

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 Department of Real Estate and Airport Management (DREAM) and the City of San Diego Police Department (SDPD) to be effective as of November 1, 2022 (the **Effective Date**), as follows:

RECITALS

- A. Whereas DREAM manages, operates, and develops Brown Field Municipal Airport.
- B. Whereas Brown Field Municipal Airport is a Federal Aviation Administration (FAA) obligated airport and any revenues generated on the airport shall be deposited into the Airport Management Enterprise Fund.
- C. WHEREAS, as a result of FAA grant assurances, and other regulations pertaining to the management and use of public airports, DREAM is required to obtain fair market value for use of the Property for all nonaeronautical activities, even if such use is by another City department; and
- D. WHEREAS, this MOU is intended to clarify the terms under which SDPD will occupy and use a portion of the Property, including the rent to be paid, the term of the use and occupancy, and the responsibilities for maintenance and compliance with the grant assurances;
- E. SDPD shall use the Premises, as defined below, under the terms and conditions set forth in this MOU.

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

TERMS AND CONDITIONS

- 1. Premises. Pursuant to the terms of this MOU, SDPD shall have the right to use and occupy the following buildings located at Brown Field Municipal Airport: (i) the building located at 7030 Boeing Street, San Diego, CA 92154, known as the Carpet Barn, in its entirety, consisting of approximately 5,000 square feet; and (ii) an approximately 2,144 square feet portion of the building located at 6950 Boeing Street, San Diego, CA 92154, known as the Maintenance Shed and currently used as a storage building for Airport Management, (collectively, the **Premises**). The Premises include approximately 7,144 square feet of total warehouse space(s), as depicted in "EXHIBIT A," attached hereto and by this reference made a part hereof.
- 2. Use. SDPD is authorized to use the Premises exclusively for storage of equipment. No other uses, whatsoever, are allowed without the prior written consent of DREAM, in each instance.

3. Term. The term of this MOU shall be one (1) year commencing on the Effective Date (Term). This MOU may be terminated upon ninety (90) days prior written notice by either party, without necessity of cause.
4. Option to Extend Term. SDPD shall have the option to extend the Term of this MOU for two (2) additional one-year (1-year) option periods by providing DREAM with written notice a minimum of ninety (90) days in advance of the end of the initial Term or extended Term.
5. Rent. The initial rent shall be at the Appraised Fair Market Value of \$0.67 per square foot per month for a total of four thousand seven hundred and eighty-six dollars and forty-eight cents (\$4,786.48), payable monthly.

Rent for the option periods shall be increased by three percent (3%) at the commencement of each of the option periods.

6. Holdover. Any holding over by SDPD after expiration of the Term shall not be considered a renewal or extension of this MOU. The continued occupancy of the Premises by SDPD after the expiration of the Term of this MOU shall constitute a month-to-month tenancy, during which SDPD shall pay DREAM monthly rent of 150% of the last monthly rent amount due under the MOU prior to expiration of the Term. All other terms and conditions of the MOU shall continue in full force and effect during the holdover tenancy.
7. Time and Place of Payment. Rent is due in advance on or before the first day of each calendar month. All monthly rents will be prorated using a 30-day basis, during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. SDPD shall make all payments payable to the "Airport Management Enterprise Fund."
8. Assignment and Subletting. SDPD 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 SDPD, to use or occupy the Premises or any part thereof, without the prior written consent of DREAM, 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.
9. Accident Reports. SDPD shall immediately report to DREAM any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any injury to persons on the Premises or otherwise related to the allowed uses. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and all other pertinent information.
10. Acceptance of Premises. SDPD agrees to take the Premises in its "As-Is" condition. By signing this MOU, SDPD accepts and understands that DREAM has made no promise to alter or improve the Premises or made any representation concerning the condition thereof. SDPD 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. SDPD will return the Premises at

the expiration or earlier termination of the MOU in the same or better condition as provided at time of acceptance.

