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James N. Routh

THE CITY OF SAN DIEGO

Flat Rate Lease

DOCUMENT NO. RP-264699

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO

FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and JAMES N. ROUTH, hereinafter called "LESSEE."

SECTION 1. USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY ~~all of~~ that certain real property described as Lot 23, Montgomery Field, situated in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the construction, maintenance, and operation of an Automated Flight Service Station (AFSS) for use by the Federal Aviation Administration and for such other airport related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this lease agreement LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an FAA Automated Flight Service Station and related activities in a fiscally responsible manner.

SECTION 2: TERM

2.01 Commencement. The term of this agreement shall be thirty (30) years commencing on December 1, 1985. "Lease Year" as used in this lease shall mean the 12-month period commencing on the first day of each December during the term of this lease.

2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.03 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

2.04 Right to Extend. Provided that LESSEE is not in default of this lease and upon mutual agreement of CITY and LESSEE, LESSEE has the right to extend this lease once for an additional term of 10 years, subject to all original agreements, considerations, covenants and conditions. To exercise this right, LESSEE must give CITY six months' written notice before the date on which this lease expires.

When written notice to extend is received by CITY, the rent and appropriate rental adjustments shall be renegotiated for the additional 10-year period. If CITY and LESSEE are unable to agree on a new rent and rental adjustments prior to two months before the date on which this lease expires, said rent shall be ten percent (10%) per year of the fair market value

of the land, paid on a monthly basis, and rents will be adjusted upward by five percent (5%) at the beginning of each lease year. If the CITY and LESSEE are unable to agree on the fair market value of the land, the fair market value shall be determined by the appraisal process set out in Paragraph 3.02 hereof. In the event the rent established by the appraisal process set out in Paragraph 3.02 is not acceptable to LESSEE, LESSEE may terminate this lease agreement on its expiration date, subject to the provisions of Paragraphs 2.03 and 6.10 hereof.

SECTION 3: RENT

- 3.01 Place of Payment. Rent is due monthly 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. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California 92112-4165, or delivered to 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Construction Period. Beginning on December 1, 1985 and continuing through March 31, 1986, LESSEE shall pay to CITY Three Hundred Eighty Dollars (\$380) per month in the manner provided in Section 3.01 above.

If LESSEE completes construction of the development prior to the end of the construction period provided above, LESSEE shall commence payment of the rent specified in the operation period below upon completion of the development, hereby defined as the filing of the notice of completion or procurement of a certificate of occupancy from the City of San Diego, whichever is sooner.

LESSEE shall notify CITY in writing upon receipt of all permits, licenses and approvals and upon completion of the development.

- b. Operation. Beginning on April 1, 1986 or upon completion of the development as defined in Paragraph 3.02.a. above, if sooner, LESSEE shall pay to CITY Fifteen Hundred and Fifteen Dollars (\$1,515) per month. Said rent shall be adjusted upward by five (5%) percent at the beginning of each lease year (each December 1) through the first twenty (20) years of the term of this agreement. A schedule of rental adjustments is attached hereto as Exhibit "B".

At the end of the twentieth year following the effective date of this agreement, the rent and appropriate rental adjustments shall be renegotiated for the remainder of the term. If CITY and LESSEE are unable to agree on a new rent and rental adjustments, said rent shall be ten percent (10%) per year of the fair market value of the land, paid on a monthly basis, and rents will be adjusted upward by five percent (5%) at the beginning of each year. If CITY and LESSEE are unable to agree on the fair market value of the land, the fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by the CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event the presiding judge of the Superior Court declines to act, then the third appraiser will be appointed in accordance with the Rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

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In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for its highest and best use at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent be less than the rent in existence immediately prior to the adjustment date.

In the event the rent established by the appraisal process stated above is not acceptable to LESSEE, LESSEE may, at LESSEE'S option, terminate this lease agreement subject to the provisions of Paragraphs 2.03 and 6.10 hereof, by giving CITY 120 days' prior written notice of LESSEE'S intention to terminate said agreement.

- 3.03 Delinquent Rent. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. 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.
- 4.02 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 Manager 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. 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 written consent of the City Manager. City Manager approval will not be unreasonably withheld.
- 4.03 Encumbrance. Subject to prior consent by the CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of the LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with the section hereof entitled Development Plan; however, a reasonable portion 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 attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval, in writing, of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said development plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

In the event any such approved deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the CITY will accept the 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.

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument 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.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within sixty (60) days following written notice thereof from CITY, except in the case of unpaid rent, LESSEE fails to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Paragraph a. (1) of this section is not curable within sixty (60) days (30 days in case of default for nonpayment of rent) after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have sixty (60) days from such notice to cure the default(s) or, if any such default is not curable within 60 days, to commence to cure the default(s) and diligently pursue such cure to completion. The 60-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:
- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
 - (2) CITY may correct said default or defaults and may pay the costs thereof 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 defaults or to pay the costs of correction performed by or at the direction of CITY.
 - (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 agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY

may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable cost incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to

applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 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 the CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. 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.
- b. In the event of a partial taking, if, in the opinion of the CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of the CITY, the remainder 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 of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. 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 of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority, except when CITY is the condemning authority.
- e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- f. No Inverse Condemnation. 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.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. 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. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section 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 use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY 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 should 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 other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days 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 the CITY. If the leased 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 the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02, Insurance, hereof.

LESSEE agrees that preliminary steps toward 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. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

- 5.04 Security Deposit. LESSEE agrees to pay, upon execution of this lease and maintain during the term of this lease, a security deposit equivalent to one month's rent. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, 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:

- a. Cash. Cash deposits shall be deposited with CITY 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.
- b. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the State or Federal Government, pledging that the funds are on deposit and guaranteed for payment, and agreeing that any or all shall be paid to CITY or order upon demand by CITY.

The financial institution and the form of any instrument pledging the funds must be approved by the CITY.

LESSEE will maintain the required security deposit throughout the lease term and for 90 days thereafter unless previously released by the CITY. 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, LESSEE shall reimburse the deposit within 10 days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to the LESSEE within 90 days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon 60 days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.01 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. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.

6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days' written notice to LESSEE, to have any necessary maintenance work done for and 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. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not

decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.12 hereof and with all applicable laws.
- 6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager and such approval shall not be unreasonably withheld. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash, corporate surety bond, certificate of deposit, letter of credit, or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE 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 will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

- 6.07 Liens. LESSEE will, at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs 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
- 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.

- 6.08 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 leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation and that the 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 the CITY.

- 6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of the CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S cost.

- 6.10 Ownership of Improvements and Personal Property.

- a. All and any improvements, trade fixtures, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease, except for those items listed on Exhibit D attached hereto and by this reference made a part hereof.

- b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE 30 days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
 - c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. 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 termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, 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 rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.

6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the development plan are described in Exhibit "C" hereto. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

6.13 Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that the CITY will be entitled to damages in the amount of One Hundred Seventy Dollars (\$170) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within 12 months following the date specified for completion in the development plan, CITY may, at its option, terminate this lease.

