

DUPLICATE

**CITY OF SAN DIEGO'S CONSENT OF
MEMORANDUM OF AGREEMENT BETWEEN CITY DEPARTMENTS**

WHEREAS, The City of San Diego (CITY) desires to have its Fire and Life Safety Services (SDF&LSS) department use a portion of CITY's Brown Field Airport, being a parcel of approximately 1.32 acres at the southeast corner of the Airport (Premises), as delineated on Exhibit "A" of the attached Memorandum of Agreement (MOA). The Premises are financed by CITY's Airport Enterprise Fund and managed by CITY's Real Estate Assets Department, Airport Division(AIRPORT); and

WHEREAS, CITY desires to comply with the Airport Protection Act of 1996 by reimbursing its Airport Enterprise Fund an amount equaling fair market rent for SDF& LSS's use of the Premises and using the funds to operate and maintain the airports, as required, regardless of the CITY affiliation; and

WHEREAS, CITY desires to have SDF&LSS comply with the same standard terms and conditions as other CITY Airport tenants;

THEREFORE, CITY hereby consents to the attached MEMORANDUM OF AGREEMENT executed between AIRPORT and SDF&LSS, which shall become effective retroactive as of July 1, 1999, following approval by the City Manager.

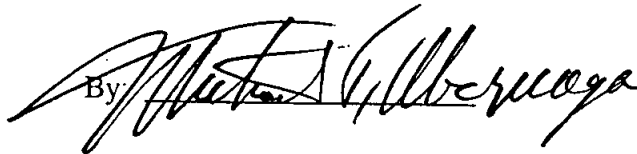
CITY OF SAN DIEGO AUTHORIZATION:

MICHAEL T. UBERUAGA,
City Manager

Date:

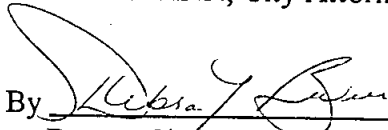
10/25/00

By:



APPROVED as to form and legality on July 17, 2000.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

DOCUMENT NO. RR-293962

FILED OCT 16 2000

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**CITY OF SAN DIEGO
MEMORANDUM OF AGREEMENT
BETWEEN THE CITY'S REAL ESTATE ASSETS DEPARTMENT,
AIRPORTS DIVISION AND FIRE & LIFE SAFETY SERVICES
DEPARTMENT**

Effective Date: July 1, 1999

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MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (MOA) is executed between THE CITY OF SAN DIEGO'S REAL ESTATE ASSETS DEPARTMENT, AIRPORT DIVISION ("AIRPORT") AND its FIRE & LIFE SAFETY SERVICES ("SDF&LSS"), acting through the City Manager, and both parties agree to comply with the terms and conditions of this Agreement.

SECTION 1: USES

- 1.1 Premises. This MOA concerns real property located at the southeast corner of Brown Field Airport (approximately 1.32 acres), in the City of San Diego (CITY), County of San Diego, State of California, hereinafter called the "Premises", as further described and delineated in Exhibit "A," attached hereto, and this Exhibit is hereby made part of this Agreement.
- 1.2 Uses. SDF&LSS will use the Premises exclusively for operating Fire Station #43. No other uses whatsoever are allowed without prior written approval from City Manager. AIRPORT will not unreasonably interfere with SDF&LSS's use of the Premises.
- 1.3 Related Council Actions. By consenting to this Agreement, CITY is not obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises.
- 1.4 Easements and Reservations. SDF&LSS will notify AIRPORT in writing and receive written authorization of the City Manager and FAA, as necessary, before establishing future easements or right-of-ways along and/or across the Premises for utilities, thoroughfares, or access, as it deems advisable for the public good.

SECTION 2: TERM

- 2.1 Term. The term of this Agreement is twenty-five (25) years, commencing on July 1, 1999, and terminating on June 30, 2024, unless terminated earlier by either party in accordance with Paragraph 10.13 Early Termination, herein.