11. Entry and Inspection. DREAM reserves and always has the right to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests, or to ensure that the Premises is being maintained in a decent, safe, healthy, and sanitary condition. In the event that such entry or inspection by DREAM discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, DREAM shall have the right, after reasonable notice to SDPD, to have any necessary maintenance work done at the expense of SDPD. SDPD agrees to pay promptly any and all costs incurred by DREAM in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition.
12. Security Deposit. RESERVED.
13. Insurance. The City of San Diego is self-insured and will maintain, for the duration of the contract, insurance for San Diego Police Department separate from DREAM to pay for injuries to persons or damages to property as follows:
 - a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - b. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 - c. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
14. Utilities. SDPD will pay for all utilities necessary for the operation and maintenance of the Premises. The Premises are separately metered.
15. Taxes and Fees. If applicable, SDPD agrees to pay its pro-rata share of all levies, taxes and fees due on Premises during the term of this MOU.
16. Maintenance of the Premises. SDPD shall be responsible for all costs associated with the operation and maintenance of the Premises throughout the term of this MOU. SDPD shall, to DREAM's satisfaction, maintain the Premises in the same or better condition as provided at time of acceptance.
17. Access to the Premises. SDPD shall only use the Boeing Street gate for access and vehicular ingress/egress to the Premises, as shown in Exhibit A. No other road, paved or unpaved, may be used to access the Premises at any time.

18. Alterations. SDPD shall not alter or improve the Premises in any way without the prior written consent of DREAM. All applicable City, county, state, and federal codes and requirements will apply to any alteration or improvement SDPD makes to the Premises.
19. Compliance with Law. SDPD shall at all times in the construction, maintenance, occupancy, use, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations, including City, DREAM, county, state, and federal requirements, at SDPD'S sole cost and expense. In addition, SDPD shall comply with any and all notices issued by DREAM, or the Mayor or his designee, under the authority of any such law, statute, ordinance or regulation.
20. Survival. Any obligation which accrues under this MOU shall survive its expiration or earlier termination.
21. Hazardous/Toxic Waste. SDPD and SDPD'S agents and contractors will not install, store, utilize, generate, or sell any hazardous substance on the premises without DREAM's prior written consent. SDPD will be responsible, at no costs to the DREAM and the Airport Enterprise Fund to comply with all laws relating to Hazardous Substances, including paying for all costs, damages, penalties and fines, removal, or remediation incurred or necessary as a result of any release of hazardous substances that occurs as a result of SDPD's use and occupancy of the Premises under this MOU.
22. Water Quality – Best Management Practices. SDPD shall be responsible for identifying, implementing, and paying for, any best management practices (BMPs) necessary to ensure that SDPD's use and occupancy does not cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).
23. MOU Subject to Federal Aviation Administration Lease and Use Agreement Provisions: SDPD acknowledges and agrees, in addition to the foregoing terms and conditions of this MOU, that SDPD, its employees, contractors, agents, and all others using, entering onto, or occupying the Premises as a result of this MOU, shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **EXHIBIT B – Federal Aviation Administration Lease and Use Agreement Provisions**, which by this reference is made a part of this MOU. Failure to strictly adhere to the FAA Regulations shall subject this MOU to immediate termination with no liability to DREAM.
24. 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 SDPD at the Premises or at such other address designated in writing by SDPD:

City of San Diego
San Diego Police Department
Attn: Captain Jeffrey Jordon
1401 Broadway
San Diego, CA-92101

And, to the Department of Real Estate and Airport Management as follows:

City of San Diego
Department of Real Estate and Airport Management
Attn: Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

and

City of San Diego
Department of Real Estate and Airport Management
Attn: Deputy Director, Airport Management
3750 John J. Montgomery Drive, M.S. 14
San Diego, CA 92123

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

IN WITNESS WHEREOF, this MOU is executed by DREAM, acting by and through its Director, and by SDPD, acting by and through its lawfully authorized representative.

Date: _____

CITY OF SAN DIEGO – DEPARTMENT of
REAL ESTATE and AIRPORT MANAGEMENT

By: _____
Penny Maus, Director,
Department of Real Estate and Airport
Management

Date: 10/21/22

CITY OF SAN DIEGO POLICE DEPARTMENT

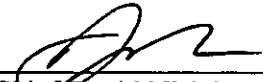
By:  _____
Chief David Nisleit
San Diego Police Department

EXHIBIT A

PREMISES

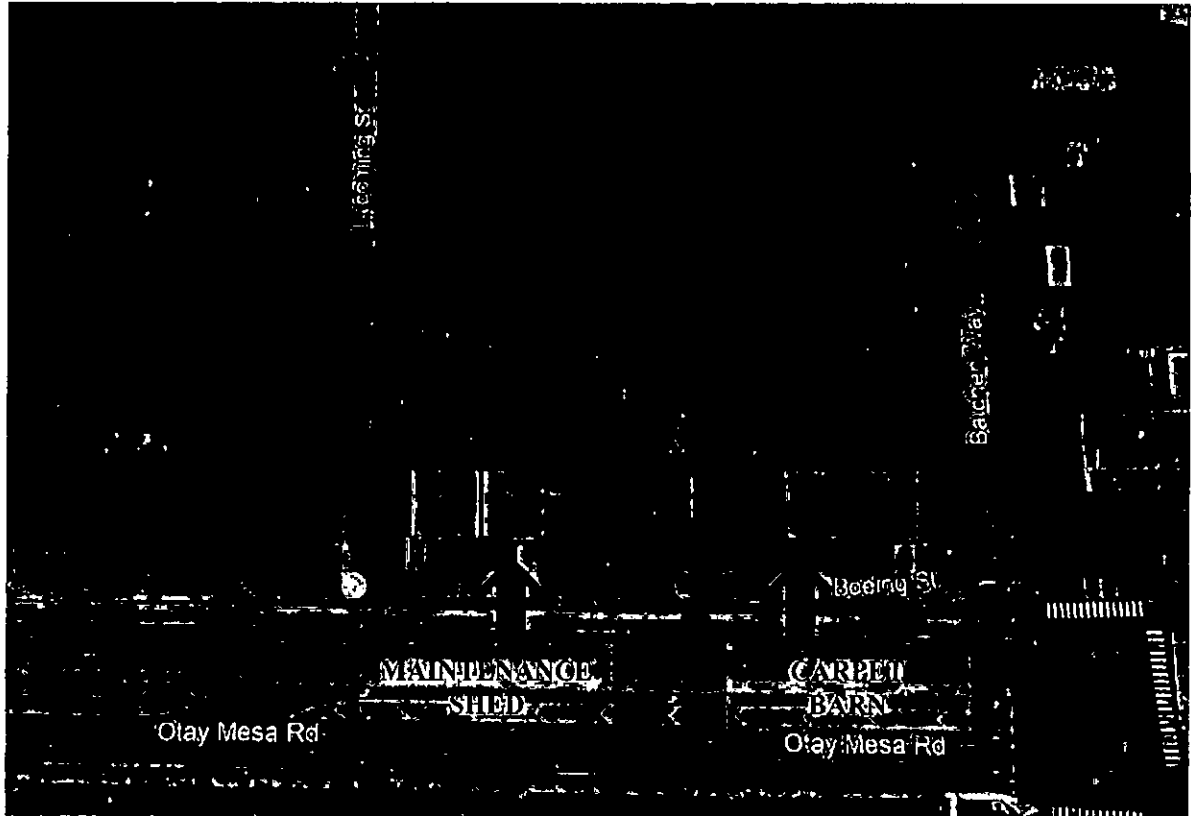


EXHIBIT B

Federal Aviation Administration Lease and Use Agreement Provisions

SAN DIEGO POLICE DEPARTMENT (SDPD) shall adhere to the following terms and conditions during the entirety of the time period covered by this MOU. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the MOU, the terms and conditions contained in the main body of the MOU shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted at the airport, include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxi, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated

by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

- a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.
- b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

1. SDPD agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If SDPD transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates SDPD for the period during which the property is owned, used or possessed by SDPD and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. The following clauses will be included in lease or license entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.
 - A. SDPD for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, SDPD will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - B. With respect to a lease, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.
 - C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to enter or re-enter the lands and

facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

3. The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. SDPD for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that SDPD will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to a lease, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI)

The airport sponsor shall insert the paragraph above in all airport contracts, leases, subcontracts, subleases and other agreements at all tiers.

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_provisions/.)

- 4. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of SDPD and without interference or hindrance.
- 5. The airport owner/sponsor reserves the right, but shall not be obligated to SDPD, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of SDPD in this regard.

6. This MOU shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of SDPD or any occupant to comply with the requirements of any existing or future agreement between the lessor and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of SDPD's rights hereunder.
7. There is reserved to the airport owner/sponsor, 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 leased premises. 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 said airspace or landing at, taking off from, or operating on the airport premises.
8. SDPD agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.
9. SDPD by accepting this MOU expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of SDPD.
10. SDPD by accepting this MOU 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 or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of SDPD.
11. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).
12. This MOU and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

13. SDPD will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
14. SDPD will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

Revised: September 2021, AWP-620

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- C. WHEREAS, as a result of FAA grant assurances, and other regulations pertaining to the management and use of public airports, DREAM is required to obtain fair market value for use of the Property for all nonaeronautical activities, even if such use is by another City department; and
- D. WHEREAS, this MOU is intended to clarify the terms under which SDPD will occupy and use a portion of the Property, including the rent to be paid, the term of the use and occupancy, and the responsibilities for maintenance and compliance with the grant assurances;
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NOW, THEREFORE, it is mutually agreed between the parties as follows:

TERMS AND CONDITIONS

- 1. **Premises.** Pursuant to the terms of this MOU, SDPD shall have the right to use and occupy the following buildings located at Brown Field Municipal Airport: (i) the building located at 7030 Boeing Street, San Diego, CA 92154, known as the Carpet Barn, in its entirety, consisting of approximately 5,000 square feet; and (ii) an approximately 2,144 square feet portion of the building located at 6950 Boeing Street, San Diego, CA 92154, known as the Maintenance Shed and currently used as a storage building for Airport Management, (collectively, the **Premises**). The Premises include approximately 7,144 square feet of total warehouse space(s), as depicted in "EXHIBIT A," attached hereto and by this reference made a part hereof.
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20. Survival. Any obligation which accrues under this MOU shall survive its expiration or earlier termination.
21. Hazardous/Toxic Waste. SDPD and SDPD'S agents and contractors will not install, store, utilize, generate, or sell any hazardous substance on the premises without DREAM's prior written consent. SDPD will be responsible, at no costs to the DREAM and the Airport Enterprise Fund to comply with all laws relating to Hazardous Substances, including paying for all costs, damages, penalties and fines, removal, or remediation incurred or necessary as a result of any release of hazardous substances that occurs as a result of SDPD's use and occupancy of the Premises under this MOU.
22. Water Quality – Best Management Practices. SDPD shall be responsible for identifying, implementing, and paying for, any best management practices (BMPs) necessary to ensure that SDPD's use and occupancy does not cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).
23. MOU Subject to Federal Aviation Administration Lease and Use Agreement Provisions: SDPD acknowledges and agrees, in addition to the foregoing terms and conditions of this MOU, that SDPD, its employees, contractors, agents, and all others using, entering onto, or occupying the Premises as a result of this MOU, shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **EXHIBIT B – Federal Aviation Administration Lease and Use Agreement Provisions**, which by this reference is made a part of this MOU. Failure to strictly adhere to the FAA Regulations shall subject this MOU to immediate termination with no liability to DREAM.
24. 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 SDPD at the Premises or at such other address designated in writing by SDPD:

City of San Diego
San Diego Police Department
Attn: Captain Jeffrey Jordon
1401 Broadway
San Diego, CA 92101

And, to the Department of Real Estate and Airport Management as follows:

City of San Diego
Department of Real Estate and Airport Management
Attn: Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

and

City of San Diego
Department of Real Estate and Airport Management
Attn: Deputy Director, Airport Management
3750 John J. Montgomery Drive, M.S. 14
San Diego, CA 92123

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

IN WITNESS WHEREOF, this MOU is executed by DREAM, acting by and through its Director, and by SDPD, acting by and through its lawfully authorized representative.

Date: Oct 21, 2022

CITY OF SAN DIEGO – DEPARTMENT of
REAL ESTATE and AIRPORT MANAGEMENT

By: 
Penny Maus, Director,
Department of Real Estate and Airport
Management

Date: 10/21/22

CITY OF SAN DIEGO POLICE DEPARTMENT

By: 
Chief David Nisleit
San Diego Police Department

EXHIBIT A

PREMISES

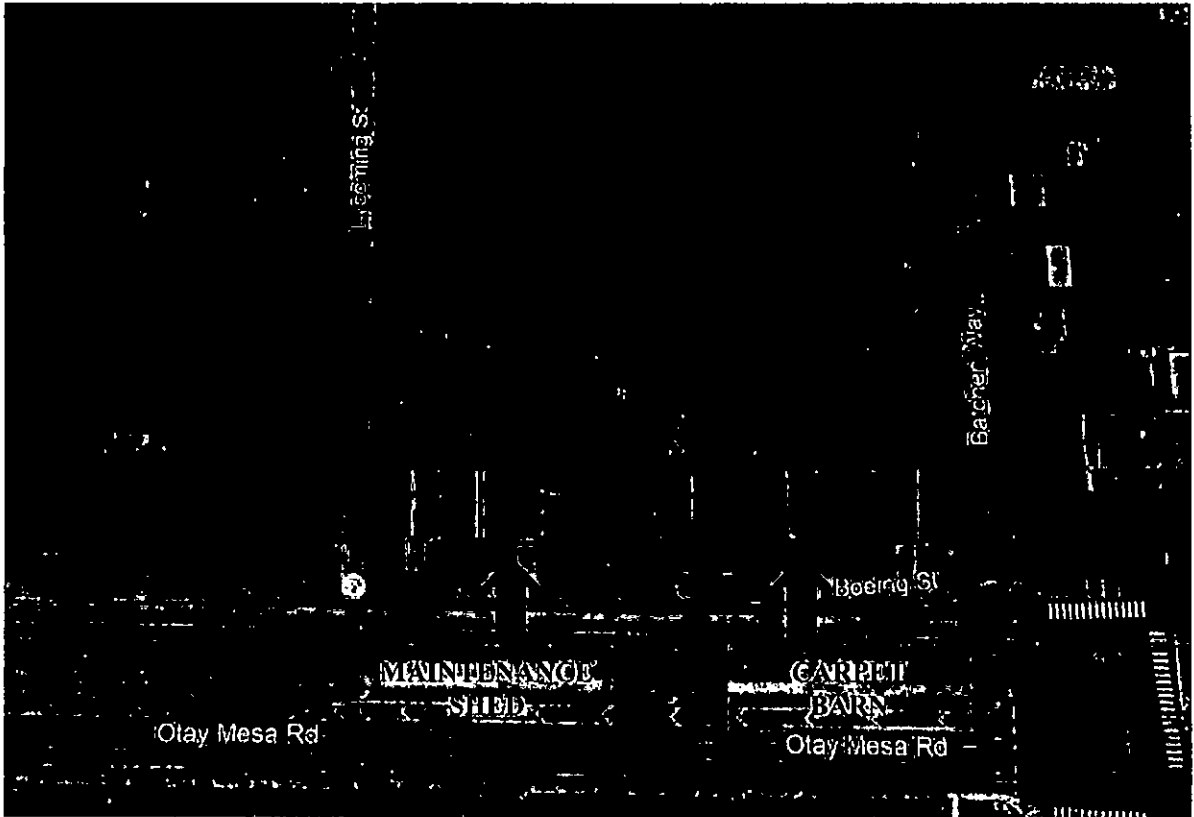


EXHIBIT B

Federal Aviation Administration Lease and Use Agreement Provisions

SAN DIEGO POLICE DEPARTMENT (SDPD) shall adhere to the following terms and conditions during the entirety of the time period covered by this MOU. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the MOU, the terms and conditions contained in the main body of the MOU shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted at the airport, include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated

by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

- a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.
- b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

1. SDPD agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If SDPD transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates SDPD for the period during which the property is owned, used or possessed by SDPD and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. The following clauses will be included in lease or license entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.

A. SDPD for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, SDPD will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to a lease, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to enter or re-enter the lands and

facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

3. The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.

A. SDPD for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that SDPD will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to a lease, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI)

The airport sponsor shall insert the paragraph above in all airport contracts, leases, subcontracts, subleases and other agreements at all tiers.

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_provisions/.)

4. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of SDPD and without interference or hindrance.
5. The airport owner/sponsor reserves the right, but shall not be obligated to SDPD, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of SDPD in this regard.

6. This MOU shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of SDPD or any occupant to comply with the requirements of any existing or future agreement between the lessor and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of SDPD's rights hereunder.
7. There is reserved to the airport owner/sponsor, 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 leased premises. 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 said airspace or landing at, taking off from, or operating on the airport premises.
8. SDPD agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.
9. SDPD by accepting this MOU expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of SDPD.
10. SDPD by accepting this MOU 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 or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of SDPD.
11. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).
12. This MOU and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

13. SDPD will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
14. SDPD will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

Revised: September 2021, AWP-620