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. 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 leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9B
San Diego, CA 92101-4155

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

- b. 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.

- 7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S 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.
- 7.05 Equal Opportunity. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 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.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 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 tense requires.
- 7.09 Captions. The lease Table of Contents, 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 intentional and shall have no effect on the enforceability of this lease.

- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on its own examination of the premises, advice from its own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, 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.

- 7.11 CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the 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.

SPECIAL PROVISIONS

- 7.12 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.

AIRPORT PROVISIONS

- 7.13 LESSEE 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 the LESSEE'S or his sublessee'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 the City of San Diego in regard to their aviation and air navigation authority.

- 7.14 LESSEE 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 premises. 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 premises.
- 7.15 LESSEE'S Noninterference with Aircraft. LESSEE and LESSEE'S successors, assigns and sublessees agree not to use the premises in any manner or act in any manner that might 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 enter the premises and abate or eliminate the interference at the expense of the LESSEE.
- 7.16 Lease Subordinate to City-United States Agreements. This lease shall be subordinate to the terms of any existing or future agreements between the City and the United States, or to any United States legal requirement, relative to the development, operation or maintenance of the airport.
- 7.17 Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean sea level elevation of 500 feet. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object or tree, at the expense of the LESSEE.
- 7.18 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 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 Montgomery Field Airport.
- 7.19 War or National Emergency. In the event of war or national emergency, this lease and all of its provisions will be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, taking over, exclusive or nonexclusive use of Montgomery Field Airport.
- 7.20 Airport Development. CITY reserves the right to further develop, change or improve the airport and its routes and landing area as CITY sees fit, without LESSEE interference or hindrance and regardless of LESSEE'S views and desires.

7.21 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).

7.22 Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.

7.23 FAA Nondiscrimination Covenant

- a. LESSEE and LESSEE'S representatives, successors, sublessees and assigns agree, as part of the consideration, 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) The LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination 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 above provisions are breached, CITY may terminate the above lease, 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 the LESSEE does not comply with this provision, CITY has the right to terminate this lease agreement, without liability, or either the CITY or the United States may judicially enforce this entire covenant.

- d. LESSEE agrees to include the entire covenant in any sublease or lease agreement by which the LESSEE grants any right or privileges to any firm, corporation or person providing services or accommodations to the public on the lease premises.
- 7.24 Affirmative Action. LESSEE, LESSEE'S successors, assigns, sub-lessees, and any suborganizations, agree to undertake an affirmative action 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.
- 7.25 CITY to Mitigate Impacts of Subordination. If subordination agreements between the CITY and United States results in LESSEE'S inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY agrees to make a reasonable rental reduction or adjustment, as determined by CITY. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.
- 7.26 CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between the CITY and the United States of America results in LESSEE'S inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY, upon written request from LESSEE, will terminate this lease or extend the term of this lease for the period of time LESSEE'S operation is affected, and no rent shall accrue during any period of inoperation.
- 7.27 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 the CITY has the right to terminate the lease without liability.
- 7.28 Employee Conduct. LESSEE shall be responsible for the conduct of any employee on the entire property, if that employee is on airport property during any period of employment.
- 7.29 Aircraft Parking. LESSEE shall require that all aircraft under its control be parked only on the leased premises, except as otherwise provided by the direction of the City Manager. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE'S control, be allowed to obstruct any designated taxiways.

- 7.30 Minority Business Policy. If the LESSEE receives any Federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and 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.