SECTION 3: RENT

- 3.1 Time and Place of Payment. The annual rent will be based on the period from July 1 through June 30 of each MOA year to correspond to CITY's fiscal year. However, SDF&LSS will pay the Airport Enterprise Fund the annual rent during each fiscal year on or before the first day of January. For example, Fiscal Year 2000 rent will be invoiced on July 1, 1999 and said rent will be due and payable on or before January 1, 2000.
- 3.2 Rent. SDF&LSS will pay the Airport Enterprise Fund fair market rent for the Premises throughout the term of the MOA as stated below:

SDF&LSS will pay an initial annual rent of Seven Thousand Four Hundred and Thirty-five Dollars (\$7,435) commencing in Fiscal Year 2000, with periodic rent adjustments, as described below:

- a. CPI Index Adjustments. On July 1, 2002, and at the beginning of each five-year period of the MOA term thereafter, the rent will be adjusted to reflect increases, if any in the Consumer Price Index (CPI) as described below. No decreases will be allowed.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will be first converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by AIRPORT.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection a. CPI Index Adjustments, until the rent adjustment can be reasonably determined by the index method, SDF&LSS will continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to AIRPORT on the date of the next scheduled rent payment; or, if the final scheduled MOA rent payment has been paid for that fiscal year, SDF&LSS shall pay the additional rent due AIRPORT within 60 days of invoice by AIRPORT.

- b. Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, will be determined prior to the date of adjustment by multiplying the rent that is effective immediately prior to said adjustment by the "adjustment figure" established by the method outlined below.

The "adjustment figure" will be established by dividing the "current index" by the "base figure," both as defined herein:

The "base figure" for the first such adjustment will be the index figure published by said CPI for the month of January 1997, since this was the date used to establish the initial rent, which is 159.1 for the purpose of Example 1 below.

The "current index" for the first adjustment will be the index for June, 2002, which is shown for purposes of Example 1 below as 169.1.

The "base figure" for each successive adjustment will be the "current index" figure used in the last preceding adjustment period; and, the "current index" will be the index for the month of June immediately preceding each adjustment, which is 138 for purposes of Example 2 below.

Example 1

Current Index $\frac{169.1}{159.1} = 1.06$ (rounded adjustment figure)

Base Figure 159.1

Effective Annual Rent $\times 1.06 =$ Adjusted Annual Rent

Example 2

Current Index $\frac{171.0}{169.1} = 1.01$ (Adjustment Figure)

Base Figure 169.1

Effective Annual Rent $\times 1.01 =$ Adjusted Annual Rent

The current rent is multiplied by the adjustment figure to determine the adjusted new annual rent. Using the foregoing examples, if the current rent is \$100,000 per year, it will be \$106,000 per year ($\$100,000 \times 1.06$) after the first adjustment and the adjusted annual rent will be \$107,060 per year ($\$106,000 \times 1.01$) after the second adjustment.

- c. Market Value Adjustments. In addition to the above CPI adjustments, the rent will be further adjusted to fair market rent at the beginning of the fifth (5th) and fifteenth (15th) MOA years for the ensuing five-year periods as determined by a current appraisal. These market value adjustments will be calculated by multiplying the capitalization rate of ten percent (10%) by the fair market value of the Premise as of the adjustment date. The fair market value of the Premise will be determined by a professional, independent real estate appraiser selected by the Real Estate Asset Department Director from the CITY's active, approved list of appraisers. SDF&LSS will reimburse AIRPORT for one-half the cost of the appraisal. The results of said appraisals shall be binding on both parties. No decreases will be allowed.

In establishing the fair market value of the Premise, the appraiser will consider the property as a fee simple absolute estate and as vacant and available for sale for uses comparable to the above approved uses.

The date of the appraisal used to determine the fair market value must be within six (6) months of the rent adjustment date. If the appraisal is not completed in time to permit the adjustment to be made upon the date specified, SDF&LSS agrees to continue to pay rent in accordance with the then-existing MOA rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency will be paid by SDF&LSS to AIRPORT on the next scheduled rent payment; or, if no future rent payments are due, the deficiency will be paid within sixty (60) days.

SECTION 4: ASSIGNMENT

- 4.1 Assignment and Subletting. SDF&LSS will not assign this MOA or any interest therein and will not sublet the Premises or any part thereof or allow other parties, employees, agents and guests of SDF&LSS to use or occupy the Premise without prior written consent from AIRPORT and the City Manager. A consent to assignment, subletting, occupation or use by any other person will not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another party.

