

**CITY OF SAN DIEGO**  
**MEMORANDUM OF UNDERSTANDING**  
**FOR OCCUPANCY OF 4141 KEARNY VILLA ROAD**  
**BETWEEN**  
**PUBLIC WORKS, AIRPORT DIVISION**  
**AND**  
**SAN DIEGO POLICE DEPARTMENT, AIR SUPPORT UNIT**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING [MOU] is an Interdepartmental MOU between Public Works, Airports Division [AIRPORTS] and the San Diego Police Department, Air Support Unit [DEPARTMENT] for the occupancy of a site on AIRPORTS' property known as 4141 Kearny Villa Road, San Diego, CA 92123 [Premises]. AIRPORTS agrees to lease the Premises to DEPARTMENT for its air operations under the terms and conditions set forth below.

1. Premises. 4141 Kearny Villa Road, San Diego, CA 92123 and as further described in the attached "Exhibit A".
2. Use of Premises. The use of the Premises shall be for aircraft operation, maintenance and related storage facility for the DEPARTMENT, and other related uses as may be approved in writing in advance by AIRPORTS.
3. Term of MOU. The term of this MOU shall be year-to-year. The Commencement Date of this MOU shall be August 1, 2009. It is intended that this MOU shall continue year-to-year, unless AIRPORTS or DEPARTMENT requests an early termination, as provided in Section 4.
4. Early Termination. This MOU may be terminated, for any reason, by either AIRPORTS or DEPARTMENT, with one hundred eighty (180) days prior written notice to the other party.
5. Right to Extend. Provided that DEPARTMENT is not in default of this MOU, this MOU will automatically renew on a year-to-year basis with three percent (3%) annual increases on August 1<sup>st</sup> of each year.
6. Rent. The base monthly rental rate for the first one-year period of this MOU shall be \$6,000.00 (\$72,000 annually). Thereafter, the monthly rental rate for each subsequent one-year period shall increase by three percent (3%) on August 1<sup>st</sup> during the term of this MOU. However, AIRPORTS is required by the FAA to received fair market value for its leaseholds, accordingly the AIRPORTS retains the right to make market rate adjustments to the rent with six (6) months advance notice.
7. Accident Reports. DEPARTMENT shall report to AIRPORTS any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and all other pertinent information.

8. Prohibited Uses. DEPARTMENT shall not commit or allow the following uses and/or activities unless approved in writing in advance by AIRPORTS: (a) utilize the Premises for any purpose other than those stated in Paragraph 2; (b) make any alterations or changes to the Premises; (c) effect any repairs to the Premises amounting to more than five thousand dollars (\$5,000) per instance; (d) allow or permit any liens or encumbrances to be placed on the Premises; (e) utilize the Premises in any manner which may create a health, safety or fire hazard; (f) store any non-aviation-related vehicles, including but not limited to automobiles, trailers or boats, on the Premises.
9. Possession by DEPARTMENT. AIRPORTS has made no promise to alter or improve the Premises or made any representation concerning the condition thereof. By taking possession of the Premises, DEPARTMENT acknowledges the Premises are in good order and condition and agrees to take possession "as is." DEPARTMENT will maintain the Premises in good condition and repair, and will not cause or permit the Premises to be damaged or defaced or to deteriorate. DEPARTMENT will return the Premises at the expiration or earlier termination of this MOU in good condition and repair, normal wear and tear excepted.
10. Amendment of Agreement. No amendment, modification or alteration of this MOU will be valid unless it is in writing and signed by all parties.
11. Entry and Inspection. AIRPORTS reserves and shall always have the right, but not the obligation, to enter Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interest in the Premises, or to inspect the operations conducted on the Premises. In the event that such entry or inspection by AIRPORTS discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, AIRPORTS shall have the right, after reasonable notice to DEPARTMENT, to have any necessary maintenance work done at the expense of DEPARTMENT. DEPARTMENT agrees to pay promptly any and all costs incurred by AIRPORTS in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition.
12. Utilities/Maintenance/Improvements/Alterations. DEPARTMENT agrees to assume full responsibility and cost for utilities, operation and maintenance of the Premises throughout the Term. DEPARTMENT will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to AIRPORTS. No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered by DEPARTMENT, except usual repair and upkeep, without prior written approval by AIRPORTS. Further, DEPARTMENT agrees that major structural or architectural design alterations shall not be made to the Premises without prior written approval by AIRPORTS. This provision shall not relieve DEPARTMENT of any obligation under this MOU to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. AIRPORTS shall not be obligated by this MOU to make or assume any expense for any improvements or alterations.

