

COPY

Legal

FEDERAL AVIATION ADMINISTRATION



U.S. Department
of Transportation

Lease No.: DTFA08-03-L-22295
Facility: Brown Municipal Airport
Air Traffic Control Tower
Otay Mesa Road
San Diego, CA 92173

ON-AIRPORT LEASE

Between

CITY OF SAN DIEGO

and

THE UNITED STATES OF AMERICA

This Lease, made and entered into this AUG 10 2004 day of _____ in the year _____
by and between CITY OF SAN DIEGO

whose address is:

Airports Division
1590 Continental Street, Suite A
San Diego, CA 92173

for itself and its successors, and assigns hereinafter referred to as Lessor 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 Lessor hereby leases to the Government the following described property, hereinafter
referred to as the premises, viz.:

See Legal Description On Exhibit B.

Federal Aviation Administration

DOCUMENT NO. 00-19309

FILED AUG 10 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Page 1
Rev. 8/02

(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 Lessor, and unless herein described otherwise, to be by routes reasonably determined to be the most convenient to the Government.

(b) And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.

(c) And the right to make alterations, attach fixtures, and erect additions, structures, or signs, 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. (10/96)

2. TERM

To have and to hold said premises with their appurtenances for the term beginning **October 1, 2003** through **September 30, 2013** inclusive; Either party may terminate this lease, in whole or in part, at any time, by giving **one hundred and eighty (180) days** notice in writing to the other party. Said notice shall be computed commencing with the day after the date of mailing. (10/96)

3. CONSIDERATION

The Government shall pay the Lessor 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. (10/96)

4. NON-RESTORATION

It is hereby agreed between the parties, that upon termination of its occupancy, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor. Notice of abandonment will be conveyed by the Government to the Lessor in writing. (10/96)

5. INTERFERENCE WITH GOVERNMENT OPERATIONS

The Lessor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature on the site or adjoining land within the airport boundaries that may interfere with the proper operation of the facilities installed by the Government under the terms of this Lease unless consent hereto shall first be secured from the Government in writing. (10/96)

6. FUNDING RESPONSIBILITY FOR GOVERNMENT FACILITIES

The Lessor agrees that any relocation, replacement, or modification of any existing or future Government facilities covered by this Lease during its term or any renewal thereof made necessary by airport improvements or changes which in the Government's opinion interfere with the technical and/or operational characteristics of the Government facilities will be at the expense of the Lessor, except, when such improvements or changes are made at the written request of the Government. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Lessor or the Government, funding responsibility shall be determined by the Government. (10/96)

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 ATCT facility. The Lessor agrees to remediate, at its sole cost, any and all other hazardous substance contamination found on the leased premises. The Lessor 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 ATCT facility. (05/00)

8. QUIET ENJOYMENT

The Lessor 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. (10/96)

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 has signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises. (10/96)

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. (10/96)

11. COVENANT AGAINST CONTINGENT FEES

The Lessor 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. (10/96)

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. (10/96)

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 lessor 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. (10/96)

14. LESSOR'S SUCCESSORS

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns. (10/96)

15. 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) (10/96):

TO LESSOR: City of San Diego
 Airports Division
 1590 Continental Street, Suite A
 San Diego, CA 92173

TO GOVERNMENT: Department of Transportation
 Federal Aviation Administration
 Real Estate & Utilities Team, AWP-54B
 P.O. Box 92007
 Los Angeles, CA 90009-2007

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

- Exhibit A – Lease Site Location
- Exhibit B - Legal Description
- Exhibit C - Operation Agreement for Air Traffic Control Tower

17. The following changes were made in this lease prior to its execution: None.

This lease supersedes Lease No. DTFA08-91-L-13242, which expires by limitation on September 30, 2003.

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

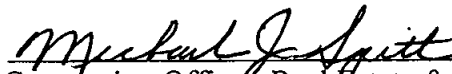
LESSOR


(Signature)

Real Estate Assets Director
(Official Title)

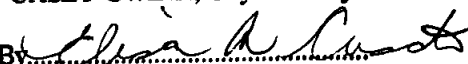
8-19-04
Date

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

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

Date: 9-23-04

Approved as to form and legality
this 24th day of August, 2004.
CASEY GWINN, City Attorney

