

COPY

FEDERAL AVIATION ADMINISTRATION



U.S. Department
of Transportation

Lease No.: DTFA08-01-L-21408
Facility: VORTAC
Mission Bay
San Diego, CA

LEASE

Between

THE CITY OF SAN DIEGO

and

THE UNITED STATES OF AMERICA

This Lease, made and entered into this ____ day of _____ in the year **MAY 03 2005**
by and between the City of San Diego, a Municipal Corporation

whose address is: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101-4199

for itself and its successors and assigns, hereinafter referred to as the City
and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant
and agree as follows:

1. PREMISES

The City hereby leases to the Government the following described property, hereinafter
referred to as the premises, viz.:

See Page 1(a)

Federal Aviation Administration

DOCUMENT NO. **RE-300368**
FILED MAY 03 2005
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Page 1
(10/98)

LEGAL DESCRIPTION

DTFA08-01-L-21408
MISSION BAY, VORTAC
SAN DIEGO, CALIFORNIA

These premises consist of an entire man-made Island of 1.956 acres, more or less, the center of which is located at Latitude $32^{\circ} 46' 57''$, Longitude $117^{\circ} 13' 29''$ in Mission Bay, in the Mission Bay Park and Recreation Area in the City of San Diego, County of San Diego, State of California.

That parcel of land, being a portion of the tidelands and submerged or filled lands of False Bay, also known as Mission Bay and that portion of the Pueblo Lands of San Diego, according to Map thereof by James Pascoe, a copy of which is on file in the office of the County Recorder of said County and is known as Miscellaneous Map No. 36, described as follows.

Beginning at the Southeast corner of Lot 21 of Block 10 in the Re-subdivision of Blocks 7, 8, 10, and a portion of Block 9 and Lot "A" of Inspiration Heights, according to Map thereof No. 1700 filed in the office of the County Recorder of said County; thence along the Southerly line of said Lot South $89^{\circ} 55' 56''$ West (record North $89^{\circ} 59'$ West) 25 feet to a point of tangent curve in the boundary of said Lot; thence South $0^{\circ} 04' 04''$ East 2 feet to a line which is parallel with and 2 feet Southerly at right angles from the Southerly line of said Block 10; thence along said parallel line North $89^{\circ} 55' 56''$ East 249.70 feet; thence North $5^{\circ} 30' 02''$ West 104.06 feet to the United States Coast and Geodetic Survey, Triangulation Station "Old Town", (the Lambert Grid Coordinates California Zone 6 for said Station "Old Town" are X equals 1,712,415.17 and Y equals 213,819.22 and said Triangulations Station is located at Latitude $32^{\circ} 45' 02.845''$, Longitude $117^{\circ} 11' 07.200''$) said Station "Old Town" being the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 11,528.82 feet and West 12,116.66 feet to the TRUE POINT OF BEGINNING; the Mission Bay Park Coordinates of said TRUE POINT OF BEGINNING being North 11,528.82 feet and West 12,116.66 feet to Center Point of the premises to be leased which consists of an entire man-made Island, lying above mean high tide line as it now or hereafter exists, the center of which is located at Latitude $32^{\circ} 46' 57''$, Longitude $117^{\circ} 13' 29''$, in Mission Bay, in the Mission Bay Park and Recreation Area in the City of San Diego, San Diego County, California.

(a) Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over the said lands and adjoining lands of the City, and unless herein described otherwise, to be by routes as generally shown on FAA Drawings WE-D-112-41802-1 and WE-D-112-41802-4, attached hereto and made a part hereof.

(b) And the right to grade, condition, and install drainage facilities, and to seed the soil of the premises, and to remove all obstructions from the premises with the City's prior written approval, which may constitute a hindrance to the establishment and maintenance of Government facilities, subject to and at all times in compliance with the City of San Diego's grading ordinance and requirements for drainage.

(c) And the right to make alterations, attach fixtures, and erect additions, structures, or signs with the City's prior written approval and or environmental review which may be required depending on the scope of any proposed work, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the date of expiration or termination of this lease, or within ninety (90) days thereafter, by or on behalf of the Government, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or signs subject to and in compliance with applicable local laws and zoning.

(d) The maintenance of said premises, including the riprap shall be the sole cost of the Government.

2. TERM

For the term beginning October 1, 2001 and ending September 30, 2005. This lease may, at the option of the Government, be renewed from year to year and otherwise upon the terms and conditions herein specified. The Government's option shall be deemed exercised and the lease renewed each year for one (1) year unless the Government gives the City thirty (30) days written notice that it will not exercise its option before this lease or any renewal thereof expires; PROVIDED, that no renewal shall extend this lease beyond the 30th day of September 2021.

3. CONSIDERATION

The Government shall pay the City no monetary consideration in the form of rental, it being mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.

4. ~~ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT~~

~~Payments by the Government under this contract, will be made by electronic funds transfer (EFT). At the option of the Government, payments maybe made by check or other means. When payments is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. EFT refers to funds transfer and information transfer.~~

~~The Government is not required to make any payment under this contract until after receipt, by the Contracting Officer of the correct EFT payment information. However, in the event the lessor certifies in writing to the Contracting Officer that the lessor does not have an account with a financial institution or an authorized payment agent, payment may be made by other than EFT.~~

~~Prior to the first payment under this contract, the lessor shall provide the information required to make contract payment by EFT, directly to the Government payment office named in this contract. A single bank or financial agent must be designated, capable of receiving and processing the electronic funds transfer using the method below. In the event that the EFT information changes, the lessor shall be responsible for providing the changed information to the designated payment office. The lessor shall pay all fees and charges for receipt and processing of EFTs.~~

~~The Government will make payments by EFT through an Automated Clearing House (ACH). However, the Federal Reserve Wire Transfer System may be used at the Government's option. The "Vendor/Miscellaneous Payment Information Form" must have the sections "Payee/Company Information" and Financial Institution Information" completed prior to award.~~

~~The Lessor agrees that the Lessor's bank or financial agent may notify the Government of a change to the routing transit number, lessor account number, or account type.~~

5. RESTORATION

The Government shall surrender possession of the premises upon the date of expiration or termination of this lease. If the City provides written notice, prior to the date of expiration or termination, requesting restoration of the premises, the Government shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, restore the premises to as good condition as that existing at the time of the Government's initial entry upon the premises under this lease or any preceding lease (changes to the premises in accordance with paragraph 1(a), 1(b) and 1(c) above, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted).

6. INTERFERENCE WITH GOVERNMENT OPERATIONS

The City agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature or to install or allow to be installed any electronic equipment on the site or adjacent land owned by the City that may interfere with the proper operation of the facilities installed by the City under the terms of this lease without obtaining prior written consent from the Contracting Officer.

7. HAZARDOUS SUBSTANCE CONTAMINATION

The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the Government's facilities. The City agrees to remediate, at its sole cost, any and all other hazardous substance contamination found on the leased premises. The City also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the Government's facilities.

8. QUIET ENJOYMENT

The City warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

9. HOLDOVER

If after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. This period shall continue until the Government shall have signed a new lease with the City, acquired the property in fee or vacated the leased premises.

10. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

11. COVENANT AGAINST CONTINGENT FEES

The City warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

12. ANTI-KICKBACK

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

13. PROTEST AND DISPUTES

All contract disputes arising under or related to this contract or protests concerning awards of contracts shall be resolved under this clause, and through the Federal Aviation Administration (FAA) Dispute Resolution System. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. The decision of the FAA shall be considered a final agency decision only after the lessor or offeror has exhausted their administrative remedies for resolving a contract dispute under the FAA Dispute Resolution System. Protests must be filed with the Office of Dispute Resolution within 5 calendar days of the date that the protester was aware, or should reasonably have been aware, of the agency action or inaction, which forms the basis of the protest. Unless otherwise stated in this contract, a contract dispute by the City against the government shall be submitted to the Contracting Officer within 1 year after the accrual of the contract dispute. Information relating to submitting a protest or dispute will be provided by the Contracting Officer, upon request.

14. ASSIGNMENT OF CLAIMS

Pursuant to the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 15, the City may assign his rights to be paid under this lease.

15. EXAMINATION OF RECORDS

The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this contract have access to and the right to examine any of the Contractor's directly pertinent books, documents, paper, or other records involving transactions related to this contract

16. CITY's SUCCESSORS

The terms and provisions of this lease and the conditions herein bind the City and the City's heirs, executors, administrators, successors, and assigns.

17. NOTICES

All notices/correspondence shall be in writing, and shall be addressed as follows (or to such other address as either party may designate from time to time by notice or correspondence to the other):

TO CITY: City of San Diego
1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101-4199

TO GOVERNMENT: Department of Transportation
Federal Aviation Administration
Real Estate & Utilities Team, AWP-54B
Los Angeles, CA 90009-2007

18. The following are attached and made a part hereof:

Legal Description, Page 1(a)
Exhibit 1, Mission Bay, VORTAC "US GOVERNMENT ISLAND"
FAA Drawing WE-D-112-41802-1, VORTAC FACILITY PLOT PLAN
FAA Drawing WE-D-112-41802-4, VORTAC FACILITY RIPRAPPING

19. The following changes were made in this lease prior to its execution:

A. Add the following restricted area criteria.

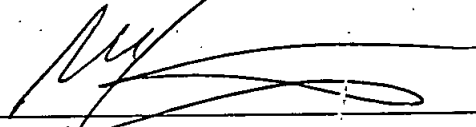
1. The City shall not construct or allow the construction of any building or structure within 1,000 feet of the VOR facility. Wooden structures with negligible metallic content may be tolerated if subtending vertical angles of less than 2.5 degrees measured from the ground at the site.
2. The City shall not permit ordinary farm-type wire fences up to 4 feet in height to be closer than 200 feet from the antennas except for the lines serving the site. No wire fence should extend more than .5 degrees above the horizontal, measured from the antenna. Chain-link fences up to 6 feet in height cannot be closer than 500 feet.
3. No groups of trees shall be within 1000 feet, or subtend a vertical angle of more than 2 degrees. Single trees may be tolerated but must be proportionate in height to the vertical angle of 2 degrees. However, if at any time the trees present an interference problem for the navigational aid, the Government reserves the right to request that the City top the trees within the restricted area to a height which corrects the interference at no expense to the Government.
4. Power and control lines should be installed underground for a minimum distance of 600 feet from the antenna. Overhead power and control lines installed beyond 600 feet should be essentially radial to the antenna for a minimum distance of 1200 feet. Other than the foregoing, there should be no lines or supporting structures so located that they subtend a vertical angle (measured from ground elevation at the site) greater than 1.5 degrees.

B. Delete in its entirety Paragraph 4, Electronic Funds Transfer (EFT) Payment.

This lease supersedes Lease No. DTFA08-81-L-10122, which expired by limitation on September 30, 2001.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

THE CITY OF SAN DIEGO


 (Signature)

Date: 5/17/05

Real Estate Assets Director
 (Official Title)

**THE UNITED STATES OF AMERICA
 DEPARTMENT OF TRANSPORTATION
 FEDERAL AVIATION ADMINISTRATION**

By: 
 Contracting Officer, Real Estate &
 Utilities Team, AWP-54B

Date: 6/1/05

Approved as to form and legality
 this 20th day of May 2005
 MICHAEL J. AGUIRRE, City Attorney

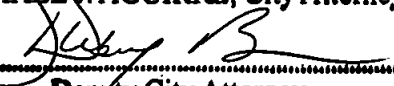
By: 
 Deputy City Attorney



Exhibit 1, Mission Bay, VORTAC "U.S. Government Island"

RESOLUTION NUMBER R- 300368

ADOPTED ON MAY 03 2005

WHEREAS, the United States of America, Department of Transportation, Federal Aviation Administration [FAA] has continuously, since 1961, installed and maintained a VORTAC air navigational device on the man-made island in Mission Bay known as Ski Island, for the benefit of local air traffic, under a prior lease which lease is currently on holdover; and

WHEREAS, the FAA would now like to enter into a new lease with the City of San Diego; which lease shall have an initial term beginning October 1, 2001, and ending September 30, 2005, with the additional right, at the FAA's option, to renew the lease annually on a year-to-year basis, provided that no renewal shall extend beyond September 30, 2021; and

WHEREAS, Section 47107(a)(12) of Title 49 of the United States Code provides in part that the airport owner or operator will provide, without cost to the U. S. Government, property interests of the sponsor in land or water areas or buildings that the U.S. Government decides are desirable for, or that will be used for, constructing at the U.S. Government's expense, facilities for carrying out activities related to air traffic control or navigation; and

WHEREAS, the consideration for the lease is the FAA's operation and maintenance of the VORTAC facility and its benefits to the City and regional airport air traffic safety. The FAA has paid the City of San Diego's processing fee for the new lease agreement; NOW, THEREFORE,

BE IT RESOLVED, by the San Diego City Council, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a new lease agreement with the FAA, for

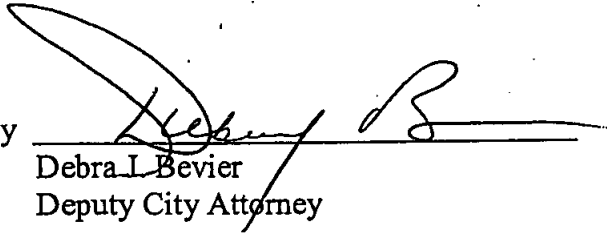
the purpose of maintaining the VORTAC air navigational device on Ski Island for the benefit of local air traffic, which lease will have a term beginning October 1, 2001, and ending September 20, 2005, with the additional right, at the FAA's option, to renew the lease annually on a year-to-year basis, provided that no renewal shall extend beyond September 30, 2021.

BE IT FUTHER RESOLVED, by the San Diego City Council, the consideration for the lease is the FAA's operation and maintenance of the VORTAC facility and its benefits to the City and regional airport air traffic safety. The FAA has paid the City of San Diego's \$3,970.00 processing fee for the new lease agreement.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

Lease Agreement between the
City of San Diego and the
United States of America on
file as Document RR-300368.

By


Debra L. Bevier

Deputy City Attorney

DJB:mm

04/14/05

Or.Dept:READ

Aud.Cert:N/A

R-2005-1067

MMS#1790

Passed and adopted by the Council of San Diego on May 3, 2005 by the following vote:

YEAS: PETERS, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: ZUCCHET, INZUNZA.

VACANT: NONE.

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-300368, passed and adopted by the Council of The City of San Diego,
California on May 3, 2005.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy
Manuel E. Ketcham