SECTION 8: SIGNATURES

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

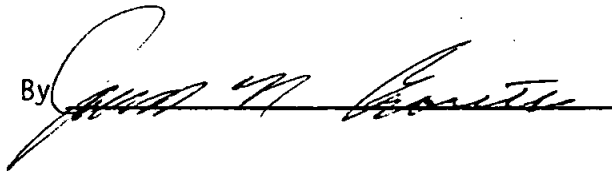
THE CITY OF SAN DIEGO

Date DEC 16 1985

By 
City Manager
ASSISTANT TO THE CITY MANAGER

LESSEE: JAMES N. ROUTH

Date 11-12-85

By 
By _____

APPROVED as to form and legality this 30 day of December, 1985

By 
City Attorney

CAB:jw(3)B5
10-28-85

R-264699

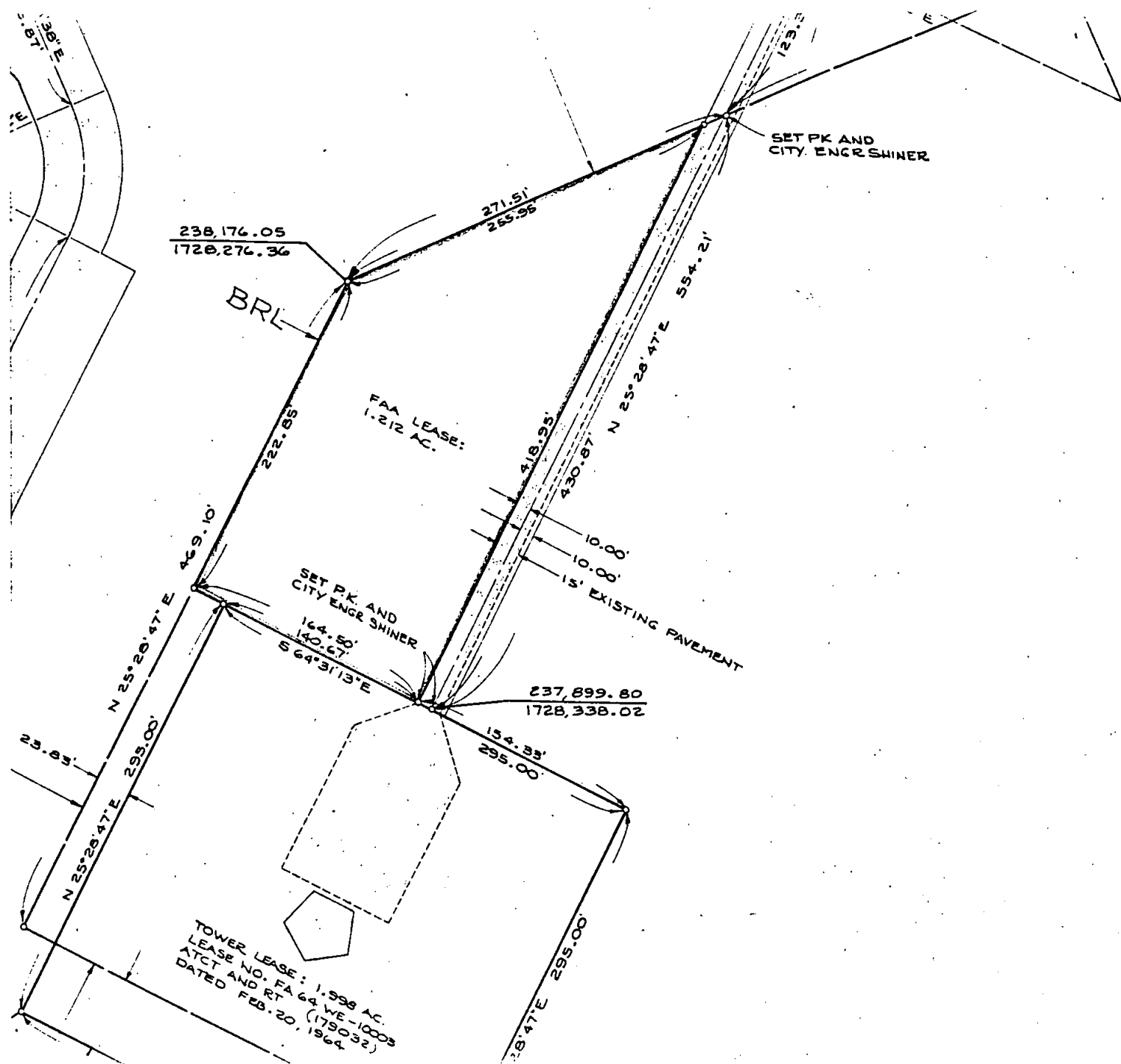


EXHIBIT "A"

SCHEDULE OF RENTAL ADJUSTMENTS
(5% annual increases)

	<u>ANNUAL RENT</u>	<u>Monthly Rent</u>
First Year	\$18,180.00	1,515.00
Second Year	19,089.00	1,590.75
Third Year	20,043.48	1,670.29
Fourth Year	21,045.60	1,753.80
Fifth Year	22,097.88	1,841.49
Sixth Year	23,202.72	1,933.56
Seventh Year	24,362.76	2,030.23
Eighth Year	25,580.88	2,131.74
Ninth Year	26,859.84	2,238.32 - Dec 1993
Tenth Year	28,202.76	2,350.23 - 1994
Eleventh Year	29,612.88	2,467.74 - 1995
Twelfth Year	31,093.44	2,591.12 - 1996
Thirteenth Year	32,648.04	2,720.67 - 1997
Fourteenth Year	34,280.40	2,856.70 - 1998
Fifteenth Year	35,994.36	2,999.53 - 1999
Sixteenth Year	37,794.00	3,149.50 - 2000
Seventeenth Year	39,683.64	3,306.97 - 2001
Eighteenth Year	41,667.72	3,472.31 - 2002
Nineteenth Year	43,751.04	3,645.92 - 2003
Twentieth Year	45,938.52	3,828.21 - 2004

James N. Routh

EXHIBIT "B"

STATISTICS

ZONE: 1
 OCCUPANCY: B2
 TYPE OF CONSTRUCTION: U-V
 CODE: 1988 UDC

PARKING

PAA REQUIREMENT: 60 CARS
 ZONING REQUIREMENT: DISC SQ.FT/SEC = 27.2 CARS
 PARKING PROVIDED
 6' x 10' STANDARD SPACES = 60
 7' x 10' COMPACT SPACES = 29
 9' x 20' HANDICAPPED SPACES = 1
 TOTAL = 90 CARS

NOTE:
 SEE DRAINAGE TO THE NORTHWEST
 AROUND RUNWAY TO EXISTING
 DRAINAGE DRAINS.

NOTE:
 LUMPY LOAT ON ACCESS ROAD
 SHALL BE WHIPPED TO ROAD
 DURING 1st DE COMPLETED OUTSIDE
 OF THE MAIN SEASON OCTOBER THRU
 MARCH

SQUARE FOOTAGE

LAND	52,794.7 SQ FT	(0.2184)
BUILDING	6,156	10.4%
PAVED AREA	21,686	41.0%
LANDSCAPED AREA	22,972.7	48.6%

PLANT SCHEDULE

-  QUERCUS NERIFOLIA
"COAST LIVE OAK"
-  RED LAUREL
"VIREL SUMAC"
-  RED OAK
"LUSKA OAK"
-  LONCHOCARPUS DIVERSIFOLIA
"WINTER BERRY"
-  ROSA SPECIOSA
"FLORIDA ROSEBUSH GOLDENHILL"
-  PACHYCLAM FASCICULATUM
"CALIFORNIA BURNING"
-  ERIGONIA CROCATUM
"CROWN OF THorns"
- TYPICAL GRASSCOVER:
 CENOTUS OLIVACEUS "MONT MEYER"



General Contents of Development Plan

EXHIBIT "C"

THIS EXHIBIT "D" IS ATTACHED TO AND MADE A PART OF THAT CERTAIN LEASE
BY AND BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
JAMES N. ROUTH, LESSEE, DATED DEC 16 1985.

PARAGRAPH 6.10, OWNERSHIP OF IMPROVEMENTS (continued)

The LESSEE, in accordance with this section hereof, has the
right to remove from the demised premises only those fixtures
as described below: (if none, write none)

Any and all equipment related to computers
and data gathering and any related trade
fixtures.

M

ASSISTANT TO THE City Manager's Initials

J. N. R.

LESSEE'S Initials

EXHIBIT "D"

R-264699

(R-86-1000)

RESOLUTION NUMBER R- 264699ADOPTED ON DEC 16 1985

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a thirty (30) year lease agreement, with the right to extend ten (10) years, with JAMES N. ROUTH, for the construction and operation of an Automated Flight Service Station on Lot 23, Montgomery Field, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 264699.

BE IT FURTHER RESOLVED, that the subsequent sublease arrangement with the Federal Aviation Administration to operate the Automated Flight Service Station, is hereby authorized and approved.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/21/85
Or.Dept:Prop.
Job:252039
R-86-1000
Form=r.none

LEGAL DESCRIPTION

All those portions of Lots 1 and 2, Highlands Subdivision according to Map thereof No. 284, filed in the Office of the County Recorder of San Diego County on March 16, 1887, (said property is also known as Lot 23, Montgomery Field Airport) located in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

