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6/5/14

CITY OF FRESNO
City Clerk's Office (Original)

LEASE AND SERVICE AGREEMENT
BETWEEN
FRESNO POLICE DEPARTMENT
AND THE
FRESNO UNIFIED SCHOOL DISTRICT

Dates as of June 13, 2014

THIS LEASE AND SERVICE AGREEMENT ("Lease") is made and entered into this ___ day of _____, 2014 by and between the City of Fresno through the Fresno Police Department ("Lessor"), and the Fresno Unified School District ("Tenant").

WITNESSETH

WHEREAS, pursuant to a Memorandum of Understanding between the City of Fresno-Airports Department (the "Airport") and the Lessor, effective as of July 1, 2013, and as amended by Amendment No. 1 on March 19, 2014, copies of which are attached hereto as Attachment A (as amended, the "MOU"), the terms of which are incorporated herein, Lessor occupies, uses, and allows concurrent third party occupancy and use of certain property consisting of 22.72 acres located at 4719 E. Robinson Avenue Fresno, as more completely described and depicted in the MOU (the "Property"); and

CITY OF FRESNO
City Clerk's Office (Original)

WHEREAS, Tenant presently occupies a portion of the Property pursuant to a Lease and Service Agreement with Lessor dated March 1, 2000 for the term beginning October 1, 2000, as amended by Amendment No. 1 dated October 1, 2010, for use as an agricultural facility for certain public, educational and/or governmental purposes, and each party variously provides certain related services to the other; and

WHEREAS, Lessor and Tenant desire to enter into a new lease agreement to conform the Lease terms and rental payments to the recently-executed MOU and to make this Lease subject to and subordinate to the MOU.

NOW THEREFORE, in consideration of the above recitals, which are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties hereto agree as follows:

1. Description of Property. Lessor hereby leases to Tenant, subject to the terms, covenants and conditions hereinafter set forth, as well as those set forth in the MOU, the Property situated in the City of Fresno, State of California (APN 438-11-144T and APN 438-11-227T), described in Exhibit A of the MOU and shown on the Plats identified as Exhibit B of the MOU. Tenant acknowledges that Lessor shall concurrently occupy the Property for the purpose of boarding and training horses and canines used by Lessor's Mounted Patrol and K-9 Units.

2. Term. This Lease is effective retroactively to July 1, 2013 and shall expire June 30, 2023, provided that either party may terminate the Lease: (i) upon at least sixty (60) days written notice to the other party, with or without cause, or (ii) at any time by giving at least thirty (30) days prior written notice to the other party of non-appropriation by its governing body of funds sufficient for performance hereunder. Upon any expiration or termination, Tenant shall remove its personal property and reasonably restore the premises to pre-lease condition except to any extent the Lessor may otherwise agree in writing. Should Tenant fail to comply, Lessor may, but shall not be

required to, take such action and recover from Tenant reasonable costs thereof upon invoice.

3. Rent. During the term of this Lease, Tenant agrees to pay base rental payments in the amount of one thousand, two hundred and thirty five dollars ($1,235) per month ("Base Rent"), plus fifty percent (50%) of the increase to monthly rental payments payable by the Fresno Police Department to the Airport described below ("Rent Increase") ("Base Rent" together with any then-applicable "Rent Increase" shall be "Rent"). As set forth in the MOU, the Airport has determined that the present Fair Market Rent ("FMR") for the Property is $36,742.86 per year. In recognition of the significant rent increase resulting from the FMR determination, a three-year phase-in period will progressively increase the rental payments paid by the Fresno Police Department to the Airport. The first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016. The annual rent paid by the Fresno Police Department to the Airport (in monthly installments) will be determined by calculating the then-current CPI-adjusted FMR for each of the three phase-in years using the initial FMR of $36,742.86 as the base year. The initial assessed rental rate for July 1, 2013 will be the same rental rate as was assessed on July 1, 2012. The Rent Increase to reflect the three year phase-in of FMR will consist of one third (1/3) of the increase of the CPI-adjusted base year FMR plus the full amount of the previous year rent. The calculation is demonstrated in Exhibit C of Amendment No. 1 to the MOU attached hereto.

Commencing on the first day of the second Fiscal Year (July 1, 2014), and then annually thereafter on the first day of each successive Fiscal Year throughout the life of the MOU, the amount of annual rent to be paid to Airports by the Fresno Police Department shall be subject to increase by an amount equal to the percentage change (increases only) in the U.S. Department of Labor, Bureau of Labor Statistics (USDLBLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average) from January 1 to December 31 during the last full calendar year prior to the scheduled rental adjustment date. The base year for the MOU, as well as this Lease, is 2013.

The amount of all annual adjustments shall be determined in the manner illustrated within the worksheet entitled "Illustration of Annual Rental Adjustment Computation," which is attached as Exhibit C of the MOU. Commencing July 1, 2014 and annually thereafter, prior to the end of each fiscal year, Airports shall complete the worksheet described in Exhibit C of the MOU and provide a copy to the Fresno Police Department to serve as notice of the rent amount due for the upcoming Fiscal Year. When Lessor obtains such notice from the Airport, it will provide a copy of the notice to Tenant within five (5) business days to inform Tenant that Tenant is responsible for payment of fifty percent (50%) of such annual Rent Increase to Lessor in monthly installments, together with the Base Rent, during the upcoming Fiscal Year.

Rental payments by Tenant to Lessor shall be due in advance on the first day of each month, and shall be overdue if not received by Lessor on the 5th day of each

month. A late charge of one and one-half percent (1.5%) of the overdue amount shall be added to the monthly rental payment amount each and every moth until the entire delinquent amount is received by Lessor. Rental payments shall be remitted to Lessor at the address for notices set forth in section 14 below.

4. Utilities. Tenant shall pay all utility costs arising from water meters:

- *#40207893 (4753 E. Robinson, current Utilities Account # 20167-210304), and*
- *#31861701 (4765 E. Robinson, current Utilities Account # 20167-210308).*

Lessor will pay all utility costs arising from water meters:

- #30772686 (3658 N. Dearing, current Utilities Account # 214159-210354),
- #60617848 (4752 E. Robinson, current Utilities Account # 20167-164634),
- #36320971 (4764 E. Robinson current Utilities Account #20167-210306), and
- #36096774 (4744 E. Garland, current Utilities Account # 20167-164124).

Both the Tenant and Lessor, in any manner mutually agreeable, shall equally share all utility costs arising from water meters:

- #60617849 (3742 N. Dearing, current Utilities Account # 214163-210362), and
- #16325985 (4752 E. Dakota, current Utilities Account # 214147-210322).

If either party seeks to expand its operations within the Property, and thus increase water meter costs, the party seeking to expand shall incur all water meter costs associated with the expansion.

Tenant and Lessor shall equally share all utility costs arising from PG&E meter #1005400354 (3734 N. Sierra Vista) not to exceed total annual costs of three thousand dollars ($3000); Tenant shall invoice Lessor quarterly in arrears for fifty percent (50%) of the PG&E invoiced charges and include with the quarterly invoice copies of the underlying PG&E invoices, provided that if and to the extent annual PG&E costs exceed three thousand dollars ($3000), the parties shall meet and confer to allocate the excess cost to the responsible party(ies).

5. Taxes and Assessments. In addition to the rental payments provided for herein, should any tax or assessment of any kind become legally authorized to be assessed against the Property or any improvements thereon or any interest therein,

Tenant shall be responsible for payment to Lessor of fifty percent (50%) of such amount at least five (5) business days prior to when such payment becomes due.

6. FAA Compliance; Rules & Regulations. Tenant shall at all times remain in compliance with the applicable portion of the Federal Aviation Administration (the "FAA") Advisory Circular No. 150/5200-33B, entitled "Hazardous Wildlife Attractants on or Near Airports," which is Exhibit E of the MOU. Tenant acknowledges that the Property may not be developed in any way that interferes with the use of Fresno Yosemite International Airport, and Tenant agrees not to use or develop the Property in any way that would contravene Article III ("General Provisions Concerning the Manner of Use") or Article IV ("Development Standards") of the MOU.

Tenant shall observe, obey, and comply with any and all applicable rules, regulations, laws, ordinances, statutes or orders of any governmental and/or regulatory authority lawfully exercising authority over the Lessor, Tenant, Airport, or the Property, the ground water/water quality, the public facilities used in connection therewith, or otherwise having authority over Tenant's conduct of its activities and operations hereunder.

Tenant agrees to abide by the rules, regulations and orders of the FAA or such other successor agency as may hereafter be designated by the Federal Government with respect to aircraft and Airport operations. This includes the requirement to comply with all FAA and Airport safety and security rules, regulations and plans. Tenant shall cause Lessor to be fully protected and held harmless against any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed due to any violation caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of Tenant, its employees, agents, visitors, suppliers or invitees.

Tenant agrees to faithfully comply with each and all of the "Assurances Required by the Federal Aviation Administration," including but not limited to those set forth in Exhibit D of the MOU throughout the life of this Lease.

Tenant, and those taking by, under and/or through Tenant in the uses and operations to be conducted upon the Property pursuant to this Lease, shall not, on the grounds of race, color, sex or national original, discriminate or permit the discrimination against any person or persons in any manner prohibited by the Civil rights Act of 1964 or amendments thereto, or violate any other rules or regulations enacted by agencies having control over the Property.

Tenant acknowledges that the Property may be subject to current and possible future requirements and/or directive of the FAA and/or the Transportation Security Administration, and any successor of either agency. Tenant agrees to abide by and keep any and all such requirements and/or directives.

Tenant and those taking by, under and/or through Tenant does hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Lessor, its successor and assigns, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on Fresno Yosemite International Airport.

Tenant and those taking by, under and/or through Tenant shall not hereafter permit places of public assembly upon the Property, nor hereafter use or permit or suffer the use of the Property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or to permit any use of the Property causing a discharge of fumes, dust or smoke so as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off or maneuvering of aircraft. Tenant and those taking by, under and/or through them waive all damages and claims for damages caused by the removal/elimination of such objects or activities.

7. Property Management and Maintenance. Tenant shall keep all fixtures, equipment and personal property in a clean and orderly condition and appearance. Tenant shall repair, replace, rebuild and paint all or any part of the improvements which may be damaged or destroyed by acts or omissions of Tenant or by those of its officers, employees, guests, invitees or of other persons. Tenant shall take such care of the Property at all times during the term of this Lease, and at the expiration or termination thereof the Property shall be in as good condition as at the time of the effective date of this Agreement, except for reasonable wear and tear.

Lessor and Tenant agree that no shared farm management and maintenance services are provided hereunder. Lessor shall manage and maintain its reserved use areas on the Property consisting of the Police K9 area as well as the Mounted Patrol Unit building, pasture, and improvements at its sole cost and expense. The Tenant shall manage and maintain the animal husbandry areas, trees, orchards, vineyards and other permanent crops on the Property, as well as any other buildings, classrooms, and structures occupied or used by the Tenant on the Property, at Tenant's sole cost and expense.

Lessor and Tenant further agree that common areas including roadways, public areas, fencing and the grounds immediately adjacent to fenced areas, shall be maintained by Lessor. Maintenance shall include the keeping down of noxious weeds and grasses on all of the leased premises; repair, replace, rebuild and paint all or any part of all other improvements or fixtures, including fencing on the leased premises which may be damaged or destroyed by acts of the Lessor or Tenant or by officers, employees, guests, invitees, or other persons.

8. Hold Harmless/Indemnification. Tenant acknowledges that the Airport, including its successor and assigns, for the use and benefit of the public, an easement

and right of flight for the passage of aircraft in the air space above the surface of the Property, together with the right to cause in said air space such noise, fumes, and exhaust as may be inherent in the operation of aircraft now known or hereafter used for navigation or flight in the air space for landing at, taking off from, or operating on the Fresno Yosemite International Airport. Lessor assumes no liability for damage to Tenant's equipment which may result from such flight operations at Fresno Yosemite International Airport and Tenant agrees to hold Lessor harmless for such damage which may result therefrom.

To the furthest extent allowed by law, Tenant shall hold Lessor completely harmless and indemnify, protect and defend Lessor and Lessor's officials, officers, employees, volunteers, and agents against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses (including all reasonable costs and expenses for investigation and defense thereof [including, but not limited to attorney fees, court costs and expert fees]), or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly, out of, as a result of, or incident to, or in any way connected with this Lease or: (1) Tenant's occupancy(ies) and/or use(s) of any part or all of the Property; (2) Tenant's exercise of any one, ore or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; and/or (4) any act(s) or omission(s) on the part of Tenant and/or any officer(s), agent(s), employee(s), contractor(s), sub-contractor(s), servant(s), or representative(s) of Tenant during the life hereof, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the active negligence or by the willful misconduct of Lessor or any of its officials, officers, agents, volunteers, or employees acting within the scope of their duties for Lessor. Lessor shall give Tenant reasonable notice of any such claims or actions.

The provisions of this section shall survive the termination of this Lease.

9. Insurance.

(a) Throughout the life of this Lease, Tenant shall pay for and maintain in full force and effect all insurance as required in Attachment B with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by Lessor's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Attachment B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Lessor, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension,

Tenant or any of its subcontractors/sub-tenants fail to maintain any required insurance in full force and effect, all services, work, use and occupancy of the property allowed under this Agreement shall be discontinued immediately, and all payments due or that become due to Tenant shall be withheld until notice is received by Lessor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Lessor. Any failure to maintain the required insurance shall be sufficient cause for Lessor to terminate this Agreement. No action taken by Lessor pursuant to this section shall in any way relieve Tenant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Lessor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Lessor shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, its principals, officers, agents, employees, persons under the supervision of Tenant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If Tenant should subcontract all or any portion of the services to be performed under this Lease, Tenant shall require each subcontractor/sub-tenant to provide insurance protection in favor of Lessor and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Tenant and Lessor prior to the commencement of any services by the subcontractor. Tenant and any subcontractor/sub-tenant shall establish additional insured status for Lessor, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) from CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

10. Exemption of Lessor. Tenant hereby specifically warrants, covenants and agrees that Lessor shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located, in upon or about the Property or elsewhere, whether belonging to Tenant, or Tenant's employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliance, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Property or

in or on any of the improvements/facilities appurtenant thereto located therein or thereon, or from other sources or placed, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Tenant also covenants and agrees that Lessor shall not be liable for any damages arising from any act or neglect on the part of any third parties.

11. Assignment and Transfer. Tenant shall not assign, otherwise transfer, or encumber this Lease, the Property, or any interest therein without the prior written consent of Lessor.

12. Restoration of Property. At the expiration of the life of this Lease or any prior termination thereof, Tenant agrees to quietly and peacefully surrender possession of the Property to Lessor with all of the existing improvements, as well as any and all improvements erected, constructed, and/or placed in, on or upon the leased premises by Tenant completely removed; the Property shall be restored to an environmentally clean, properly graded condition free of weeds and rubbish.

13. Holding Over. In the event that Tenant should hold over the Property beyond the term of this Lease or after termination of this Lease by Lessor, with or without the expressed written consent of Lessor, such holding over shall be constructed to be a month-to-month use right only, and Tenant shall pay monthly rent to Lessor. Such rental rate is the amount of rent that was due for the prior Fiscal Year monthly rental payments, plus one hundred percent (100%) of the Rent Increases imposed by the Airports Department as described in section 3 of this Lease and Exhibit C of the MOU. Tenant shall be responsible for payment of all Rent and Rent Increases imposed by Airports pursuant to the terms of the MOU for any period during which Tenant holds over, and Lessor shall not be responsible for payment of any Rent Increase during such time that Lessor does not occupy the Property. Such holding over shall be subject to all the terms, covenants, and conditions of this Lease.

14. Notices. The Lessor's notice, rental payment and address of record is:

Fresno Police Department
Business Office
P.O. Box 1271
Fresno, CA 93721

The Tenant notice and address of record is:

Fresno Unified School District
Fresno Adult School Campus
2500 Stanislaus St
Fresno, CA 93721-1231
Att: Career Technical Education

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IN WITNESS WHEREOF, the parties have executed this Lease at Fresno, California, the day and year first above written.

