

**CITY OF SAN DIEGO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING**

THIS CITY OF SAN DIEGO INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING ("MOU") is made by and between the City of San Diego Real Estate Assets Department-Airports Division ("AIRPORT") and the City of San Diego-Public Works/Engineering & Capital Projects ("E&CP") to be effective as of July 1, 2018 (the "Effective Date"), as follows:

RECITALS

- A. There is currently an MOU between AIRPORT and E&CP, effective on March 1, 1991 ("1991 Agreement"), regarding E&CP's lease of the AIRPORT-controlled property located at 9485 Aero Drive, San Diego, CA 92123 (the "Premises").
- B. E&CP no longer requires use of the entire Premises and wishes to reduce the square footage from 124,146 sf to 18,387 sf, a decrease of 105,759 sf.
- C. As of the Effective Date hereof, the parties agree to have the 1991 Agreement terminated.
- D. E&CP shall continue to use the Premises under the terms and conditions set forth in this MOU.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

TERMS AND CONDITIONS

- 1. Premises. AIRPORT hereby leases to E&CP and E&CP leases from AIRPORT the property located at 9485 Aero Drive, San Diego, California 92123 (the "Premises"). The Premises is described as approximately 18,387 square feet of parking lot and site improvements as described in Exhibit A: Legal Description of Premises and depicted in Exhibit B: Premises -Parcel A, attached hereto and by this reference made part hereof.
- 2. Use. E&CP is authorized to use the Premises non-exclusively for employee and visitor parking. No other uses, whatsoever, are allowed without the prior written consent of the Mayor, or his designee, in each instance.
- 3. Term. This MOU shall commence on the July 1, 2018, and shall continue on an annual basis ("Term") thereafter. This MOU may be terminated upon one hundred and eighty (180) days prior written notice by either party, without necessity of cause.
- 4. Rent. The initial rent shall be sixty-nine thousand eight hundred and seventy dollars and no cents (\$69,870.00) per year.

Each year, on the anniversary of the Effective Date, the annual rent shall be increased by three percent (3%).

- 5. Time and Place of Payment. Rent is due annually in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months

of any rental period in order to achieve payment on the first day of each calendar month. E&CP shall make all payments payable to the "Airport Enterprise Fund."

6. Assignment and Subletting. E&CP shall not assign this MOU 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 E&CP, to use or occupy the Premises or any part thereof, without the prior written consent of the Mayor, or his designee, in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person.
7. Accident Reports. E&CP shall report to AIRPORT any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and all other pertinent information.
8. Possession by E&CP. AIRPORT has made no promise to alter or improve the Premises or made any representation concerning the condition thereof. E&CP is currently in possession of the Premises and acknowledges the Premises is in good order and condition. E&CP will maintain the Premises in good condition and repair, and will not cause or permit the Premises to be damaged or defaced or to deteriorate. E&CP will return the Premises at the expiration or earlier termination of the MOU in good condition and repair, normal wear and tear excepted.
9. Entry and Inspection. AIRPORT reserves and always has the right to enter said Premises for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests, or to ensure that the Premises is being maintained in a decent, safe, healthy, and sanitary condition. In the event that such entry or inspection by AIRPORT discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, AIRPORT's shall have the right, after reasonable notice to E&CP, to have any necessary maintenance work done at the expense of E&CP. E&CP agrees to pay promptly any and all costs incurred by AIRPORT in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition.
10. Utilities. E&CP will pay for all utilities necessary for the operation and maintenance of its laboratory and/or the Premises.
11. Taxes and Fees. E&CP agrees to pay all levies, taxes and fees due on Premises during the term of this MOU.
12. Maintenance of the Premises. E&CP shall be responsible for all costs associated with the operation and maintenance of the Premises throughout the Term. E&CP shall, to AIRPORT's satisfaction, maintain the Premises in a decent, safe, healthy and sanitary condition at all times. All applicable codes and standards of state and federal agencies shall be observed.
13. Access to the Premises. E&CP shall use gate and access road for ingress/egress to the Premises with any type of vehicle. No other road, dirt road, may be used to access the Premises at any time.