Commencing at the intersection of the centerlines of Balboa Avenue and Ponderosa Avenue as said streets are located and established on the date of this instrument; thence Southerly along the centerline of said Ponderosa Avenue South $00^{\circ}21'56''$ West 959.20 feet; thence North $89^{\circ}38'04''$ West 35.00 feet to a point on the Westerly boundary of Ponderosa Avenue, said point is also a point in the arc of a 154.13 foot radius curve concave Westerly, a radial to said point bears South $89^{\circ}38'04''$ East; thence Southerly along the Westerly boundary of Ponderosa Avenue and along the arc of said curve through a central angle of $06^{\circ}49'48''$ an arc length of 18.37 feet to a point on the Westerly boundary of Ponderosa Avenue, also being a point of terminus on the center line of the unnamed access road to the Montgomery Field Control Tower; thence North $80^{\circ}33'34''$ West 36.32 feet to a point in the arc of a 155.00 foot radius curve concave Southeasterly, a radial to said point bears North $09^{\circ}26'26''$ East; thence Northwesterly, Westerly and Southwesterly along the arc of said curve through a central angle of $33^{\circ}58'04''$ an arc length of 91.89 feet to a point on said curve to which a radial points North $24^{\circ}31'38''$ West; thence South $65^{\circ}28'22''$ West 405.13 feet to a point in the arc of a 231.50 foot radius curve concave Southeasterly a radial to said point bears North $24^{\circ}31'38''$ West; thence Westerly and Southwesterly along the arc of said curve through a central angle of $39^{\circ}59'35''$ an arc length of 161.59 feet to a point on said curve to which a radial points North $64^{\circ}31'13''$ West; thence South $25^{\circ}28'47''$ West 123.35 feet to a point on the Building Restriction Line of Montgomery Field Airport as said line is established on the date of this instrument; thence Southwesterly along said Building Restriction Line South $65^{\circ}28'22''$ West 15.56 feet to the TRUE POINT OF BEGINNING; thence continuing Southwesterly along the Building Restriction Line South $65^{\circ}28'22''$ West 255.95 feet; thence South $25^{\circ}28'47''$ West 222.85 feet; thence leaving the Building Restriction Line South $64^{\circ}31'13''$ East 164.50 feet; thence North $25^{\circ}28'47''$ East 418.95 feet returning to the TRUE POINT OF BEGINNING.

Contains 1.212 acres.

Basis of Bearings:

Inverse Bearing between Lambert Control Points "Murphy", N.236,993.60, E. 1729,545.35 and "Soledad Cross," N.246,354.25 E. 1694,746.24; i.e. N $74^{\circ}56'39.5''$ W.

Airports Division

BROCK: jn

3/7/86

12/16/85
Council Consent Item 153
R 264699

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO			1. CERTIFICATE NUMBER:			
TO: CITY ATTORNEY		2. FROM: (ORIGINATOR) Property Department/Airports		3. DATE 11-15-85		
4. SUBJECT: LEASE AGREEMENT - James N. Routh - Federal Aviation Administration Automated Flight Service Station.						
5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)						
Authorizing the City Manager to execute a 30-year lease agreement, with the right to extend 10 years, with James N. Routh, for the construction and operation of an Automated Flight Service Station on Lot 23, Montgomery Field and further authorizing the subsequent sublease arrangement with the Federal Aviation Administration to operate the Automated Flight Service Station. REPORT TO COUNCIL COMMUNITY AREA: Kearny Mesa COUNCIL DISTRICT 5						
6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION <u>NOT</u> COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)						
ACTION REQUESTED BY: Property Director						
DESCRIPTIVE LOCATION: Westerly of the terminus of Ponderosa Avenue and northe of the Control Tower on Montgomery Field Airport						
DOCUMENTS SUBMITTED: Original and 9 copies of the proposed lease agreement.						
ENVIRONMENTAL ASSESSMENT: The City of San Diego as lead agency under CEQA has prepared and completed a Mitigated Negative Declaration, EQD No. 85-0573 dated October 3, 1985 covering this activity.						
HANDLING: DO NOT RECORD. Deliver documents to Property Dept., Airports Division, Attn: Carole Brock, M.S. 14, for further processing.						
7. FOR INFORMATION CONTACT: (NAME & MAIL STA.) Carole Brock 14			8. TELEPHONE NO. 6496	9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☒		
10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS			
FUND/DEPT.	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
ORGANIZATION			✓	DEPARTMENT DIRECTOR	<i>[Signature]</i>	11/15/85
OBJECT ACCOUNT				CLEARING AUTH. GS/Airports		
JOB ORDER			X	CLEARING AUTH. EQD	<i>[Signature]</i>	11/18/85
WORK ORDER NO.				DEPUTY CITY MANAGER	<i>[Signature]</i>	11-15-85
C.I.P. NO.				AUDITOR		
FACILITY				CITY ATTORNEY		
AMOUNT				ORIGINATING DEPARTMENT	<i>[Signature]</i>	
12. ESTIMATED COST:			X	MGR. DOCKET CLERK		
Job: 252039			✓	RULES COMMITTEE	☐ CONSENT ☐ ADOPTION	
cc: X Docket w/dwg.					☐ REFER TO	DATE
REDI BOOK Page 352						
Thomas Bros. Maps Page 53						

RESOLUTION NUMBER R-_____

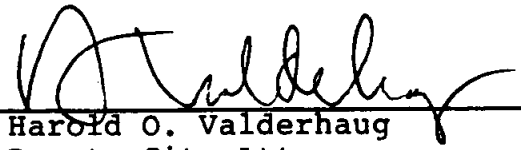
ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a thirty (30) year lease agreement, with the right to extend ten (10) years, with JAMES N. ROUTH, for the construction and operation of an Automated Flight Service Station on Lot 23, Montgomery Field, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR-_____.

BE IT FURTHER RESOLVED, that the subsequent sublease arrangement with the Federal Aviation Administration to operate the Automated Flight Service Station, is hereby authorized and approved.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
11/21/85
Or.Dept:Prop.
Job:252039
R-86-1000
Form=r.none

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY	2. FROM: (ORIGINATOR) Property Department/Airports	3. DATE 11-15-85
-----------------------------	---	---------------------

4. SUBJECT: LEASE AGREEMENT - James N. Routh - Federal Aviation Administration Automated Flight Service Station.

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing the City Manager to execute a 30-year lease agreement, with the right to extend 10 years, with James N. Routh, for the construction and operation of an Automated Flight Service Station on Lot 23, Montgomery Field and further authorizing the subsequent sublease arrangement with the Federal Aviation Administration to operate the Automated Flight Service Station.

REPORT TO COUNCIL

COUNCIL DISTRICT 5

COMMUNITY AREA: Kearny Mesa

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".

ACTION REQUESTED BY: Property Director

DESCRIPTIVE LOCATION: Westerly of the terminus of Ponderosa Avenue and northerly of the Control Tower on Montgomery Field Airport

DOCUMENTS SUBMITTED: Original and 9 copies of the proposed lease agreement.

ENVIRONMENTAL ASSESSMENT: The City of San Diego as lead agency under CEQA has prepared and completed a Mitigated Negative Declaration, EQD No. 85-0573 dated October 3, 1985 covering this activity.

HANDLING: DO NOT RECORD. Deliver documents to Property Dept., Airports Division, Attn: Carole Brock, M.S. 14, for further processing.

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.) Carole Brock 14	8. TELEPHONE NO. 6496	9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☒
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10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS			
FUND/DEPT.	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
ORGANIZATION			✓	DEPARTMENT DIRECTOR <i>del</i>		
OBJECT ACCOUNT				CLEARING AUTH. GS/Airports		
JOB ORDER			X	CLEARING AUTH. EQD		
WORK ORDER NO.				DEPUTY CITY MANAGER		
C.I.P. NO.			X	AUDITOR		
FACILITY				CITY ATTORNEY		
AMOUNT				ORIGINATING DEPARTMENT		
12. ESTIMATED COST: Job: X 252039 cc: X Docket w/dwg. <u>REDI BOOK Page 352</u> <u>Thomas Bros. Maps. Page 53</u>			X	MGR. DOCKET CLERK		
			✓	RULES COMMITTEE	☐ CONSENT ☐ ADOPTION ☐ REFER TO _____ DATE _____	



The City of San Diego

MANAGER'S REPORT

DATE ISSUED: November 22, 1985

REPORT NO. 85-579

ATTENTION: PFR COMMITTEE, Agenda of November 27, 1985

SUBJECT: Lease Agreement - James N. Routh - Federal Aviation Administration
Automated Flight Service Station

SUMMARY

Issue: Should the City enter into a 30-year lease agreement, with the right to extend 10 years, with James N. Routh for the construction of an 8,000 square foot building and adjacent parking area and the subsequent sublease to the Federal Aviation Administration for the operation of an Automated Flight Service Station.