LESSOR:

City of Fresno through the Fresno Police Department

By: _____
Title: Chief of Police
Date: 6/13, 2014

TENANT:

Fresno Unified School District

By: _____
Title: Assoc. Supt
Date: 4/7/14, 2014

Ruth F.Quinto
Deputy Superintendent/CFO

APPROVED AS TO FORM
4/10/14

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK

By: Cindy Bruer
Title: Deputy
Date: June 17, 2014

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney
CITY OF FRESNO

By: Mary Anne B. Cooke
Title: Deputy City Attorney
Date: June 13, 2014

Attachments:

A: "City of Fresno Interdepartmental Memorandum of Understanding Regarding the Use of Police Ag Farm" between Airports Department and Fresno Police Department, effective July 1, 2013, including Exhibits A, B, C, D and E thereto, together with "Amendment No. 1 to the City of Fresno Interdepartmental Memorandum of Understanding Regarding the Use of Police Ag Farm" between Airports Department and Fresno Police Department, dated as of March 19, 2014, including Exhibits A and C thereto.

B: Insurance Requirements

Attachment A

"City of Fresno Interdepartmental Memorandum of Understanding Regarding the Use of Police Ag Farm" between Airports Department and Fresno Police Department, effective July 1, 2013, including Exhibits A, B, C, D and E thereto, together with "Amendment No. 1 to the City of Fresno Interdepartmental Memorandum of Understanding Regarding the Use of Police Ag Farm" between Airports Department and Fresno Police Department, dated as of March 19, 2014, including Exhibits A and C thereto [attached]

CITY OF FRESNO
AMENDMENT NO. 1 TO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING
REGARDING THE USE OF POLICE AG FARM

Between

AIRPORTS DEPARTMENT

And

FRESNO POLICE DEPARTMENT

This AMENDMENT NO. 1 TO INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING ("Amendment No. 1") is entered into this 1st day of March, 2014, by and between the Airports Department, hereinafter referred to as "Airports" and the Fresno Police Department, hereinafter referred to as "Police," both of which are departments of the City of Fresno, a municipal corporation.

RECITALS

WHEREAS, the Airports and Police entered into a Interdepartmental Memorandum of Understanding ("Agreement") effective July 1, 2013, and

WHEREAS, Police desires to reduce certain leased space from the Description of Use Area covered by the Agreement from 22.72 acres to 16.87 acres, and

WHEREAS, Airports wishes to accommodate Police,

NOW, THEREFORE, in consideration of the premises and of the mutual promises herein, it is hereby agreed as follows:

1. Exhibits A and C of the Agreement are amended and replaced with Exhibit A and Exhibit C attached hereto.

2. The 254,761 square feet (5.85 acres) of space as shown on the Exhibit A attached hereto is removed from the Description of Use Area, thereby reducing the area of the Use Area to 734,857.2 square feet (16.87 acres).

3. The current rental rate shall remain unchanged at $0.05 per square foot, resulting in a new Annual Rent of $36,742.86 for fiscal year 2014. Article VI Section A of the Agreement shall be amended to read as follows:

   A. ANNUAL RENT AND DUE DATE

   The Fair Market Rent ("FMR") is defined as 10% of the Market Value of the Use Area is based on the Market Value of the adjacent property (DPU Leaky Acres). This adjacent property has the same use restrictions, zoning and property type and was determined to be $.05 per square foot ($21,729.86 per acre) by an appraisal performed by AGI Valuations and completed on June 8, 2012. Therefore, the 2013 Fair Market value of the 734,857.2 square feet of this Use Area is thus determined to be $366.582.74, and the Fair Market Rent is $36,742.86 per year.

   In recognition of the significant increase resulting from the Fair Market Rent determination, there shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

   The Annual Rent will be determined by calculating the then-current, CPI adjusted Fair Market Rent each of the three phase-in years, using the initial Fair Market Rent of

$36,742.86 as the base year. The initial assessed rental rate for July 1, 2013 will be the same rental rate as was assessed on July 1, 2012. The three years of phase-in of Fair Market Rent will consist of 1/3 of the increase of the CPI-adjusted base year Fair Market Rent plus the full amount of the previous year rent. The calculation is demonstrated in Exhibit "C".

4. Except as provided in this Amendment No. 1, the provisions of the "Agreement" as heretofore amended are unchanged.

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IN WITNESS WHEREOF, Airports and Police have entered into and executed this **AMENDMENT NO. 1 TO INTERDEPARTMENTAL MEMORANDUM OF AGREEMENT** as of the day and year first above written.

Airports Department

By: _____
Kevin R. Meikle,
Director of Aviation

Fresno Police Department

By: _____
Jerry Dyer,
Chief of Police

Address for Notice:
City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Address for Notice:
Fresno Police Department
Business Office
P.O. Box 1271
Fresno, CA 93721

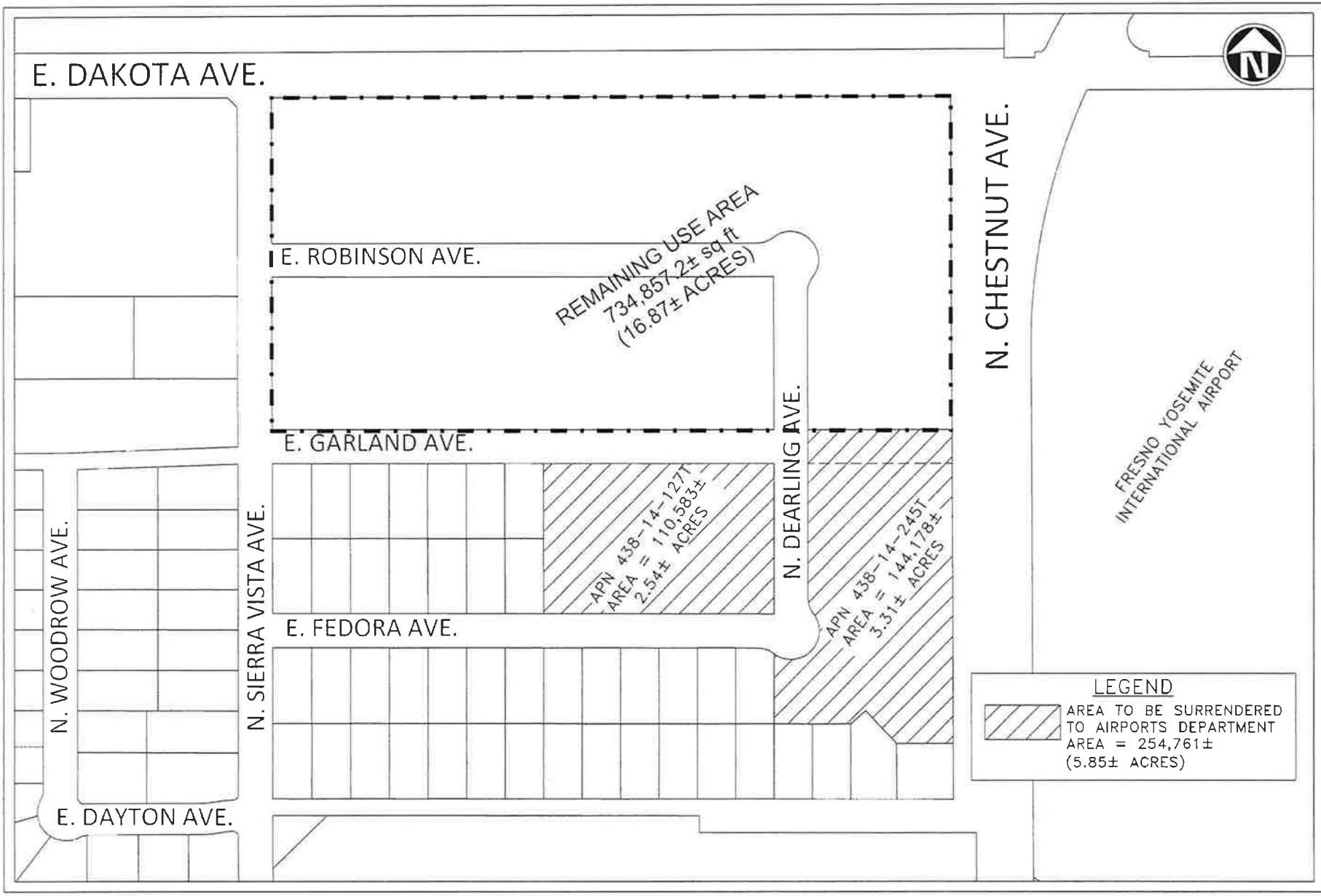
ATTEST:
Yvonne Spence, CMC
City Clerk

By: Cindy Bruer 3/19/14
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: Mary Anne B Tooke March 3, 2014
Mary Anne Tooke Date
Deputy City Attorney

Exhibit "A" - Map of Use Area
Exhibit "C" – Example Notice of Annual Rental Adjustment/ Rental Schedule



CITY OF FRESNO
AIRPORTS DEPARTMENT
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

CONSULTANT INFORMATION

REVISIONS/REFERENCE

NO.	DATE	REVISION

AIRPORTS DEPARTMENT

FRESNO YOSEMITE INTERNATIONAL AIRPORT
AREA TO BE SURRENDERED TO AIRPORT
APN 438-14-127T AND APN 438-14-245T

DIRECTOR OF AVIATION
KEVIN R. MOKLE, ARCHITECT

APPROVED
CONST ENG.
OFFICE ENG.
CITY DESIGN ENG.

CORNERSTONE # CR004
FUND #
ORG #
ACTIVITY
PROJECT I.D.

DRAWN BY: RD
CHECKED BY: JND
DATE: 2-13-14
SCALE: N/A
FILE: -

CITY DRAWING NO.
23-AA-382

SHEET NO.
1
OF 1 SHEETS

FRESNO YOSEMITE

NOTICE OF ANNUAL RENTAL ADJUSTMENT (Based on USDLBLS Consumer Price Index for Urban Wage Earners and Clerical Workers - ALL ITEMS, U.S. CITY AVERAGE)

February 24, 2014 1:27 PM

RE: FRESNO POLICE DEPARTMENT
INTERDEPARTMENTAL USE AGREEMENT
USE OF AG FARM

The rental adjustment calculation shown to the right was completed in keeping with the intent of the lease for municipal well operations and maintenance on land owned by Fresno Yosemite International Airport,

between
THE CITY OF FRESNO - AIRPORTS DEPARTMENT
AND
THE CITY OF FRESNO
POLICE DEPARTMENT

EFFECTIVE: July 1, 2014

MONTHLY RENTAL WILL BE: $3,123.14

If you have any questions concerning this matter please contact the undersigned at (559) 621-4511.

Rick Duncan
Airports Properties Supervisor
City of Fresno, Department of Airports

FRESNO YOSEMITE INTERNATIONAL AIRPORT
INTERDEPARTMENTAL USE AGREEMENT

DATE: February 24, 2014 1:27 PM

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ANNUAL RENTAL ADJUSTMENT COMPUTATION
FOR LEASE YEAR COMMENCING:
July 1, 2014

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USDLBLS CPI - JAN-DEC.,	2012	226.229 *
USDLBLS CPI - JAN-DEC.,	2013	228.000 *
AMOUNT OF CPI CHANGE	.....	1.8
PERCENTAGE CPI CHANGE	.....	0.7828%
SQUARE FOOTAGE	.....	734,857.20
CURRENT MONTHLY RENTAL		$3,061.91
CURRENT RENT P/SQ FT/YR	.....	0.05
AMOUNT OF ADJUSTMENT	.....	0.001
NEW MONTHLY RENTAL		0.051
AMOUNT OF ADJUSTMENT	.....	$61.24

NEW MONTHLY RENTAL		**$3,123.14**
EFFECTIVE:	July 1, 2014	**$37,477.72**

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Example

Prepared by:

CITY OF FRESNO
DEPARTMENT OF AIRPORTS
PROPERTIES SECTION
4995 EAST CLINTON WAY
FRESNO, CA 93727-1504

TELEPHONE: (559) 621-4500
FACSIMILE: (559) 251-4825

NOTES: * PER USDL/BLS

Exhibit "C"

SAMPLE ONLY

Exhibit "C"
Fresno Police Department Ag Farm
Rental Schedule for FY14 – FY18

Assessed Rental Rate: Actual rental amount due for the identified Fiscal Year

Fair Market Value: Market Rental Rate of property plus the proportional increase of Consumer Price Index as calculated from the previous year(s) using FY14 and $36,742.86 as the base.

In recognition of the significant increase resulting from the Fair Market Rent determination there shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

	Rent Beginning	Fiscal Year	Fair Market Rental (FMR)	Assessed (actual) Rental Rate
A	July 1, 2013	FY14	$36,742.86	**$14,820**
B	July 1, 2014	FY15	FY14 FMR + CPI (2013 through 2014)	**1/3 x (FY15 FMR – FY14 Assessed Rent) + FY14 Assessed Rent**
C	July 1, 2015	FY16	FY15 FMR + CPI (2014 through 2015)	**1/3 x (FY16 FMR – FY14 Assessed Rent) + FY15 Assessed Rent**
D	July 1, 2016	FY17	FY16 FMR + CPI (2015 through 2016)	**1/3 x (FY16 FMR – FY14 Assessed Rent) + FY15 Assessed Rent**
E	July 1, 2017	FY18	FY17 FMR + CPI (2016 through 2017)	**FY18 FMR**
F	July 1, 2018+	Rental adjustments subsequent FY18 will be made annually as described in Article VI, Section B of the lease agreement.		

Example: Rental Rate Increase FY14-FY19 ***assuming*** *CPI increase remains steady at 2% per year.*

	CPI Rate	FMR	Assessed Rental Rate
FY14		$ 36,742.86	$ 14,820.00
FY15	2.0%	$ 37,477.72	$ 22,365.02
FY16	2.0%	$ 38,227.27	$ 27,647.15
FY17	2.0%	$ 38,991.82	$ 31,424.92
FY18	2.0%	$ 39,771.65	$ 39,771.65
FY19	2.0%	$ 40,567.09	$ 40,567.09

CITY OF FRESNO
AMENDMENT NO. 1 TO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING
REGARDING THE USE OF POLICE AG FARM

Between

AIRPORTS DEPARTMENT

And

FRESNO POLICE DEPARTMENT

This AMENDMENT NO. 1 TO INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING ("Amendment No. 1") is entered into this 1st day of March, 2014, by and between the Airports Department, hereinafter referred to as "Airports" and the Fresno Police Department, hereinafter referred to as "Police," both of which are departments of the City of Fresno, a municipal corporation.

RECITALS

WHEREAS, the Airports and Police entered into a Interdepartmental Memorandum of Understanding ("Agreement") effective July 1, 2013, and

WHEREAS, Police desires to reduce certain leased space from the Description of Use Area covered by the Agreement from 22.72 acres to 16.87 acres, and

WHEREAS, Airports wishes to accommodate Police,

NOW, THEREFORE, in consideration of the premises and of the mutual promises herein, it is hereby agreed as follows:

1. Exhibits A and C of the Agreement are amended and replaced with Exhibit A and Exhibit C attached hereto.

2. The 254,761 square feet (5.85 acres) of space as shown on the Exhibit A attached hereto is removed from the Description of Use Area, thereby reducing the area of the Use Area to 734,857.2 square feet (16.87 acres).

3. The current rental rate shall remain unchanged at $0.05 per square foot, resulting in a new Annual Rent of $36,742.86 for fiscal year 2014. Article VI Section A of the Agreement shall be amended to read as follows:

   A. ANNUAL RENT AND DUE DATE

   The Fair Market Rent ("FMR") is defined as 10% of the Market Value of the Use Area is based on the Market Value of the adjacent property (DPU Leaky Acres). This adjacent property has the same use restrictions, zoning and property type and was determined to be $.05 per square foot ($21,729.86 per acre) by an appraisal performed by AGI Valuations and completed on June 8, 2012. Therefore, the 2013 Fair Market value of the 734,857.2 square feet of this Use Area is thus determined to be $366.582.74, and the Fair Market Rent is $36,742.86 per year.

   In recognition of the significant increase resulting from the Fair Market Rent determination, there shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

   The Annual Rent will be determined by calculating the then-current, CPI adjusted Fair Market Rent each of the three phase-in years, using the initial Fair Market Rent of

$36,742.86 as the base year. The initial assessed rental rate for July 1, 2013 will be the same rental rate as was assessed on July 1, 2012. The three years of phase-in of Fair Market Rent will consist of 1/3 of the increase of the CPI-adjusted base year Fair Market Rent plus the full amount of the previous year rent. The calculation is demonstrated in Exhibit "C".

4. Except as provided in this Amendment No. 1, the provisions of the "Agreement" as heretofore amended are unchanged.

/ / /

/ / /

/ / /

IN WITNESS WHEREOF, Airports and Police have entered into and executed this **AMENDMENT NO. 1 TO INTERDEPARTMENTAL MEMORANDUM OF AGREEMENT** as of the day and year first above written.