13. Compliance with Law. DEPARTMENT shall 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 of San Diego, AIRPORTS, county, state, and federal governments, at DEPARTMENT'S sole cost and expense. In addition, DEPARTMENT shall comply with any and all notices issued by the Airports Director or his designee, or the Mayor or his designee, under the authority of any such law, statute, ordinance or regulation.
14. Hazardous/Toxic Waste. For the purposes of this MOU and this provision, a release of hazardous substances shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

If DEPARTMENT knows or has reasonable cause to believe that any hazardous substance has been released onto or beneath the Premises, DEPARTMENT shall give written notice to AIRPORTS within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if DEPARTMENT knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, DEPARTMENT shall notify AIRPORTS immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. DEPARTMENT will notify AIRPORTS immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, DEPARTMENT shall not utilize or sell any hazardous substance on the property, except those used in the operation and maintenance of aircraft, without the prior written consent of AIRPORTS.

15. Special Airport Provisions

a) DEPARTMENT Use to Conform with Laws and Other Rules.

DEPARTMENT 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 DEPARTMENT'S control. DEPARTMENT 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 AIRPORTS in regard to their aviation and air navigation authority.

b) DEPARTMENT Use and Construction to Conform with Federal Aviation Regulations.

DEPARTMENT agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Premises. DEPARTMENT 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.

c) DEPARTMENT'S Noninterference with Aircraft.

DEPARTMENT agrees 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, AIRPORTS reserves the right to enter the Premises and abate or eliminate the interference and receive reimbursement for all costs associated with such action(s).

d) MOU Subordinate to City of San Diego/AIRPORTS-United States Agreements.

This MOU shall be subordinate to the terms of any existing or future agreements between The City of San Diego/AIRPORTS and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the airport.

e) Height Limitation.

DEPARTMENT agrees not to erect or permit any structure or tree on the Premises that conflicts with any FAA regulation. If this covenant is breached in any way, AIRPORTS reserves the right to enter the Premises and remove the structure, object, or tree, and receive reimbursement for all costs associated with such action(s).

f) Right of Flight Easement.

AIRPORTS 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.

g) War or National Emergency.

In the event of war or national emergency, this MOU and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Field Airport.

h) Airport Development.

AIRPORTS reserves the right to further develop, change or improve Montgomery Field Airport and its routes and landing areas as AIRPORTS sees fit, without DEPARTMENT interference or hindrance and regardless of DEPARTMENT'S views and desires.

i) Nonexclusive Right.

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

j) Landing Area Maintenance.

AIRPORTS reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. AIRPORTS also has the right to direct and control all DEPARTMENT activities affecting the maintenance and repair of these facilities.

k) AIRPORTS to Mitigate Impacts of Subordination.

If subordination agreements between the City of San Diego/AIRPORTS and United States of America result in DEPARTMENT'S inability to operate on the Premises, or if operations permitted under this MOU are materially affected during a period of subordination, AIRPORTS agrees to make a reasonable rental reduction or adjustment, as determined by AIRPORTS. DEPARTMENT agrees that any damages claimed during this subordination period will be limited to this rental relief.

l) AIRPORTS to Mitigate Impacts of Subordination by Termination or Extension.

If subordination agreements between the City of San Diego/AIRPORTS and the United States of America result in DEPARTMENT'S inability to operate on the Premises, or if the operations permitted under this MOU are materially affected during a period of subordination, AIRPORTS, upon written request from DEPARTMENT, will terminate this MOU or extend the term of this MOU for the period of time that DEPARTMENT'S operation is affected, and no rent shall accrue during any period of suspended operations.

m) Licenses and Certifications.

DEPARTMENT 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 AIRPORTS then has the right to terminate this MOU without liability.

n) Employee Conduct.

DEPARTMENT 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.

o) Aircraft Parking.

DEPARTMENT shall require that all aircraft under its control be parked only on the Premises, except as otherwise provided by the direction of the Airport Director or his designee. At no time shall any aircraft, vehicle or other object, including refuse, under DEPARTMENT'S control, be allowed to obstruct any designated taxiways.

16. Notices.

- a. Any notice required or permitted to be given pursuant to this MOU shall be in writing and may be served interoffice mail, personally or by United States mail, postage prepaid, addressed to DEPARTMENT at the Premises or at such other address designated in writing by DEPARTMENT:

SDPD, Air Support Unit  
4141 Kearny Villa Road  
San Diego, CA 92123

and, to AIRPORTS as follows:

Public Works  
Airports Division  
3750 John J. Montgomery Dr  
M.S. 14  
San Diego, CA 92123

- b. Any party entitled or required to receive notice under this MOU may by like notice designate a different address to which notices shall be sent.
- 17. Assignment and Subletting. DEPARTMENT shall not assign this MOU, or any interest, and shall not sublet the Premises, or any part or any right or privilege pursuant to the MOU or allow any other person, except employees, agents, and guests of DEPARTMENT to use or occupy the Premises, or any part, without the prior written consent of the AIRPORTS.
- 18. AIRPORT Approval. The approval or consent of AIRPORTS, wherever required in this MOU, shall mean the written approval or consent of the Airport Director, or his designee, unless otherwise specified.

