

CITY OF SAN DIEGO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING

THIS CITY OF SAN DIEGO INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING ("MOU") is made by and between the City of San Diego Real Estate Assets Department-Airport Division ("AIRPORT") and the City of San Diego-Fire Rescue Department ("FIRE DEPARTMENT") to be effective as of July 1, 2015 (the "Effective Date"), as follows:

TERMS AND CONDITIONS

1. **Premises.** FIRE DEPARTMENT is authorized to use that certain AIRPORT real property referred to herein as the 110,392 square feet of land west of Taxiway J and south of Taxiway H, located at Montgomery Field Airport, as further depicted as the shaded area within the irregular-shaped box shown on Exhibit "A", attached hereto and by this reference made part hereof; said real property is hereinafter referred to as the "Premises."
2. **Use.** FIRE DEPARTMENT is authorized to use the Premises exclusively for operating its Aviation-related Fire-Rescue Operations and other related uses. No other uses, whatsoever, are allowed without the prior written consent of AIRPORT and the Mayor, or his designee, in each instance.
3. **Term.** This MOU shall commence on the Effective Date, and shall continue thereafter on a month-to-month basis ("Term") for a period of no more than three (3) years.
4. **Rent.** The total initial monthly rent shall be four thousand three hundred eight dollars and twenty three cents (\$4,308.23) per month. Said rent is subject to annual adjustments as described below.

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

5. **Time and 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. FIRE DEPARTMENT shall make all payments payable to the "Airport Enterprise Fund".
6. **Assignment and Subletting.** FIRE DEPARTMENT shall not assign this MOU or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of FIRE DEPARTMENT, to use or occupy the Premises or any part thereof, without the prior written consent of AIRPORT and the Mayor, or his designee, in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person.

7. Accident Reports. FIRE DEPARTMENT shall report to AIRPORT any accident causing more than one thousand dollars (\$1,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and all other pertinent information.
8. Possession by FIRE DEPARTMENT. AIRPORT has made no promise to alter or improve the Premises or made any representation concerning the condition thereof. FIRE DEPARTMENT is currently in possession of the Premises and acknowledges the Premises is in good order and condition. FIRE 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. FIRE DEPARTMENT will return the Premises at the expiration or earlier termination of the MOU in good condition and repair, normal wear and tear excepted.
9. Entry and Inspection. AIRPORT reserves and always has the right to enter said Premises for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests, or to ensure that the Premises is being maintained in a decent, safe, healthy, and sanitary condition.
10. Utilities. FIRE DEPARTMENT will pay for all utilities and necessary for the operation and maintenance of its Fire-Rescue Operations and/or the Premises.
11. Taxes and Fees. FIRE DEPARTMENT agrees to pay all levies, taxes and fees due on Premises during the term of this MOU.
12. Survival. Any obligation which accrues under this MOU shall survive its expiration or earlier termination.
13. Maintenance of the Premises. FIRE DEPARTMENT shall be responsible for all costs associated with the operation and maintenance of the Premises throughout the term of this MOU. FIRE DEPARTMENT shall, to AIRPORT's satisfaction, maintain the Premises in a decent, safe, healthy and sanitary condition at all times. All applicable codes and standards of state and federal agencies shall be observed.
14. Hazardous/Toxic Waste. FIRE DEPARTMENT shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. FIRE DEPARTMENT and FIRE DEPARTMENT's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without AIRPORT's prior written consent in each instance. FIRE DEPARTMENT shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks,

equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For purposes of this MOU, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- b. Hazardous Substance. For purposes of this MOU, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If FIRE DEPARTMENT's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, FIRE DEPARTMENT shall pay all costs of remediation and removal to the AIRPORT's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- d. Removal. If FIRE DEPARTMENT or FIRE DEPARTMENT's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, FIRE DEPARTMENT and/or FIRE DEPARTMENT's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this MOU. AIRPORT reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. FIRE DEPARTMENT shall be responsible for any and all costs incurred by AIRPORT to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. Indemnity. FIRE DEPARTMENT shall protect, defend, indemnify and hold AIRPORT harmless from any and all claims, costs and expenses related to environmental liabilities resulting from FIRE DEPARTMENT's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary AIRPORT response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, FIRE DEPARTMENT's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

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

15. Water Quality. FIRE DEPARTMENT shall comply with the Resource Management Plan ("RMP"), Best Management Practices ("BMP") including the Storm Water Pollution Prevention Plan ("SWPPP") approved by AIRPORT'S Storm Water Management Program.
16. FAA REQUIREMENTS. FIRE DEPARTMENT and its officers, employees, contractors, agents, sublessees, and all others operating through FIRE DEPARTMENT shall conform to the following FAA covenants and reservations of rights.
- a. FIRE DEPARTMENT Use to Conform with Law and Other Rules.

FIRE 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 FIRE DEPARTMENT's control. FIRE 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 AIRPORT in regard to their aviation and air navigation authority.
 - b. FIRE DEPARTMENT Use and Construction to Conform with Federal Aviation Regulations.

FIRE DEPARTMENT agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Premises and the Airport. FIRE 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. FIRE DEPARTMENT's Noninterference with Aircraft.