Airports Department

By: _____
Kevin R. Meikle,
Director of Aviation

Fresno Police Department

By: _____
Jerry Dyer,
Chief of Police

Address for Notice:
City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Address for Notice:
Fresno Police Department
Business Office
P.O. Box 1271
Fresno, CA 93721

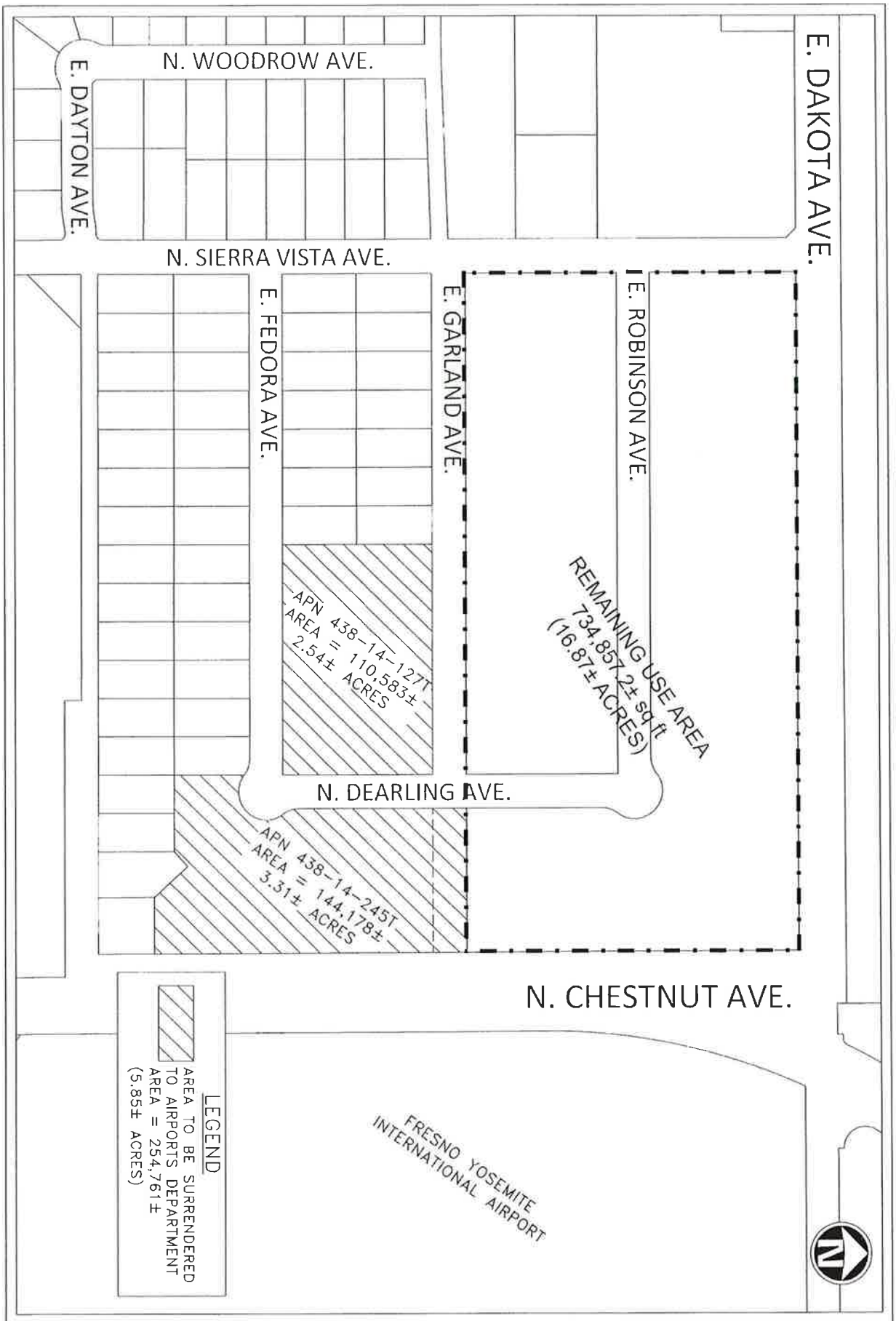
ATTEST:
Yvonne Spence, CMC
City Clerk

By: Cindy Bruer 3/19/14
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: Mary Anne Tooke March 3, 2014
Mary Anne Tooke Date
Deputy City Attorney

Exhibit "A" - Map of Use Area
Exhibit "C" – Example Notice of Annual Rental Adjustment/ Rental Schedule



DIRECTOR OF AVIATION
KEVIN R. MEIGLE, ARCHITECT

APPROVED
CONST. ENG.
OFFICE ENG.
CITY DESIGN ENG.
COORDINATOR # CPDAA
FUND
ACCT.
PROJECT I.D.
DRAWN BY
CHECKED BY
DATE
SCALE
FILE
CITY DRAWING NO.
SHEET NO. 1 OF 1 SHEETS

AIRPORTS DEPARTMENT

FRESNO YOSEMITE INTERNATIONAL AIRPORT
AREA TO BE SURRENDERED TO AIRPORT
APN 438-14-127T AND APN 438-14-245T

RECORDED DETAILS
R.E. SUR. SURVEYOR

CITY OF FRESNO
DEPARTMENT OF PUBLIC WORKS
MAPS AND RECORDS DIV.
PROJECT NO. 12-01-1-1-0007
SURVEYOR'S INFORMATION

FRESNO YOSEMITE

NOTICE OF ANNUAL RENTAL ADJUSTMENT (Based on USDLBLS Consumer Price Index for Urban Wage Earners and Clerical Workers - ALL ITEMS, U.S. CITY AVERAGE)

February 24, 2014 1:27 PM

RE: FRESNO POLICE DEPARTMENT
INTERDEPARTMENTAL USE AGREEMENT
USE OF AG FARM

The rental adjustment calculation shown to the right was completed in keeping with the intent of the lease for municipal well operations and maintenance on land owned by Fresno Yosemite International Airport,

between
THE CITY OF FRESNO - AIRPORTS DEPARTMENT
AND
THE CITY OF FRESNO POLICE DEPARTMENT

EFFECTIVE: July 1, 2014

MONTHLY RENTAL WILL BE: $3,123.14

If you have any questions concerning this matter please contact the undersigned at (559) 621-4511.

Rick Duncan
Airports Properties Supervisor
City of Fresno, Department of Airports

FRESNO YOSEMITE INTERNATIONAL AIRPORT INTERDEPARTMENTAL USE AGREEMENT

DATE: February 24, 2014 1:27 PM

==========

ANNUAL RENTAL ADJUSTMENT COMPUTATION
FOR LEASE YEAR COMMENCING:
July 1, 2014

==========

USDLBLS CPI - JAN-DEC.,	2012	226.229 *
USDLBLS CPI - JAN-DEC.,	2013	228.000 *
AMOUNT OF CPI CHANGE	.....	1.8
PERCENTAGE CPI CHANGE	.....	0.7828%
SQUARE FOOTAGE	.....	734,857.20
CURRENT MONTHLY RENTAL		$3,061.91
CURRENT RENT P/SQ FT/YR	.....	0.05
AMOUNT OF ADJUSTMENT	.....	0.001
NEW MONTHLY RENTAL		0.051
AMOUNT OF ADJUSTMENT	.....	$61.24

NEW MONTHLY RENTAL		**$3,123.14**
EFFECTIVE:	July 1, 2014	**$37,477.72**

==========

Prepared by:

CITY OF FRESNO
DEPARTMENT OF AIRPORTS
PROPERTIES SECTION
4995 EAST CLINTON WAY
FRESNO, CA 93727-1504

TELEPHONE: (559) 621-4500
FACSIMILE: (559) 251-4825

NOTES:

* PER USDL/BLS

Example

Exhibit "C"
Fresno Police Department Ag Farm
Rental Schedule for FY14 – FY18

Assessed Rental Rate: Actual rental amount due for the identified Fiscal Year

Fair Market Value: Market Rental Rate of property plus the proportional increase of Consumer Price Index as calculated from the previous year(s) using FY14 and $36,742.86 as the base.

In recognition of the significant increase resulting from the Fair Market Rent determination there shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

	Rent Beginning	Fiscal Year	Fair Market Rental (FMR)	Assessed (actual) Rental Rate
A	July 1, 2013	FY14	$36,742.86	**$14,820**
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F	July 1, 2018+	Rental adjustments subsequent FY18 will be made annually as described in Article VI, Section B of the lease agreement.		

Example: Rental Rate Increase FY14-FY19 ***assuming*** *CPI increase remains steady at 2% per year.*

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FY17	2.0%	$ 38,991.82	$ 31,424.92
FY18	2.0%	$ 39,771.65	$ 39,771.65
FY19	2.0%	$ 40,567.09	$ 40,567.09

CITY OF FRESNO
AIRPORTS DEPARTMENT
NOV 5 2013
RECEIVED

CITY OF FRESNO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING
REGARDING THE USE OF POLICE AG FARM

Between

AIRPORTS DEPARTMENT

And

FRESNO POLICE DEPARTMENT

This **INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING** ("Agreement") is entered into this 18 day of SEP, 2013, by and between the Airports Department, ("Airports") and the Fresno Police Department, ("Police") both of which are departments of the City of Fresno, a municipal corporation.

RECITALS

WHEREAS, City of Fresno owns airport enterprise property commonly known as, Ag Farm, that is identified on the Federal Aviation Administration approved Airport Layout Plan and more specifically located at the southwest corner of East Dakota Avenue and North Chestnut Avenue, California ("Use Area"); and

WHEREAS, the parties desire that Police continue using the Use Area for the purpose of operating and maintaining a Horse Mounted Patrol Unit facility that was originally developed in 1990; and

WHEREAS, the Use Area may be used for non-aeronautical purposes upon terms and conditions consistent with federal regulatory policy requirements including but not limited to the Federal Aviation Administration ("FAA") Grant Assurances attached to this Agreement as Exhibit "D" and incorporated herein; and

WHEREAS, FAA policy requires the payment of fair market value rent for the non-Aeronautical use of airport property including the Use Area by Police; and

WHEREAS, It is not the intent of Airports and Police to create any new restrictions or new regulations applicable to the City of Fresno by the creation of this Agreement but rather to establish guidelines for how the Use Area is utilized and to establish a rental agreement in compliance with Federal Regulations.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants set forth below, the parties have entered into this Agreement to establish the terms and conditions pursuant to which Police shall have a non-exclusive, non-transferable use of the Use Area, all as follows:

ARTICLE I
DESCRIPTION OF USE AREA

The Use Area consists of approximately 22.72 acres located at 4719 East Robinson Avenue, Fresno, CA (APN(s) 438-11-144T & 438-11-227T), described in Exhibit "A", and shown on the Plats identified as Exhibit "B"; both exhibits are attached hereto and made a part hereof. Police shall accept the Use Area in an "as is" condition.

ARTICLE II
PERMITTED USES

Police shall use the Use Area only for the operation and maintenance of its Horse Mounted Patrol and other animal-related law enforcement purposes, and third party occupancy for an Agricultural Education Facility, and for no other purposes.

ARTICLE III

GENERAL PROVISIONS CONCERNING THE MANNER OF USE

The following general provisions shall be applicable to Police's use of the Use Area:

1. The Area shall be inspected, environmentally assessed, improved, operated and maintained by Police and all costs thereof including the preparation of said Use Area and all expenses thereof, and all tools and labor necessary thereof, shall be at the sole cost and expense of Police.

2. Police shall have and enjoy the right of ingress to and egress from the Use Area subject only to such reasonable rules and regulations as may be established by Airports. Such right of ingress and egress shall likewise apply to Police's employees, agents, patrons, invitees, suppliers and authorized persons including the right of transportation of equipment, materials, machinery and other property to and from the Use Area.

3. Police shall provide at Police's sole cost and expense, any and all permits, licenses, fees, etc. that may be required of the City of Fresno to conduct its intended operations within the Use Area.

ARTICLE IV
DEVELOPMENT STANDARDS

1. Police will not make any alterations, changes, or improvements to the Use Area without the expressed written consent of the Airports Director.

2. Police shall not erect nor permit the erection of any improvements on the Use Area, which would be an airport hazard within the standards established by Part 77 of the FAA as now existing or as may hereafter be modified, or otherwise impact Terminal Instrument Procedures (TERPS), as determined by FAA.

3. Police shall not engage in or conduct or permit the conduct of any activity of any kind on the Use Area which will interfere in any manner with the operation of the Fresno Yosemite International Airport as an airport or with aircraft operations or related operations conducted on the airport by the City or its lessees, and shall not make use of said Use Area in any manner which might interfere with the landing and taking off of aircraft, the operation of the approach lighting system, or the operation of the instrument landing system as each presently exists or may hereafter be modified, or otherwise constitute an airport hazard.

4. Airports or any of its authorized officers and employees shall, at all reasonable times, have the right to enter upon the Use Area, either in person or by nominee, for any lawful purpose/use including inspecting the Use Area to ascertain the condition thereof and whether the covenants of this Agreement are being kept, observed and performed.

5. Police understand that the Use Area is in the Runway Protection Zone of the Fresno Yosemite International Airport and as such, Police understand there are particular restrictions in which the area can be developed, used, and/or maintained. Police also understand that these restrictions may change over time due to evolving FAA regulations and/or modifications to the airport including but not limited to, runway alterations, expansions, and CNEL Noise Contours.

6. Any and all development of the Use Area shall conform to all applicable codes, ordinances, regulations and development standards of the City of Fresno or other authority having competent jurisdiction over such development to the extent they apply to the City of Fresno for the type of development considered. All building, regulatory and other permits and approvals if required shall be obtained and paid for by Police. Nothing in this section is intended to impose any new or additional requirements or restrictions that would not otherwise exist for the City of Fresno.

7. Police, at its sole cost agrees to operate and maintain the facility within the Use Area, per Exhibit "B", which improvement shall be and remain the property, liability and responsibility of Police at all times during the course of this Agreement.

8. Police shall provide Airports with as built drawings, maps, and other related data of all such existing and hereafter made improvements.

ARTICLE V
TERM

This Agreement shall be effective retroactively to July 1, 2013 and shall remain in full force and effect, for a base term expiring June 30, 2023. Either party shall have the right, at any time, to terminate this Agreement upon giving advance written notice of not less than sixty (60) days to the other party. Should Police exercise this termination right, Police shall make rental payments through the end of such sixty (60) day notice period, however Police shall not be liable for rental payments after the expiration of the sixty (60) day notice period, provided Police have vacated the Use Area.

ARTICLE VI
RENT

A. ANNUAL RENT AND DUE DATE

The Fair Market Rent ("FMR") is defined as 10% of the Market Value of the Use Area is based on the Market Value of the adjacent property (DPU Leaky Acres). This adjacent property has

the same use restrictions, zoning and property type and was determined to be $21,729.86 per acre by an appraisal performed by AGI Valuations and completed on June 8, 2012. Therefore, the 2013 Fair Market value of the 22.72 acres of this Use Area is thus determined to be $493,267.82, and the Fair Market Rent is $49,326.84 per year.

In recognition of the significant increase resulting from the Fair Market rent determination. There shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

The annual rent will be determined by calculating the then-current, CPI adjusted Fair Market Rent each of the three phase-in years, using the initial Fair Market Rent of $49,326.84 as the base year. The initial assessed rental rate for July 1, 2013 will be the same rental rate as was assessed on July 1, 2012. The three years of phase-in of Fair Market Rent will consist of 1/3 of the increase of the CPI-adjusted base year Fair Market Rent plus the full amount of the previous year rent. Police shall pay rent monthly, on or before the fifth of each month. The calculation is shown below and demonstrated in Exhibit "C".

B. RENTAL ADJUSTMENTS:

Commencing on the first day of the 2nd Fiscal Year (July 1, 2014), and then annually thereafter on the first day of each successive Fiscal Year throughout the life of this Agreement, the amount of annual rent to be paid to Airports by Police shall be subject to increase, by an amount equal to the percentage change (increases only) in the U.S. Department of Labor, Bureau of Labor Statistics (USDLBLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average) from January 1 to December 31 during the last full calendar year prior to the scheduled rental adjustment date. The base year for this agreement shall be 2013.

The amount of all such annual adjustments shall be determined in the manner illustrated within the worksheet entitled "Illustration of Annual Rental Adjustment Computation", which is attached as Exhibit "C" hereto and made a part hereof. Commencing July 1, 2014 and annually thereafter, prior to the end of each fiscal year, Airports shall complete the worksheet described in Exhibit "C" and provide a copy to Police. This will serve as notice of the rent amount due for the upcoming Fiscal Year.