IN WITNESS WHEREOF, this MOU is executed by AIRPORTS and DEPARTMENT through their authorized representatives.

CITY OF SAN DIEGO  
Public Works, Airports Division

Date 6/8/09

By: [Signature]  
Name: David Jarrell  
Title: Deputy Chief Operating Officer, Public Works

CITY OF SAN DIEGO  
San Diego Police Department, Air Support Unit

Date 6/15/09

By: [Signature]  
Name: W. M. Lansdowne  
Title: Chief of Police

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA guidelines, section 15301.

Date: 6/22/09

By: [Signature]  
Name: Myra S. Herrmann  
Title: Senior Planner

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

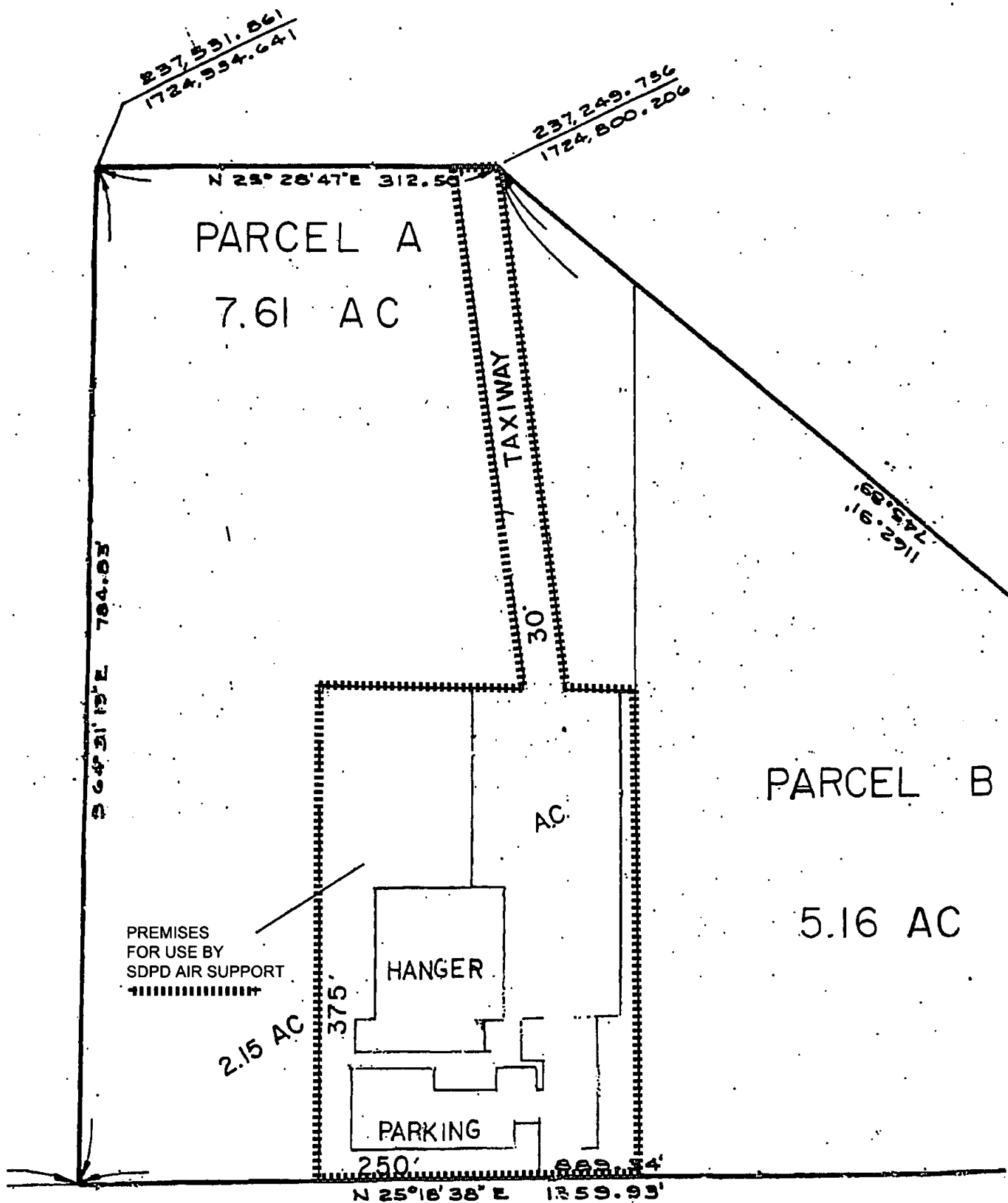
Date: 6/22/09

By: [Signature]  
Debra J. Bevier  
Deputy City Attorney for AIRPORTS

JAN I. GOLDSMITH, City Attorney

Date: 6.15.09

By: [Signature]  
Linda L. Peter  
Deputy City Attorney for DEPARTMENT



KEARNY VILLA ROAD