SECTION 5: DEFAULTS AND REMEDIES

- 5.1 Defaults. Each of the following shall constitute an event of default under this MOA:

- a. SDF&LSS's failure to make any payment required under this MOA when due;
- b. SDF&LSS defaults in the performance of any covenant or condition required by this MOA, other than those requiring payment to AIRPORT, to be performed by SDF&LSS and fails to cure said default within thirty (30) days following written notice thereof from AIRPORT; or if any such default, other than those requiring payment to AIRPORT, is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion;
- c. SDF&LSS voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- d. SDF&LSS is adjudicated a bankrupt;
- e. SDF&LSS makes a general assignment for the benefit of creditors;

- 5.2 Remedies.

- a. Upon default by SDF&LSS, AIRPORT may, at its option, give SDF&LSS, or any person claiming rights through SDF&LSS, a written Three (3) Day Notice to Pay

or Quit, or AIRPORT may terminate the MOA and all rights of SDF&LSS and of all persons claiming rights through SDF&LSS to the Premise or to possession thereof, and AIRPORT may enter and take possession of the Premises (provided, however, in the event that any default described in Section 5.1 Defaults, hereof, is not curable within thirty (30) days after notice to SDF&LSS, AIRPORT will not terminate this MOA pursuant to the default if SDF&LSS immediately commences to cure the default and diligently pursues such cure to completion), and may recover from SDF&LSS the sum of:

- (i) the worth at the time of award of any unpaid rent that had been due at the time of termination;
- (ii) the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, and SDF&LSS affirmatively proves could have been reasonably avoided;
- (iii) the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the term after the time of award exceeds (b) the amount of rental loss, if any, and SDF&LSS affirmatively proves could be reasonably avoided;
- (iv) any other amount necessary to compensate AIRPORT for all the detriment proximately caused by SDF&LSS's failure to perform its obligations or that, in the ordinary course of things, would be likely to result; and
- (v) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (i) and (ii) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include Base Rent, Percentage Rent and any other payments required by SDF&LSS.

- b. If there is a deed of trust or mortgage on the Premises, AIRPORT will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30) day period may be extended during such time as mortgagee or

beneficiary pursues said cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure said default(s) through litigation or through foreclosure, then AIRPORT will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (i) AIRPORT may correct said default(s) and charge the costs thereof to the account of SDF&LSS, which charge will be due and payable on the date that the rent is next due after presentation by AIRPORT to SDF&LSS and mortgagee or beneficiary of a statement of said costs.
- (ii) AIRPORT may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY and SDF&LSS or by CITY and mortgagee or beneficiary, or AIRPORT may use the funds of any faithful performance or cash bond on deposit with AIRPORT, or AIRPORT may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of AIRPORT.
- (iii) AIRPORT may terminate this MOA as to the rights of SDF&LSS by assuming or causing the assumption of liability for any trust deed or mortgage. SDF&LSS agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by AIRPORT. AIRPORT may, as an alternative, substitute for the terminated SDF&LSS a new occupant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by AIRPORT in releasing to a new tenant will be the responsibility of the terminated SDFD, and SDF&LSS hereby agrees to reimburse AIRPORT for any such costs.

Should the default(s) be noncurable by SDF&LSS, then any lender holding a beneficial interest in the MOA premises, whose qualifications as an assignee have been approved by AIRPORT, will have the absolute right to substitute itself to the estate of SDF&LSS hereunder and to commence performance of this MOA. If such mortgagee or beneficiary will give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by AIRPORT of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this MOA will not terminate pursuant to the default. In that event, AIRPORT expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this MOA with all the rights, privileges, and obligations of SDF&LSS, subject to cure of the default, if possible, by mortgagee or beneficiary. SDF&LSS expressly agrees to assign all its

interest in and to its MOA estate to mortgagee or beneficiary in that event.