C. LATE PAYMENT CHARGE

Should any installment of rent or any other charges accruing to Airports under the provisions of this Agreement not be received by Airports within five (5) calendar days after such shall become due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount added thereto and constituting a part thereof shall be imposed by Airports each and every month until the entire delinquent amount is received by Airports.

ARTICLE VII
MAINTENANCE, ALTERATIONS & REPAIR, REMOVAL & DEMOLITION

A. MAINTENANCE:

Police shall, at all times during the life of this Agreement, at no cost or expense to Airports, keep and maintain its improvements and the Use Area in good order and repair, and in a clean, sanitary, and neat condition. Maintenance of the Use Area includes but is not limited to landscape, including perimeter area, and all fencing surrounding the Use Area.

Police shall, at all times, remain in compliance with the applicable portions of FAA Advisory Circular No. 150/5200-33B, entitled "Hazardous Wildlife Attractants on or Near Airports" which is attached as Exhibit "E" hereto and incorporated herein, and shall complete and submit to Airports within sixty (60) days, a Hazardous Wildlife Mitigation Plan pertinent to the approved use of the Use Area. Police shall also be required to provide written changes to any such plan to the Airport for review and approval.

Police shall, at all times, keep the Use Area and all fixtures, equipment and personal property in a clean and orderly condition and appearance. Police shall repair, replace, rebuild and paint all or any part of the improvements within the Use Area which may be damaged or destroyed by acts or omissions of Police or by those of its officers, employees, guests, invitees or of other persons.

Police shall take such care of the Use Area and all parts thereof at all times during the term of this Agreement, that at the expiration or termination thereof the premises shall be in as good condition as at the time of the effective date of this Agreement, except for reasonable wear and tear.

B. ALTERATIONS & REPAIRS:

Police shall have the right, at its sole cost and expense, to operate and maintain within and on the Use Area any improvements, which may be considered as necessary or useful to its operations; provided, however, any construction, alterations or improvements are subject to Articles III & IV above, and Article X below, and shall be commenced only after plans and specifications therefore have been submitted to and approved in writing by Airports.

Police shall, at no cost or expense to Airports, make any additions or alterations, operate, maintain, improve and repair all facilities and other improvements as may be required at any time in order to comply with legal and regulatory requirements and third party contractual obligations (including but not limited to FAA Advisory Circular 150/5200-33B) imposed upon Airports in connection with or for the use of such Use Area or any part thereof and shall otherwise observe and comply with any and all applicable public laws, ordinances, regulations, and orders of competent governmental authority applicable to the City of Fresno for the Use Area.

C. HOLD HARMLESS / INDEMNIFICATION:

There is reserved to Airports, its successors and assigns, for the use and benefit of the public, an easement and right of flight for the passage of aircraft in the air space above the surface of the Use Area, together with the right to cause in said air space such noise, fumes, and exhaust as may be inherent in the operation of aircraft now known or hereafter used for

navigation or flight in the air space for landing at, taking off from, or operating on the Fresno Yosemite International Airport. Airports assumes no liability for damage to Police's equipment which may result from such flight operations at the Fresno Yosemite International Airport and Police agrees to hold Airports harmless for such damage which may result therefrom.

Police shall hold Airports completely harmless and indemnify, protect and defend Airports and Airports' officials, officers, employees, volunteers and agents against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses (including all reasonable costs and expenses for investigation and defense thereof [including, but not limited to attorney fees, court costs and expert fees]), or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly, out of, as a result of, or incident to, or in any way connected with this Agreement or: (1) Police's occupancy(ies) and/or use(s) of any part or all of the Use Area ; (2) Police's exercise of any one, more or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Police's part to be performed under the terms of this Agreement; and/or (4) any act(s) or omission(s) on the part of Police and/or any officer(s), agent(s), employee(s), contractor(s), sub-contractor(s), servant(s), or representative(s) of Police during the life hereof, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the active negligence or by the willful misconduct of Airports or any of its officials, officers, agents, volunteers or employees acting within the scope of their duties for Airports. Airports shall give to Police reasonable notice of any such claims or actions.

The provisions of this section shall survive the termination of this Agreement.

D. EXEMPTION OF AIRPORT:

Police hereby specifically warrants, covenants and agrees that Airports shall not be liable for injury to Police's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Use Area or elsewhere on Airport under authority hereof, whether belonging to Police, or Police's employees, customers, agents, contractors, sub-contractors, tenant, sub-lessee of Police, or any other person whomsoever. Nor shall Airports be liable for any injury to Police's employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Use Area or in or on any of the improvements/facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Police. Police also covenants and agrees that Airports shall not be liable for any damages arising from any act or neglect on the part of any third parties.

ARTICLE VIII
UTILITIES

Police shall pay all utilities costs associated with its use of the Use Area including, but not limited to, all electricity, gas, telephone and any other utility service it may require. Police agrees that all charges for such services shall be paid prior to delinquency and that Airports shall be protected and held harmless therefrom.

ARTICLE IX
TAXES AND ASSESSMENTS

In addition to the rental provided for herein, should any tax or assessment of any kind become legally authorized to be assessed against the Use Area or any improvements thereon or any interest therein, Police shall cause it to be paid, at no cost or expense to Airports, when due.

ARTICLE X
RULES AND REGULATIONS

Police shall observe, obey, and comply with any and all applicable rules, regulations, laws, ordinances, statutes or orders of any governmental and regulatory authority lawfully exercising authority over the City of Fresno, Airport, the Use Area, the ground water/water quality, the public facilities used in connection therewith, or otherwise having authority over Police's conduct of its activities and operations hereunder.

Police agrees to abide by the rules; regulations and orders of the FAA or such other successor agency as may hereafter be designated by the Federal Government with respect to aircraft and Airport operations. This includes the requirement to comply with all FAA and Airport safety and security rules, regulations and plans. The Police shall cause Airports to be fully protected and held harmless against any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed due to any violation caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of Police, its employees, agents, visitors, suppliers or invitees.

The "Assurances required by the Federal Aviation Administration" including, but not limited to those set forth in Exhibit "D" of this Agreement, are binding contractual obligations between the City of Fresno and the Federal Aviation Administration as a condition of the receipt of federal financial assistance for the airport. Police shall faithfully comply with each and all of such "Assurances required by the Federal Aviation Administration" as applicable throughout the life of this Agreement.

ARTICLE XI
ASSIGNMENT AND TRANSFER

Police shall not assign, otherwise transfer, or encumber this Agreement, the Use Area, or any interest therein without the prior written consent of Airports.

ARTICLE XII
EMINENT DOMAIN

In the event that the Government of the United States takes over the operation of the Airport or any part thereof included in this Agreement by requisition or other unilateral action as the result of a national emergency, Airports shall be relieved of any liability incurred hereunder to Police.

In the event that the Government of the United States takes over such operation as aforesaid, the Airport shall promptly return on a pro-rata basis any then unearned rent paid by Police hereunder. It is further agreed that, if compensation is awarded by the Government of the United States because of taking over such operations as aforesaid, Police shall be entitled to share in such award to the extent of its interest therein, based on the value of the unexpired term of this Agreement as such value shall be determined in the proceedings for the taking of such operations and awarding such compensation.

ARTICLE XIII
TERMINATION AND RESTORATION

At the expiration of the life of this Agreement or any prior termination thereof, Police agrees to quietly and peacefully surrender possession of the Use Area to Airports with all of the existing improvements, as well as any and all improvements erected, constructed, and/or placed in, on or upon the leased premises completely removed; the land shall be restored to an environmentally clean, properly graded condition free of weeds and rubbish.

ARTICLE XIV
HOLDING OVER

In the event Police should hold over the Use Area beyond the term of this Agreement, with or without the expressed written consent of Airports, such holding over shall be construed to be a month-to-month use right only, and Police shall pay rent to Airports and such rental rate is the amount of rent that was due in monthly installments for the prior Fiscal Year subject to rental adjustments (increases only) as stated in Article VI, Section B for such year-to-year use rights. Otherwise, such holding over shall be subject to all the terms, covenants, and conditions of this Agreement.

ARTICLE XV
DEFAULT BY Police

In the event that Police shall fail to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Agreement to be kept, observed, undertaken, fulfilled, and/or performed by Police, and where such failure shall continue for a period of thirty (30) days following service of written notice thereof upon Police by Airports, Police shall be declared to be in default and breach of this Agreement; provided, however, that if the nature of Police's default is such that more than thirty (30) days are reasonably required for its cure, then Police shall not be deemed to be in default

and breach of this Agreement if Police commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible.

Following the occurrence of any default and breach of this Agreement by Police as set forth within this Article, Airports may then immediately, or at any time thereafter, terminate this Agreement by service of a minimum of ten (10) days advance written notice to such effect upon Police and this Agreement shall terminate at 11:59:59 p.m., on the termination date specified within such notice. Such notice shall set forth the following:

1. The default and breach which resulted in such termination by Airports; and

2. A Demand for Possession, which, in the event only ten (10) days advance notice shall be given by Airports, shall be effective at 12:00:01 A.M., on the eleventh (11th) calendar day following the date on which the notice in which such demand is contained shall be sufficiently served Police by Airports in conformity with the "Notice" provisions of this Agreement; or, if more than the minimum number of days advance notice shall be given, at 12:00:01 A.M., on the next day following the date specified within such notice as being the date of termination hereof; and

3. Such notice may contain any other notice which Airports shall be required or desire to give under this Agreement.

ARTICLE XVI
NOTICES

All notices or demands of any kind which Airports may be required to serve on Police under the terms of this Agreement, may be served upon Police (as an alternative to personal service upon Police) by mailing a copy thereof by registered or certified mail, return receipt requested, addressed to Police:

Fresno Police Department
Business Office
P.O. Box 1271
Fresno, CA 93721

or at such other place as Police may designate to Airports in writing.

All notices or demands of any kind which Police may be required or may desire to serve upon Airports under the terms of this Agreement, may be served upon Airports (as an alternative to personal service upon Airports) by mailing a copy thereof by registered or certified mail, return receipt requested, addressed to Airports:

City of Fresno - Airports Department
Attn.: Airport Properties Manager
4995 E. Clinton Way
Fresno, California, 93727

or at such other place as Airports may designate to Police in writing.

In the event of any service by mail, as aforesaid, service shall be deemed to be complete on the third day after the deposit thereof in the United States mail.

ARTICLE XVII
TERMINATION BY Police FOR NON-APPROPRIATION

In the sole event of non-appropriation relating to this Agreement, Police shall have the right to terminate this Agreement at the end of any Fiscal Year of the City of Fresno, in the manner and subject to the terms specified in this paragraph. Police shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such Fiscal Year, and shall notify Airports of any anticipated termination. For purposes of this paragraph, "non-appropriation" shall mean failure of the City of Fresno or its governing body to appropriate money for any Fiscal Year of the City of Fresno sufficient for the continued performance of this Agreement by Police. In the event of termination by non-appropriation, Police will be responsible for all demolition and restoration requirements as detailed in Article XIII.

ARTICLE XVIII
SPECIAL PROVISIONS

A. Airports, in the interest of safety, by and through its Director of Aviation or his successor in function, shall at all times during the life of this Agreement have the authority to designate routes to be taken, within the Use Area, by Police and Police's employees, delivery agencies, suppliers, visitors, invitees, and others having business with Police, and by all automobiles, trucks, and equipment. Police hereby agrees to honor such authority and to use only the routes so designated.

B. There is reserved to Airports, its successors and assigns, for the use and benefit of the public, an easement and right of flight for the passage of aircraft in the air space above the surface of the Use Area, together with the right to cause in said air space such noise, fumes, and exhaust as may be inherent in the operation of aircraft now known or hereafter used for navigation or flight in the air space for landing at, taking off from, or operating on the Fresno Yosemite International Airport. Airports assumes no liability for damage to Police's equipment which may result from such flight operations at the Fresno Yosemite International Airport and Police agrees to hold Airports harmless for such damage which may result therefrom.

C. Police shall not erect nor permit the erection of any improvements on the Use Area, which would be an airport hazard within the standards established by Part 77 of the FAA as now existing or as may hereafter be modified.

D. Police shall not engage in or conduct or permit the conduct of any activity of any kind on the Use Area which will interfere in any manner with the operation of the Fresno Yosemite International Airport as an airport or with aircraft operations or related operations conducted on the airport by the City or its lessees, and shall not make use of said Use Area in any manner which might interfere with the landing and taking off of aircraft, the operation of the approach lighting system, or the operation of the instrument

landing system as each presently exists or may hereafter be modified, or otherwise constitute an airport hazard.

E. Airports or any of its authorized officers and employees shall, at all reasonable times, have the right to enter upon the Use Area, either in person or by nominee, for any lawful purpose/use including inspecting the Use Area to ascertain the condition thereof and whether the covenants of this Agreement are being kept, observed and performed.

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IN WITNESS WHEREOF, Airports and Police have entered into and executed this **MEMORANDUM OF AGREEMENT** as of the day and year first above written.

Airports Department

By: _____
Kevin R. Meikle
Director of Aviation (Interim)

Police Department

By: _____

Title: POLICE CHIEF

Address for Notice:

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Address for Notice:

Fresno Police Department
Business Office
P.O. Box 1271
Fresno, CA 93721

ATTEST:
Yvonne Spence, CMC
City Clerk

By: Sherri L. Badertscher
Deputy 11/4/2013

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: _____ 9/18/13
Brandon M. Collet, Deputy Date

Exhibit "A" - Lease Description of Use Area
Exhibit "B" - Plats of Use Area
Exhibit "C" - Rental Rate and Adjustment Worksheets
Exhibit "D" - Assurances required by the Federal Aviation Administration
Exhibit "E" - Federal Aviation Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports

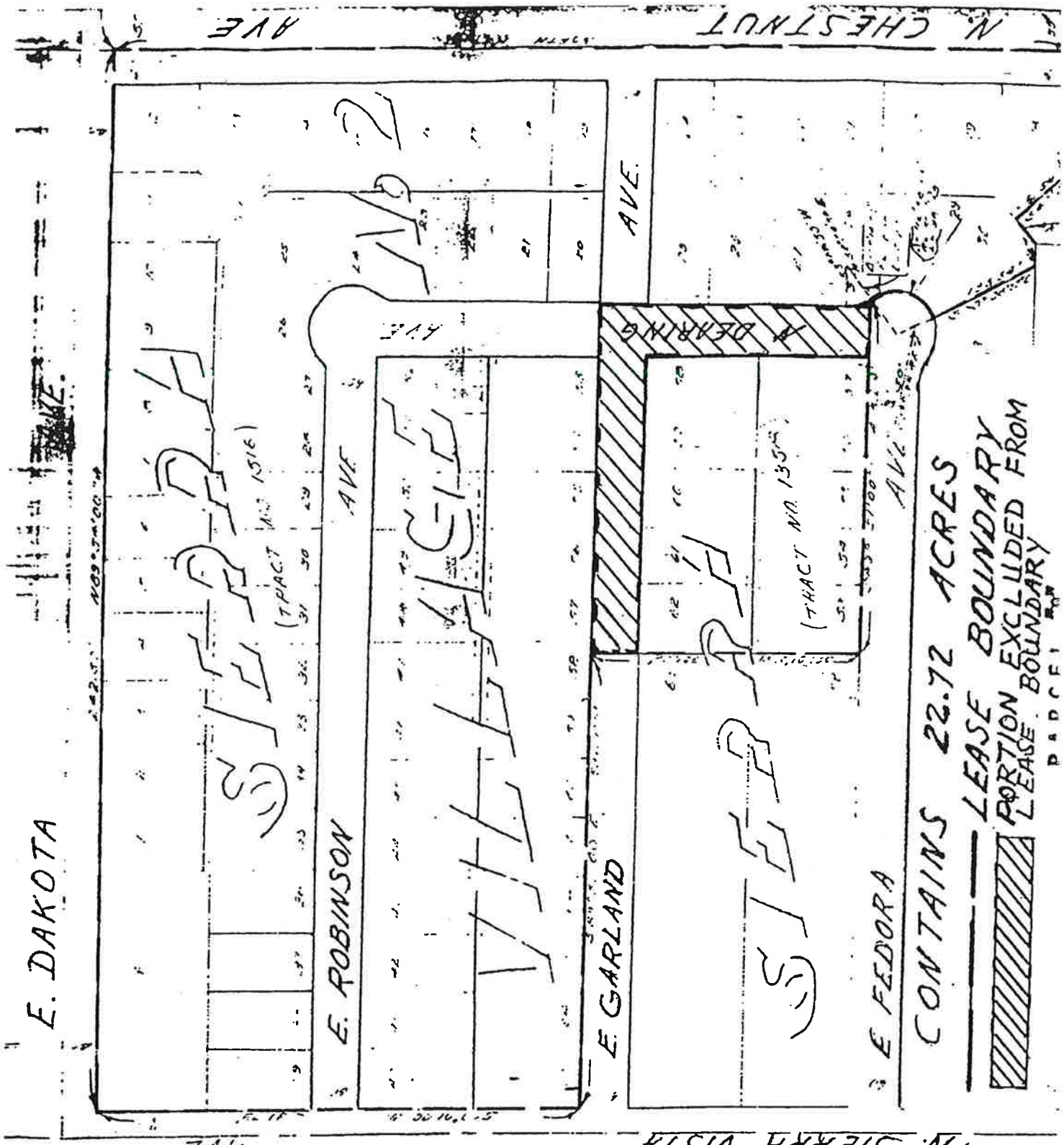


EXHIBIT "A"