Manager's Recommendations: Authorize the City Manager to execute the agreement.

Other Recommendations: None.

Fiscal Impact: \$13,640 will be deposited to the Airports Enterprise Fund during the first year. A total of \$582,949 will be deposited over the first 20 years.

BACKGROUND

The Federal Aviation Administration (FAA) has embarked on a program to consolidate existing flight service facilities into 61 fully Automated Flight Service Stations (AFSS) throughout the United States. This consolidation is estimated to be more efficient and save the Federal taxpayers \$1.5 Billion in reduced personnel requirements over the next eight fiscal years. An AFSS is fully computerized and provides the following services to the general aviation pilot: (1) air-ground communications, (2) weather reports and forecasts, (3) monitoring of various air navigational facilities, (4) military flight service (5) flight plan processing, (6) direction finding and (7) flight assistance in emergency type situations.

In April 1983, the FAA requested proposals to build and lease an AFSS to consolidate service to Imperial, Orange and San Diego Counties. Mr. James N. Routh submitted a proposal and in September, 1984, was given a commitment to lease from the FAA for a site at Montgomery Field. After determining that the AFSS site would not adversely impact the proposed heliport relocation and addressing on-site environmental concerns, this proposed lease was developed.

PROPOSAL:

James N. Routh proposes to lease 1.212 acres of vacant land on Montgomery Field located northerly of the FAA Control Tower under the following basic terms and conditions:

USE: Construction of an 8,000 square foot building and adjacent parking area and sublease to the FAA for the operation of a fully Automated Flight Service Station. As a part of the development plan, Mr. Routh will be required to slurry seal the access road to the Control Tower.

TERM: 30 years, with the right to extend 10 years, beginning December 1, 1985.

RENT: \$380 per month during the Construction Period. \$1,515 per month starting with the Operations Period through November 30, 1986.

RENT ADJUSTMENTS: Five percent (5%) upward rental adjustments each year for the first 20 years increasing the yearly rent from \$19,089 to \$45,938 in the twentieth year.

Rent will be adjusted according to fair market value through the appraisal process for the twenty-first through the thirtieth year and again for the ten-year extension if it is culminated.

CONSTRUCTION PERIOD: From December 1, 1985 through March 31, 1986 (4 months) or upon completion of construction, whichever is sooner. Construction is estimated at a cost of \$750,000.00. The lessee will pay City \$170 for every day of failure to meet the development schedule.

OPERATIONS PERIOD: Begins April 1, 1986 or upon completion of Construction, whichever is sooner.

Sublease: The FAA has made a lease commitment to Mr. Routh that will culminate in a sublease agreement when this proposed ground lease is in place. The sublease will contain the following basic terms and conditions:

Term: 20 years beginning on the date of occupancy, with an option to renew for an additional 10 year period.

Rent: \$152,800 per year. Rental adjustments will be based on actual pass-through expenses, including increases in taxes, insurance and land rental rates. The FAA will pay for utilities and services including electrical, water, sewer, janitorial and grounds maintenance. Mr. Routh will pay all construction costs, taxes, building maintenance, and building liability and fire insurance fees.

Use: Operation of an Automated Flight Service Station (AFSS) to service Imperial, Orange and San Diego Counties.

Employment: Approximately 30 full-time FAA employees to cover 3 shifts.

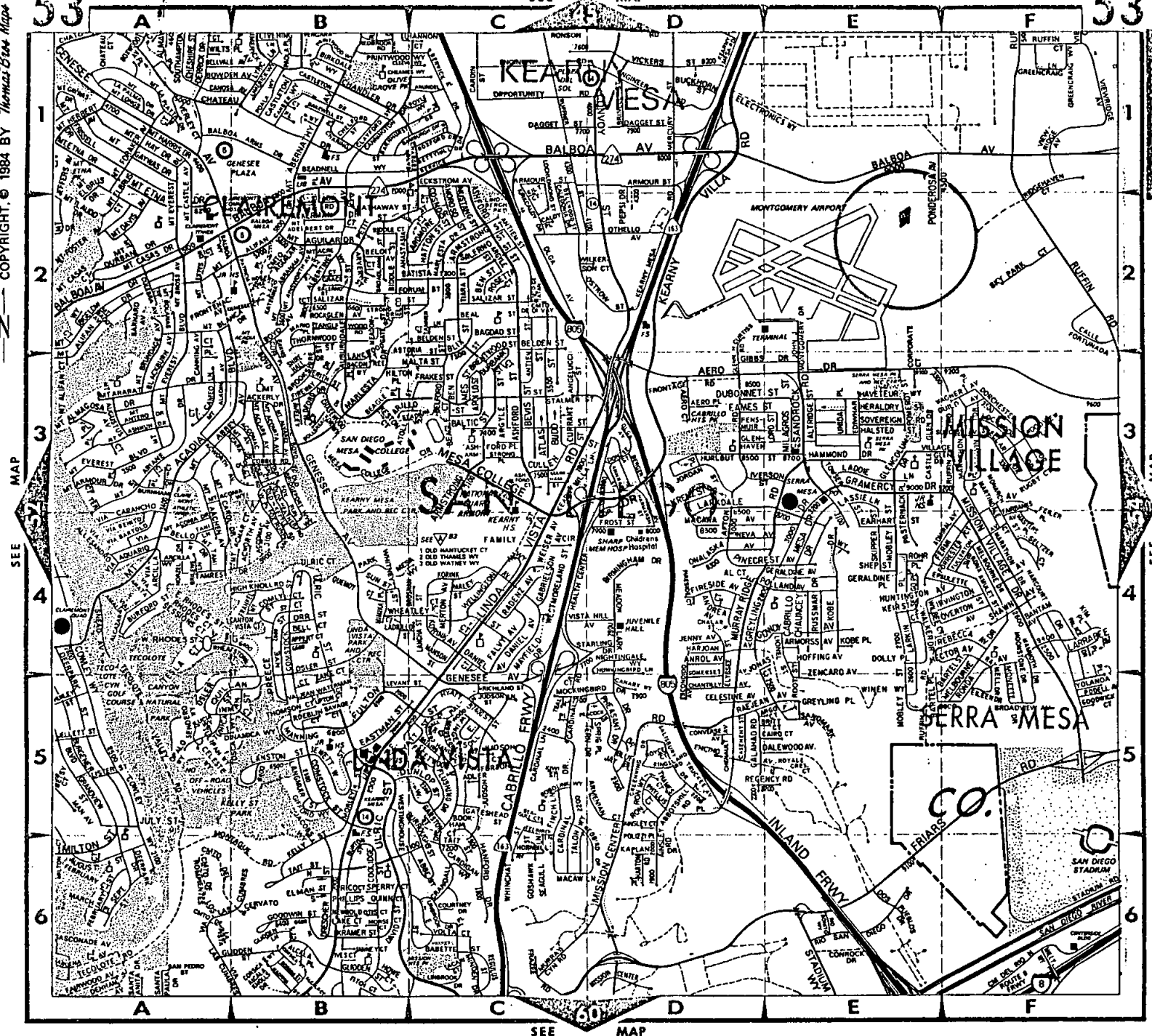
ALTERNATIVE

Deny the proposed lease. The result would be loss of possible revenue and services to the general aviation community.