By: 
Deputy City Attorney

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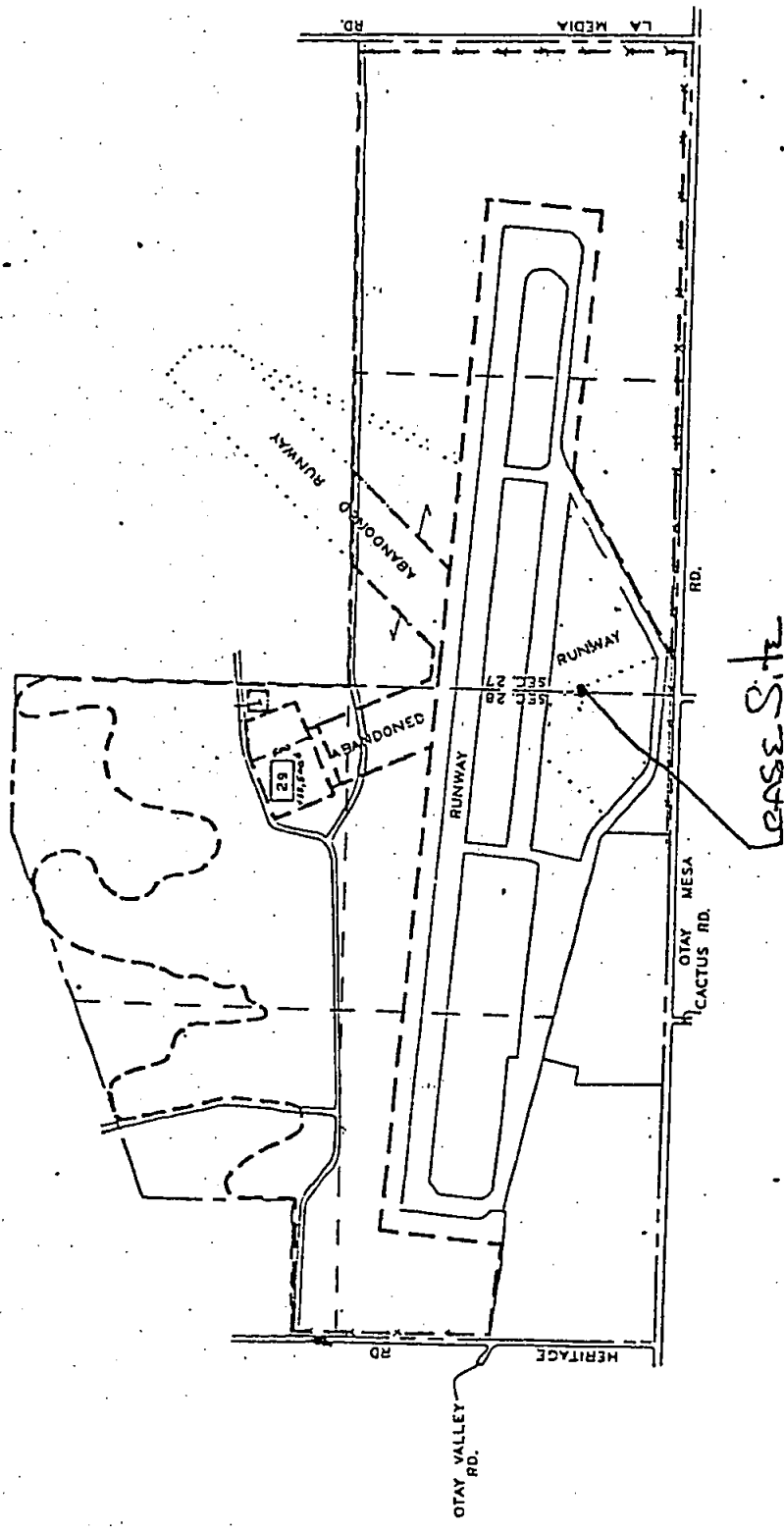


Exhibit A

DTFA08-03-L-22295

BROWN FIELD - SHT 1 OF 3

Lease No: DTFA02-030L-22295
BROWN FIELD AIR TRAFFIC CONTROL TOWER

LEASE DESCRIPTION
BROWN FIELD AIR TRAFFIC CONTROL TOWER
OTAY MESA ROAD
SAN DIEGO, CALIFORNIA

That portion of Sections 27 and 28, Township 18 South, Range 1 West, San Bernardino Base and Meridan, in the City of San Diego, County of San Diego, State of California, described as follows:

Beginning at the southwest corner of said Section 27; thence N 00 45' 19" E along the west line of said Section 27, 159.88 feet; thence N 60 00' 16" E 378.59 feet to the true point of beginning; thence N 83o 59' 44" W 72.50 feet; thence N 6o 00' 16" E 145.00 feet; thence S 83o 59' 44" E 145.00 feet, thence S 6o 00' 16" 145.00 feet; thence N 83o 59' 44" W 72.50 feet to the true point of beginning.