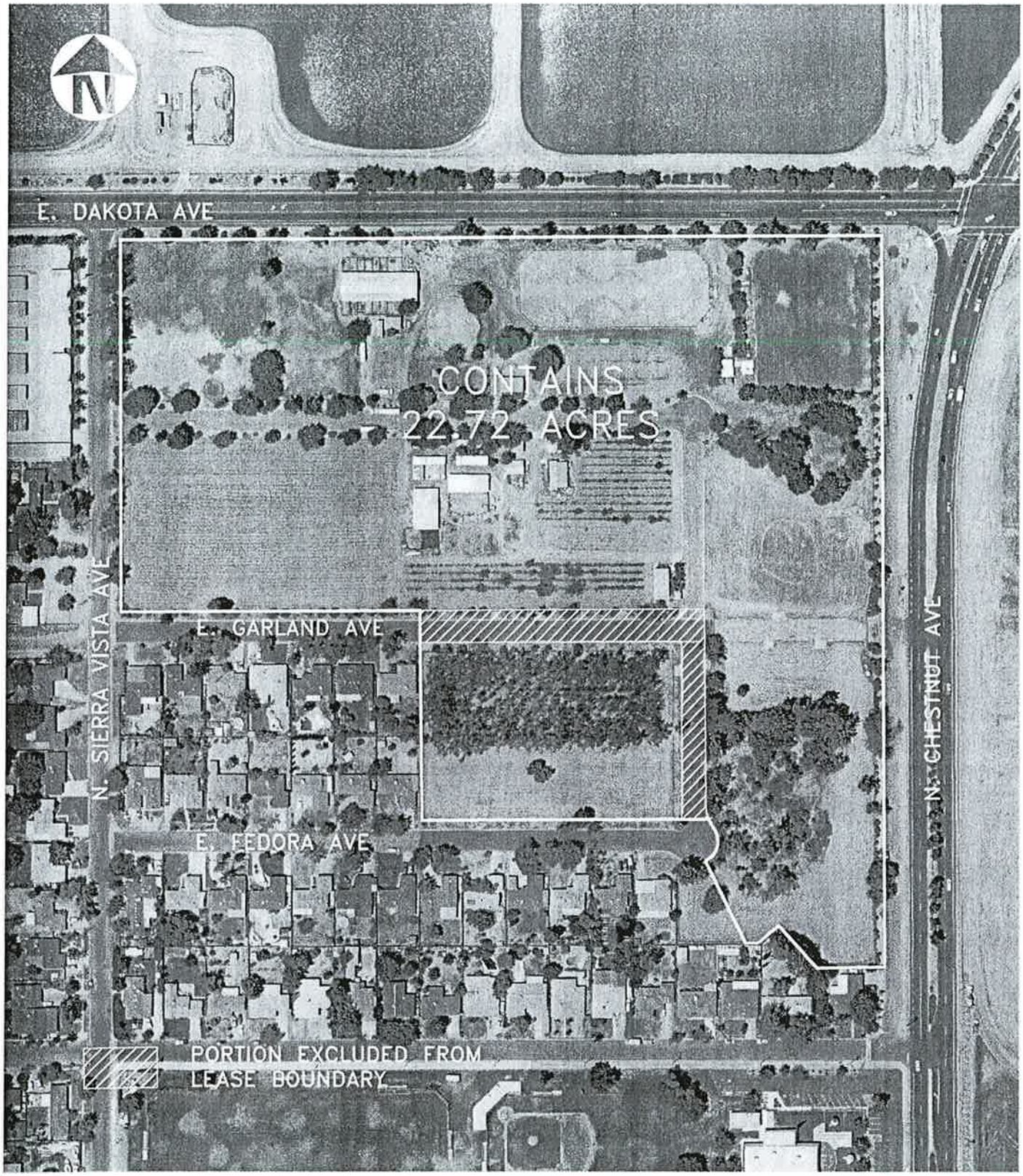
W.O. NO. 6050

..NO. 410-22

..E NO. 2365

REF. & REV.

CITY OF FRESNO	DEPARTMENT OF PUBLIC WORKS
FRESNO AIR TERMINAL LEASE SITE PORTION OF SIERRA VISTA TR. No. 1358 AND PARCEL OF SIERRA VISTA TR. 1316	APPROVED CONST. ENG. ____ OFFICE ENG. ____ CITY ENG. ____ DR. BY MARY R. CH. BY J.N. DATE: JULY 1979 SCALE: 1" = 100' SHEET NO. 1 OF 1 SHEETS 25-D-47



REVISIONS/REFERENCE
REV NO

FRESNO YOSEMITE

CITY OF FRESNO
DEPARTMENT OF AIRPORTS
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4600

FRESNO YOSEMITE INTERNATIONAL AIRPORT

LEASE SITE

PORTION OF SIERRA VISTA TRACK NO 1358
AND PORTIONS OF SIERRA VISTA TRACK 1516

file path and name

Exhibit "B"

KRA NO.
FUND NO.
ORG NO.
ACTIVITY
PROJECT I.D.

AIRPORTS DEPARTMENT
DIRECTOR OF AVIATION (INTERIM)
KEVIN R. MEIKLE, ARCHITECT

APPROVED
CONST. ENG.
CITY DESIGN ENG.
OFFICE ENG.

DR. BY XXX
CH. BY XXX
DATE: XX. XX. XXXX
SCALE: XXX

CITY DRAWING NO. 25-A-XXX
SHEET NO. 1
OF 1 SHEETS

FRESNO YOSEMITE
INTERNATIONAL AIRPORT

NOTICE OF ANNUAL RENTAL ADJUSTMENT (Based on USDLBLS Consumer Price Index for Urban Wage Earners and Clerical Workers - ALL ITEMS, U.S. CITY AVERAGE)

July 29, 2013 10:42 AM

RE: FRESNO POLICE DEPARTMENT
INTERDEPARTMENTAL USE AGREEMENT
USE OF AG FARM

The rental adjustment calculation shown to the right was completed in keeping with the intent of the lease for municipal well operations and maintenance on land owned by Fresno Yosemite International Airport,

between
THE CITY OF FRESNO - AIRPORTS DEPARTMENT
AND
THE CITY OF FRESNO
DEPARTMENT OF PUBLIC UTILITIES - WATER DIVISION

EFFECTIVE: July 1, 2014

MONTHLY RENTAL WILL BE: $4,192.78

If you have any questions concerning this matter, please contact the undersigned at (559) 621-4511.

Rick Duncan
Airports Properties Supervisor
City of Fresno, Department of Airports

FRESNO YOSEMITE INTERNATIONAL AIRPORT
INTERDEPARTMENTAL USE AGREEMENT

DATE: July 29, 2013 10:42 AM

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ANNUAL RENTAL ADJUSTMENT COMPUTATION
FOR LEASE YEAR COMMENCING:
July 1, 2014

==========

USDLBLS CPI - JAN-DEC.,	2012	226.229 *
USDLBLS CPI - JAN-DEC.,	2013	228.000 *
AMOUNT OF CPI CHANGE	.....	1.8
PERCENTAGE CPI CHANGE	.....	0.7828%
SQUARE FOOTAGE	.....	989,683.20
CURRENT MONTHLY RENTAL		$4,110.57
CURRENT RENT P/SQ FT/YR	.....	0.049841
AMOUNT OF ADJUSTMENT	.....	0.00099682
NEW MONTHLY RENTAL		0.05083782
AMOUNT OF ADJUSTMENT	.....	$82.21

NEW MONTHLY RENTAL		**$4,192.78**
EFFECTIVE:	July 1, 2014	**$50,313.34**

==========

Prepared by:

CITY OF FRESNO
DEPARTMENT OF AIRPORTS
PROPERTIES SECTION
4995 EAST CLINTON WAY
FRESNO, CA 93727-1504

TELEPHONE: (559) 621-4500
FACSIMILE: (559) 251-4825

NOTES: * PER USDL/BLS

Example

Exhibit "C"

SAMPLE ONLY

Exhibit "C"
Fresno Police Department Ag Farm
Rental Schedule for FY14 – FY18

Assessed Rental Rate: Actual rental amount due for the identified Fiscal Year

Fair Market Value: Market Rental Rate of property plus the proportional increase of Consumer Price Index as calculated from the previous year(s) using FY14 and $49,326.84 as the base.

In recognition of the significant increase resulting from the Fair Market Rent determination there shall be a three-year phase-in to progressively increase the rental rates to FMR. To allow orderly budgeting and planning, the first phase of the increase will be effective July 1, 2014, followed by the second phase effective July 1, 2015, and the third phase effective July 1, 2016.

	Rent Beginning	Fiscal Year	Fair Market Rental (FMR)	Assessed (actual) Rental Rate
A	July 1, 2013	FY14	$49,326.84	**$14,820**
B	July 1, 2014	FY15	FY14 FMR + CPI (2013 through 2014)	**1/3 x (FY15 FMR – FY14 Assessed Rent) + FY14 Assessed Rent**
C	July 1, 2015	FY16	FY15 FMR + CPI (2014 through 2015)	**1/3 x (FY16 FMR – FY14 Assessed Rent) + FY15 Assessed Rent**
D	July 1, 2016	FY17	FY16 FMR + CPI (2015 through 2016)	**1/3 x (FY16 FMR – FY14 Assessed Rent) + FY15 Assessed Rent**
E	July 1, 2017	FY18	FY17 FMR + CPI (2016 through 2017)	**FY18 FMR**
F	July 1, 2018+	Rental adjustments subsequent FY18 will be made annually as described in Article VI, Section B of the lease agreement.		

Example: Rental Rate Increase FY14-FY19 ***assuming*** *CPI increase remains steady at 2% per year.*

	CPI Rate	*FMR*	*Assessed Rental Rate*
FY14		*$ 49,326.84*	*$ 14,820.00*
FY15	*2.0%*	*$ 50,313.38*	*$ 26,639.29*
FY16	*2.0%*	*$ 51,319.64*	*$ 38,793.68*
FY17	*2.0%*	*$ 52,346.04*	*$ 51,289.85*
FY18	*2.0%*	*$ 53,392.96*	*$ 53,392.96*
FY19	*2.0%*	*$ 54,460.82*	*$ 54,460.82*

EXHIBIT “D”

FAA
Airports

Grant Assurances
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. **Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
d. Hatch Act – 5 U.S.C. 1501, et seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]
h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]
l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
q. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
t. Copeland Anti kickback Act - 18 U.S.C. 874.1
u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity[1]
Executive Order 11990 - Protection of Wetlands
Executive Order 11998 – Flood Plain Management
Executive Order 12372 - Intergovernmental Review of Federal Programs
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
Executive Order 12898 - Environmental Justice

Federal Regulations

a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
c. 14 CFR Part 150 - Airport noise compatibility planning.
d. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]
f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]
h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
i. 49 CFR Part 20 - New restrictions on lobbying.
j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.[1 2]
m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.[1]
o. 49 CFR Part 29 – Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).
p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.[1]

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

2. Responsibility and Authority of the Sponsor.

a. **Public Agency Sponsor:** It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. **Private Sponsor:** It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure

that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport,

it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.** It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam

era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.** In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of

this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

1) Operating the airport's aeronautical facilities whenever required;
2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

   1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

   2) 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.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the

airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports

available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

    1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

    2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities. It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such

purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and (4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights. It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or

(b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue

from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.

33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses**. The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to

have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. **Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

    a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
        1) Describes the requests;
        2) Provides an explanation as to why the requests could not be accommodated; and
        3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

    b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Exhibit “E”

U.S. Department
of Transportation

Federal Aviation Administration

Advisory Circular

Subject: HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS	**Date:** 8/28/2007	**AC No:** 150/5200-33B
	Initiated by: AAS-300	**Change:**

1. PURPOSE. This Advisory Circular (AC) provides guidance on certain land uses that have the potential to attract hazardous wildlife on or near public-use airports. It also discusses airport development projects (including airport construction, expansion, and renovation) affecting aircraft movement near hazardous wildlife attractants. Appendix 1 provides definitions of terms used in this AC.

2. APPLICABILITY. The Federal Aviation Administration (FAA) recommends that public-use airport operators implement the standards and practices contained in this AC. The holders of Airport Operating Certificates issued under Title 14, Code of Federal Regulations (CFR), Part 139, Certification of Airports, Subpart D (Part 139), may use the standards, practices, and recommendations contained in this AC to comply with the wildlife hazard management requirements of Part 139. Airports that have received Federal grant-in-aid assistance must use these standards. The FAA also recommends the guidance in this AC for land-use planners, operators of non-certificated airports, and developers of projects, facilities, and activities on or near airports.

3. CANCELLATION. This AC cancels AC 150/5200-33A, *Hazardous Wildlife Attractants on or near Airports*, dated July 27, 2004.

4. PRINCIPAL CHANGES. This AC contains the following major changes, which are marked with vertical bars in the margin:

a. Technical changes to paragraph references.

b. Wording on storm water detention ponds.

c. Deleted paragraph 4-3.b, *Additional Coordination.*

5. BACKGROUND. Information about the risks posed to aircraft by certain wildlife species has increased a great deal in recent years. Improved reporting, studies, documentation, and statistics clearly show that aircraft collisions with birds and other wildlife are a serious economic and public safety problem. While many species of wildlife can pose a threat to aircraft safety, they are not equally hazardous. Table 1

ranks the wildlife groups commonly involved in damaging strikes in the United States according to their relative hazard to aircraft. The ranking is based on the 47,212 records in the FAA National Wildlife Strike Database for the years 1990 through 2003. These hazard rankings, in conjunction with site-specific Wildlife Hazards Assessments (WHA), will help airport operators determine the relative abundance and use patterns of wildlife species and help focus hazardous wildlife management efforts on those species most likely to cause problems at an airport.

Most public-use airports have large tracts of open, undeveloped land that provide added margins of safety and noise mitigation. These areas can also present potential hazards to aviation if they encourage wildlife to enter an airport's approach or departure airspace or air operations area (AOA). Constructed or natural areas—such as poorly drained locations, detention/retention ponds, roosting habitats on buildings, landscaping, odor-causing rotting organic matter (putrescible waste) disposal operations, wastewater treatment plants, agricultural or aquaculture activities, surface mining, or wetlands—can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape. Even small facilities, such as fast food restaurants, taxicab staging areas, rental car facilities, aircraft viewing areas, and public parks, can produce substantial attractions for hazardous wildlife.

During the past century, wildlife-aircraft strikes have resulted in the loss of hundreds of lives worldwide, as well as billions of dollars in aircraft damage. Hazardous wildlife attractants on and near airports can jeopardize future airport expansion, making proper community land-use planning essential. This AC provides airport operators and those parties with whom they cooperate with the guidance they need to assess and address potentially hazardous wildlife attractants when locating new facilities and implementing certain land-use practices on or near public-use airports.

6. MEMORANDUM OF AGREEMENT BETWEEN FEDERAL RESOURCE AGENCIES. The FAA, the U.S. Air Force, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture - Wildlife Services signed a Memorandum of Agreement (MOA) in July 2003 to acknowledge their respective missions in protecting aviation from wildlife hazards. Through the MOA, the agencies established procedures necessary to coordinate their missions to address more effectively existing and future environmental conditions contributing to collisions between wildlife and aircraft (wildlife strikes) throughout the United States. These efforts are intended to minimize wildlife risks to aviation and human safety while protecting the Nation's valuable environmental resources.