Respectfully submitted,


John Fowler
Deputy City Manager

SPOTTS:CAB:jn
PF&R





Environmental
Quality
Division

236-5775

RECEIVED
OCT 14 1985
Airports Division

Mitigated Negative Declaration

EQD No. 85-0573

SUBJECT: Montgomery Field Automated Flight Service Station. LEASE OF CITY PROPERTY and DEVELOPMENT PLAN to allow construction of a one-story, 8,136 square-foot building on a 1.2-acre lot. Located near the north end of Runway 5-23, north of the control tower at Montgomery Field (Parcel 23, Montgomery Field).
Applicant: James N. Routh.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

The project originally proposed the widening of an offsite roadway which could have significantly impacted existing vernal pool habitat. The project has been revised to delete this roadway widening and construction activities will be conditioned to avoid any impacts during the construction phase.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATING MEASURES:

1. The existing access road from Ponderosa Avenue to the Montgomery Field Control Tower will not be widened.
2. The proposed slurry seal coat to be applied to the access road shall be confined to the existing road bed. All construction vehicles must be confined to the existing roadway or the project parcel. The application of the slurry seal may not occur during the rainy season (between October 1 and March 31 of any calendar year).

3. All construction activities associated with the proposed building and parking lot shall be confined to the existing access road and the project parcel. This condition is intended to prevent errant vehicle movement and construction material stockpiles from impacting sensitive vernal pool areas.

VI. PUBLIC REVIEW DISTRIBUTION:

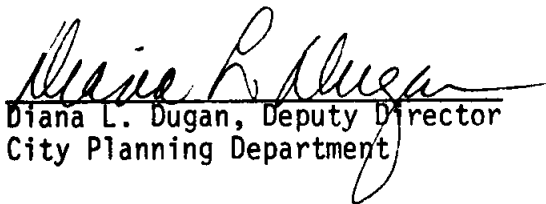
Draft copies or notice of this Negative Declaration were distributed to:

San Diego Association of Governments
U.S. Fish and Wildlife Service, Sacramento Field Office
California Department of Fish and Game
California Native Plant Society
Federal Aviation Administration
Miramar Naval Air Station
Councilman Struiksma, District 5

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- (X) Comments addressing the findings of the draft Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Negative Declaration and any Initial Study material are available in the office of the Environmental Quality Division for review, or for purchase at the cost of reproduction.


Diana L. Dugan, Deputy Director
City Planning Department

August 30, 1985
Date of Draft Report

October 3, 1985
Date of Final Report

Analyst: HUFFMAN
h v 8
h 1



United States Department of the Interior

FISH AND WILDLIFE SERVICE
SACRAMENTO ENDANGERED SPECIES OFFICE
2800 Cottage Way, Room E-1823
Sacramento, California 95825-1846

SEP 19 1985

RECEIVED
SEP 23 1985
ENVIRONMENTAL QUALITY DIVISION

RESPONSES TO COMMENTS

Ms. Diana L. Dugan
Deputy Director
City of San Diego
City Planning Department
Environmental Quality Division
202 "C" Street, M.S. 5A
San Diego, California 92101
(Attn: Tom Huffman)

Subject: Montgomery Field Automated Flight Service Station, San Diego, California (1-1-85-1-476)

Dear Ms. Dugan:

In a notice dated 5 September 1985, you requested written comments regarding the adequacy of a Proposed Mitigated Negative Declaration (PMND) for the proposed automated flight service station at Montgomery Field. The project entails the lease and development of a 1.2-acre lot of City-owned land on Montgomery Field to the Federal Aviation Administration (FAA). The proposed service station will be located near the north-end of Runway 5-23, immediately north of the control tower.

1 Vernal pools, habitat harboring the endangered San Diego mesa mint (*Pogogyne abramsii*), occur to the northwest, west, and southwest of the 1.2-acre site. These pools comprise the N1 pool series; a series identified in the City of San Diego's Vernal Pool Preservation Program as pool habitat requiring individual permits prior to any dredge and/or fill of wetlands (vernal pools) pursuant to Section 404 of the Clean Water Act. Because of FAA (they will build and staff the service station) and Corps of Engineers involvement (they issue permits under the Clean Water Act), both agencies must determine whether this project will effect an endangered species necessitating formal consultation with the Fish and Wildlife Service pursuant to the Endangered Species Act. Moreover, to assist us in our review of this proposed project and its effects on endangered species, we need additional information and further clarification regarding the proposed mitigative measures detailed in the PMND.

2 The site plan depicted drainage along the control tower road to the northwest, towards the 1.2-acre site and away from the vernal pool habitat. A note on the site plan stated "site drainage to the northwest around runway to existing drainage swale." Nonetheless, the PMND failed to report where irrigation and rainfall runoff from the parking lot, building, and ornamental plantings would be diverted or directed. We assume the site plan, as it affects drainage, can be changed prior to

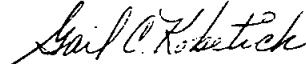
1. A site meeting was convened on October 2, 1985, between the Environmental Quality Division, the U.S. Fish and Wildlife Service, and the project architect. It was determined at this meeting that the endangered San Diego Mesa Mint will not be adversely impacted by the project, and thus a formal consultation with the U.S. Fish and Wildlife Service will likely not be necessary.
2. All drainage from the project site will be directed around the runway to the northwest of the project site, away from the vernal pools. The site will be graded to create a large swale on the site which will accomplish the desired drainage pattern.

construction absent any mention of "drainage" as a mitigative measure in the final MND (FMND). Thus, we need to know that the existing drainage pattern and watersheds of the vernal pools will be protected by the project and how the FMND will address this important issue.

3 The PMND asserted that "[a]ll construction activities associated with the proposed building and parking lot shall be confined to the existing access road and the project parcel." Although we agree such a measure will "prevent errant vehicle movement and construction material stockpiles from impacting sensitive vernal pool areas", we need to know how such areas will be protected during (when heavy equipment and material stockpiles could impact pool habitat) and after construction (when the service station will be in use).