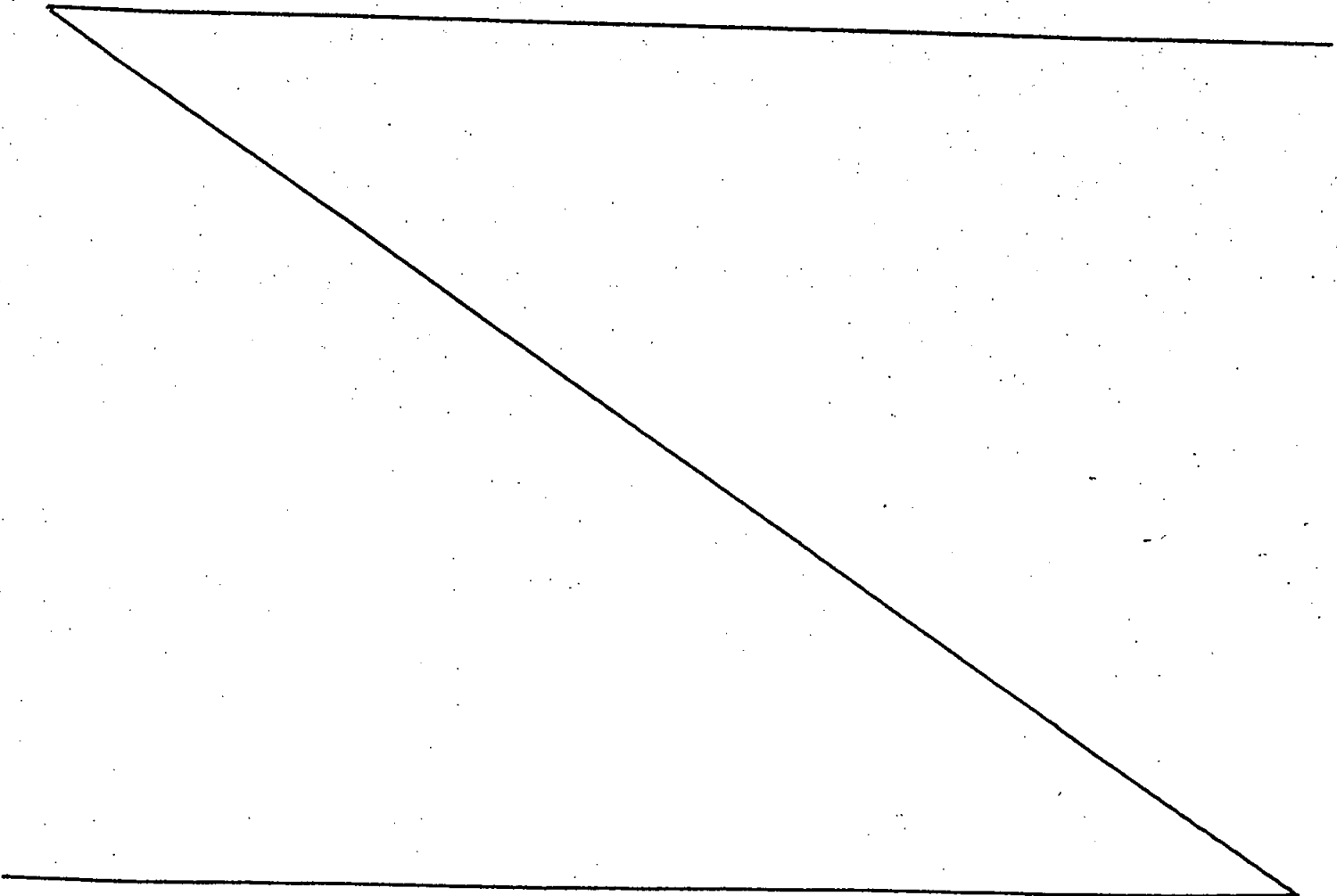


EXhibit B - (LEGAL DESCRIPTION)

FEDERAL AVIATION ADMINISTRATION



U.S. Department
of Transportation

OPERATION AGREEMENT FOR AIR TRAFFIC CONTROL TOWER

I. This agreement is by and between the City of San Diego (hereinafter referred to as "Lessor") and the United States of America (hereinafter referred to as "Government"). This agreement is to be attached to and made a part of Lease No. DTFA08-03-L-22295 between Lessor and Government.

II. WHEREAS, an Airport Traffic Control Tower erected on the premises owned by Lessor, commonly known as Brown Field Airport Traffic Control Tower, located in San Diego, CA., and leased by Government, and

III. WHEREAS, it is in the public interest that said Airport Traffic Control Tower be operated by Government, subject to the availability of funds therefor, in accordance with standards established by Government;

IV. NOW, THEREFORE, Lessor agrees to the following conditions:

1. Except as provided under other, separate agreements between lessor and Government concerning installation, operation and maintenance of navigational aids or other airport and aircraft directional and safety devices, Lessor shall, at no expense to the Government, provide and maintain the following:

- a. aircraft runway, taxiway and ramp lighting for boundaries and obstructions and all electrical current required for operation thereof;
- b. lighting control panels in said Tower for preceding lighting as necessary for its operation by the Government.
- c. proper and continued functioning of any other airport or aircraft directional and safety devices which may be installed by lessor but placed under the Government's control.

- d. Television, telephones, or other communications devices as desired by Lessor for airport safety and security and related cables or conduit required therefor.

All such Air Traffic Control devices which are designated to be directly or remotely controlled from the Airport Traffic Control Tower shall be operationally under the control of the Government's Air Traffic Controllers.

2. Lessor shall promptly advise Government's duly authorized representative(s) in said Tower of any conditions which render any area of the Airport unsafe for normal utilization by aircraft and shall, upon demand, appropriately mark any such area in a manner approved by Government, properly indicating such conditions. Lessor shall promptly give notice to Government's Tower Representative(s) prior to the time any emergency maintenance, or construction is begun on the airport landing area, unless such action is in accordance with a schedule which has been previously coordinated with said Tower. Notice shall be given not less than thirty (30) days prior to the commencement date of such maintenance or construction, and said approved schedules shall be submitted to Government not less than thirty (30) days prior to the commencement date of such maintenance or construction where practicable.

3. Government shall have control of the operation of said Tower and its associated facilities, and shall not be subject to direction from Lessor in this regard. Each party shall protect, defend and indemnify and save harmless the other from and against all loss, injury, or damage and any claims resulting in whole or in part, directly or indirectly from or incident to its own acts.

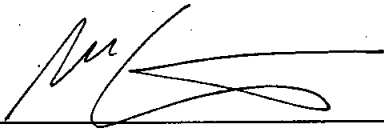
4. Lessor, upon request from Government, agrees to provide two-way ground control communication equipment in its maintenance and emergency vehicles operating in the airport landing area, and such equipment shall be capable of maintaining radio communications with the Airport Traffic Control Tower.

5. Lessor agrees to pay for the relocation of said Tower and its associated facilities if such relocation is made necessary by airport improvements or changes which impair the technical and/or operational characteristics of said Tower and its associated facilities.

6. While the Airport is in operation, Lessor agrees that the Airport shall be operated for the use and benefit of the public, on fair and reasonable terms, without unjust discrimination. While the Airport is in operation, Lessor also agrees that it shall not grant or permit any exclusive right for the use of the Airport which is forbidden by section 308 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349), or any succeeding laws or regulations on the same subject.

7. Lessor agrees that in its operation of the Airport and all facilities on the Airport, neither it nor any person or entity occupying space thereon shall discriminate against any person, or organization, or class of persons by reason of race, color, creed, or national origin.

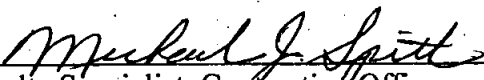
IN WITNESS WHEREOF, the parties hereto have executed this agreement as follows:



Date: _____

GOVERNMENT

Date: 9-23-04



Realty Specialist, Contracting Officer
Department of Transportation
Federal Aviation Administration
The United States of America

Approved as to form and legality
this.....day of.....20.....
CASEY GWINN, City Attorney

By.....
Deputy City Attorney

Passed and adopted by the Council of San Diego on August 10, 2004, by the following vote:

**YEAS: PETERS, ZUCCHET, ATKINS, MAIENSCHIN, FRYE, MADAFFER,
INZUZNA, MAYOR MURPHY**

NAYS: NONE

NOT PRESENT: NONE

VACANT: DISTRICT FOUR

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
ORDINANCE NO. O-19309 passed and adopted by the Council of The City of San Diego,
California on August 10, 2004.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy

set forth in that lease agreement on file in the office of the City Clerk as Document No.

OO- 19309

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage

APPROVED: CASEY GWINN, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:ai
07/09/04
Or.Dept: READ
O-2005-5

ORDINANCE NUMBER O- 19309 (NEW SERIES)

ADOPTED ON AUG 10 2004

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT WITH THE UNITED STATES OF AMERICA, ACTING THROUGH THE FEDERAL AVIATION ADMINISTRATION, TO OPERATE A CONTROL TOWER AT BROWN FIELD AIRPORT.

WHEREAS, the Federal Aviation Administration [FAA] has operated the Control Tower at Brown Field Airport since 1972; and

WHEREAS, this Control Tower is vital to the safe operation of the Brown Field as a general aviation airport; and

WHEREAS, a preliminary review by the Real Estate Assets Acquisition and Valuation division estimates the market rent for the tower site to be in the range of \$375 to \$500 per month; and

WHEREAS, pursuant to Title 49 United State Code Section 47107, an airport owner or operator must provide, without charge to the Government, property interests that will be used for carrying out activities related to air traffic control or navigation if the airport accepts an Federal Grant funds; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, a ten-year lease agreement with the United States of America, acting through the Federal Aviation Administration to operate and maintain a Control Tower on approximately ½ acre of City-owned property at the Brown Field Airport at no rent under the terms and conditions