14. Alterations. E&CP shall not alter the Premises without the prior written consent of AIRPORT. All applicable City, County, State, and Federal codes and requirements will apply to any alteration E&CP makes to the Premises or its improvements.
15. Compliance with Law. E&CP shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all laws, statutes, ordinances, and regulations of the City of San Diego, AIRPORTS, county, state, and federal governments, at E&CP's sole cost and expense. In addition, E&CP shall comply with any and all notices issued by the AIRPORT, or the Mayor or his designee, under the authority of any such law, statute, ordinance or regulation.
16. Survival. Any obligation which accrues under this MOU shall survive its expiration or earlier termination.
17. Hazardous/Toxic Waste. E&CP shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. E&CP and E&CP's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without AIRPORT's prior written consent in each instance. E&CP shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - a. Release. For purposes of this MOU, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
 - b. Hazardous Substance. For purposes of this MOU, "Hazardous Substance" 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.
 - c. Remediation. If E&CP's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, E&CP shall pay all costs of remediation and removal to the AIRPORT's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
 - d. Removal. If E&CP or E&CP's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, E&CP and/or E&CP's contractor or agent shall remove all Hazardous Substances in any type of container,

equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this MOU. AIRPORT reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. E&CP shall be responsible for any and all costs incurred by AIRPORT to remove any container, equipment or device requiring disposal or removal as required by this provision.

- e. Notice of Release. If E&CP knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, E&CP shall immediately notify AIRPORT and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. E&CP shall deliver a written report thereof to AIRPORT within three (3) days after 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 E&CP knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, E&CP shall take all actions necessary to alleviate the danger. E&CP shall immediately notify AIRPORT in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- f. Environmental Assessment. Upon reasonable cause to believe that E&CP's occupancy, use, development, maintenance or restoration of the Premises ("E&CP's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, AIRPORT shall notify E&CP of such belief and allow E&CP up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If E&CP fails to cause such an environmental assessment to be commenced with the noticed time period, AIRPORT may cause the assessment to be performed. The environmental assessment shall be obtained at E&CP's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by E&CP's Operations on, in, from or under 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 future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. E&CP shall cause, or if E&CP fails to do so within a reasonable period of time, as determined by AIRPORT in its sole discretion, AIRPORT may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and

compliance with environmental law and regulations are achieved, and E&CP shall pay all costs and expenses therefore.

18. Water Quality – Best Management Practices. E&CP shall be 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 E&CP’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, E&CP 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).
19. MOU Subject to FAA Regulations: E&CP acknowledges and agrees, in addition to the foregoing terms and conditions of this MOU, that E&CP shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **EXHIBIT C – FAA Requirements and Reservations of Rights**, which by this reference is made a part of this MOU. Failure to strictly adhere to the FAA Regulations shall subject this MOU to immediate termination with no liability to AIRPORT.
20. Notices.
 - a. Any notice required or permitted to be given pursuant to this MOU shall be in writing and may be served interoffice mail, personally or by United States mail, postage prepaid, addressed to PUBLIC WORKS – ENGINEERING & CAPITAL PROJECTS at the Premises or at such other address designated in writing by ENGINEERING & CAPITAL PROJECTS:

San Diego-Public Works/Engineering & Capital Projects
Attn: Director of Public Works/EC&P
202 C Street, 9th Floor
San Diego, CA 92101

And, to AIRPORT as follows;

City of San Diego
Attn: Deputy Director / Airport Division
3750 John J. Montgomery Drive, M.S. 14
San Diego, CA 92123

21. Authority to Sign. Each individual signing this MOU for a City Department represents and warrants that they are authorized to execute and deliver this MOU on behalf of their respective Department.
22. Entire Agreement. This MOU constitutes the entire agreement between the parties and supersedes any and all prior understandings between the parties concerning the Uses authorized herein. Any modification, alteration, or amendment of this MOU shall be in writing and signed by all the parties hereto.

IN WITNESS WHEREOF, this MOU is executed to be effective as of the Effective Date.

Date: 7/26/18

THE CITY OF SAN DIEGO

By: [Signature]
Cybele Thompson
Director, Real Estate Assets Department

Date: _____

CITY OF SAN DIEGO PUBLIC WORKS – E&CP

By: [Signature]
James Nagelvoort
Director, Public Works – Engineering &
Capital Projects

Environmental Analysis Section Environmental Clearance:

This activity is not a project pursuant to CEQA Guidelines Section 15378(b)(5), and thus, is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3):

Date: 7/26/18

By: [Signature]
Alyssa Muto
Deputy Director, Planning Department

EXHIBIT "A"

Legal Description of Premises

APN: 421-030-57

That portion of Lot 4 of City Aero Drive Industrial Park, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12632, recorded May 3, 1990 in the Office of the County Recorder of said County, said portion being more particularly described as follows:

PARCEL "A"

Beginning at the northeast corner of said Lot 4; Thence along the easterly line of said Lot 4 South 12°24'03" West (record South 11°54'50" West) 124.48 feet; Thence leaving said easterly line of Lot 4 North 77°35'57" West 15.00 feet to the **True Point of Beginning**; Thence South 12°24'03" West 146.88 feet; Thence North 64°31'12" West 145.19 feet; Thence North 25°28'48" East 143.00 feet; Thence South 64°31'12" East 111.97 feet to the **True Point of Beginning**.