DAVID L. BENNETT
Director, Office of Airport Safety
and Standards

Table 1. Ranking of 25 species groups as to relative hazard to aircraft (1=most hazardous) based on three criteria (damage, major damage, and effect-on-flight), a composite ranking based on all three rankings, and a relative hazard score. Data were derived from the FAA National Wildlife Strike Database, January 1990–April 2003.[1]

Species group	Ranking by criteria			Composite ranking[2]	Relative hazard score[3]
	Damage[4]	Major damage[5]	Effect on flight[6]		
Deer	1	1	1	1	100
Vultures	2	2	2	2	64
Geese	3	3	6	3	55
Cormorants/pelicans	4	5	3	4	54
Cranes	7	6	4	5	47
Eagles	6	9	7	6	41
Ducks	5	8	10	7	39
Osprey	8	4	8	8	39
Turkey/pheasants	9	7	11	9	33
Herons	11	14	9	10	27
Hawks (buteos)	10	12	12	11	25
Gulls	12	11	13	12	24
Rock pigeon	13	10	14	13	23
Owls	14	13	20	14	23
H. lark/s. bunting	18	15	15	15	17
Crows/ravens	15	16	16	16	16
Coyote	16	19	5	17	14
Mourning dove	17	17	17	18	14
Shorebirds	19	21	18	19	10
Blackbirds/starling	20	22	19	20	10
American kestrel	21	18	21	21	9
Meadowlarks	22	20	22	22	7
Swallows	24	23	24	23	4
Sparrows	25	24	23	24	4
Nighthawks	23	25	25	25	1

[1] Excerpted from the *Special Report for the FAA, "Ranking the Hazard Level of Wildlife Species to Civil Aviation in the USA: Update #1, July 2, 2003".* Refer to this report for additional explanations of criteria and method of ranking.

[2] Relative rank of each species group was compared with every other group for the three variables, placing the species group with the greatest hazard rank for $\geq$ 2 of the 3 variables above the next highest ranked group, then proceeding down the list.

[3] Percentage values, from Tables 3 and 4 in Footnote 1 of the *Special Report*, for the three criteria were summed and scaled down from 100, with 100 as the score for the species group with the maximum summed values and the greatest potential hazard to aircraft.

[4] Aircraft incurred at least some damage (destroyed, substantial, minor, or unknown) from strike.

[5] Aircraft incurred damage or structural failure, which adversely affected the structure strength, performance, or flight characteristics, and which would normally require major repair or replacement of the affected component, or the damage sustained makes it inadvisable to restore aircraft to airworthy condition.

[6] Aborted takeoff, engine shutdown, precautionary landing, or other.

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SECTION 1.

GENERAL SEPARATION CRITERIA FOR HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS.

1-1. INTRODUCTION. When considering proposed land uses, airport operators, local planners, and developers must take into account whether the proposed land uses, including new development projects, will increase wildlife hazards. Land-use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes.

The FAA recommends the minimum separation criteria outlined below for land-use practices that attract hazardous wildlife to the vicinity of airports. Please note that FAA criteria include land uses that cause movement of hazardous wildlife onto, into, or across the airport's approach or departure airspace or air operations area (AOA). (See the discussion of the synergistic effects of surrounding land uses in Section 2-8 of this AC.)

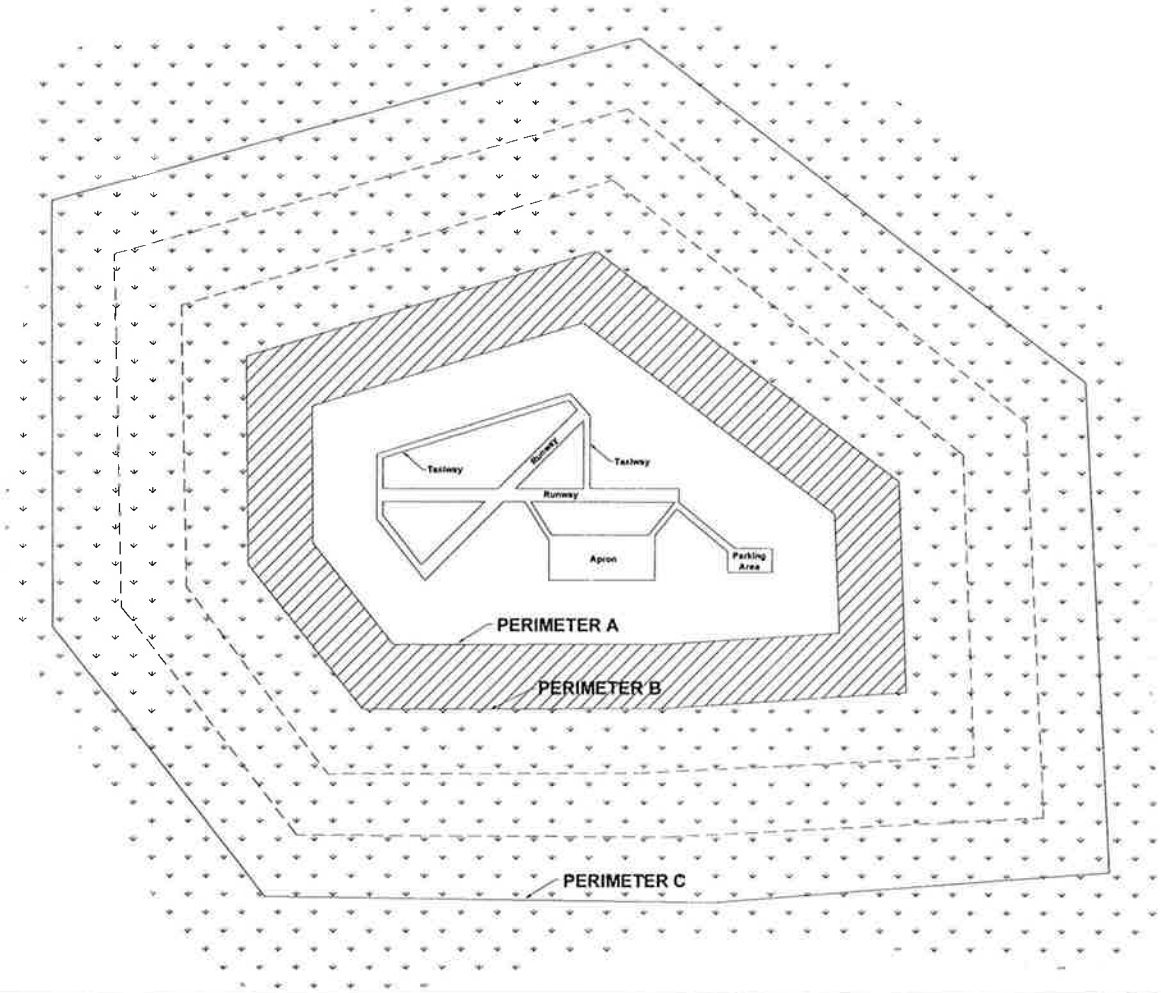
The basis for the separation criteria contained in this section can be found in existing FAA regulations. The separation distances are based on (1) flight patterns of piston-powered aircraft and turbine-powered aircraft, (2) the altitude at which most strikes happen (78 percent occur under 1,000 feet and 90 percent occur under 3,000 feet above ground level), and (3) National Transportation Safety Board (NTSB) recommendations.

1-2. AIRPORTS SERVING PISTON-POWERED AIRCRAFT. Airports that do not sell Jet-A fuel normally serve piston-powered aircraft. Notwithstanding more stringent requirements for specific land uses, the FAA recommends a separation distance of 5,000 feet at these airports for any of the hazardous wildlife attractants mentioned in Section 2 or for new airport development projects meant to accommodate aircraft movement. This distance is to be maintained between an airport's AOA and the hazardous wildlife attractant. Figure 1 depicts this separation distance measured from the nearest aircraft operations areas.

1-3. AIRPORTS SERVING TURBINE-POWERED AIRCRAFT. Airports selling Jet-A fuel normally serve turbine-powered aircraft. Notwithstanding more stringent requirements for specific land uses, the FAA recommends a separation distance of 10,000 feet at these airports for any of the hazardous wildlife attractants mentioned in Section 2 or for new airport development projects meant to accommodate aircraft movement. This distance is to be maintained between an airport's AOA and the hazardous wildlife attractant. Figure 1 depicts this separation distance from the nearest aircraft movement areas.

1-4. PROTECTION OF APPROACH, DEPARTURE, AND CIRCLING AIRSPACE. For all airports, the FAA recommends a distance of 5 statute miles between the farthest edge of the airport's AOA and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure airspace.

Figure 1. Separation distances within which hazardous wildlife attractants should be avoided, eliminated, or mitigated.



PERIMETER A: For airports serving piston-powered aircraft, hazardous wildlife attractants must be 5,000 feet from the nearest air operations area.

PERIMETER B: For airports serving turbine-powered aircraft, hazardous wildlife attractants must be 10,000 feet from the nearest air operations area.

PERIMETER C: 5-mile range to protect approach, departure and circling airspace.

SECTION 2.

LAND-USE PRACTICES ON OR NEAR AIRPORTS THAT POTENTIALLY ATTRACT HAZARDOUS WILDLIFE.

2-1. GENERAL. The wildlife species and the size of the populations attracted to the airport environment vary considerably, depending on several factors, including land-use practices on or near the airport. This section discusses land-use practices having the potential to attract hazardous wildlife and threaten aviation safety. In addition to the specific considerations outlined below, airport operators should refer to *Wildlife Hazard Management at Airports,* prepared by FAA and U.S. Department of Agriculture (USDA) staff. (This manual is available in English, Spanish, and French. It can be viewed and downloaded free of charge from the FAA's wildlife hazard mitigation web site: http://wildlife-mitigation.tc.FAA.gov.). And, *Prevention and Control of Wildlife Damage,* compiled by the University of Nebraska Cooperative Extension Division. (This manual is available online in a periodically updated version at: ianrwww.unl.edu/wildlife/solutions/handbook/.)

2-2. WASTE DISPOSAL OPERATIONS. Municipal solid waste landfills (MSWLF) are known to attract large numbers of hazardous wildlife, particularly birds. Because of this, these operations, when located within the separations identified in the siting criteria in Sections 1-2 through 1-4, are considered incompatible with safe airport operations.

a. **Siting for new municipal solid waste landfills subject to AIR 21.** Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106-181) (AIR 21) prohibits the construction or establishment of a new MSWLF within 6 statute miles of certain public-use airports. Before these prohibitions apply, both the airport and the landfill must meet the very specific conditions described below. These restrictions do not apply to airports or landfills located within the state of Alaska.

   The airport must (1) have received a Federal grant(s) under 49 U.S.C. § 47101, et. seq.; (2) be under control of a public agency; (3) serve some scheduled air carrier operations conducted in aircraft with less than 60 seats; and (4) have total annual enplanements consisting of at least 51 percent of scheduled air carrier enplanements conducted in aircraft with less than 60 passenger seats.

   The proposed MSWLF must (1) be within 6 miles of the airport, as measured from airport property line to MSWLF property line, and (2) have started construction or establishment on or after April 5, 2001. Public Law 106-181 only limits the construction or establishment of some new MSWLF. It does not limit the expansion, either vertical or horizontal, of existing landfills.

   NOTE: Consult the most recent version of AC 150/5200-34, *Construction or Establishment of Landfills Near Public Airports,* for a more detailed discussion of these restrictions.

b. **Siting for new MSWLF not subject to AIR 21.** If an airport and MSWLF do not meet the restrictions of Public Law 106-181, the FAA recommends against locating MSWLF within the separation distances identified in Sections 1-2 through 1-4. The separation distances should be measured from the closest point of the airport's AOA to the closest planned MSWLF cell.

c. **Considerations for existing waste disposal facilities within the limits of separation criteria.** The FAA recommends against airport development projects that would increase the number of aircraft operations or accommodate larger or faster aircraft near MSWLF operations located within the separations identified in Sections 1-2 through 1-4. In addition, in accordance with 40 CFR 258.10, owners or operators of existing MSWLF units that are located within the separations listed in Sections 1-2 through 1-4 must demonstrate that the unit is designed and operated so it does not pose a bird hazard to aircraft. (See Section 4-2(b) of this AC for a discussion of this demonstration requirement.)

d. **Enclosed trash transfer stations.** Enclosed waste-handling facilities that receive garbage behind closed doors; process it via compaction, incineration, or similar manner; and remove all residue by enclosed vehicles generally are compatible with safe airport operations, provided they are not located on airport property or within the Runway Protection Zone (RPZ). These facilities should not handle or store putrescible waste outside or in a partially enclosed structure accessible to hazardous wildlife. Trash transfer facilities that are open on one or more sides; that store uncovered quantities of municipal solid waste outside, even if only for a short time; that use semi-trailers that leak or have trash clinging to the outside; or that do not control odors by ventilation and filtration systems (odor masking is not acceptable) do not meet the FAA's definition of fully enclosed trash transfer stations. The FAA considers these facilities incompatible with safe airport operations if they are located closer than the separation distances specified in Sections 1-2 through 1-4.

e. **Composting operations on or near airport property.** Composting operations that accept only yard waste (e.g., leaves, lawn clippings, or branches) generally do not attract hazardous wildlife. Sewage sludge, woodchips, and similar material are not municipal solid wastes and may be used as compost bulking agents. The compost, however, must never include food or other municipal solid waste. Composting operations should not be located on airport property. Off-airport property composting operations should be located no closer than the greater of the following distances: 1,200 feet from any AOA or the distance called for by airport design requirements (see AC 150/5300-13, *Airport Design*). This spacing should prevent material, personnel, or equipment from penetrating any Object Free Area (OFA), Obstacle Free Zone (OFZ), Threshold Siting Surface (TSS), or Clearway. Airport operators should monitor composting operations located in proximity to the airport to ensure that steam or thermal rise does not adversely affect air traffic. On-airport disposal of compost by-products should not be conducted for the reasons stated in 2-3f.

f. **Underwater waste discharges.** The FAA recommends against the underwater discharge of any food waste (e.g., fish processing offal) within the separations identified in Sections 1-2 through 1-4 because it could attract scavenging hazardous wildlife.

g. **Recycling centers.** Recycling centers that accept previously sorted non-food items, such as glass, newspaper, cardboard, or aluminum, are, in most cases, not attractive to hazardous wildlife and are acceptable.

h. **Construction and demolition (C&D) debris facilities.** C&D landfills do not generally attract hazardous wildlife and are acceptable if maintained in an orderly manner, admit no putrescible waste, and are not co-located with other waste disposal operations. However, C&D landfills have similar visual and operational characteristics to putrescible waste disposal sites. When co-located with putrescible waste disposal operations, C&D landfills are more likely to attract hazardous wildlife because of the similarities between these disposal facilities. Therefore, a C&D landfill co-located with another waste disposal operation should be located outside of the separations identified in Sections 1-2 through 1-4.

i. **Fly ash disposal.** The incinerated residue from resource recovery power/heat-generating facilities that are fired by municipal solid waste, coal, or wood is generally not a wildlife attractant because it no longer contains putrescible matter. Landfills accepting only fly ash are generally not considered to be wildlife attractants and are acceptable as long as they are maintained in an orderly manner, admit no putrescible waste of any kind, and are not co-located with other disposal operations that attract hazardous wildlife.

   Since varying degrees of waste consumption are associated with general incineration (not resource recovery power/heat-generating facilities), the FAA considers the ash from general incinerators a regular waste disposal by-product and, therefore, a hazardous wildlife attractant if disposed of within the separation criteria outlined in Sections 1-2 through 1-4.

2-3. WATER MANAGEMENT FACILITIES. Drinking water intake and treatment facilities, storm water and wastewater treatment facilities, associated retention and settling ponds, ponds built for recreational use, and ponds that result from mining activities often attract large numbers of potentially hazardous wildlife. To prevent wildlife hazards, land-use developers and airport operators may need to develop management plans, in compliance with local and state regulations, to support the operation of storm water management facilities on or near all public-use airports to ensure a safe airport environment.

a. **Existing storm water management facilities.** On-airport storm water management facilities allow the quick removal of surface water, including discharges related to aircraft deicing, from impervious surfaces, such as pavement and terminal/hangar building roofs. Existing on-airport detention ponds collect storm water, protect water quality, and control runoff. Because they slowly release water

after storms, they create standing bodies of water that can attract hazardous wildlife. Where the airport has developed a Wildlife Hazard Management Plan (WHMP) in accordance with Part 139, the FAA requires immediate correction of any wildlife hazards arising from existing storm water facilities located on or near airports, using appropriate wildlife hazard mitigation techniques. Airport operators should develop measures to minimize hazardous wildlife attraction in consultation with a wildlife damage management biologist.

