Use Regulations applicable to the Premises.

1.5 Related Council Actions. The City's grant and execution of this Lease shall not be deemed to obligate either City or the City Council to authorize, agree with, or undertake any other governmental agency, board, or commission's discretionary action with regard to development and operation of the Premises. The term "discretionary action" includes but is not limited to re-zonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.6 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. Lessee shall obtain all licenses, permits and

agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If Lessee's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, Lessee shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

1.7 Quiet Possession. By paying the rent and performing the covenants and agreements herein, Lessee shall at all times during the Term (as defined in Section 2.1, below) peaceably and quietly have, hold, and enjoy the Premises. If for any reason during the Term (as defined in Section 2.1, below) Lessee is permanently or temporarily dispossessed through action or claim of a title superior to City's, this Lease shall not be voidable, nor shall City be liable to Lessee for any loss or damage resulting therefrom, but City shall grant in writing a proportionate reduction of the Rent otherwise payable for the period or periods during which Lessee is prevented from enjoying quiet and peaceable possession of all or a portion of the Premises.

1.8 Easements and Reservations. City hereby reserves all right, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises, together with the right to store and recapture water from the soils beneath the surface of the Premises.

City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for such utilities, thoroughfares, or access as it deems advisable for the public good. Provided however, no right reserved by City in this Section 1.8 shall be so exercised by City as to unreasonably interfere (i.e., Lessee is completely prevented from using the area affected) with Lessee's operations hereunder. City agrees that should the exercise of any of the rights reserved by City in this Section 1.8 unreasonably interfere with the use of any or all of the Premises by Lessee, the Rent shall be reduced as follows; for every full day of such unreasonable interference, City shall credit Lessee one (1) day of rent in proportion to the area affected.

City has the right to enter the Premises for the purpose of making repairs to, or developing, municipal resources and services.

Any injury that may result from the percolation, storage and/or recapture of water from the soil beneath the surface of the Premises shall not be considered unreasonable interference, provided, however, that the City will reimburse Lessee for physical damages or operational damages, if any, to the improvements located on the Premises resulting from City exercising the rights reserved in this Section 1.8 provided Lessee took all reasonable measures to protect against such physical damages and operational damages. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage or operational damage as determined by City. City will pay the costs for maintenance and repair of all City installations made pursuant to these reserved rights.

1.9 Operation of Facilities. A regular schedule of days and hours of operation shall be established by Lessee to best serve the public, as set forth in The City of San Diego Airports Division Minimum Operating Standards on file with the Airports Division's Operations Office, as may be amended from time to time.

1.10 Rates and Charges. All charges for merchandise and services or facilities on the Premises shall be comparable to amounts charged by other vendors for similar services in San Diego

County; provided, however, Lessee shall not be required to sell merchandise or provide services and facilities at a loss.

1.11 Political Activities. The Premises shall be used exclusively for the Allowed Uses. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan; provided, however, that Lessee shall not be precluded from providing a forum for open public debate by candidates such as occurs at a “candidate forum” and similar events.

1.12 Parking. Lessee shall provide automobile parking for its employees, customers and sublessees within the Premises. Lessee shall not knowingly allow said parking on non-Premises Airport property without the prior written approval of City.

1.13 No Warranty. City does not warrant that the Premises are suitable for the purposes for which they are leased as stated herein.

TERM

2.1 Term. The term of this Lease shall be _____ years (“**Term**”) and shall commence on _____ (“**Commencement Date**”). The Term, if not otherwise hereafter extended, amended, or earlier terminated, shall expire on _____. “**Lease Year**” as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12 month period thereafter during the Term.

2.2 Holdover. Any holding over by Lessee after expiration of the Term shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration of the Term constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, City shall have the right to bring the Base Monthly Rent (as defined in Section 3, below) to the then market value and to terminate the holdover tenancy at will.

2.3 Quitclaim and Surrender of Lessee’s Interest. On execution of this Lease, Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. City may record such deed only on the expiration of the Term or earlier termination of this Lease. In the event that City requires any subsequent quitclaim deed, Lessee or its successor in interest shall deliver the same within five (5) business days after receipt of written demand therefor.

At the expiration of the Term, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances. In the event of termination of this Lease by City prior to the end of the Term, any liens and encumbrances then existing against the Premises must be approved in writing by the City in order to be allowed to remain against the Premises. If such liens and encumbrances are not approved to remain against the Premises, Lessee shall be solely responsible for ensuring that all such liens and encumbrances are removed from the Premises within a reasonable time period not to exceed six (6) months. Upon either the expiration or earlier termination of the Term, Lessee shall surrender the Premises in good order, in a safe, healthy, and sanitary condition and state of repair, ordinary wear and tear excepted.

RENT & SECURITY DEPOSIT

3.1 Time and Place of Payments. Rent is due monthly in advance on or before the first day of each calendar month. All rent payments shall be made payable to “City Treasurer” and mailed to:

City of San Diego
P.O. Box 129030
San Diego, California 92112-9030 or hand-delivered to:

The Office of the City Treasurer Civic Center Plaza
1200 Third Avenue, First Floor San Diego, California
92101

City may change the place of payment at any time upon thirty (30) days written notice to Lessee. Mailed payments shall be deemed paid on the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt by the City Treasurer. Lessee assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Base Monthly Rent. Subject to this Agreement not being terminated early for any reason, and subject to the adjustments as provided herein, Lessee shall pay as rent for the use and occupancy of the Premises the base monthly rent (“**Base Monthly Rent**”), as further defined below:

3.2.1 Base Monthly Rent Amount. The total initial base monthly rent amount is _____ dollars (\$) per month beginning on the Commencement Date (the “**Initial Base Monthly Rent Amount**”). Said rent is subject to annual adjustments based on the Consumer Price Index (“CPI”), or the Market Rent Adjustment, as described below. Base Monthly Rent for any period that is less than one (1) month shall be prorated based on the full number of days during such month.

3.2.2 CPI Index Adjustments. Each Lease Year, on the anniversary of the Commencement Date, the Base Monthly Rent shall be increased by the percentage increase, if any, in the CPI. In no event shall the adjusted Base Monthly Rent as established by the CPI be less than the Base Monthly Rent in existence immediately prior to the adjustment date. CPI adjustments shall occur annually, beginning at the end of the first year following the Commencement Date of the Lease and every year thereafter during the Lease Term, Base Monthly Rent shall be adjusted to reflect any increases in the Consumer Price Index.

The index used will be the CPI for (“All Urban Consumers”) for Los Angeles, Riverside, Orange County (1982-84 = 100) of the U.S. Department of Labor, Bureau of Labor Statistics. If the above index is no longer published, the index for adjustment will be the U.S. Department of the Labor’s “Comprehensive Official Index” most comparable to the aforesaid index. In the event that such indices are no longer published, then another

comparable index or source of such information generally recognized as authoritative will be substituted by City.

Regardless of the index publication dates, the effective dates of rent adjustments shall be as specified in this Section 3. Until the rent adjustment can be reasonably determined by the index method, Lessee shall continue to make payments of Base Monthly Rent at the existing rental rate. When the adjustment is determined, the balance of rent due at the adjusted rate will be paid to City within thirty (30) days.

3.2.3 Index Adjustment Computation. The Base Monthly Rent for each monthly rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the Base Monthly Rent which is effective immediately prior to said adjustment by the “adjustment figure” established as follows:

The “adjustment figure” shall be established by dividing the “current index” by the “base figure,” as defined herein:

The “current index” shall be an average of CPI index figures for the fourth, fifth and sixth months immediately preceding the adjustment date.

The “base figure” for the first such adjustment shall be an average of the CPI index figures for the fourth, fifth and sixth months immediately preceding the Commencement Date.

The “base figure” for each successive adjustment shall be an average of the CPI index figures for the one year period ending on the fourth, fifth and sixth months immediately preceding the Commencement Date immediately preceding each of the CPI adjustment dates.