4 A site inspection may be in order to fully answer all of our questions and eliminate concerns regarding the proposed project and its effects on endangered species. Further questions regarding a site inspection should be directed to Ms. Karla Kramer of our Laguna Niguel Office [(714) 831-4270]. Future correspondence should be addressed to Ms. Nancy Kaufman, Project Leader, U.S. Fish and Wildlife Service, Laguna Niguel Field Office, 24000 Avila Road, Laguna Niguel, California 92677.

Sincerely,



Gail C. Kobetich
Project Leader

cc: Project Leader, Laguna Niguel, CA (LN-FO)
Chief, Endangered Species, Portland, OR (AFA-SE)

3. The existing paved access road is adequate to provide access to the project site, and no current vehicle movement would be expected to occur. It is not felt that any physical barriers should be constructed along the roadside given there is no valid reason to think they would be necessary. It is also noted that construction activities to erect such a barrier could actually leave more of an impact than the current vehicle movement it would be intended to prevent.

4. Please see Response No 1.

City of San Diego
Planning Department
ENVIRONMENTAL QUALITY DIVISION
202 "C" Street, M.S. 5A
San Diego, CA 92101
(619) 236-5775

INITIAL STUDY
EQD No. 85-0573

SUBJECT: Montgomery Field Automated Flight Service Station. LEASE OF CITY PROPERTY and DEVELOPMENT PLAN to allow construction of a one-story, 8,136-square-foot building on a 1.2-acre lot. Located near the north end of Runway 5-23, north of the control tower at Montgomery Field (Parcel 23, Montgomery Field).
Applicant: James N. Routh.

I. PURPOSE AND MAIN FEATURES:

The proposed project involves construction of a one-story automated flight service station for the Federal Aviation Administration (FAA). The building would occupy 8,136 square feet (15 percent) of the 1.2-acre lot. The project includes 21,700 square feet (41 percent) of paving and 23,000 square feet (44 percent) of landscaping. A total of 66 parking spaces would be provided. The majority of the parking is to be located south of the building. An existing access road would be used which connects the project site with Ponderosa Avenue, located 800 feet from the project parcel. The project as originally proposed included widening of this 15-foot-wide access road to 20 feet. This aspect of the project has been deleted in response to potential impacts to offsite vernal pools (see discussion below). The project includes landscaping of the site with low water use native plant species compatible with the surrounding vegetation. Grading would consist of 6,000 cubic yards of imported fill spread evenly over the site.

II. ENVIRONMENTAL SETTING:

The project site is located north of the Montgomery Field Control Tower and northeast of Runway 5-23. The project site and land to the north and west is flat, and sparsely vegetated with isolated shrubs and weeds. A 15-foot-wide access road which connects the control tower with Ponderosa Avenue borders the eastern edge of the site. A vernal pool is located opposite the project site, approximately 20 feet east of the road. There are vernal pools located 5-10 feet away from the access road on both sides of a drainage culvert which passes beneath the road. This area is offsite, approximately halfway between the project site and Ponderosa Avenue. Vegetation surrounding the vernal pools includes native coastal sage scrub species. Of special note were four burrowing owls (Athene cunicularia) observed east of the project site in the vernal pool area.

The subject property is designated as a future U.S. Customs Facility in the Montgomery Field Airport Master Plan. The vernal pools, located east and northeast of the site, are designated Environmentally Sensitive Areas. The project site is located outside the Flight Activity Zone for Runway 5-23, and hence is compatible with airport operations.

III. ENVIRONMENTAL ANALYSIS: See attached Initial Study checklist.

IV. DISCUSSION:

Biology

Biological resources of concern include vernal pools located east and northeast of the project site, on both sides of the 15-foot-wide access road which leads to the Montgomery Field Control Tower. The project originally proposed widening of the roadway (from the Control Tower to Ponderosa Avenue) from 15 feet to 20 feet, which could have had a direct impact on the vernal pools adjacent to the existing road. In addition to filling of pool areas, other concerns with regard to vernal pools included alteration of hydrologic conditions, impacts from haphazard movement of construction vehicles, and urban contaminants in the runoff.

In response to these issues, the project has been revised to delete the originally proposed widening of the access road. The City Airport Leases Supervisor is instead requiring the applicant to slurry seal the top of the road. In order to minimize any impacts that could result from contaminated runoff, a condition has been added to the lease which requires that the slurry seal activities occur outside of the rainy season (October - March). This would prevent application of fresh slurry material during the rainy season.

Another concern was runoff from the development site. As shown on the site plan, runoff from the development would be directed to an existing drainage swale northwest of Runway 5-23. Development of the site is thus not anticipated to result in any significant modifications to existing vernal pool watershed.

The landscaping plan has also been modified to include low water use native plant species. Plant materials on this plan are compatible with existing vegetation. The plan was designed to exclude all species which could adversely affect vernal pools, such as Eucalyptus trees, whose leaf litter could accumulate in the pools and have an inhibitory affect on the pool species.

The project, with the conditions noted in the Mitigated Negative Declaration, is not expected to result in any significant adverse impacts to biological resources.

V. RECOMMENDATION:

On the basis of this initial evaluation:

- ☐ The proposed project would not have a significant effect on the environment, and a NEGATIVE DECLARATION should be prepared.
- ☒ Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in Section IV above have been added to the project. A MITIGATED NEGATIVE DECLARATION should be prepared.
- ☐ The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT should be required.

PROJECT ANALYST: HUFFMAN

Attachments: Location Map
Site Plan
Initial Study Checklist

STATISTICS

ZONE:

OCCUPANCY: B2

TYPE OF CONSTRUCTION: U/N

CODE: 1982 UDC

PARKING

FAA REQUIREMENT: 60 CARS

ZONING REQUIREMENT: 6156 SQ.FT/BLK = 27.2 CARS

PARKING PROVIDED:

6 1/2' x 20' STANDARD SPACES = 84

7 1/2' x 16' COMPACT SPACES = 29

9' x 20' HANDICAPPED SPACES = 1

TOTAL = 60 CARS

NOTE:
SITE DRAINAGE TO THE NORTHWEST
AROUND RUNWAY TO EXISTING
DRAINAGE CANALS.

NOTE:
LUMBER LOT ON ACCESS ROAD
SHALL BE COMPLETED OUTSIDE
OF THE PLANT VERNON COTTON TRAIL
WAY.

SQUARE FOOTAGE

LAND	52,794.7 SQ FT	(1.2184)
BUILDING	6,156	19.4%
PAVED AREA	21,686	41.0%
LANDSCAPED AREA	22,978.7	48.6%

PLANT SCHEDULE

-  - *OLEA OLIVARIA*
"COAST LIVE OAK"
 -  - *PRUNUS LAURINA*
"LAVENDER BUNGE"
 -  - *PAV. QUART.*
"FOUR STAR EUCALYPTUS"
 -  - *LEUCODENDRON DIVERGENTIA*
"SUMMER HOLLY"
 -  - *RUPEA SPECIOSA*
"RUPEA PACHYMERIS ELEGANTIA"
 -  - *PROSTRATA PASCUALIA*
"CALIFORNIA EUCALYPTUS"
 -  - *PROSTRATA PASCUALIA*
"CALIFORNIA EUCALYPTUS"
- TYPICAL GROUND COVER:
CELANOTIS GLORIOSA (MOUNT PINE)



SITE PLAN

Environmental Quality Division

CITY OF SAN DIEGO · PLANNING DEPARTMENT

FIGURE

2

III. ENVIRONMENTAL ANALYSIS:

This Initial Study checklist is designed to identify the potential for significant environmental impacts which could be associated with a project. All answers of "yes" and "maybe" indicate that there is a potential for significant environmental impacts and these determinations are explained in Section IV.

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
A. <u>Geology/Soils</u> . Will the proposal result in:			
1. Unstable geologic or soil conditions according to the Seismic Safety Study Geotechnical Land Use Capability Map or other evidence?	—	—	<u>X</u>
2. Any increase in wind or water erosion of soils, either on or off the site?	—	—	<u>X</u>
B. <u>Air</u> . Will the proposal result in:			
1. Substantial air emissions or deterioration of ambient air quality?	—	—	<u>X</u>
2. The exposure of sensitive receptors to substantial pollutant concentrations?	—	—	<u>X</u>
3. The creation of dust or objectionable odors?	—	—	<u>X</u>
4. A substantial alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	—	—	<u>X</u>
C. <u>Hydrology/Water Quality</u> . Will the proposal result in:			
1. Changes in currents, or the course of direction of water movements, in either marine or fresh waters?	—	—	<u>X</u>
2. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?	—	—	<u>X</u>
3. Alterations to the course or flow of flood waters?	—	—	<u>X</u>
4. Discharge into surface waters, or in any alteration of surface water quality, including, but not limited to temperature, dissolved oxygen or turbidity?	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
5. Discharge into surface or ground waters, significant amounts of pesticides, herbicides, fertilizers, gas, oil or other noxious chemicals?	—	—	<u>X</u>
6. Change in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	—	—	<u>X</u>
7. Exposure of people or property to water related hazards such as flooding?	—	—	<u>X</u>

D. Biology. Will the proposal result in:

1. A reduction in the number of any unique, rare, endangered, sensitive or fully protected species of plants or animals?	—	—	<u>X</u>
2. A substantial change in the diversity of any species of animals or plants?	—	—	<u>X</u>
3. Introduction of invasive species of plants into the area?	—	—	<u>X</u> *
4. Interference with the movement of any resident or migratory fish or wildlife species?	—	—	<u>X</u>
5. An impact on a sensitive habitat, including, but not limited to streamside vegetation, oak woodland, vernal pools, coastal salt marsh, lagoon, wetland, or coastal sage scrub or chaparral?	—	—	<u>X</u> *

E. Noise. Will the proposal result in:

1. A significant increase in the ambient noise levels?	—	—	<u>X</u>
2. Exposure of people to noise levels which exceed the City's adopted noise ordinance?	—	—	<u>X</u>
3. Exposure of people to current or future transportation noise levels which exceed standards established in the Transportation Element of the General Plan?	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
F. <u>Light, Glare and Shading.</u> Will the proposal result in:			
1. Substantial light or glare?	—	—	<u>X</u>
2. Substantial shading of other properties?	—	—	<u>X</u>
G. <u>Land Use.</u> Will the proposal result in:			
1. An alteration of the planned land use of an area?	—	—	<u>X</u>
2. A conflict with adopted environmental plans and goals of the community where it is located?	—	—	<u>X</u>
3. Land uses which are not compatible with aircraft accident potential as defined by a SANDAG (ALUC) Airport Land Use Plan? (Site located outside FAE)	—	—	<u>X</u>
H. <u>Natural Resources.</u> Will the proposal result in:			
1. The prevention of future extraction of sand and gravel resources?	—	—	<u>X</u>
2. The conversion of agricultural land to nonagricultural use or impairment of the agricultural productivity of agricultural land?	—	—	<u>X</u>
I. <u>Hazardous Materials:</u> Will the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to gas, oil, pesticides, chemicals or radiation)?	—	—	<u>X</u>
J. <u>Population.</u> Will the proposal alter the planned location, distribution, density, or growth rate of the population of an area?	—	—	<u>X</u>
K. <u>Housing.</u> Will the proposal affect existing housing, or create a demand for additional housing?	—	—	<u>X</u>
L. <u>Transportation/Circulation.</u> Will the proposal result in:			
1. Traffic generation in excess of specific/ community plan allocation?	—	—	<u>X</u>
2. An increase in projected traffic which is substantial in relation to the capacity of the street system?	—	—	<u>X</u>
3. An increased demand for off-site parking?	—	—	<u>X</u>
4. Substantial impact upon planned transportation systems?	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
5. Alterations to present circulation movements including effects on existing public access to beaches, parks, or other open space area?	—	—	<u>X</u>
6. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?	—	—	<u>X</u>
M. <u>Public Services</u> . Will the proposal have an effect upon, or result in a need for new or altered governmental services such as police or fire protection, schools, parks or recreational facilities?	—	—	<u>X</u>
N. <u>Utilities</u> . Will the proposal result in a need for new systems, or substantial alterations to utilities, including power or natural gas, communications systems, water, sewer, storm water drainage, solid waste and disposal?	—	—	<u>X</u>
O. <u>Energy</u> . Will the proposal result in the use of excessive amounts of fuel or energy?	—	—	<u>X</u>
P. <u>Water Conservation</u> . Is project landscaping predominantly non-drought resistant vegetation?	—	—	<u>X</u>
Q. <u>Aesthetics</u> . Will the proposal result in:			
1. The obstruction of any vista or scenic view from a public viewing area?	—	—	<u>X</u>
2. The creation of a negative aesthetic site or project?	—	—	<u>X</u>
3. Project bulk, scale, materials or style which will be incompatible with surrounding development?	—	—	<u>X</u>
4. The loss of a stand of distinctive, landmark or mature trees?	—	—	<u>X</u>
5. Substantial change in topography or ground surface relief features (generally more than 5,000 cubic yards of grading per acre)?	—	—	<u>X</u>
6. The loss, covering or modification of any unique geologic or physical features such as a natural canyon, sandstone bluff, rock outcrop or hillside with a slope in excess of 25 percent?	—	—	<u>X</u>

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
R. <u>Cultural/Scientific Resources.</u> Will the proposal result in:			
1. Alteration of or the destruction of a prehistoric or historic archaeological site?	—	—	<u>X</u>
2. Adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?	—	—	<u>X</u>
3. Adverse physical or aesthetic effects to an architecturally significant building, structure, or object?	—	—	<u>X</u>
4. The loss of paleontological resources?	—	—	<u>X</u>

S. Mandatory Findings of Significance.

1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	—	—	<u>X</u>
2. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)	—	—	<u>X</u>
3. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	—	—	<u>X</u>
4. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	—	—	<u>X</u>