Where possible, airport operators should modify storm water detention ponds to allow a maximum 48-hour detention period for the design storm. The FAA recommends that airport operators avoid or remove retention ponds and detention ponds featuring dead storage to eliminate standing water. Detention basins should remain totally dry between rainfalls. Where constant flow of water is anticipated through the basin, or where any portion of the basin bottom may remain wet, the detention facility should include a concrete or paved pad and/or ditch/swale in the bottom to prevent vegetation that may provide nesting habitat.

When it is not possible to drain a large detention pond completely, airport operators may use physical barriers, such as bird balls, wires grids, pillows, or netting, to deter birds and other hazardous wildlife. When physical barriers are used, airport operators must evaluate their use and ensure they will not adversely affect water rescue. Before installing any physical barriers over detention ponds on Part 139 airports, airport operators must get approval from the appropriate FAA Regional Airports Division Office.

The FAA recommends that airport operators encourage off-airport storm water treatment facility operators to incorporate appropriate wildlife hazard mitigation techniques into storm water treatment facility operating practices when their facility is located within the separation criteria specified in Sections 1-2 through 1-4.

b. **New storm water management facilities.** The FAA strongly recommends that off-airport storm water management systems located within the separations identified in Sections 1-2 through 1-4 be designed and operated so as not to create above-ground standing water. Stormwater detention ponds should be designed, engineered, constructed, and maintained for a maximum 48–hour detention period after the design storm and remain completely dry between storms. To facilitate the control of hazardous wildlife, the FAA recommends the use of steep-sided, rip-rap lined, narrow, linearly shaped water detention basins. When it is not possible to place these ponds away from an airport's AOA, airport operators should use physical barriers, such as bird balls, wires grids, pillows, or netting, to prevent access of hazardous wildlife to open water and minimize aircraft-wildlife interactions. When physical barriers are used, airport operators must evaluate their use and ensure they will not adversely affect water rescue. Before installing any physical barriers over detention ponds on Part 139 airports, airport operators must get approval from the appropriate FAA Regional Airports Division Office. All vegetation in or around detention basins that provide food or cover for hazardous wildlife should be eliminated. If soil conditions and other requirements allow, the FAA encourages

the use of underground storm water infiltration systems, such as French drains or buried rock fields, because they are less attractive to wildlife.

c. **Existing wastewater treatment facilities.** The FAA strongly recommends that airport operators immediately correct any wildlife hazards arising from existing wastewater treatment facilities located on or near the airport. Where required, a WHMP developed in accordance with Part 139 will outline appropriate wildlife hazard mitigation techniques. Accordingly, airport operators should encourage wastewater treatment facility operators to incorporate measures, developed in consultation with a wildlife damage management biologist, to minimize hazardous wildlife attractants. Airport operators should also encourage those wastewater treatment facility operators to incorporate these mitigation techniques into their standard operating practices. In addition, airport operators should consider the existence of wastewater treatment facilities when evaluating proposed sites for new airport development projects and avoid such sites when practicable.

d. **New wastewater treatment facilities.** The FAA strongly recommends against the construction of new wastewater treatment facilities or associated settling ponds within the separations identified in Sections 1-2 through 1-4. Appendix 1 defines wastewater treatment facility as "any devices and/or systems used to store, treat, recycle, or reclaim municipal sewage or liquid industrial wastes." The definition includes any pretreatment involving the reduction of the amount of pollutants or the elimination of pollutants prior to introducing such pollutants into a publicly owned treatment works (wastewater treatment facility). During the site-location analysis for wastewater treatment facilities, developers should consider the potential to attract hazardous wildlife if an airport is in the vicinity of the proposed site, and airport operators should voice their opposition to such facilities if they are in proximity to the airport.

e. **Artificial marshes.** In warmer climates, wastewater treatment facilities sometimes employ artificial marshes and use submergent and emergent aquatic vegetation as natural filters. These artificial marshes may be used by some species of flocking birds, such as blackbirds and waterfowl, for breeding or roosting activities. The FAA strongly recommends against establishing artificial marshes within the separations identified in Sections 1-2 through 1-4.

f. **Wastewater discharge and sludge disposal.** The FAA recommends against the discharge of wastewater or sludge on airport property because it may improve soil moisture and quality on unpaved areas and lead to improved turf growth that can be an attractive food source for many species of animals. Also, the turf requires more frequent mowing, which in turn may mutilate or flush insects or small animals and produce straw, both of which can attract hazardous wildlife. In addition, the improved turf may attract grazing wildlife, such as deer and geese. Problems may also occur when discharges saturate unpaved airport areas. The resultant soft, muddy conditions can severely restrict or prevent emergency vehicles from reaching accident sites in a timely manner.

2-4. WETLANDS. Wetlands provide a variety of functions and can be regulated by local, state, and Federal laws. Normally, wetlands are attractive to many types of wildlife, including many which rank high on the list of hazardous wildlife species (Table 1).

NOTE: If questions exist as to whether an area qualifies as a wetland, contact the local division of the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, or a wetland consultant qualified to delineate wetlands.

a. **Existing wetlands on or near airport property.** If wetlands are located on or near airport property, airport operators should be alert to any wildlife use or habitat changes in these areas that could affect safe aircraft operations. At public-use airports, the FAA recommends immediately correcting, in cooperation with local, state, and Federal regulatory agencies, any wildlife hazards arising from existing wetlands located on or near airports. Where required, a WHMP will outline appropriate wildlife hazard mitigation techniques. Accordingly, airport operators should develop measures to minimize hazardous wildlife attraction in consultation with a wildlife damage management biologist.

b. **New airport development.** Whenever possible, the FAA recommends locating new airports using the separations from wetlands identified in Sections 1-2 through 1-4. Where alternative sites are not practicable, or when airport operators are expanding an existing airport into or near wetlands, a wildlife damage management biologist, in consultation with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the state wildlife management agency should evaluate the wildlife hazards and prepare a WHMP that indicates methods of minimizing the hazards.

c. **Mitigation for wetland impacts from airport projects.** Wetland mitigation may be necessary when unavoidable wetland disturbances result from new airport development projects or projects required to correct wildlife hazards from wetlands. Wetland mitigation must be designed so it does not create a wildlife hazard. The FAA recommends that wetland mitigation projects that may attract hazardous wildlife be sited outside of the separations identified in Sections 1-2 through 1-4.

   (1) Onsite mitigation of wetland functions. The FAA may consider exceptions to locating mitigation activities outside the separations identified in Sections 1-2 through 1-4 if the affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water recharge, which cannot be replicated when moved to a different location. Using existing airport property is sometimes the only feasible way to achieve the mitigation ratios mandated in regulatory orders and/or settlement agreements with the resource agencies. Conservation easements are an additional means of providing mitigation for project impacts. Typically the airport operator continues to own the property, and an easement is created stipulating that the property will be maintained as habitat for state or Federally listed species.

Mitigation must not inhibit the airport operator's ability to effectively control hazardous wildlife on or near the mitigation site or effectively maintain other aspects of safe airport operations. Enhancing such mitigation areas to attract hazardous wildlife must be avoided. The FAA will review any onsite mitigation proposals to determine compatibility with safe airport operations. A wildlife damage management biologist should evaluate any wetland mitigation projects that are needed to protect unique wetland functions and that must be located in the separation criteria in Sections 1-2 through 1-4 before the mitigation is implemented. A WHMP should be developed to reduce the wildlife hazards.

(2) Offsite mitigation of wetland functions. The FAA recommends that wetland mitigation projects that may attract hazardous wildlife be sited outside of the separations identified in Sections 1-2 through 1-4 unless they provide unique functions that must remain onsite (see 2-4c(1)). Agencies that regulate impacts to or around wetlands recognize that it may be necessary to split wetland functions in mitigation schemes. Therefore, regulatory agencies may, under certain circumstances, allow portions of mitigation to take place in different locations.

(3) Mitigation banking. Wetland mitigation banking is the creation or restoration of wetlands in order to provide mitigation credits that can be used to offset permitted wetland losses. Mitigation banking benefits wetland resources by providing advance replacement for permitted wetland losses; consolidating small projects into larger, better-designed and managed units; and encouraging integration of wetland mitigation projects with watershed planning. This last benefit is most helpful for airport projects, as wetland impacts mitigated outside of the separations identified in Sections 1-2 through 1-4 can still be located within the same watershed. Wetland mitigation banks meeting the separation criteria offer an ecologically sound approach to mitigation in these situations. Airport operators should work with local watershed management agencies or organizations to develop mitigation banking for wetland impacts on airport property.

2-5. DREDGE SPOIL CONTAINMENT AREAS. The FAA recommends against locating dredge spoil containment areas (also known as Confined Disposal Facilities) within the separations identified in Sections 1-2 through 1-4 if the containment area or the spoils contain material that would attract hazardous wildlife.

2-6. AGRICULTURAL ACTIVITIES. Because most, if not all, agricultural crops can attract hazardous wildlife during some phase of production, the FAA recommends against the used of airport property for agricultural production, including hay crops, within the separations identified in Sections 1-2 through 1-4. . If the airport has no financial alternative to agricultural crops to produce income necessary to maintain the viability of the airport, then the airport shall follow the crop distance guidelines listed in the table titled "Minimum Distances between Certain Airport Features and Any On-Airport Agricultural Crops" found in AC 150/5300-13, *Airport Design*, Appendix 17. The cost of wildlife control and potential accidents should be weighed against the income produced by the on-airport crops when deciding whether to allow crops on the airport.

a. **Livestock production.** Confined livestock operations (i.e., feedlots, dairy operations, hog or chicken production facilities, or egg laying operations) often attract flocking birds, such as starlings, that pose a hazard to aviation. Therefore, The FAA recommends against such facilities within the separations identified in Sections 1-2 through 1-4. Any livestock operation within these separations should have a program developed to reduce the attractiveness of the site to species that are hazardous to aviation safety. Free-ranging livestock must not be grazed on airport property because the animals may wander onto the AOA. Furthermore, livestock feed, water, and manure may attract birds.

b. **Aquaculture.** Aquaculture activities (i.e. catfish or trout production) conducted outside of fully enclosed buildings are inherently attractive to a wide variety of birds. Existing aquaculture facilities/activities within the separations listed in Sections 1-2 through 1-4 must have a program developed to reduce the attractiveness of the sites to species that are hazardous to aviation safety. Airport operators should also oppose the establishment of new aquaculture facilities/activities within the separations listed in Sections 1-2 through 1-4.

c. **Alternative uses of agricultural land.** Some airports are surrounded by vast areas of farmed land within the distances specified in Sections 1-2 through 1-4. Seasonal uses of agricultural land for activities such as hunting can create a hazardous wildlife situation. In some areas, farmers will rent their land for hunting purposes. Rice farmers, for example, flood their land during waterfowl hunting season and obtain additional revenue by renting out duck blinds. The duck hunters then use decoys and call in hundreds, if not thousands, of birds, creating a tremendous threat to aircraft safety. A wildlife damage management biologist should review, in coordination with local farmers and producers, these types of seasonal land uses and incorporate them into the WHMP.

2-7. GOLF COURSES, LANDSCAPING AND OTHER LAND-USE CONSIDERATIONS.

a. **Golf courses.** The large grassy areas and open water found on most golf courses are attractive to hazardous wildlife, particularly Canada geese and some species of gulls. These species can pose a threat to aviation safety. The FAA recommends against construction of new golf courses within the separations identified in Sections 1-2 through 1-4. Existing golf courses located within these separations must develop a program to reduce the attractiveness of the sites to species that are hazardous to aviation safety. Airport operators should ensure these golf courses are monitored on a continuing basis for the presence of hazardous wildlife. If hazardous wildlife is detected, corrective actions should be immediately implemented.

b. **Landscaping and landscape maintenance.** Depending on its geographic location, landscaping can attract hazardous wildlife. The FAA recommends that airport operators approach landscaping with caution and confine it to airport areas not associated with aircraft movements. A wildlife damage management biologist should review all landscaping plans. Airport operators should also monitor all landscaped areas on a continuing basis for the presence of hazardous wildlife. If

hazardous wildlife is detected, corrective actions should be immediately implemented.

Turf grass areas can be highly attractive to a variety of hazardous wildlife species. Research conducted by the USDA Wildlife Services' National Wildlife Research Center has shown that no one grass management regime will deter all species of hazardous wildlife in all situations. In cooperation with wildlife damage management biologist, airport operators should develop airport turf grass management plans on a prescription basis, depending on the airport's geographic locations and the type of hazardous wildlife likely to frequent the airport

Airport operators should ensure that plant varieties attractive to hazardous wildlife are not used on the airport. Disturbed areas or areas in need of re-vegetating should not be planted with seed mixtures containing millet or any other large-seed producing grass. For airport property already planted with seed mixtures containing millet, rye grass, or other large-seed producing grasses, the FAA recommends disking, plowing, or another suitable agricultural practice to prevent plant maturation and seed head production. Plantings should follow the specific recommendations for grass management and seed and plant selection made by the State University Cooperative Extension Service, the local office of Wildlife Services, or a qualified wildlife damage management biologist. Airport operators should also consider developing and implementing a preferred/prohibited plant species list, reviewed by a wildlife damage management biologist, which has been designed for the geographic location to reduce the attractiveness to hazardous wildlife for landscaping airport property.

c. **Airports surrounded by wildlife habitat.** The FAA recommends that operators of airports surrounded by woodlands, water, or wetlands refer to Section 2.4 of this AC. Operators of such airports should provide for a Wildlife Hazard Assessment (WHA) conducted by a wildlife damage management biologist. This WHA is the first step in preparing a WHMP, where required.

d. **Other hazardous wildlife attractants.** Other specific land uses or activities (e.g., sport or commercial fishing, shellfish harvesting, etc.), perhaps unique to certain regions of the country, have the potential to attract hazardous wildlife. Regardless of the source of the attraction, when hazardous wildlife is noted on a public-use airport, airport operators must take prompt remedial action(s) to protect aviation safety.

2-8. SYNERGISTIC EFFECTS OF SURROUNDING LAND USES. There may be circumstances where two (or more) different land uses that would not, by themselves, be considered hazardous wildlife attractants or that are located outside of the separations identified in Sections 1-2 through 1-4 that are in such an alignment with the airport as to create a wildlife corridor directly through the airport and/or surrounding airspace. An example of this situation may involve a lake located outside of the separation criteria on the east side of an airport and a large hayfield on the west side of an airport, land uses that together could create a flyway for Canada geese directly across the airspace of the airport. There are numerous examples of such situations;

therefore, airport operators and the wildlife damage management biologist must consider the entire surrounding landscape and community when developing the WHMP.

SECTION 3.

PROCEDURES FOR WILDLIFE HAZARD MANAGEMENT BY OPERATORS OF PUBLIC-USE AIRPORTS.

3.1. INTRODUCTION. In recognition of the increased risk of serious aircraft damage or the loss of human life that can result from a wildlife strike, the FAA may require the development of a Wildlife Hazard Management Plan (WHMP) when specific triggering events occur on or near the airport. Part 139.337 discusses the specific events that trigger a Wildlife Hazard Assessment (WHA) and the specific issues that a WHMP must address for FAA approval and inclusion in an Airport Certification Manual.

3.2. COORDINATION WITH USDA WILDLIFE SERVICES OR OTHER QUALIFIED WILDLIFE DAMAGE MANAGEMENT BIOLOGISTS. The FAA will use the Wildlife Hazard Assessment (WHA) conducted in accordance with Part 139 to determine if the airport needs a WHMP. Therefore, persons having the education, training, and expertise necessary to assess wildlife hazards must conduct the WHA. The airport operator may look to Wildlife Services or to qualified private consultants to conduct the WHA. When the services of a wildlife damage management biologist are required, the FAA recommends that land-use developers or airport operators contact a consultant specializing in wildlife damage management or the appropriate state director of Wildlife Services.

NOTE: Telephone numbers for the respective USDA Wildlife Services state offices can be obtained by contacting USDA Wildlife Services Operational Support Staff, 4700 River Road, Unit 87, Riverdale, MD, 20737-1234, Telephone (301) 734-7921, Fax (301) 734-5157 *(http://www.aphis.usda.gov/ws/)*.