The above described parcel contains 18387.17 Sq. Feet (0.4221 Acre).

Exhibit "B" attached and by this reference is made a part hereto.

Richard T. McCormick *2-21-2018*
Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering



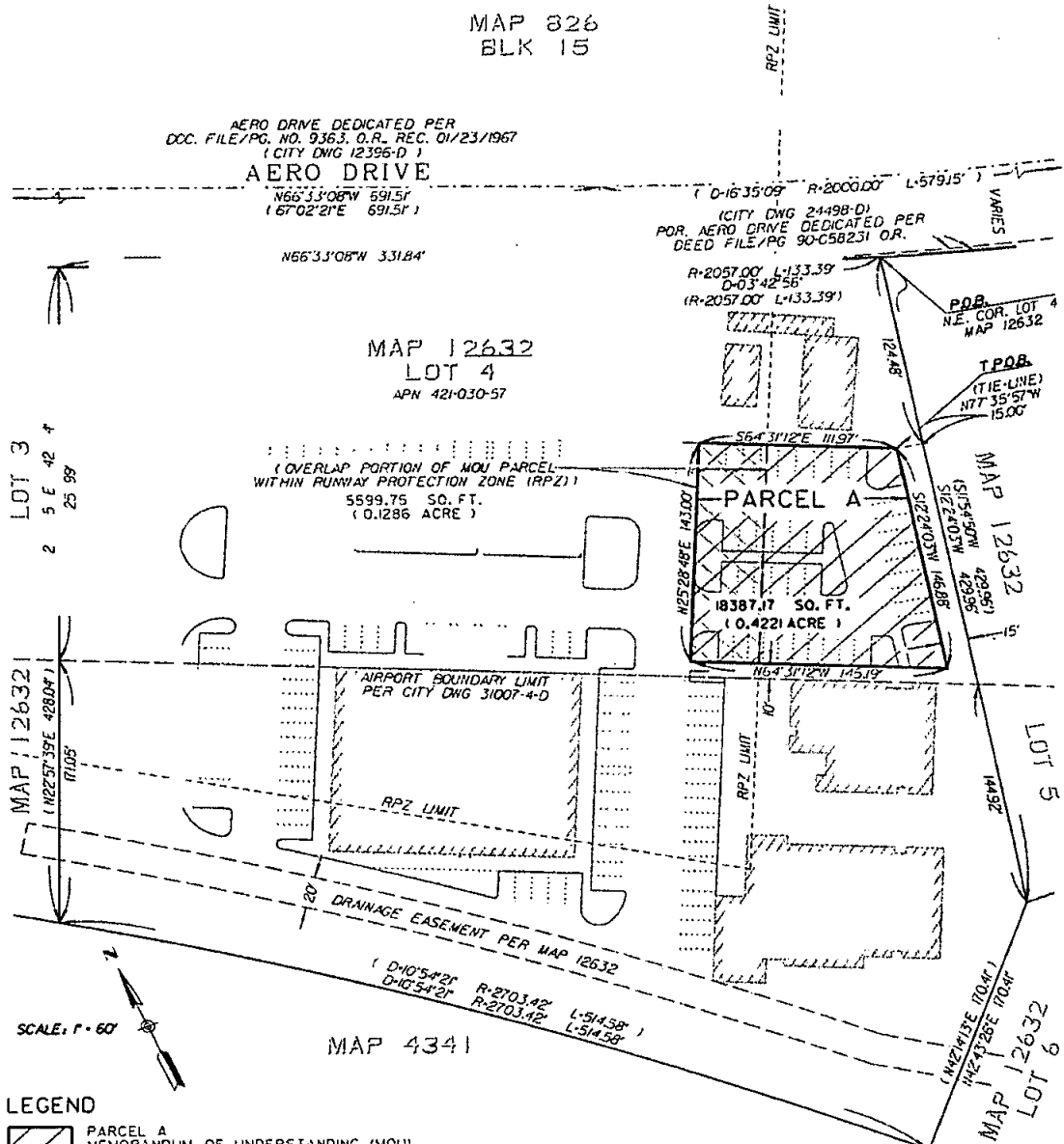
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WBS: 21003181 February 2018

EXHIBIT "B"