3.2.4 Market Value Adjustment. For Lease Year **(This will be either Lease Year 5 or Lease Year 10 depending on the term of the Lease)**, the Base Monthly Rent is to be adjusted to market value (“Market Value Adjustment”) as follows.

3.2.4.1 Lessee agrees that no later than six (6) months prior to the commencement of Lease Year City shall cause an appraisal to be performed to appraise the then market value of the real property that constitutes the Premises by a qualified independent appraiser. The appraiser shall be an appraiser with not less than ten (10) years of experience appraising airport properties. The appraiser's determination of the value of the Lessee's remaining interests in this Lease and the improvements shall be binding on the City and Lessee. The subject real property shall be appraised based upon the following directions and assumptions: (i) the date of value shall be the first day of Lease Year ; (ii) the land and structures owned by the City shall be the property to be appraised (iii) the market value of the subject real property shall be based upon the property being “As-Is”. “As Is” is defined as follows: the subject real property in its current condition as of the date of appraisal with no

express or implied warranty of suitability for use, not including any improvements, infrastructure or entitlements paid for by Lessee.

3.2.4.2 The Base Monthly Rent for Lease Year shall be equal to one twelfth (1/12th) of ten percent (10%) of the appraised real property market value of the subject real property, as determined in accordance with the provisions of the above subsection 3.2.4.1.

3.2.4.3 Notwithstanding the foregoing, in no event shall the adjusted Base Monthly Rent, established by an appraisal as provided for herein, be less than the Base Monthly Rent in existence immediately prior to the date of the Market Value Adjustment.

3.2.4.4 Lessor and Lessee agree to share the cost of the appraisal for the Market Value Adjustment equally. Lessee shall have 30 days from the time of City's request of reimbursement to reimburse City for Lessee's share of the cost.

3.3 Security Deposit. A security deposit shall be paid to the City by Lessee in the sum of \$ [EQUAL TO 3 MONTHS RENT] (the "Security Deposit") before the Commencement Date of this Lease. All or any portion of the Security Deposit shall be available unconditionally to City for correcting any default or breach of this Lease by Lessee or Lessee's successors or assigns, or for payment of expenses incurred by City as a result of Lessee's failure to faithfully perform all terms, covenants, and conditions of this Lease.

The security deposit shall take one of the forms set out below:

3.3.1 Cash. All cash shall be deposited in a City fund, and City shall not be liable to Lessee for any interest thereon. Provided further, any interest earned by City from such deposit or redeposit shall be and remain the property of City.

3.3.2 Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to City upon demand by City. The financial institution and the form of any instrument pledging the funds must be approved in advance by City.

Lessee will maintain the required Security Deposit throughout the Term. Failure to do so shall be considered a default and is grounds for immediate termination of this Lease.

In the event City utilizes all or any portion of the Security Deposit as a result of Lessee's default, Lessee shall redeposit the Security Deposit with the City within ten (10) days of notice from City to bring the Security Deposit up to the full specified amount.

The Security Deposit or any balance thereof will be returned to Lessee in compliance with California law following expiration or earlier termination of this Lease, provided Lessee has

faithfully complied with all terms, covenants, and conditions hereof or has cured any default under this Lease.

The Security Deposit may be increased by City proportionate to any increased performance or rental liability of Lessee upon sixty (60) days prior written notice from City of such required increase.

3.4 **City's Right to Inspect and Audit.** Lessee shall keep all of its books of account, records and supporting documentation needed to confirm the accuracy of any payments made or due to the City throughout the Term plus five (5) years. Lessee shall make the books, records and documentation required pursuant to the immediately preceding sentence available for inspection and audit by City in one location within the County of San Diego. Lessee shall maintain separate books and records related to Lessee's possession, use and/or occupancy of the Premises. Upon reasonable prior notice, City may inspect and audit the operation of Lessee's business in connection with its possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with Lessee's possession, use and/or occupancy of the Premises as City may deem necessary, in its sole discretion, to protect City's rights under this Lease. If required by competent governmental authority, Lessee shall promptly deliver to City, at City's reasonable request and at Lessee's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to Lessee's possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with Lessee's possession, use and/or occupancy of the Premises. City's right to audit Lessee's books and records shall terminate for each Lease Year on the date five (5) years after the end of that Lease Year.

3.4.1 **Audit Cost.** The full cost of each City audit shall be borne by City, unless one or both of the following conditions exists, in which case Lessee shall reimburse City for all costs of the audit:

(a) If an audit reveals an underpayment of Base Monthly Rent of more than five percent (5%) per Lease Year, calculated as the difference between the Base Monthly Rent reported as payable by Lessee and the Base Monthly Rent payable as determined by the audit;

(b) If Lessee has failed to maintain true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

3.4.2 **Rent Deficiency and Overpayment.** Any deficiency in the payment of Base Monthly Rent and any other monies owing under this Lease, as determined by the audit shall be subject to all penalties and remedies provided to City under this Lease. City shall credit any overpayment determined by the audit, without interest, against future Base Monthly Rent payable under this Lease. If no future Base Monthly Rent is then due under this Lease, City shall refund to Lessee any overpayment determined by the audit, without interest, within sixty (60) days after City's certification of the audit.

3.5 **Delinquent Rent.** If Lessee fails to make any payment of Base Monthly Rent and any other monies owing under this Lease when due, Lessee shall pay to City, in addition to the unpaid

amount, a late charge of five percent (5%) of the unpaid amount, which shall be deemed additional rent (“**Additional Rent**”). If any of such payment remains unpaid after fifteen (15) days of its due date, Lessee shall pay to City an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be Additional Rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due City under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. Lessee shall pay to City any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by City shall neither constitute a waiver of Lessee’s breach or default with respect to the late payment nor prevent City from exercising any other rights and remedies available at law or in equity. As required by law, Lessee is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due City are not paid when due.

3.6 Unauthorized Use Charge. Lessee shall pay to City one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged Lessee by competent governmental authorities. Such unauthorized use charge shall be payable to City within thirty (30) days after Lessee receives the gross receipts. No unauthorized use charges shall satisfy or be a credit against any other rent or payment obligation of Lessee’s under this Lease. The unauthorized use charge shall otherwise be considered “Additional Rent” under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and City’s acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of City’s rights under this Lease. If Lessee makes any use of the Premises that is not allowed by this Lease, such use shall constitute a default under this Lease.

ASSIGNMENT, SUBLEASING & EMCUMBRANCES

4.1 Time is of Essence; Provisions Binding on Successors and Assigns. Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective Parties, jointly and individually.

4.2 Assignment and Subletting. Lessee shall not assign this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of Lessee, to use or occupy the Premises or any part thereof, without the prior written consent of the City in each instance, not to be unreasonably withheld, conditioned or delayed. A consent to assignment, subletting, occupation, or use by any person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of City, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of Lessee by operation of law, without the prior written consent of the City. “**Assignment**” for the purposes of this Lease shall include, without limitation, any transfer of any interest in this Lease by Lessee or by any partners, principals, or stockholders, as

the case may be, from the original Lessee, its general partners or principals or controlling shareholders.

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Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The City shall require, as a condition to approval of any sublease of the majority portion of the leasehold (“**Major Sublease**” and as further defined in Section 4.3, below), or any assignment, that Lessee pay additional consideration to City, as set forth in Section 4.3, Equity Sharing, below, payable as of the effective date of such proposed Major Sublease or any assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with then current City lease requirements.

Pursuant to City Charter Section 225, the City, must review and approve every person or entity which will have an interest in this Lease.

Prior to the Commencement Date of this Lease, Lessee shall provide City with all applicable information therefor, and pay all City fees, for all subleases for which Lessee seeks City’s Consent. Any unconsented-to sublessees occupying space on the Premises after the Commencement Date shall subject Lessee to a default under this Lease and shall subject this Lease to termination.

Authorized Sublessees and/or Licensees. Notwithstanding the foregoing Section 4.2, the City consents to the sublessees/licensees as further set forth in attached **Exhibit B**.