FIRE DEPARTMENT and FIRE DEPARTMENT's successors, assigns agree not to in any manner 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, AIRPORT reserves the right to abate or eliminate the interference at the expense of FIRE DEPARTMENT.
 - d. MOU Subordinate to AIRPORT/United States Agreements.

This MOU shall be subordinate to the terms of any existing or future agreements between AIRPORT and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport.
 - e. Height Limitation.

FIRE DEPARTMENT and the FIRE DEPARTMENT'S successors and assigns agree not to erect or permit any structure unless it complies with all FAA and ALUCP height limitations. If this covenant is breached in any way, AIRPORT reserves the right to remove the structure or object at the expense of the FIRE DEPARTMENT.

f. Right of Flight Easement.

AIRPORT and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the Premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near 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. During any war or national emergency, AIRPORT shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this MOU which are inconsistent with the provisions of the MOU to the Government shall be suspended. AIRPORT shall not be liable for any loss or damages alleged by the MOU as a result of this action. However, nothing in this MOU shall prevent the FIRE DEPARTMENT from pursuing any rights it may have for reimbursement from the United States Government.

h. Airport Development.

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

i. Nonexclusive Right.

FIRE 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.

AIRPORT reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities at Montgomery Field Airport. AIRPORT also has the right to direct and control all FIRE DEPARTMENT activities affecting the maintenance and repair of the Airport land area and all other public facilities.

k. FAA Nondiscrimination Covenant.

FIRE DEPARTMENT and FIRE DEPARTMENT's representatives, successors, and assigns agree, as part of the consideration for this MOU that:

- a) 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.
- b) 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.
- c) FIRE DEPARTMENT shall conduct all activities by this MOU in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

In the event of the breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Lease and to reenter and repossess said Premises and facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

l. Equal Opportunity.

FIRE DEPARTMENT, FIRE DEPARTMENT's successors, assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be

excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

m. AIRPORT to Mitigate Impacts of Subordination.

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

n. AIRPORT to Mitigate Impacts of Subordination by Termination or Extension.

If subordination agreements between AIRPORT and United States of America result in the FIRE DEPARTMENT's inability to conduct activities contemplated by this MOU on the Premises or if the FIRE DEPARTMENT's activities are materially affected during a period of subordination: (1) AIRPORT agrees to make a reasonable time extension or adjustment, as determined by AIRPORT; or (2) upon written request from the FIRE DEPARTMENT, AIRPORT will terminate this MOU. The FIRE DEPARTMENT agrees that any damages claimed during this subordination period will be limited to this time extension/adjustment relief.

o. Employee Conduct.

The FIRE DEPARTMENT shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with the construction and development of the Improvements.

p. Subordination to Montgomery Field Quitclaim Deed.

FIRE DEPARTMENT agrees that this MOU is subordinate to the provisions of the Montgomery Field Quitclaim Deed to AIRPORT.

q. Aircraft Parking.

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

r. Minority Business Policy.

FIRE DEPARTMENT agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The FIRE DEPARTMENT and the FIRE DEPARTMENT'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.

s. Right of Flight.

There is hereby reserved to AIRPORT, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of Flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or land at, taking off from or operation on the Airport.

t. No Interference with Aircraft.

Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference and/or hazard at the expense of Lessee.

u. Provisions to be Included in All Pertinent Documents.

Lessee agrees that it shall insert all of the FAA Requirements provisions set forth in this Section 16 in all subleases, contracts or agreement by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

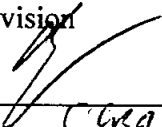
18. Entire Agreement. This MOU constitutes the entire agreement between the parties and supersedes any and all prior understandings between the parties concerning the Uses authorized herein. Any modification, alteration, or amendment of this MOU shall be in writing and signed by all the parties hereto.

19. Authority to Sign. Each individual signing this MOU for a City Department represents and warrants that they are authorized to execute and deliver this MOU on behalf of their respective Department.

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

Date: 10/28/15

City of San Diego Real Estate Assets Department-
Airports Division

By: 

Name: CEZAR C. THOMPSON

Title: DIRECTOR, REAL ESTATE ASSETS

Date: 7/15/15

City of San Diego Fire Rescue Department

By: 

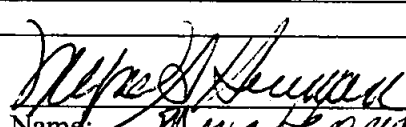
Name: JAVIER MAINAR

Title: FIRE CHIEF

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA
Guidelines Section 15301 (Existing Facilities).

Date: 10/13/15

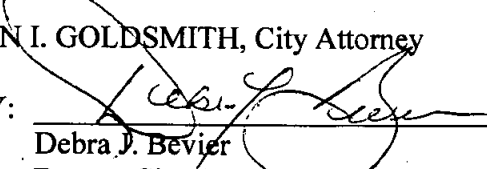
By: 

Name: MARY HERNANDEZ

Title: SENIOR PLANNER

Approved as to form this 30th day
of October, 2015.

JAN I. GOLDSMITH, City Attorney

BY: 

Debra J. Bevier
Deputy City Attorney

Exhibit A