Premises - Parcel A

MONTGOMERY-GIBBS
EXECUTIVE AIRPORT

MAP 826
BLK 15



LEGEND

- PARCEL A
MEMORANDUM OF UNDERSTANDING (MOU)
AREA = 18387.17 SQ. FT. (0.4221 ACRES)
- PORTION OF MOU PARCEL WITHIN
RUNWAY PROTECTION ZONE (RPZ) LIMITS
AREA = 5599.75 SQ. FT. (0.1285 ACRES)

P.O.B. INDICATES POINT OF BEGINNING
T.P.O.B. INDICATES TRUE POINT OF BEGINNING
() INDICATES RECORD DATA PER
MAP 12632

PREPARED BY:

CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION,
UNDER THE DIRECTION OF
RICHARD T. MCCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

RICHARD T. MCCORMICK, LS 7450



PAGE 2 OF 2

9485 AERO DRIVE
M.O.U. PARCEL
PORTION OF LOT 4, MAP 12632

EXHIBIT "C"
FAA Requirements and Reservations of Rights

E&CP and its officers, employees, contractors, agents, and all others operating through E&CP shall conform to the following FAA covenants and reservations of rights.

C-1. E&CP's Use to Conform with Law and Other Rules. E&CP 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 E&CP's control. E&CP agrees that such use shall be in accordance 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.

C-2. E&CP's Use and Construction to Conform with Federal Aviation Regulations. E&CP agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the Airport. E&CP 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.

C-3. E&CP's Noninterference with Aircraft. E&CP and E&CP's successors and assigns, agree not to use the Premises in any manner which might interfere with any aircraft landing or taking off from the 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 E&CP.

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

C-5. Height Limitation. The E&CP and the E&CP's successors and assigns agree not to erect or permit any structure unless it complies with all FAA and Airport Land Use Compatibility Plan ("ALUCP") height limitations. If this covenant is breached in any way, AIRPORT reserves the right to remove the structure or object at the expense of the E&CP.

C-6. Right of Flight Easement. AIRPORT 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 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.

C-7. War or National Emergency. In the event of war or national emergency, this MOU 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, AIRPORT 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 MOU which are inconsistent with the provisions

of the MOU to the Government shall be suspended. AIRPORT shall not be liable for any loss or damages alleged by the MOU as a result of this action. However, nothing in this MOU shall prevent the E&CP from pursuing any rights it may have for reimbursement from the United States Government.

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

C-9. Nonexclusive Right. E&CP understands and agrees that nothing in this MOU 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).

C-10 Landing Area Maintenance. AIRPORT reserves the right, but not the obligation, to maintain and repair the Airport Landing Area and all other public facilities. AIRPORT also has the right to direct and control all of E&CP's activities affecting the maintenance and repair of the Airport Landing Area and all other public facilities.

C-11. FAA Nondiscrimination Covenant.

a. E&CP and E&CP's representatives, successors, and assigns agree, as part of the consideration for this MOU, 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.

(3) E&CP shall conduct all activities contemplated by this MOU 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, AIRPORT may terminate this MOU and reenter and repossess the Premises as if this MOU 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. E&CP 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. E&CP is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If E&CP does not comply with this provision, AIRPORT has the right to terminate this MOU, without liability, and either AIRPORT or the United States may judicially enforce this entire covenant.

- d. E&CP agrees to include this entire covenant in any sublease or other agreement by which E&CP grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the Premises.

C-12. Equal Opportunity. The E&CP, the E&CP'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.

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

C-14. AIRPORT to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between AIRPORT and the United States of America result in E&CP's inability to operate as authorized on the Premises, or if E&CP's operations authorized under this MOU are materially affected during a period of subordination, AIRPORT, upon written request from E&CP, will terminate this MOU or extend the term of this MOU for the period of time that E&CP's operation is affected, and no rent shall accrue during any period of non-operation.

C-15. Licenses and Certifications. E&CP 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 AIRPORT then has the right to terminate this MOU without liability.

C-16. Employee Conduct. E&CP shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport, if that employee, contractor, agent, invitee or guest is on AIRPORT property during any period of employment or in connection with E&CP's operations or activities on the Airport.

C-17. Aircraft Parking. E&CP shall require that all Aircraft under its control be parked only on the Premises, except as otherwise provided by the direction of AIRPORT. At no time shall any Aircraft, Motor Vehicle or other object, including refuse, under E&CP's control, be allowed to obstruct any designated taxiways.

C-18. Minority Business Policy. E&CP 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 E&CP and the E&CP'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.

C-19. Provisions to be Included in All Pertinent Documents. E&CP agrees that it shall insert all of the FAA Requirements provisions set forth in this **EXHIBIT C** in all contracts or agreements by which E&CP grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.