4.3 Equity Sharing. Lessee agrees that as additional consideration for this Lease, and in addition to all other rents and payments payable to City, City shall be entitled to participate in any “equity” received by Lessee during the Term. For purposes of this paragraph, “equity” shall mean any amount paid to Lessee as consideration for an assignment of this Lease or Major Sublease of the Premises; provided, however, equity shall not include any base rents or additional rents payable to Lessee by its subtenants. “**Major Sublease**” shall mean any sublease or series of subleases entered into by Lessee that constitute a single related transaction which individually or cumulatively involves twenty-five (25%) percent or more of the total acreage of the Premises, except for Permitted Transactions, as defined in this Section 4.3. In addition, equity shall include any proceeds of a loan secured by Lessee’s leasehold interest in the Premises which are not expended for permanent leasehold improvements. In the event of any action resulting in “equity” as described above, Lessee agrees that City shall be entitled to a payment equal to two percent (2%) of any such equity. For purposes of calculating such payment, equity shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. In the case of a Major Sublease which provides for periodic payment of rent, City shall be entitled to ten percent (10%) of the difference between the Base Monthly Rent paid by Lessee to City and the rent paid by the sublessee to Lessee, which amounts shall be added to the Base Monthly Rent paid to City. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

4.3.1 The provisions of this paragraph shall not apply to the following “Permitted Transactions”:

(a) an assignment or transfer of a beneficial interest in Lessee's leasehold estate resulting from a devise, bequest, or intestate succession for the benefit of

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Lessee's principal owner or chief executive officer (if Lessee is other than an individual);
and

(b) such other assignment or transfer due to a reorganization or other activity of Lessee which the City reasonably determines that a substantial change has not occurred with respect to the direct or indirect legal and equitable ownership interests in Lessee, in the legal or fictitious name of the Lessee, as there is no material change in the equity, in beneficial use of or legal title to the leasehold as an asset or the income produced thereby.

4.4 Encumbrance. Subject to receipt of the City's prior written consent, which shall not be unreasonably withheld, Lessee may encumber Lessee's leasehold estate by a deed of trust, mortgage, chattel mortgage, or other security instrument to secure the payment of a promissory note or notes of Lessee, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of rehabilitating/developing the Premises in accordance with **Exhibit C General Development Plan**. However, no more than ten percent (10%) of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

In the event any such approved deed of trust or mortgage or other security agreement should at any time be in default and be foreclosed or transferred in lieu of foreclosure, City will accept the City-approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by City, said mortgagee or beneficiary may assign this Lease to its nominee, if, in the opinion of City, the nominee is a reputable, qualified, and financially responsible person or entity. Any deed of trust, mortgage, or other security agreement shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to San Diego City Charter section 225, all mortgagees, beneficiaries, designees and nominees shall make a full and complete disclosure of the name and identity of any and all persons or entities proposed to be directly or indirectly involved in this Lease and the precise nature of all interests of all persons or entities therein. Every person or entity which will have an interest in this Lease must be reviewed and approved by City in advance. The City's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community and such persons or entities are able, in City's reasonable opinion, to comply with this Lease and have financial capability equal or greater than Lessee and possess or engage management skills equal to or greater than Lessee.

DEFAULT AND REMEDIES

5.1 Default Lessee shall be in default of this Lease if any of the following occurs:

5.1.1 Lessee fails to make any payment required under this Lease when due;

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5.1.2 Lessee breaches any of its obligations under this Lease, other than those requiring payment to City, and fails to cure the breach within thirty (30) days following written notice thereof from City, or if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

5.1.3 Lessee voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

5.1.4 Lessee is adjudicated a bankrupt; or

5.1.5 Lessee makes a general assignment for the benefit of creditors.

5.2 Remedies. Upon Lessee's default, City may, at its option, give Lessee, or any person claiming rights through Lessee, (1) a written "Three Day Notice to Pay or Quit," for failure to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to City, in order that City may seek to terminate the Lease and all rights of Lessee, and all persons claiming rights through Lessee, to the Premises or to possession of the Premises. Upon termination, City may enter and take possession of the Premises, and may recover from Lessee the sum of:

termination;

the worth at the time of any unpaid rent that was due at the time of

the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that Lessee affirmatively proves could have been reasonably avoided;

the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;

any other amount necessary to compensate City for all the detriment proximately caused by Lessee's breach and default, or that in the ordinary course of things, would be likely to result; and

all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time at law or in equity.

As used in clauses 5.2.1 and 5.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 5.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include Base Monthly Rent and any other amounts payable by Lessee under this Lease.

5.3 Default if Leasehold is Encumbered. If there is a City-approved encumbrance on Lessee's leasehold interest, City shall give the mortgagee or beneficiary written notice of Lessee's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the

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notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. City may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then City may exercise any of the following options:

5.3.1 City may correct the default and charge the costs to the account of Lessee, which charge shall be due and payable on the date that the Base Monthly Rent is next due after City's notice of such costs to Lessee, and mortgagee or beneficiary;

5.3.2 City may correct the default and pay the costs from the proceeds of any insurance fund held by City, City and Lessee, or by City and mortgagee or beneficiary, or City may use the funds of any faithful performance or cash bond on deposit with City, or City may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of City; and,

5.3.3 City may terminate this Lease as to the rights of Lessee by assuming or causing the assumption of liability for any trust deed or mortgage. Lessee shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by City. City may, as an alternative, substitute the terminated Lessee with a new lessee reasonably satisfactory to the mortgagee or beneficiary. Lessee shall pay to City all reasonable costs incurred by City in re-leasing to a new lessee.

If the default is non-curable by Lessee, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by City, shall have the absolute right to substitute itself to the estate of Lessee hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving City's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, City consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of Lessee, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, Lessee shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

5.4 Abandonment by Lessee. If Lessee abandons the Premises, this Lease shall continue in effect as long as City does not terminate this Lease, and City may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

5.5 Waiver. Any waiver by City of a breach or default by Lessee shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by City. City's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. City's acceptance of any rents shall not be a waiver of any default preceding

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such payment. Lessee acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by City to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but City shall at all times, have the legal right to require the cure of any breach or default. City's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

EMINENT DOMAIN

6.1 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of City, the remaining part of the Premises is unsuitable for the continued lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of City, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that Lessee's operations are reduced or impaired.

All monies awarded in any such taking shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of, or damages to, Lessee's then remaining leasehold interest in installations or improvements owned by Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

INDEMNIFICATION AND INSURANCE

7.1 Indemnity. Lessee agrees to defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Lessee's employees, invitees,

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guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the use, occupancy, management, development and/or operation of the Premises or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that Lessee's duty to indemnify and hold harmless City hereunder shall not include any claims or liability arising from the sole gross negligence or willful misconduct of the City, its agents, officers, or employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Lessee shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

7.2 Insurance.

Lessee shall obtain and maintain throughout the Term, and any extension of said Term, at its sole cost and expense, all insurance required by this Lease. Lessee's liabilities under this Lease, including without limitation Lessee's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. Lessee's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if Lessee fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to City, Lessee shall be in default of this Lease. Lessee shall not modify any policy or endorsement thereto which increases City's exposure to loss. Lessee shall obtain and deliver to City's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to City's written approval of same, which shall not be unreasonably withheld) for the following as applicable:

(a) Commercial General Liability Insurance, providing coverage for the damages due to bodily injury, including death, personal injury, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of at least Ten Million Dollars (\$10,000,000), products and completed operations and if applicable, use of unlicensed vehicles that in any way arise from the use of the Leased Premises and operations of activities of the entity. Non-licensed vehicles operated on the movement area will require coverage in an amount not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

(b) Fire, extended coverage, and vandalism insurance policy on all City owned insurable property on the Premises, in an amount to cover one hundred percent (100%) of the replacement. Any proceeds from a loss shall be payable jointly to City and Lessee. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. Lessee shall submit to the City recommendations

and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.5, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to City has been made in each case for the

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use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

(c) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence or Two Million Dollars (\$2,000,000) per occurrence for automobiles operated on airside. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.

(d) Workers' Compensation Insurance, as required by the laws of the State of California for all of Lessee's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

(e) Hangar Keeper's Insurance, sufficient to cover replacement cost and aircraft hangared for others, but no less than Five Million Dollars (\$5,000,000).

(f) Aircraft Liability Insurance, General Aircraft Operation Liability, in an amount of not less than Ten Million Dollars \$10,000,000 per occurrence.

(g) Environmental Liability Insurance, providing coverage for gradual, sudden and accidental discharge or spill of pollutants including first party clean up and remediation of the Premises; wrongful delivery or misdelivery of fuel; loading and unloading of fuel to and from Mobile Storage Tank (MST).

Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

Primary and Non-Contributory. Insurance policies shall be endorsed such that that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the Term and any extended use.

Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Lessee and must be disclosed and acceptable to City at the time evidence of insurance is provided.

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Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except “course of construction fire insurance” shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, Lessee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. Lessee shall provide proof of continuing insurance at least annually during the Term and otherwise upon City’s request. If insurance lapses or is discontinued for any reason, Lessee shall immediately notify City and obtain replacement insurance as soon as possible.

Modification. To assure protection from and against the kind and extent of risk existing on the Premises, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Lessee thirty (30) days prior written notice. Lessee shall also obtain any additional insurance required by City for new improvements, changed circumstances, or City’s reasonable re-evaluation of risk levels related to Lessee’s use of the Premises.

Accident Reports. Lessee shall immediately report to City any accident causing property damage or injury to persons on the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

Causes of Loss - Special Form Property Insurance. Lessee shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of Lessee’s insurable property on the Premises, excepting wells, irrigation piping, and plant material, in an amount to cover one hundred percent (100%) of the replacement cost. Lessee shall deliver to City a certificate of such insurance.

WASTE, DAMAGE OR DESTRUCTION

8.1 Waste, Damage or Destruction. Lessee agrees to give notice to City of any fire or other damage that may occur on the Premises within twenty-four (24) hours of the occurrence of such fire or damage.

Lessee agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City’s option, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage,

Unless an individual situation calls for the immediate repair and/or restoration of the Premises (to be determined by City in its sole discretion), Lessee agrees that preliminary steps toward

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performing repairs, restoration, or replacement of the Premises shall be commenced by Lessee within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

IMPROVEMENTS, ALTERATIONS, MAINTENANCE AND REPAIRS

9.1 Acceptance of Premises. By signing this Lease, Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease, and is satisfied with the condition thereof. Lessee further acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is", and that Lessee does not hold City responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes. City has not made and makes no representation or warranty as to the condition or suitability of the Premises for Lessee's intended use, and assumes no obligation to alter or improve the Premises.

9.2 Entry and Inspection. City reserves and shall always have the right, but not the obligation, to enter said Premises, for the purpose of viewing and ascertaining the condition of the same, to protect its interests in the Premises, to inspect the operations conducted thereon or to perform any work thereon (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) the City may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) the City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City-constructed or owned facilities on or off of the Premises or at the Airport. No exercise by City of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from City for any injury or inconvenience occasioned thereby. If such entry or inspection by City discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, City shall have the right, after ten (10) days' written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition.

9.3 Maintenance. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following, as applicable: all roofs; all heating, ventilation and air conditioning systems; all mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locking and closing devices; all interior window sashes, casements and frames; doors and door frames; floor coverings; and all such items of

repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Upon surrender of the Premises, Lessee shall deliver the Premises to City in good order, condition and state of repair, but shall not be

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responsible for damages resulting from ordinary wear and tear. Lessee shall be responsible for completing all work, at its sole cost and expense, or reimbursing City (including all costs and expenses, including attorney fees, incurred to ensure the completion of the work) for all work, necessary to bring the Premises back to good order, safe, healthy, and sanitary condition and state of repair (excepting ordinary wear and tear) upon the surrender of the Premises to City. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

9.4 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to City, City shall have the right, upon giving Lessee ten (10) days written notice of its election to do so, to make such repairs or replacements or to perform such maintenance on behalf of and for the account of Lessee. If City makes or causes any such maintenance, repairs or replacements to be made or performed, as provided for herein, Lessee shall pay the cost thereof to City, as Additional Rent, promptly upon receipt of an invoice therefor.

9.5 Annual Leasehold Compliance Surveys. In addition to City's right to enter the Premises pursuant to Section 9.2 Entry and Inspection, above, Lessee acknowledges and accepts City's right and intent, but not the obligation, to conduct periodic, but not more frequently than annual (unless reasonable circumstances, to be determined by City in its sole discretion, determine the need for more than annual inspections), leasehold compliance surveys ("**Survey**"). The Surveys shall be scheduled at a mutually convenient time for City and Lessee, following written notice by City of its intent to conduct a Survey. The Survey will focus on, but not be limited to, the condition of all improvements on the Premises and proper maintenance thereof, building code compliance, compliance with all other laws, a verification of aircraft locations, and a verification of all subleases on the Premises. Lessee agrees to cooperate with City, or its authorized representative, during the Survey process and provide access to all areas on the Premises, both interior and exterior, including all aircraft storage hangers. In the event City, or its authorized agent, is not able to access all areas of the Premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow-up Survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate City for the personnel cost of the follow-up Survey at the rate of \$50 for each hour of such follow-up Survey. Refusal by Lessee to provide access to all areas of the Premises, and/or unreasonably delaying access to all areas of the Premises, shall be considered material breaches of this Lease and grounds for termination.

9.6 Building Inspections. City may, at City's sole cost and expense, cause all buildings and structures on the Premises to be inspected not less than every three (3) years during the Term. Inspections shall be conducted by a licensed California civil or structural engineer selected by City. As required by Section 9.3, Maintenance, above, Lessee shall cause to be done such repair and maintenance work identified in the judgment of the inspector as being reasonably required, at Lessee's sole cost and expense. Any repair and maintenance work shall not be subject to rent credit

to Lessee. Lessee shall submit copies of the inspection reports to the City not later than ten (10) calendar days after Lessee's receipt of same and shall seek City's prior written approval for all non-routine maintenance and/or capital repairs identified by the inspector(s).

9.7 Improvements. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without the prior written approval of the

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City, which shall not be unreasonably withheld. Further, Lessee agrees that structural or architectural design alterations to approved improvements, structures or installations may not be made on the Premises without the prior written approval of the City and such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in good order, safe, healthy, and sanitary condition and state of repair, including structural repair, restoration and replacement of damaged or worn improvements, or parts thereof, except as may be set forth in this Lease. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

9.8 Ownership of Improvements and Personal Property.

Any and all permanent improvements, in ground plant or tree material, in-ground irrigation and water wells, structures, and installations or additions to the Premises constructed on the Premises by Lessee shall at expiration or earlier termination of this Lease be deemed to be part of the Premises and shall become, at City's option, City's property free of all liens and claims, except as may otherwise be provided in this Lease.

If City elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, structures, and installations constructed on the Premises by Lessee, City shall so notify Lessee a minimum of one

(1) year prior to expiration of the Term (except in the case of an early termination due to default or other early termination event allowed pursuant to this Lease, in which case reasonable notice shall be given), and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost on or before lease expiration or earlier termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to reimburse City for all costs and fees, including attorneys' fees, incurred by City involved with said removal and collecting reimbursement for said removal.

Lessee-owned machines, appliances, equipment, trade fixtures, and other items of personal property shall be removed by Lessee by the date of the expiration or earlier termination of this Lease. Any of said items which Lessee fails to remove will be removed and/or stored by City subject to California law, and Lessee agrees to reimburse City for all costs and fees, including attorneys' fees, incurred by City involved with said removal and/or storage and collecting reimbursement for said removal and/or storage.

If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee agrees to reasonably repair all such damage or Lessee agrees to reimburse

City for all costs and fees, including attorneys' fees, incurred by City involved with said repairs and collecting reimbursement for said repairs.

Any necessary removal by either City or Lessee which takes place beyond the expiration or earlier termination hereof shall require Lessee to pay rent to City at the Base Monthly Rent rate in effect immediately prior to said expiration or earlier termination. Said Base Monthly Rent rate will double for each 30-day period, or

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part thereof, that Lessee remains working at the Premises beyond the first sixty (60) days from the expiration or earlier termination date.

Notwithstanding any of the foregoing, in the event Lessee desires to dispose of any of its personal property used in the operation of said Premises upon expiration or earlier termination of this Lease, then City shall have the first right to acquire or purchase said personal property.

9.9 Noxious Weeds, Pests, and Erosion. Lessee shall take all commercially reasonable corrective actions, to the satisfaction of City, to prevent the infestation of noxious weeds, pests, and erosion throughout the Premises.

9.10 Hazardous Substances. Lessee shall not allow the installation or release of hazardous substances in, on, under, or from the Premises, except for those substances that are customarily and regularly used in the operation of Lessee's business, and are stored and utilized in accordance with all manufacturer's instructions and applicable laws and regulations. Lessee and Lessee's sublessees, permittees, agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises without City's prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

9.10.1 Remediation. If Lessee's occupancy, use, development, maintenance, or restoration of the Premises (Lessee's Operations) results in a release of a hazardous substance, Lessee shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.

9.10.2 Indemnity. Lessee shall protect, defend, indemnify, and hold City harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Lessee's Operations on the Premises or area surrounding the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

9.10.3 Removal. If Lessee or Lessee's contractor, agent, permittee or sublessee has received approval and permits to store, utilize, generate or install, or otherwise bring

hazardous substances to the Premises, Lessee and/or Lessee's contractor, agent, permittee or sublessee shall remove all hazardous substances in all containers, equipment or devices from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. City reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous substances or containers, equipment or devices containing hazardous substances from the Premises. Lessee shall pay any and all costs incurred by City to remove any container, equipment or device requiring disposal or removal as required by this provision.

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9.10.4 Notice of Release. If Lessee knows or has reasonable cause to believe that a hazardous substance has been released on, under, or from the Premises, Lessee shall immediately notify City and any appropriate regulatory or reporting agency pursuant to Title 19 of the California Code of Regulations, and deliver a written report thereof to City within three (3) business days of receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If Lessee knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Lessee shall take all actions necessary to alleviate the danger. Lessee shall notify City immediately of any notice of violation received or initiation of environmental actions or private suits related to the Premises.

9.10.5 Environmental Assessment. Upon reasonable cause to believe that Lessee's Operations resulted in any hazardous substance being released on or beneath the Premises or area surrounding the Premises, City may cause an environmental assessment to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at Lessee's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by Lessee's Operations on, in, or under the Premises or the area surrounding the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by City, county, state, or federal laws, statutes, ordinances, or regulations, or require restricted use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and to effect unrestricted and lawful re-use of the Premises, and estimates of the cost of such remediation or removal. Lessee shall cause, or if Lessee fails to do so within a reasonable period of time, City may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and Lessee shall pay all costs and expenses therefor.

NEW DEVELOPMENT PLAN AND IMPROVEMENTS

10.1 General Development Plan. Notwithstanding anything to the contrary contained herein, Lessee shall make certain improvements to the Premises ("**General Development Plan**") as set forth in **Exhibit C General Development Plan**. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City, with the operation and maintenance of the transient ramp, with the monitoring and sampling

of groundwater, or other monitoring components, and the public and other persons and organizations entitled to use of the same. Lessee shall secure City's prior written approval to commence work on the improvements set forth in **Exhibit C General Development Plan**.

10.1.1 Permits and Approvals. Lessee shall, at its sole cost and expense, seek and obtain all necessary development permits and approvals, including environmental clearance for the General Development Plan, required for developing the Premises pursuant to the General Development Plan.

10.2 Liquidated Damages. The Parties agree that the damages to City resulting from Lessee's failure to complete the improvements identified in the General Development Plan by the

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scheduled completion dates would be extremely difficult to determine. Therefore, the Parties agree that if Lessee fails to complete the General Development Plan as required by this Lease by the scheduled completion dates, Lessee shall pay to City the amount of Two Hundred Dollars (\$200.00) as liquidated damages, and not as a penalty, for each day after the applicable scheduled completion date until completion of the improvement. Such liquidated damages shall be deemed Additional Rent due and payable upon City's demand therefor.

10.3 Landscaping. Lessee shall be responsible for maintaining all landscaping on the Premises, and for maintaining the landscaping watering systems on the Premises in good working order, by Lessee at Lessee's expense. Lessee also agrees to reimburse City for all costs associated with the landscaping to be installed between Gibbs Dr. and the fence of the Premises ("**Landscaping Improvements**") once a landscaping plan for the common areas of the Airport have been developed and approved by City. Lessee also agrees to contribute (in an amount to be determined by City in the future) to a Common Area Maintenance fund when said fund is established by City.

10.4 Minimum Improvement Costs. Lessee agrees to spend a minimum of \$ _____ on all the improvements described in Section 10.1 General Development Plan, Section 10.3 Landscaping, and as further set forth in **Exhibit C General Development Plan**.

10.5 City's Costs; Indemnity. In addition to all fees, costs, etc., required to be paid by Lessee for the processing of its construction plans through the City of San Diego's Development Services Department, or any other regulatory agency, Lessee shall reimburse City for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by City in approving or disapproving Lessee's plans for any improvements. Lessee shall be liable for and shall indemnify and defend City from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from Lessee's construction or installation of any improvements permitted under this Lease.

10.6 Onsite and Offsite Utilities. Lessee shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. Lessee shall be responsible for the cost of all public utility upgrades or relocations required by City necessary for the Premises including, construction, completion or operation of Lessee's improvements. City shall assist in determining location of existing utilities by providing Lessee with any surveys on file with the City. Nothing set forth above in this Section 10 shall affect the provisions of Section 12.24 Water

Quality –Best Management Practices, below. All utilities will be installed underground upon prior written approval by City of the utility installation and location thereof.

SECURITY OF PREMISES REQUIREMENTS

11.1 Security of Premises. Lessee shall be responsible for, and shall provide for, all the security of the Premises; City shall have no responsibility therefor. Lessee shall construct and maintain fences, gates, walls and/or barriers along the portions of the Premises that border a street or can be accessed by the general public in a manner designed to prevent all unauthorized access to the taxiways, runways, and Lessee’s ramp and hangar areas; the designs therefor and materials used, are all subject to the prior written approval of City. Unless otherwise approved in writing by City, Lessee shall construct and maintain fences and/or walls no less than six feet in height along the boundaries of the Premises, in locations specified and approved by City. Such fences and/or walls shall be constructed of materials and in such a manner as to reasonably prevent access to the Premises. Ingress

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and egress through gates and access points in the fences or walls shall be controlled by Lessee at all times. Unless otherwise approved in writing by the City, such control must be by the use of automated gate controls utilizing keycard technology. All plans for security fencing and/or walls and access gates must be submitted to and approved by the City prior to construction. Lessee shall provide lighting adequate, in the judgment of the City, to prevent unobserved entry onto the Premises during the hours of darkness.

GENERAL PROVISIONS

12.1 Notices

Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to Lessee at the Premises or at such other address designated in writing by Lessee, including the address below, and to City as follows:

City:

City of San Diego
Attn: Real Estate Assets Director 1200 3rd Ave, Suite 1700
San Diego, CA 92101 Lessee:

[INSERT LESSEE’S NAME & ADDRESS HERE]

and to any City-approved mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

Any Party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent upon thirty

(30) days prior written notice.

12.2 Compliance with Law. Lessee shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments at Lessee's sole cost and expense. In addition, Lessee shall comply with any and all notices issued by the City under the authority of any such law, statute, ordinance or regulation. Upon City's request, Lessee shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to Lessee (e.g., validation of periodic inspections, permits or licenses if any).

12.3 City's Consent, Discretion. The approval or consent of City wherever required in this Lease shall mean the written approval or consent of the Mayor, or his or her designee, without need

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for further resolution by the City Council, unless otherwise specified. City's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

12.4 Construction Requirements. All improvements required to be made to the Premises by this Lease, or otherwise approved by City to be constructed by Lessee, shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with any present or future Airport Layout Plan ("ALP") and any development standards which are or may be adopted by City and the Federal Aviation Administration ("FAA"). Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the planned improvements, for City's approval, prior to commencing any approved work. All work with respect to any improvements must be done in a good and workmanlike manner, commenced within ninety (90) days following receipt of approval therefore from the City, and diligently prosecuted to completion to the end. Upon completion of such work, Lessee shall have recorded in the office of the San Diego County Recorder a Notice of Completion, in a form as required or permitted by law. Lessee shall deliver to City, within ten (10) days receipt of the same, a copy of the Notice of Occupancy and the building permit with respect thereto. Within sixty (60) days following completion of any improvement, Lessee shall provide the City with three (3) complete sets of "as-built" plans of such improvement. Any such improvements shall be constructed strictly in accordance with the laws and ordinances relating thereto.

12.5 Prevailing Wage. By signing this Lease, Lessee certifies that it is aware of the wage provisions set forth in attached **Exhibit D Prevailing Wage Requirements** and shall comply with such provisions before commencing any and all work on the Premises.

12.6 Signs, Antennas and Lighting. Lessee shall not construct nor permit the erection or display of any antennas or signs, including banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without the prior written approval of the City, which approval shall be within the City's sole discretion. Lessee shall submit sketches of proposed antennas and signs to the City for approval showing size, materials, colors and location. Such antennas and signs must conform to all City requirements, as well as applicable standards, laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must also conform to all City requirements, as well as all applicable standards, laws or ordinances of governmental agencies having jurisdiction over the Premises. Any

such antenna, sign or lighting installed without the prior written consent of City shall be subject to removal without notice at any time, at Lessee's expense; Lessee agrees to reimburse City for all costs and fees, including attorney fees, incurred by City involved with said removal.

12.7 Liens. Lessee shall at all times save City free and harmless and indemnify City against all claims for labor or materials in connection with operations, construction, improvements, alterations, repairs or replacements on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, construction, alterations, repairs or replacements are made to the Premises by Lessee or by any party other than City, and a lien or notice of lien is filed, Lessee shall within five (5) days of such filing either:

(a) take all actions necessary to record a valid release of lien, or

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(b) file with City a bond, cash, or other security acceptable to City sufficient to pay in full all claims of all persons seeking relief under the lien.

12.8 Taxes. Lessee agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits. Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes. Lessee further agrees that payment for such taxes, fees and assessments will not reduce any rent due City.

12.9 Unavoidable Delay. If the performance of any act required of City or Lessee is prevented or delayed by reason of strikes, lockouts, or labor disputes; acts of God such as fires, floods and epidemics; freight embargoes; or other causes beyond the reasonable control of the Party required to perform an act, said Party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent as required pursuant to this Lease. In the event Lessee or City claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of such fact within ten (10) days after the beginning of any such claimed delay and provide documentation sufficient to support said claim.

12.10 Construction and Payment Bond. If Lessee constructs improvements on the Premises, City may at any time require Lessee to deposit with City a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to City. The bond shall insure that the work commenced by Lessee will be completed in accordance with the plans approved by City or, at the option of City that the uncompleted work will be removed and the Premises restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City.

Prior to the commencement of any work on the Premises, the Lessee shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. The Lessee shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, the Lessee shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City

12.11 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that Lessee or any person claiming under or through

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Lessee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or physical disability in the use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

12.12 Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), City is required to state: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

12.13 Compliance with City’s Equal Opportunity Contracting Program.

12.13.1 Equal Opportunity Contracting. Lessee shall submit to City statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each sub consultant/subcontractor/vendor/ service provider listed in the report.

12.13.2 Equal Employment Opportunity. Lessee will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Lessee will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City, Lessee will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that Lessee will take to achieve the City's goal for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, Lessee will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor.

12.13.3 Local Business and Employment. Lessee acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all City contracts. Lessee will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease

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from local residents and firms as opportunities occur. Lessee agrees to hire qualified local residents and firms whenever feasible.

Lessee understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in City contracts for a period of not less than one (1) year.

12.14 Equal Benefits. Lessee shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, Lessee certifies that it will maintain such equal benefits throughout the term of this Lease. Lessee's failure to maintain equal benefits shall be a default of this Lease.

12.15 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

12.16 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the context requires.

12.17 Captions. All section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is unintentional and shall have no effect on the enforceability of this Lease.

12.18 City Employee Participation Policy. It is the policy of City that all City contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement or lease may, at the sole option of City, be unilaterally and immediately terminated by City if the contractor or lessee employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or lessee. It is not the intent of this policy that these provisions apply to members of the City Council.

12.19 Drug-free Workplace. Lessee shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.

Establishing a drug-free awareness program to inform employees about all of the following:

(a) The dangers of drug abuse in the workplace.

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(b) The Lessee's policy of maintaining a drug-free workplace.

(c) Any available drug counseling rehabilitation and employees assistance programs; and

(d) The penalties that may be imposed upon employees' for drug abuse.

Lessee shall include in each contract related to this Lease language obligating each sub-licensee, contractor or sublessee to comply with the provisions of this section to maintain a drug-free workplace. Lessee and each of its sub-licensees, contractors and sublessees shall be individually responsible for their own drug-free workplace programs.

12.20 Americans With Disabilities Act. Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations ("**Title 24**") and California Civil Code § 54.1 as they may apply to the Premises. Lessee's obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("**Title III**") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee's intended use of the Premises, or (ii) may also be required of County under Title II of the ADA ("**Title II**") (42 uses§§ 12131- 12165).

12.21 Disabled Access Compliance. Lessee shall, at its sole cost and expense and as applicable to the Premises and Lessee's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable laws, rules, regulations and directives of competent governmental authorities protecting the rights of people with disabilities. Lessee's compliance shall include but not necessarily be limited to the following:

(a) Lessee shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

(b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Lessee.

(c) Lessee shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

(d) Where required by law, Lessee shall comply with City's disabled access requirements by bringing up to code and making accessible any areas of the

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Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of Lessee.

(e) Lessee shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. Lessee and sublessee shall be individually responsible for their own ADA employment programs.

Lessee agrees to indemnify and hold City harmless from any and all claims and judgments made against City, and for all costs and damages, including reasonable attorney fees and costs, incurred by City as a result of Lessee failing to comply with all the requirements of this Section. Lessee further understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

12.22 Standard of Employees. Lessee and its employees shall at all times conduct themselves and the operations on the Premises in a commercially reasonable manner.

12.23 Relocation Payments. Lessee understands and agrees that it shall not be entitled to any relocation payment from City whatsoever upon termination of this Lease.

12.24 Water Quality –Best Management Practices. City and Lessee are committed to the implementation of controls (“**best management practices**” or “**BMPs**”) to manage activities on the Premises in a manner which aids in the protection of the City's precious water resources. It is the

Lessee's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, Lessee shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately Lessee's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the Lessee will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

12.25 Reporting Requirements. Lessee agrees to provide to the City's Water Department reports about all activities conducted on the Premises. These reports will detail the usage of water, and all agricultural practices including but not limited to use of pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the BMP. Failure to provide the information requested under this section shall constitute a default under the terms of this Lease.

12.26 Hold Harmless, Flood Damage and Other Acts of God. Lessee understands and agrees that the Premises is subject to flood damage and that other damages may result to the Premises from other circumstances, including weather conditions and such causes as fire and earthquakes and Lessee assumes all risk therefor. Lessee agrees that all damages resulting from flooding and other weather-related causes, whether directly or indirectly resulting therefrom, shall not result in any liability on the part of City, and Lessee specifically agrees to assume the defense of, indemnify, and hold City harmless from all such damages incurred by Lessee or anyone claiming through Lessee therefor.

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Lessee further specifically agrees that City shall have no obligation whatsoever to construct or maintain channels, or to construct, maintain, or operate reservoirs, or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the Premises. Upon receiving prior written approval by City, Lessee shall be allowed to minimize potential flood damage through improved drainage and other flood control improvements installed and/or constructed on the Premises.

Were it not for Lessee's agreement to the requirements of this Section, City would not enter into this Lease.

12.27 Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term that the FAA will mandate SMS compliance for general aviation airports, which would include the Airport. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, Lessee agrees that Lessee will timely comply with, and respond to: (1) City's requirement that Lessee conduct regular (and other as-needed) SMS-related inspections of the Premises and that Lessee will compile and report said information in a form acceptable to the FAA and City; (2) all City requests for SMS-related data; (3) the City's right to conduct SMS-related inspections of the Premises; (4) all other SMS-related requests made by City

in its effort to implement a system-wide SMS and maintain an SMS Manual for the City's airport system or a part thereof; and (5) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by Lessee shall be verified by Lessee to be accurate and shall be provided without cost to City.

12.28 California Public Records Act. City shall determine, in its sole discretion, whether information provided to City by Lessee is or is not a public record subject to disclosure under the California Public Records Act ("Act"). If Lessee notifies City that it objects to the disclosure of certain information to a third party, Lessee shall deliver to City with such notice specific and detailed legal grounds, including any applicable case law, upon which City may rely for withholding any information requested pursuant to the Act. If City withholds disclosure of information in reliance on such legal analysis provided by Lessee, Lessee shall protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from City and all costs incurred by City associated therewith, and shall defend, at Lessee's sole expense, any action brought against City resulting from City's nondisclosure of the information. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Lessee shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

12.28.1 City shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by Lessee as a result of City's disclosure or non-disclosure of Lessee information requested pursuant to the Act.

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12.28.1.1 Lessee's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE ACT.

12.29 Cumulative Remedies. City's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of City's rights or remedies at law or in equity.

12.30 Survival. Any obligation which accrues under this Lease prior to its expiration or earlier termination shall survive such expiration or earlier termination.

12.31 Joint and Several Liability. If Lessee is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of Lessee under this Agreement.

12.32 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between City and Lessee or between City and any other entity or party, or cause City to be responsible in any way for the debts or obligations of Lessee or any other party or entity.

12.33 Exhibits. All exhibits referenced in this Lease are incorporated into this Lease by this reference. In the event of a conflict between this Lease and any exhibit to this Lease, the terms, conditions, and obligations of this Lease shall control.

12.34 Entire Understanding. This Lease contains the entire understanding of the Parties. Lessee, by signing this Lease, agrees that there is no other written or oral understanding between the Parties with respect to the leasing of the Premises other than as set forth in this Lease. Each Party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties (if any), representations (if any), and covenants set forth in this Lease. The failure or refusal of any Party to read the Lease, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all Parties.

FAA REQUIREMENTS AND RESERVATIONS OF RIGHTS

Lessee shall be responsible for ensuring that Lessee, its officers, employees, contractors, agents, sublessees, licensees and all others operating through Lessee, shall conform to the covenants and reservations of rights as further set forth in the attached **Exhibit E FAA Requirements and Reservation of Rights**.

IN WITNESS WHEREOF, this Lease is executed by City, acting by and through its Mayor or his designee, and by Lessee, acting by and through its lawfully authorized officer(s).

THE CITY OF SAN DIEGO, a California municipal corporation

Date: By:

Name:

Title:

MASTER TENANT

Date: By:

Name:

Title:

*Approved as to form this _____ day
of _____, 201_.*

MARA W. ELLIOTT, City Attorney

By: _____ Name:
Title:

EXHIBITS

Exhibit A – Premises

Exhibit A-1 - Legal Description

Exhibit B - Authorized Sublessees and/or Licensees Exhibit

C – General Development Plan

Exhibit D - Prevailing Wage Requirements

Exhibit E – FAA Requirements and Reservations of Rights

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EXHIBIT A (Will be updated)

PREMISES

MASTER TENANT

EXHIBIT A-1

LEGAL DESCRIPTION

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EXHIBIT B

AUTHORIZED SUBLESSEES AND /OR LICENSEES

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EXHIBIT C

GENERAL DEVELOPMENT PLAN

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EXHIBIT D

PREVAILING WAGE REQUIREMENTS

By signing this Lease, LESSEE certifies that it is aware of the wage provisions described herein and shall comply with such provisions before commencing any work on the Premises.

A. PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE and its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego (City) and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

2. Penalties for Violations. LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

3. Payroll Records. LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll

records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.

3.1 In addition to submitting weekly certified payroll records to the City, for contracts entered into on or after April 1, 2015, contractors and their subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- 4. Apprentices.** LESSEE and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 5. Working Hours.** LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 6. Required Provisions for Subcontracts.** LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 177.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 7. Labor Code Section 1861 Certification.** LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- 8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- 9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to

perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, LESSEE is certifying that he or she has verified that all subcontractors

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used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of subcontractor registration to the City upon request.

9.1 A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

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EXHIBIT E

FAA REQUIREMENTS AND RESERVATION OF RIGHTS

LESSEE and its officers, employees, contractors, agents, and all others operating through LESSEE shall conform to the following FAA covenants and reservations of rights as applicable.

B-1. LESSEE's Use to Conform with Law and Other Rules. LESSEE is granted the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

B-2. LESSEE's Use and Construction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the Airport. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the Site and the Airport.

B-3. LESSEE's Noninterference with Aircraft. LESSEE and LESSEE's successors and assigns, agree not to interfere with any aircraft landing or taking off from Montgomery Field Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to abate or eliminate the interference at the expense of the LESSEE.

B-4. Agreement Subordinate to CITY/United States Agreements. This Lease shall be subordinate to the terms of any existing or future agreements between CITY and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport. LESSEE acknowledges and agrees that should any existing or future agreement between CITY and the United States, or any United States legal requirement, cause this Lease to terminate or otherwise be affected, LESSEE shall have no right to seek damages of any type therefor from CITY.

B-5. Height Limitation. LESSEE and the LESSEE's successors and assigns agree not to erect or Lease any structure unless it complies with all FAA and ALUCP height limitations. If this covenant is breached in any way, CITY reserves the right to remove the structure or object at the expense of the LESSEE.

B-6. Right of Flight Easement. CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the Premises, for the benefit

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and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near the Airport.

B-7. War or National Emergency. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the Airport. During any war or national emergency, CITY shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the lease to the Government shall be suspended. CITY shall not be liable for any loss or damages alleged by the Lease as a result of this action. However, nothing in this Lease shall prevent the LESSEE from pursuing any rights it may have for reimbursement from the United States Government.

B-8. Airport Development. CITY reserves the right to further develop, change or improve the Airport, terminal, offices, including its routes and landing areas, as CITY sees fit, without LESSEE's interference or hindrance, and regardless of LESSEE's views and desires. CITY shall have the right to perform any and all such actions referred to in this section – including the right to shut down parts or all of the Airport – at no liability to the CITY, regardless of any damages or losses LESSEE may suffer from said actions.

B-9. Nonexclusive Right. LESSEE understands and agrees that nothing in this Lease shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).

B-10. Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the Airport landing area and all other public facilities with no liability to CITY. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of the Airport landing areas and all other Public facilities.

B-11. FAA Nondiscrimination Covenant.

- a. LESSEE agrees and LESSEE's representatives, successors, and assigns agree, as part of the consideration for this Lease, that:
 - (1) No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the Premises based on race, color, sex or national origin.
 - (2) No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the Premises, based on race, color, sex or national origin.

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(3) LESSEE shall conduct all activities contemplated by this Lease in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, 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," as now exists or may be amended in the future.

- b. If any of the provisions are breached, CITY may terminate this Lease and reenter and repossess the premises as if this Lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.
- c. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision, CITY has the right to terminate this Lease, without liability, and either CITY or the United States may judicially enforce this entire covenant.
- d. LESSEE agrees to include this entire covenant in any sublease or other agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the premises.

B-12. Equal Opportunity. The LESSEE, the LESSEE's successors and assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

B-13. CITY to Mitigate Impacts of Subordination. If subordination agreements between CITY and United States of America result in LESSEE's inability to operate as a business on the Leased Area, or if the operations permitted under this Lease are materially affected during a period of subordination, CITY agrees to make a reasonable adjustment to the terms and conditions of the Lease, as determined by CITY, in its sole discretion. LESSEE agrees that any damages claimed during this subordination period will be limited to the relief granted by CITY, if any, and that CITY will incur no liability for any losses suffered by LESSEE.

B-14. CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between CITY and the United States of America result in LESSEE's inability to operate as authorized on the Leased Area, or if LESSEE's operations authorized under this Lease are materially affected during a period of subordination, CITY, upon written request from LESSEE, will terminate this Lease

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or extend the term of this Lease for the period of time that LESSEE's operation is affected, and no rent shall accrue during any period of in-operation.

B-15. Hangar Keeper's Insurance. If so instructed by CITY, PERMITTEE agrees to maintain Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others. This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this Permit.

B-16. Licenses and Certifications. LESSEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and CITY then has the right to terminate this Lease without liability.

B-17. Employee Conduct. LESSEE shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Lease Area and Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with LESSEE's operations or activities on the Airport.

B-18. Aircraft Parking. LESSEE shall require that all aircraft under its control be parked within the boundaries of the Premises. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE's control, be allowed to parked within the Runway Protection Zone (RPZ) or obstruct any designated taxiways.

B-19. Minority Business Policy. LESSEE agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The LESSEE and the LESSEE's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation- assisted contracts.

B-20. Provisions to be Included in All Pertinent Documents. LESSEE agrees that it shall insert all of the FAA Requirements provisions set forth in Exhibit B in all contracts or agreements by which LESSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Leased Premises.

MONTGOMERY-GIBBS EXECUTIVE AIRPORT

Flat Rate Lease

Between

THE CITY OF SAN DIEGO

AND

[insert name of proposed LESSEE here

EXHIBIT "D" - Work Force Report



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1010 Second Avenue • Suite 500 • San Diego, CA 92101
Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: _____
AKA/DBA: _____
Address (Corporate Headquarters, where applicable): _____
City _____ County _____ State _____ Zip _____
Telephone Number: (____) _____ FAX Number: (____) _____
Name of Company CEO: _____
Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):
Address: _____
City _____ County _____ State _____ Zip _____
Telephone Number: _____ FAX Number: (____) _____
Type of Business: _____ Type of License: _____
The Company has appointed: _____
as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:
Address: _____
Telephone Number: (____) _____ FAX Number: (____) _____

- One San Diego County (or Most Local County) Work Force - Mandatory
 Branch Work Force *
 Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of _____
(Firm Name)

_____, _____, _____ hereby certify that information provided
(County) (State)
herein is true and correct. This document was executed on this _____ day of _____, 200 ____.

(Authorized Signature) (Print Authorized Signature)

WORK FORCE REPORT – NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

Exhibit “E” – Credit Information Request

I/We hereby request and authorize you to release to the City of San Diego for verification purposes, personal and business credit reports and information concerning the company/corporation/partnership and/or the officers and individuals listed below. That information may include but is not limited to:

Employment history dates, title, income, hours worked.

Banking (checking & savings) accounts of record.

Mortgage loan rating (open date, high credit, payment amount, loan balance, and payment)

Any information deemed necessary concerning a consumer credit report for my loan application.

This information is for the confidential use in compiling a credit report.

A facsimile, photographic or carbon copy of this authorization (being a facsimile, photographic or carbon copy of the signature (s) of the undersigned), may be deemed to be equivalent of the original and may be used as a duplicate original.

1. Name of Applicant
(Please print or type)
Name of Business:
(If different from “applicant”)
Telephone: ()
Name of Affiliated Business:
Telephone: ()
2. Name of Officer/Owner
Address for the last two years:
Social Security Number:
Signature:
3. Name of Officer/Owner:
Address for the last two years:
Social Security Number:
Signature:

Exhibit "E", Credit Information Request

PLEASE PRINT

Date/Time: _____

COMMERCIAL CREDIT CHECK

1. Name of Business _____
2. Business Address _____ Number, Street, City, State, Zip Code
3. Phone Number _____

CONSUMER (PERSONAL) CREDIT CHECK

1. Name of Consumer _____ Last Name, First Name, Middle Initial
2. Consumer Address _____ Number, Street, City, State, Zip Code
3. Phone Number
4. Consumer Social Security Number ___ __ ___ / ___ __ / ___ __ __

REAL ESTATE ASSETS DEPARTMENT INFORMATION

1. Requestor Name: _____
2. Job Order No. _____
3. Job Title: _____
4. Supervisor Approval: _____

Exhibit "F" – City of San Diego Lessee's Questionnaires for all Leases

CITY OF SAN DIEGO

**LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE
FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES**

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Exact name of proposed Lessee (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: _____, _____.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub) Lessee exactly as it will appear on the actual tenancy document:

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

Telephone No.: _____ Fax. No.: _____

E-mail Address: _____

3. Billing Address (***only if different from Mailing Address***);

Telephone No.: _____

Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (); Corporation ();

Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: _____

2. General Partnership ()
 Limited Partnership ()
 Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

Date	Book	Page	County

4. Has the partnership conducted business in San Diego County?
 Yes () No () If so, when? _____
 If so, where? _____

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
a. Publicly () Privately ()
b. If publicly held, how and where is the stock traded?

6. Please list the following:	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of Common Stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must** attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition. The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	_____
Date of Birth	_____
Place of Birth	_____
Social Security Number	_____
Driver's License Number/State	_____
Home Address	_____

Previous Address	_____

Home Telephone No.	_____
Employer	_____
Occupation	_____
Business Address	_____
Business Telephone No.	_____
Business Fax No.	_____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

**PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE**

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
1	\$	\$	\$	\$	\$
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

Exhibit "G" – Contractor Standards Pledge of Compliance

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

A. BID/PROPOSAL/SOLICITATION TITLE:

E. G.

F. H. **BIDDER/PROPOSER INFORMATION:**

I. Legal Name	J. DB		
K. Street Address	L. City	M. Stat	N. Zip
O. Contact Person, Title	P. Phone	Q. Fax	e

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

Yes No

If Yes, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

Yes No

If Yes, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

Corporation Date incorporated: _____ / _____ / _____ State of incorporation: _____

List corporation's current officers: President: _____

Vice Pres: _____

Secretary: _____

Treasurer: _____

Is your firm a publicly traded corporation? Yes No

If Yes, name those who own ten percent (10 %) or more of the corporation's stocks:

Limited Liability Company Date formed: _____ / _____ / _____ State of formation: _____

List names of members who own ten percent (10%) or more of the company:

Partnership Date formed: _____ / _____ / _____ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: _____ / _____ / _____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

Joint Venture Date formed: _____ / _____ / _____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture must complete a separate *Pledge of Compliance*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?
Yes No

If Yes, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?
Yes No

If Yes, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

If Yes, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If Yes, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes No

If Yes, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

Yes No

If Yes, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

Yes No

If Yes, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes No

If Yes, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes No

If Yes, use Pledge of Compliance Attachment "A" to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes No

If Yes, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date: _____

Contract Amount: _____

Requirements of Contract: _____

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes No If Yes, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: _____

Contact Name and Phone Number: _____

Contact Email: _____

Address: _____

Contract Date _____

Sub-Contract Dollar Amount: _____

Requirements of Contract: _____

What portion of work will be assigned to this subcontractor: _____

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: _____

Owned Rented Other (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned Rented Other (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

Equipment Description: _____

Owned Rented Other (explain below)

If Owned, Quantity Available: _____

Year, Make & Model: _____

Explanation: _____

L. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated _____ / ____ / ____.

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Name and Title

Signature

Date

City of San Diego CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Print Name, Title

Signature
Date