- c. Abandonment by SDF&LSS. Even though SDFD has breached the MOA and abandoned the property, this MOA will continue in effect so long as AIRPORT does not terminate this MOA, and AIRPORT may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any AIRPORT waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. AIRPORT delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this MOA. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. AIRPORT'S acceptance of any rents is not a waiver of any default preceding the rent payment. AIRPORT and SDF&LSS specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of The City of San Diego and that any failure by the City Manager or AIRPORT staff to discover a default or take prompt action to require the cure of any default will not result in an equitable estoppel, but AIRPORT will at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

SECTION 6: INDEMNIFICATION / ACCIDENT REPORTS

- 6.1 Indemnity. SDF&LSS agrees to defend, indemnify, protect, and hold AIRPORT, its agents, officers, and employees harmless from and against any and all claims for damages or injuries to any person or property, including injury to SDF&LSS's employees, invitees, guests, or officers that arises out of or is in any manner directly or indirectly connected with the operation of the Premises, and all expenses of investigating and defending against same; provided, however, that SDF&LSS's duty to indemnify and hold harmless will not include any claims or liability arising from the established negligence or willful misconduct of AIRPORT, its agents, officers, or employees.
- 6.2 Accident Reports. SDF&LSS will report to AIRPORT any accident resulting in serious injury to a person or persons on the Premise, within ten days of each occurrence. This report will contain the name(s) and address(es) of the party(ies) involved, a statement of the circumstances, the date and hour, the name(s) and address(es) of any witness(es) and other pertinent information, as legally permissible.

SECTION 7: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 7.1 Acceptance of Premise. By signing this MOA, SDF&LSS represents and warrants that it has independently inspected the Premises, and does not hold AIRPORT responsible for any defects in the Premises.
- 7.2 Entry and Inspection. AIRPORT reserves and will always have the right to enter said Premises for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests in the Premises, or to ensure that the Premises are being maintained in a decent, safe, healthy, and sanitary condition.
- 7.3 Maintenance. Except as hereinafter provided, SDF&LSS, agrees to assume full responsibility and costs of operating and maintaining the Premises throughout the MOA term. All applicable codes and standards of state and federal agencies will be observed. SDF&LSS will, at its expense, keep all trees and other vegetation on the Premises trimmed, both vertically and horizontally, to FAA and AIRPORT standards, which shall include inspecting the trees annually for the purpose of trimming heavy branches and removing any dead or diseased vegetation that might be hazardous during heavy winds.
- 7.4 Alterations. SDF&LSS will not alter the Premises without the prior written consent of AIRPORT. All applicable City, County, State and Federal codes and requirements will apply to any alternations SDF&LSS makes to the Premises or its improvements.
- 7.5 Utilities. SDF&LSS will pay for all utilities and those installations necessary for operation of the Premises.
- 7.6 Liens. SDF&LSS will at all times indemnify AIRPORT against all claims for labor or materials in connection with improvements, alterations, or repairs on the Premises and the costs of defending against such claims, including reasonable attorney's fees.
- 7.7 Taxes and Fees. SDF&LSS agrees to pay all levies, taxes and fees due on Premises during the term of this agreement.
- 7.8 Signs. SDF&LSS will not erect nor display any banners, pennants, flags, posters, signs, lighting or similar devices after commencement of this agreement that are determined by FAA or AIRPORT to be an obstruction or other hazard to aircraft operations.
- 7.9 Hazardous/Toxic Waste. SDF&LSS will not allow hazardous substances in, on, under, or from the Premises during the term of this MOA. "Hazardous substances" will mean those listed by the Environmental Protection Agency in regularly released reports and any other substances included in the State's list of hazardous substances. SDF&LSS will be responsible for all costs of remediation and removal of such hazardous substances

resulting during the term of this MOA in accordance with all applicable rules and regulations of governmental authorities.

SDF&LSS agrees to assume the defense of, indemnify, and hold AIRPORT harmless from any and all claims, costs and expenses related to environmental liabilities resulting during the term of this MOA.

If SDF&LSS knows or believes that any hazardous substance has been released on or beneath the Premises, SDF&LSS will give written notice to the City Manager and copy AIRPORT within ten (10) days of receipt of such knowledge. If SDF&LSS has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, SDF&LSS will notify the City Manager and AIRPORT immediately. SDF&LSS and its subtenants will not utilize nor sell any hazardous substance on the Premises without the prior written consent of AIRPORT.

SECTION 8: GENERAL PROVISIONS

- 8.1 **Notices.** Any notice required or permitted to be given hereunder will be in writing and may be served personally or by United States mail, postage prepaid, addressed to SDFD at the Premises address indicated below or at such other address designated in writing by SDF&LSS and to AIRPORT as indicated:

San Diego Fire & Life Services,
1010 Second Ave., Suite 400
San Diego, CA 92101

Deputy Director of City Airports Division
3750 John J. Montgomery Drive
San Diego, CA 92123

- 8.2 **Compliance with Law.** SDF&LSS will at all times comply with all applicable laws, statutes, ordinances, and regulations of City, County, State, and Federal Governments, at SDF&LSS's sole cost and expense. In addition, SDF&LSS will comply with any and all notices issued by the City Manager or authorized designee under the authority of any such regulations.
- 8.3 **AIRPORT and CITY Approval.** The approval or consent of AIRPORT, wherever required in this MOA, will mean the written approval or consent of the Director of the Airport Division and City Manager or his or her authorized designee. The City Manager has the authority to approve any changes to the MOA, except those that may be prohibited by Council Policy.
- 8.4 **Nondiscrimination.** SDF&LSS agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical

status, national origin, age, marital status, or physical disability in SDF&LSS's use of the Premises.

- 8.5 Compliance with CITY's Equal Opportunity Contracting Program. SDF&LSS acknowledges and agrees that it is aware of and will comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk. SDF&LSS and all of its subcontractors are individually responsible for abiding by its contents.

SDF&LSS will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations herein-after enacted.

- 8.6 Partial Invalidity. If any term, covenant, condition, or provision of this MOA is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 8.7 Legal Fees. In the event of any litigation regarding this MOA, the prevailing party will be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 8.8 Entire Understanding. This MOA contains the entire understanding of the parties. SDF&LSS, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Premises. No modification, amendment, or alteration of this MOA will be valid unless it is in writing and signed by all parties.
- 8.9 Drug-free Workplace. SDF&LSS will be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free workplace.
- 8.10 Disabled Access Compliance. SDF&LSS agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.

SECTION 9: SPECIAL PROVISIONS

- 9.1 Landscaping. SDF&LSS will, at its sole expense, landscape the Premises and install an automatic watering system that will be maintained in good condition throughout the term of this MOA. As part of maintaining the landscaping and watering system, SDF&LSS will remove weeds, correct infestation or erosion, eradicate pests, promptly replace unhealthy

vegetation, make repairs to the automatic watering system, and keep all trees on the Premises trimmed to comply with the height limitations established by the California Department of Transportation.

- 9.2 Standard of Employees. SDF&LSS and its employees will at all times conduct themselves and the operations on the Premises in a creditable manner, as required by the City Manager.
- 9.3 Relocation Payments. SDF&LSS understands and agrees that it will not be entitled to any relocation payment or relocation site whatsoever from AIRPORT upon termination of this MOA.
- 9.4 Trash and Refuse. SDF&LSS will remove all trash and refuse from the Premises as often as necessary to maintain the Premises in a clean and sanitary condition at all times, and will provide an adequate number of closed trash containers on the Premises to collect the trash generated by its use and that of its customers. SDF&LSS will not allow unsightly or unsanitary exterior storage on the Premises.

SECTION 10: AIRPORT PROVISIONS

- 10.1 SDF&LSS Use to Conform with Law and Other Rules. SDF&LSS 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 SDF&LSS's or its subtenant's control. SDF&LSS agrees that such use will be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.
- 10.2 SDF&LSS Use and Construction to Conform with Federal Aviation Regulations. SDF&LSS agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Premises. SDF&LSS 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.
- 10.3 SDF&LSS's Noninterference with Aircraft. SDF&LSS agrees not to use the Premises or act in any manner that might interfere with any aircraft landing or taking off from Brown Field Airport or otherwise create a hazard. If this covenant is breached in any manner, AIRPORT reserves the right to immediately, without further notice, enter the Premises and abate or eliminate the interference at the expense of SDF&LSS.

- 10.4 MOA Subordinate to CITY-United States Agreements. This MOA will be subordinate to the terms of any existing or future agreements between CITY and the United States or to any United States legal requirement relative to the development, operation or maintenance of the airport.
- 10.5 Height Limitation. SDF&LSS agrees not to erect or permit any structure or tree on the Premises that exceeds FAA height limitations. If this covenant is breached in any way, AIRPORT reserves the right to enter the Premises and remove the structure, object, or tree at the expense of SDF&LSS.
- 10.6 Right of Flight Easement. CITY 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 Brown Field Airport.
- 10.7 War or National Emergency. In the event of war or national emergency, this MOA and all of its provisions will 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 Brown Field Airport.
- 10.8 Airport Development. AIRPORT reserves the right to further develop, change or improve the airport and its routes and landing areas as CITY sees fit, without SDF&LSS interference or hindrance and regardless of SDF&LSS's views and desires.
- 10.9 Nonexclusive Right. SDF&LSS understands and agrees that nothing in this MOA will 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).
- 10.10 Landing Area Maintenance. AIRPORT reserves the right but not the obligation to maintain and repair the airport landing area and all other public facilities. AIRPORT also has the right to direct and control all SDF&LSS activities affecting the maintenance and repair of these facilities.
- 10.11 FAA Nondiscrimination Covenant. SDF&LSS agrees, as part of the consideration, that no person will be denied benefits or participation or be subjected to discrimination in the use of facilities on the Premises based on race, color, sex or national origin; that no person will be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements or the furnishing of any services on the Premise based on race, color, sex or national origin. SDF&LSS will use the Premises 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.

If any of the provisions of this Agreement are breached, AIRPORT may terminate the MOA, with prior approval from the City Manager, and reenter and repossess the Premises as if this MOA had never been entered into by the parties. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.

- 10.12 CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between CITY and the United States of America result in SDF&LSS's inability to operate on the Premises as authorized herein, AIRPORT may, upon written request from SDF&LSS, terminate this MOA or extend the term of this MOA for the period of time that SDF&LSS's operation is affected, and no rent will accrue during any period of inoperation.
- 10.13 Early Termination. With prior written approval from the City Manager, either party may terminate this agreement by serving the other party with a prior 180-day written notice by Certified, First Class, U.S. Mail. Neither party will be liable to the other party for any damages suffered from early termination of this agreement, nor will AIRPORT provide SDF&LSS with a relocation site or relocation assistance.

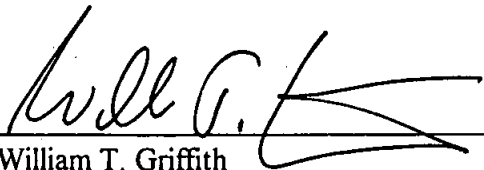
SECTION 11 : SIGNATURES

11.1 Signature Page.

IN WITNESS WHEREOF, this MOA is executed by the CITY departments signing below, acting by and through the City Manager or his Designee.

**REAL ESTATE ASSETS DEPARTMENT,
AIRPORT DIVISION (AIRPORT)**

Date OCT 30 2000

By 
William T. Griffith
Director, Real Estate Assets Department

FIRE & LIFE SAFETY SERVICES

Date 7-28-00

By Robert Orly

APPROVED as to form and legality on July 17, 2000

CASEY GWINN, City Attorney

By [Signature]
Deputy City Attorney

Environmental Exemption Approval:

By: [Signature] Date: 7/19/00
/SR PLANNER/EAS

SECTION 12. EXHIBITS

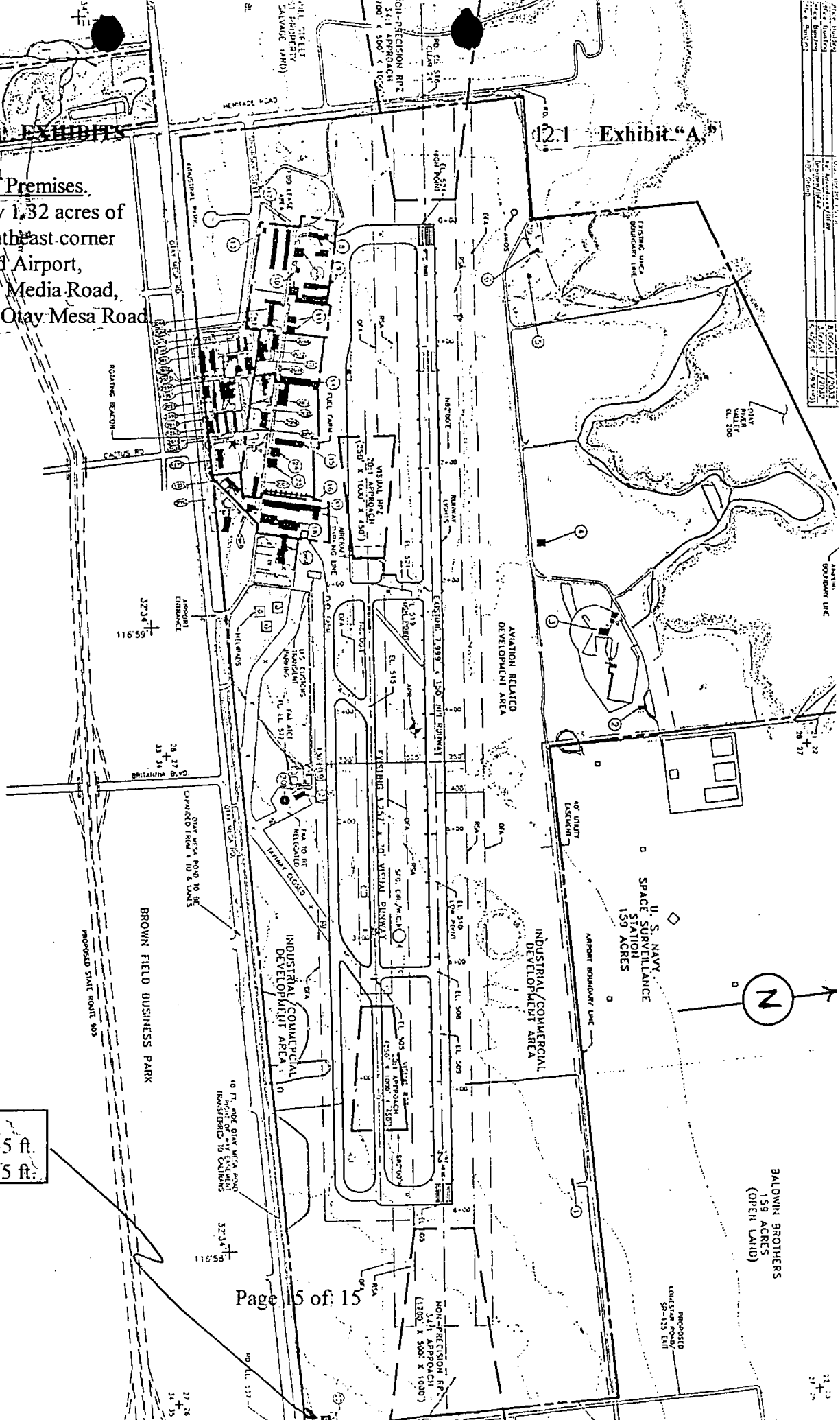
Description of Premises.

Approximately 1.32 acres of land at the southeast corner of Brown Field Airport, fronting on La Media Road, ± 205 ft. n. of Otay Mesa Road

12.1 Exhibit "A."

Site:
e - w 255 ft.
n - s 225 ft.

Project Name	12.1 Exhibit "A."
Project Number	12.1
Project Date	1/20/23
Project Status	1/20/23
Project Location	12.1
Project Owner	12.1
Project Designer	12.1
Project Engineer	12.1
Project Surveyor	12.1
Project Architect	12.1
Project Planner	12.1
Project Consultant	12.1
Project Contractor	12.1
Project Subcontractor	12.1
Project Supplier	12.1
Project Manufacturer	12.1
Project Distributor	12.1
Project Retailer	12.1
Project Wholesaler	12.1
Project Importer	12.1
Project Exporter	12.1
Project Agent	12.1
Project Broker	12.1
Project Dealer	12.1
Project Merchant	12.1
Project Vendor	12.1
Project Supplier	12.1
Project Manufacturer	12.1
Project Distributor	12.1
Project Retailer	12.1
Project Wholesaler	12.1
Project Importer	12.1
Project Exporter	12.1
Project Agent	12.1
Project Broker	12.1
Project Dealer	12.1
Project Merchant	12.1
Project Vendor	12.1



BALDWIN BROTHERS
159 ACRES
(OPEN LAND)