3-3. WILDLIFE HAZARD MANAGEMENT AT AIRPORTS: A MANUAL FOR AIRPORT PERSONNEL. This manual, prepared by FAA and USDA Wildlife Services staff, contains a compilation of information to assist airport personnel in the development, implementation, and evaluation of WHMPs at airports. The manual includes specific information on the nature of wildlife strikes, legal authority, regulations, wildlife management techniques, WHAs, WHMPs, and sources of help and information. The manual is available in three languages: English, Spanish, and French. It can be viewed and downloaded free of charge from the FAA's wildlife hazard mitigation web site: http://wildlife-mitigation.tc.FAA.gov/. This manual only provides a starting point for addressing wildlife hazard issues at airports. Hazardous wildlife management is a complex discipline and conditions vary widely across the United States. Therefore, qualified wildlife damage management biologists must direct the development of a WHMP and the implementation of management actions by airport personnel.

There are many other resources complementary to this manual for use in developing and implementing WHMPs. Several are listed in the manual's bibliography.

3-4. WILDLIFE HAZARD ASSESSMENTS, TITLE 14, CODE OF FEDERAL REGULATIONS, PART 139. Part 139.337(b) requires airport operators to conduct a Wildlife Hazard Assessment (WHA) when certain events occur on or near the airport.

Part 139.337 (c) provides specific guidance as to what facts must be addressed in a WHA.

3-5. WILDLIFE HAZARD MANAGEMENT PLAN (WHMP). The FAA will consider the results of the WHA, along with the aeronautical activity at the airport and the views of the airport operator and airport users, in determining whether a formal WHMP is needed, in accordance with Part 139.337. If the FAA determines that a WHMP is needed, the airport operator must formulate and implement a WHMP, using the WHA as the basis for the plan.

The goal of an airport's Wildlife Hazard Management Plan is to minimize the risk to aviation safety, airport structures or equipment, or human health posed by populations of hazardous wildlife on and around the airport.

The WHMP must identify hazardous wildlife attractants on or near the airport and the appropriate wildlife damage management techniques to minimize the wildlife hazard. It must also prioritize the management measures.

3-6. LOCAL COORDINATION. The establishment of a Wildlife Hazards Working Group (WHWG) will facilitate the communication, cooperation, and coordination of the airport and its surrounding community necessary to ensure the effectiveness of the WHMP. The cooperation of the airport community is also necessary when new projects are considered. Whether on or off the airport, the input from all involved parties must be considered when a potentially hazardous wildlife attractant is being proposed. Airport operators should also incorporate public education activities with the local coordination efforts because some activities in the vicinity of your airport, while harmless under normal leisure conditions, can attract wildlife and present a danger to aircraft. For example, if public trails are planned near wetlands or in parks adjoining airport property, the public should know that feeding birds and other wildlife in the area may pose a risk to aircraft.

Airport operators should work with local and regional planning and zoning boards so as to be aware of proposed land-use changes, or modification of existing land uses, that could create hazardous wildlife attractants within the separations identified in Sections 1-2 through 1-4. Pay particular attention to proposed land uses involving creation or expansion of waste water treatment facilities, development of wetland mitigation sites, or development or expansion of dredge spoil containment areas. At the very least, airport operators must ensure they are on the notification list of the local planning board or equivalent review entity for all communities located within 5 miles of the airport, so they will receive notification of any proposed project and have the opportunity to review it for attractiveness to hazardous wildlife.

3-7 COORDINATION/NOTIFICATION OF AIRMEN OF WILDLIFE HAZARDS. If an existing land-use practice creates a wildlife hazard and the land-use practice or wildlife hazard cannot be immediately eliminated, airport operators must issue a Notice to Airmen (NOTAM) and encourage the land–owner or manager to take steps to control the wildlife hazard and minimize further attraction.

SECTION 4.

FAA NOTIFICATION AND REVIEW OF PROPOSED LAND-USE PRACTICE CHANGES IN THE VICINITY OF PUBLIC-USE AIRPORTS

4-1. FAA REVIEW OF PROPOSED LAND-USE PRACTICE CHANGES IN THE VICINITY OF PUBLIC-USE AIRPORTS.

a. The FAA discourages the development of waste disposal and other facilities, discussed in Section 2, located within the 5,000/10,000-foot criteria specified in Sections 1-2 through 1-4.

b. For projects that are located outside the 5,000/10,000-foot criteria but within 5 statute miles of the airport's AOA, the FAA may review development plans, proposed land-use changes, operational changes, or wetland mitigation plans to determine if such changes present potential wildlife hazards to aircraft operations. The FAA considers sensitive airport areas as those that lie under or next to approach or departure airspace. This brief examination should indicate if further investigation is warranted.

c. Where a wildlife damage management biologist has conducted a further study to evaluate a site's compatibility with airport operations, the FAA may use the study results to make a determination.

4-2. WASTE MANAGEMENT FACILITIES.

a. Notification of new/expanded project proposal. Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106-181) limits the construction or establishment of new MSWLF within 6 statute miles of certain public-use airports, when both the airport and the landfill meet very specific conditions. See Section 2-2 of this AC and AC 150/5200-34 for a more detailed discussion of these restrictions.

The Environmental Protection Agency (EPA) requires any MSWLF operator proposing a new or expanded waste disposal operation within 5 statute miles of a runway end to notify the appropriate FAA Regional Airports Division Office and the airport operator of the proposal (40 CFR 258, *Criteria for Municipal Solid Waste Landfills*, Section 258.10, *Airport Safety*). The EPA also requires owners or operators of new MSWLF units, or lateral expansions of existing MSWLF units, that are located within 10,000 feet of any airport runway end used by turbojet aircraft, or within 5,000 feet of any airport runway end used only by piston-type aircraft, to demonstrate successfully that such units are not hazards to aircraft. (See 4-2.b below.)

When new or expanded MSWLF are being proposed near airports, MSWLF operators must notify the airport operator and the FAA of the proposal as early as possible pursuant to 40 CFR 258.

b. **Waste handling facilities within separations identified in Sections 1-2 through 1-4.** To claim successfully that a waste-handling facility sited within the separations identified in Sections 1-2 through 1-4 does not attract hazardous wildlife and does not threaten aviation, the developer must establish convincingly that the facility will not handle putrescible material other than that as outlined in 2-2.d. The FAA strongly recommends against any facility other than that as outlined in 2-2.d (enclosed transfer stations). The FAA will use this information to determine if the facility will be a hazard to aviation.

c. **Putrescible-Waste Facilities.** In their effort to satisfy the EPA requirement, some putrescible-waste facility proponents may offer to undertake experimental measures to demonstrate that their proposed facility will not be a hazard to aircraft. To date, no such facility has been able to demonstrate an ability to reduce and sustain hazardous wildlife to levels that existed before the putrescible-waste landfill began operating. For this reason, demonstrations of experimental wildlife control measures may not be conducted within the separation identified in Sections 1-2 through 1-4.

4-3. OTHER LAND-USE PRACTICE CHANGES. As a matter of policy, the FAA encourages operators of public-use airports who become aware of proposed land use practice changes that may attract hazardous wildlife within 5 statute miles of their airports to promptly notify the FAA. The FAA also encourages proponents of such land use changes to notify the FAA as early in the planning process as possible. Advanced notice affords the FAA an opportunity (1) to evaluate the effect of a particular land-use change on aviation safety and (2) to support efforts by the airport sponsor to restrict the use of land next to or near the airport to uses that are compatible with the airport.

The airport operator, project proponent, or land-use operator may use FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, or other suitable documents similar to FAA Form 7460-1 to notify the appropriate FAA Regional Airports Division Office. Project proponents can contact the appropriate FAA Regional Airports Division Office for assistance with the notification process.

It is helpful if the notification includes a 15-minute quadrangle map of the area identifying the location of the proposed activity. The land-use operator or project proponent should also forward specific details of the proposed land-use change or operational change or expansion. In the case of solid waste landfills, the information should include the type of waste to be handled, how the waste will be processed, and final disposal methods.

a. **Airports that have received Federal grant-in-aid assistance.** Airports that have received Federal grant-in-aid assistance are required by their grant assurances to take appropriate actions to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. The FAA recommends that airport operators to the extent practicable oppose off-airport land-use changes or practices within the separations identified in Sections 1-2 through 1-4 that may attract hazardous wildlife. Failure to do so may lead to noncompliance with applicable grant assurances. The FAA will not approve the placement of airport

development projects pertaining to aircraft movement in the vicinity of hazardous wildlife attractants without appropriate mitigating measures. Increasing the intensity of wildlife control efforts is not a substitute for eliminating or reducing a proposed wildlife hazard. Airport operators should identify hazardous wildlife attractants and any associated wildlife hazards during any planning process for new airport development projects.

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APPENDIX 1. DEFINITIONS OF TERMS USED IN THIS ADVISORY CIRCULAR.

1. **GENERAL.** This appendix provides definitions of terms used throughout this AC.

   1. **Air operations area.** Any area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft. An air operations area includes such paved areas or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiways, or apron.

   2. **Airport operator.** The operator (private or public) or sponsor of a public-use airport.

   3. **Approach or departure airspace.** The airspace, within 5 statute miles of an airport, through which aircraft move during landing or takeoff.

   4. **Bird balls.** High-density plastic floating balls that can be used to cover ponds and prevent birds from using the sites.

   5. **Certificate holder.** The holder of an Airport Operating Certificate issued under Title 14, Code of Federal Regulations, Part 139.

   6. **Construct a new MSWLF.** To begin to excavate, grade land, or raise structures to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting agency.

   7. **Detention ponds.** Storm water management ponds that hold storm water for short periods of time, a few hours to a few days.

   8. **Establish a new MSWLF.** When the first load of putrescible waste is received on-site for placement in a prepared municipal solid waste landfill.

   9. **Fly ash.** The fine, sand-like residue resulting from the complete incineration of an organic fuel source. Fly ash typically results from the combustion of coal or waste used to operate a power generating plant.

   10. **General aviation aircraft.** Any civil aviation aircraft not operating under 14 CFR Part 119, Certification: Air Carriers and Commercial Operators.

   11. **Hazardous wildlife.** Species of wildlife (birds, mammals, reptiles), including feral animals and domesticated animals not under control, that are associated with aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a strike hazard

   12. **Municipal Solid Waste Landfill (MSWLF).** A publicly or privately owned discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR § 257.2. An MSWLF may receive

other types wastes, such as commercial solid waste, non-hazardous sludge, small-quantity generator waste, and industrial solid waste, as defined under 40 CFR § 258.2. An MSWLF can consist of either a stand alone unit or several cells that receive household waste.

13. **New MSWLF.** A municipal solid waste landfill that was established or constructed after April 5, 2001.

14. **Piston-powered aircraft.** Fixed-wing aircraft powered by piston engines.

15. **Piston-use airport.** Any airport that does not sell Jet-A fuel for fixed-wing turbine-powered aircraft, and primarily serves fixed-wing, piston-powered aircraft. Incidental use of the airport by turbine-powered, fixed-wing aircraft would not affect this designation. However, such aircraft should not be based at the airport.

16. **Public agency.** A State or political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo (49 U.S.C. § 47102(19)).

17. **Public airport.** An airport used or intended to be used for public purposes that is under the control of a public agency; and of which the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft is publicly owned (49 U.S.C. § 47102(20)).

18. **Public-use airport.** An airport used or intended to be used for public purposes, and of which the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft may be under the control of a public agency or privately owned and used for public purposes (49 U.S.C. § 47102(21)).

19. **Putrescible waste.** Solid waste that contains organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds (40 CFR §257.3-8).

20. **Putrescible-waste disposal operation.** Landfills, garbage dumps, underwater waste discharges, or similar facilities where activities include processing, burying, storing, or otherwise disposing of putrescible material, trash, and refuse.

21. **Retention ponds.** Storm water management ponds that hold water for several months.

22. **Runway protection zone (RPZ).** An area off the runway end to enhance the protection of people and property on the ground (see AC 150/5300-13). The dimensions of this zone vary with the airport design, aircraft, type of operation, and visibility minimum.

23. **Scheduled air carrier operation.** Any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial

operator for which the air carrier, commercial operator, or their representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is conducted as a supplemental operation under 14 CFR Part 119 or as a public charter operation under 14 CFR Part 380 (14 CFR § 119.3).

24. **Sewage sludge.** Any solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment process; and a material derived from sewage sludge. Sewage does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. (40 CFR 257.2)

25. **Sludge.** Any solid, semi-solid, or liquid waste generated form a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect. (40 CFR 257.2)

26. **Solid waste.** Any garbage, refuse, sludge, from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including, solid liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954, as amended, (68 Stat. 923). (40 CFR 257.2)

27. **Turbine-powered aircraft.** Aircraft powered by turbine engines including turbojets and turboprops but excluding turbo-shaft rotary-wing aircraft.

28. **Turbine-use airport.** Any airport that sells Jet-A fuel for fixed-wing turbine-powered aircraft.

29. **Wastewater treatment facility.** Any devices and/or systems used to store, treat, recycle, or reclaim municipal sewage or liquid industrial wastes, including Publicly Owned Treatment Works (POTW), as defined by Section 212 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Clean Water Act of 1977 (P.L. 95-576) and the Water Quality Act of 1987 (P.L. 100-4). This definition includes any pretreatment involving the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. (See 40 CFR Section 403.3 (q), (r), & (s)).

30. **Wildlife.** Any wild animal, including without limitation any wild mammal, bird, reptile, fish, amphibian, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, including any part, product, egg, or offspring thereof (50 CFR 10.12, *Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants*). As used in this AC, wildlife includes feral animals and domestic animals out of the control of their owners (14 CFR Part 139, Certification of Airports).

31. **Wildlife attractants.** Any human-made structure, land-use practice, or human-made or natural geographic feature that can attract or sustain hazardous wildlife within the landing or departure airspace or the airport's AOA. These attractants can include architectural features, landscaping, waste disposal sites, wastewater treatment facilities, agricultural or aquaculture activities, surface mining, or wetlands.

32. **Wildlife hazard.** A potential for a damaging aircraft collision with wildlife on or near an airport.

33. **Wildlife strike.** A wildlife strike is deemed to have occurred when:

    a. A pilot reports striking 1 or more birds or other wildlife;

    b. Aircraft maintenance personnel identify aircraft damage as having been caused by a wildlife strike;

    c. Personnel on the ground report seeing an aircraft strike 1 or more birds or other wildlife;

    d. Bird or other wildlife remains, whether in whole or in part, are found within 200 feet of a runway centerline, unless another reason for the animal's death is identified;

    e. The animal's presence on the airport had a significant negative effect on a flight (i.e., aborted takeoff, aborted landing, high-speed emergency stop, aircraft left pavement area to avoid collision with animal) (Transport Canada, Airports Group, *Wildlife Control Procedures Manual*, Technical Publication 11500E, 1994).

2. RESERVED.

Attachment B

INSURANCE REQUIREMENTS
Lease and Service Agreement between City of Fresno ("Lessor")
and Fresno Unified School District ("Tenant")

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. Property Insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Tenant , or any party the Tenant sub-contracts with shall maintain limits of liability of not less than those set forth below. However, insurance limits available to Lessor, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**:

   (i) $1,000,000 per occurrence for bodily injury and property damage;
   (ii) $1,000,000 per occurrence for personal and advertising injury;
   (iii) $2,000,000 aggregate for products and completed operations; and,
   (iv) $2,000,000 general aggregate applying separately to the work performed under the Agreement,

2. **WORKER'S COMPENSATION INSURANCE** as required by the State of California with statutory limits.

3. **EMPLOYER'S LIABILITY**:

(i) $1,000,000 each accident for bodily injury;
(ii) $1,000,000 disease each employee; and,
(iii) $1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the Lessor, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Tenant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the Lessor's Risk Manager or his/her designee. At the option of the Lessor's Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Lessor, its officers, officials, employees, agents and volunteers; or
(ii) Tenant shall provide a financial guarantee, satisfactory to Lessor's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Lessor be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The *General Liabilityinsurance policy* is to contain, or be endorsed to contain, the following provisions:

1. Lessor, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Tenant shall establish additional insured status for the Lessor and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as the contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims related to this Agreement, Tenant's insurance coverage shall be primary insurance with respect to the Lessor, its officers, officials, employees,

agents and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, agents and volunteers shall be excess of Tenant's insurance and shall not contribute with it. Tenant shall establish primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The *Workers' Compensation insurance policy* is to contain, or be endorsed to contain, the following provision: Tenant and its insurer shall waive any right of subrogation against Lessor, its officers, officials, employees, agents and volunteers.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to Lessor. Tenant is also responsible for providing written notice to the Lessor under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish Lessor with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for Lessor, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

Tenant shall furnish Lessor with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the Lessor's Risk Manager or his/her designee prior to Lessor's execution of the Lease and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker.