

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

No new supplemental items will be added to the agenda following close of business on Friday.

September 15, 2020

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Item: None

S u p p l e m e n t a l I t e m (s)

S21A. **John Wayne Airport** - Approve Full-Service Fixed Base Operation leases with Clay Lacy Aviation, Inc. for Northwest parcel and Aviation Consultants, Inc. dba ACI Jet for Northeast parcel, 1/1/21 – 12/31/55; authorize Director or designee to make minor modifications and amendments under certain conditions and to provide 30 days written notice to terminate existing Southeast Fixed Based Operation Interim Lease with Newport FBO Two, LLC dba Atlantic Aviation; and consider application of Final Environmental Impact Report No. 627 and other findings - District 2 *(4/5 vote of the members present)*



County Executive Office

Memorandum

S21A

September 4, 2020

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2020.09.04 15:22:40
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2020 SEP -4 PM 4:23
CLERK OF THE BOARD OF SUPERVISORS

The County Executive Office is requesting a Supplemental Agenda Staff Report for the September 15, 2020, Board Hearing.

Agency: John Wayne Airport
Subject: Approve Lease Agreements for Two Full-Service Fixed Base Operators at John Wayne Airport
Districts: 2

Reason for supplemental: This item needs to be heard at the next available Board date in order to have the lease agreements for the selected Fixed Base Operators for general aviation services in place as soon as possible. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Michelle Steel, Chairwoman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 9/15/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport
DEPARTMENT HEAD REVIEW: *[Signature]*
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Barry A. Rondinella (949) 252-5183
Dave Pfeiffer (949) 252-5291

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COUNTY OF ORANGE
BOARD OF SUPERVISORS

SUBJECT: Approve Lease Agreements for Two Full-Service Fixed Base Operators at John Wayne Airport

CEO CONCUR

[Signature]

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Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2020.09.04 15:22:00 -07'00'

CEO Signature

COUNTY COUNSEL REVIEW

Approved as to Form
Action
Nicholas M. Walsh

County Counsel Signature

CLERK OF THE BOARD

Discussion

4/5 Vote

Budgeted: Yes

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: N/A

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: See Financial Impact Section

Funding Source: See Financial Impaction Section

County Audit in last 3 years No

Prior Board Action: 08/11/2020 #11, 09/10/2019 #18, 06/25/2019 #45, 05/22/2018 #39

RECOMMENDED ACTION(S)

1. Find that Final Environmental Impact Report (EIR) No. 627, previously certified by the Board of Supervisors on June 25, 2019, reflects the independent judgment of the County of Orange and satisfies the requirements of CEQA for the leases being considered herein, which is a necessarily included element contemplated as part of the whole of the action.
 - a. The circumstances of the project are substantially the same as described in EIR No. 627, which adequately addressed the impacts of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project which was not known or could not have been known when EIR No. 627 was adopted has become known, and no further environmental review is required.
 - b. EIR No. 627 is adequate to satisfy the requirements of CEQA for the lease agreements.

- c. The CEQA Findings of Fact, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations have been incorporated into the project and all mitigation measures are fully enforceable pursuant to CEQA (Public Resources Code) Section 21081.6(b) and have either been adopted as conditions, incorporated as part of the project design, or included in the procedures of project implementation.
2. Approve and execute lease with Clay Lacy Aviation, Inc. for a Full-Service Fixed Operation on the Northwest parcel for a term of 35 years commencing January 1, 2021, through December 31, 2055.
3. Approve and execute lease with Aviation Consultants, Inc., doing business as ACI Jet, for the Full-Service Fixed Base Operation on the Northeast parcel for a term of 35 years commencing January 1, 2021, through December 31, 2055.
4. Authorize the Airport Director or designee to make minor modifications and amendments to the agreements that do not materially alter the terms or financial obligations to the County, and perform all activities specified under the terms of the leases.
5. Authorize the Airport Director or designee to provide 30 days' written notice to terminate the existing Southeast Fixed Based Operation Interim Lease with Newport FBO Two, LLC dba Atlantic Aviation.

SUMMARY:

Approval of the leases with two Full-Service Fixed Based Operators will allow John Wayne Airport to move forward with its General Aviation Improvement Plan to develop self-sustaining general aviation operations and enhance service, safety, security and efficiency for general aviation services and activities at John Wayne Airport.

BACKGROUND INFORMATION:

On March 13, 2018, the Board of Supervisors (Board) approved the traditional land lease financial development model lease for the General Aviation Improvement Plan to allow John Wayne Airport (JWA) to develop a self-sustaining General Aviation (GA) operation. On March 29, 2018, JWA issued a Request for Qualifications for Full- and Limited-Service Fixed Base Operators (FBO) to qualify to participate in the FBO Request for Proposal (RFP) process to manage GA services at JWA. On May 22, 2018, the Board approved a slate of nine qualified Respondents to participate in the RFP process.

On June 25, 2019, the Board certified Final Program Environmental Impact Report 627 (EIR 627), including related CEQA Findings of Fact, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations, and approved the Proposed Project with certain specified land use requirements. On September 10, 2019, the Board authorized issuance of the RFP and model leases for FBOs for: Parcel (1) Northeast Full-Service FBO; Parcel (2) Northwest Full-Service FBO; and Parcel (3) Southwest Limited-Service FBO. Nine proposals were received on December 19, 2019. Five panel members participated in the review and scoring of the proposals received.

Selection of Full- and Limited-Service Fixed Base Operators

On August 11, 2020, the Board considered the proposals received and evaluated by the panel members, and selected three FBOs to negotiate with: Clay Lacy Aviation, Inc. (Clay Lacy) for the Northwest Full-Service

FBO, Aviation Consultants, Inc., doing business as ACI Jet (ACI Jet) for the Northeast Full-Service FBO and Jay's Aircraft Maintenance, Inc. for the Southwest Limited-Service FBO.

After selection by the Board, JWA met with each FBO to negotiate and finalize the lease terms and phasing plan for the development of each parcel. Leases for the two Full-Service FBOs have been finalized, reflecting 35-year terms commencing on January 1, 2021, and continuing through December 31, 2055. Negotiations with Jay's Aircraft Maintenance, Inc. are continuing and upon completion the lease for the Southwest Limited-Service FBO will be brought to the Board for approval.

Following lease execution, but prior to lease commencement, the County must receive all items required by the lease agreements, including, but not limited to, the required security deposits and evidence of insurance.

Northwest Full-Service FBO: Clay Lacy

In 2018, Clay Lacy celebrated 50 years in the aviation industry and provided the following statement in its RFP proposal, "A southern California-based aviation pioneer, visionary, and industry leader for more than 50 years, Clay Lacy Aviation is the most experienced, most financially secure, and most highly regarded operator of business jets in the world." Some of the services Clay Lacy will provide include the following: (i) FBO services; (ii) sale of aviation fuel, engine oil and lubricants; (iii) into-plane delivery of fuel; (iv) aircraft repair and maintenance; (v) aircraft charter; (vi) flight training; (vii) sale and lease of aircraft; (viii) aircraft wash; and (ix) management of transient parking and hangar, storage and tie-down facilities.

Clay Lacy's proposal on the west parcel (approximately 14 acres) provides for an initial capital investment in the amount of \$57,897,531. Their development includes approximately 110,429 square feet of hangar space, over 300,000 square feet of ramp space and a state-of-the-art two-story FBO facility with over 43,000 square feet of office space.

Clay Lacy is required to offer a right of first refusal to the Orange County Sheriff's Department (OCSD) and Orange County Fire Authority (OCFA) to sublease an Air Support Facility, which will be constructed and maintained by Clay Lacy on the leased premises in accordance with a mutually agreed design providing for operations and administrative support functions, an aircraft hangar and apron area for OCSD's and OCFA's helicopters and auto parking.

Northeast Full-Service FBO: ACI Jet

ACI Jet is a locally-owned, California-based, Full-Service FBO and has served the Orange County community since 2017. As stated in their proposal, ACI Jet's Mission is, "To help people, businesses and communities reach their full aviation potential." In their proposal, ACI Jet highlighted that it puts its Mission statement into action through its Core Values, which include: Integrity, Safety, Perseverance and Service. Some of the services ACI Jet will provide include the following: (i) aviation fuel, engine oil and lubricants and into-plane delivery of fuel; (ii) manage hangar storage operations and tie-downs; (iii) provide aircraft repair and maintenance services; (iv) provide and manage transient parking; (v) provide charter operations; (vi) manage fueling operations; and (vii) provide aircraft wash facilities. ACI Jet also plans to build a General Aviation Facility for customs clearance of international general aviation arrivals between the hours of 5 a.m. and 12 a.m.

ACI Jet's proposal on the east parcel (approximately 31 acres) provides for an initial capital investment in the amount of \$86,508,650. Their development includes approximately 287,480 square feet of hangar space,

close to 400,000 square feet of ramp space and a premier FBO facility, which includes over 32,000 square feet of office space.

ACI Jet is required to submit an operational plan on managing the existing County waiting list for hangar spaces within 15 days of the lease commencement date.

Development and Construction

Federal Aviation Administration (FAA) approval of JWA's Airport Layout Plan and National Environmental Policy Act documentation is required prior to any FBO construction activities.

Clay Lacy's development and construction of the proposed project is estimated to take 24 months to complete, in addition to time for pre-construction planning and permitting. Clay Lacy and the Limited-Service FBO on the west side of JWA are scheduled to commence construction first. Upon completion, ACI Jet will commence its development and construction, which is estimated to take 66 months, in addition to time for pre-construction planning and permitting. To address the operational needs of JWA, the development and phasing plan for construction may be modified or amended by the Airport Director in consultation with the FBOs.

Assurance of Construction Completion

Within nine months of the commencement date of the lease agreements, the FBOs must furnish a completion bond or irrevocable letter of credit (or combination of both) that assures the County the total estimated construction cost of their first phase will be available to the FBO to complete the first phase of construction.

Rent Calculation

Rent shall consist of Minimum Annual Rent and Additional Rent. The Minimum Annual Rent is defined as the sum of Ground Rent and Building Rent. Additional Rent includes a percentage of Gross Receipts, rent-a-car fees, a percentage of advertising receipts and fuel flowage and lubricant fees as defined and set forth in Article IV of the leases.

| FBO Parcels | Approximate Parcel Area | Annual Ground Rent* | Approximate Building Area | Annual Building Rent* | Percentage Rent of Gross Receipts** |
|--------------------|--------------------------------|----------------------------|----------------------------------|------------------------------|--|
| ACI Jet | 1,358,299 SF | \$1.77 PSF | 270,393 SF | \$8.16 PSF | 5% and .25% |
| Clay Lacy | 635,178 SF | \$1.77 PSF | 99,816 SF | \$8.76 PSF | 5% and .25% |

* Annual Ground and Building Rents are based on appraised values.

** Defined more fully in Article IV of the leases.

Regularly Scheduled Commercial Operations

To provide general aviation with the ability to use and operate at JWA at a level, and in a manner, consistent with declared County policy on general aviation use of JWA, and not interfere with the safe and efficient operation of JWA, and taking into account the JWA passenger service goals of the County, the leases contain a provision prohibiting the operation of Regularly Scheduled Commercial Users from the FBOs, as defined in Section 2.40 of John Wayne Airport's Phase 2 Commercial Airline Access Plan and Regulation.

Acceptance of Existing Liability

The leased premises described in the RFP have been used for GA FBO purposes and related activities. The prior activities include aircraft tie-down areas, fuel storage parcels that include underground fuel storage tanks and underground oil and water separator/clarifiers. Historical assessments identify the presence of environmental constituents both on and off the leased premises associated with the FBOs.

As part of the terms and conditions of the leases, Clay Lacy and ACI Jet are required to agree and acknowledge that they may be subject to liability and costs associated with environmental conditions by entering into a lease. Clay Lacy and ACI Jet are required to indemnify and hold the County harmless both during and after the term of the lease for environmental conditions related to the leased premises and will be required to provide the County with environmental liability/pollution insurance coverage.

Land Use Requirements

Article V, Section 5.01 of the leases requires compliance with the "Green" and "Yellow" land use designations set forth by the Board that define where the FBOs must park or store aircraft. Due to each FBO's staggered construction and phasing schedule, the land use requirements will be implemented upon completion of each phase of construction. The lease for the Northeast parcel requires full implementation of the uses depicted in Exhibit C to the lease no later than seven years from the initial date of demolition.

Accidents and Incidents

Article V, Section 5.08 of the leases requires Clay Lacy and ACI Jet to report to the Airport Director any accidents or incidents for which they are wholly or partially responsible, which occur on the leased premises and are reportable to the FAA or other governmental or regulatory agencies. Clay Lacy and ACI Jet would be required to pay to the County administrative costs in the amount of \$1,000 per such reportable accident or incident.

Property Taxes and Tax Revenue

Property taxes, regular, special or utility assessments, and all taxes related to the leased premises are the sole responsibility of Clay Lacy and ACI Jet. The FBOs are responsible for paying any possessory interest tax that may become due for the land and improvements as fully set forth in the lease. As part of their proposals, the FBOs were required to submit a projected 10-year tax revenue report to the County based on the estimated number and type of based aircraft at the FBO site locations.

Compliance with CEQA: This project is a necessarily included element of the project considered in Final EIR No. 627, certified by the Board on June 25, 2019, which adequately addressed the effects of this action. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project that was not known or could not have been known when the Final EIR No. 627 was certified has become known; therefore, no further environmental review is required.

FINANCIAL IMPACT:

ACI Jet and Clay Lacy will assume full responsibility for redevelopment and construction costs related to the complete development of their leased premises. For ACI Jet, over the 35-year lease term, it is estimated that the total ground lease rent payment to JWA will be approximately \$132,057,803 and Clay Lacy will pay approximately \$61,753.868. This includes an estimated 2.5 percent annual Consumer Price Index

escalation. The Building Rent shall only be payable on the existing enclosed structures and shall not be payable to JWA on any new improvements that ACI Jet and Clay Lacy construct through the development of their parcel. The Building Rent shall be prorated beginning upon initiation of demolition of enclosed structures located on the leased premises, and shall be adjusted each month, as more fully specified in Article IV, Section 4.01. The Building Rent is highly dependent on the phasing, permitting, pre-construction and design aspects of the development and is not included in the estimated revenue to JWA. Similarly, the Gross Receipts revenue to JWA is not included in the calculation of forecasted revenue to the County.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Northeast Full-Service FBO Lease with Aviation Consultants, Inc. dba ACI Jet
Attachment B – Northwest Full-Service FBO Lease with Clay Lacy Aviation, Inc.
Attachment C – Real Property Conveyance Questionnaire



**NORTHEAST FULL-SERVICE
FIXED BASE OPERATION (FBO) LEASE**

Dated _____

between

County of Orange

and

Aviation Consultants, Inc., doing businesses as ACI Jet

LESSEE

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JOHN WAYNE AIRPORT FBO LEASE

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JOHN WAYNE AIRPORT FBO LEASE

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JOHN WAYNE AIRPORT FBO LEASE

LIST OF EXHIBITS

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EXHIBIT DISCLAIMER

Some information contained in the Exhibits to this Lease has been obtained by COUNTY's representatives and/or third parties. The information is believed to be reasonably correct, but the COUNTY does not warrant either the completeness or accuracy of such information. It is the responsibility of the LESSEE to verify all such information.



JOHN WAYNE AIRPORT FBO LEASE

THIS FBO Lease ("Lease") is made and entered into this ____ day of _____, 20__, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and AVIATION CONSULTANTS, INC. doing business as ACI Jet ("LESSEE").

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and airport proprietor of John Wayne Airport ("JWA" or "Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, JWA is in the process of implementing a comprehensive General Aviation Improvement Program ("GAIP") with the intent to improve service, safety, security and efficiency for general aviation services and activities at JWA; and

WHEREAS, on June 25, 2019, COUNTY certified the GAIP Environmental Impact Report ("EIR") 627 and selected the Proposed Project, providing a framework for general aviation improvements at the Airport and a comprehensive update of JWA's general aviation facilities; and

WHEREAS, JWA conducted a competitive Request for Proposal ("RFP") process and COUNTY selected LESSEE to develop and operate an updated Fixed Based Operator ("FBO") facility at the Airport under this long-term Lease;

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this Lease shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AIRPORT

"Airport" or "JWA" shall mean the John Wayne Airport, Orange County, California.

SECTION 1.02 AIRPORT DIRECTOR

"Airport Director" or "Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office, or Director's designee.



JOHN WAYNE AIRPORT FBO LEASE

SECTION 1.03 AIRPORT FUEL FARM

“Airport Fuel Farm” or “Fuel Farm” shall mean the area located at the Southeast corner of the Airport located at the intersection of Campus Drive and Bristol Street, which contains COUNTY and LESSEE fueling facilities consisting of above ground sump tanks, underground fuel storage tanks, piping and associated fueling apparatus of which LESSEE’S Fuel Storage Parcel comprises a portion.

SECTION 1.04 BEST MANAGEMENT PRACTICES

“Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, safety plans, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment measures, operating procedures, and practices to control erosion, facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include any type of pollution prevention and pollution control measure necessary to achieve compliance.

SECTION 1.05 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

SECTION 1.06 COUNTY

“COUNTY” shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.07 DOT

“DOT” shall mean the United States Department of Transportation.

SECTION 1.08 ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Materials, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (ii) Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; (iv) 49 C.F.R. Subchapter C (Transportation of Hazardous Materials); (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 *et seq.*; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 *et seq.*; (viii) the Safe Drinking Water and Toxic Enforcement Act



JOHN WAYNE AIRPORT FBO LEASE

of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 *et seq.*; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 *et seq.*; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, *et seq.*; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.09 FAA

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over LESSEE or its business, and the Airport.

SECTION 1.10 HAZARDOUS MATERIALS

“Hazardous Materials” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Materials” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.



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SECTION 1.11 NON-STORM WATER DISCHARGE

“Non-Storm Water Discharge” shall mean any discharge to storm sewer systems that is not entirely composed of storm water. “Non-Storm Water Discharge” includes “Unauthorized Non-Storm Water Discharges” and “Authorized Non-Storm Water Discharges” as defined by the California Environmental Protection Agency State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.12 NPDES PERMIT

“National Pollutant Discharge Elimination System (NPDES) Permit” means the currently applicable discharge permit(s) issued by the Regional Water Quality Control Board, Santa Ana Region, which establish waste discharge requirements applicable to storm runoff within the County and Airport.

SECTION 1.13 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

- a. Artificial materials (such as floatable plastics, wood products or metal shavings);
- b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
- c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
- d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
- e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
- f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
- g. Materials which contain base/neutral or acid extractable organic compounds;
- h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
- i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
- j. Any substance listed under Health and Safety Code, §25316.



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SECTION 1.14 PROHIBITED DISCHARGE

“Prohibited Discharge” shall mean any discharge that contains any pollutant, from public or private property to (i) the storm water drainage system; (ii) any upstream flow, which is tributary to the storm water drainage system; (iii) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, or coastal slough; or (iv) any coastal harbor, bay, or the Pacific Ocean.

SECTION 1.15 STORM WATER

“Storm Water” shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.16 STORM WATER DRAINAGE SYSTEM

“Storm Water Drainage System” means street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of a tributary to the county-wide storm water runoff system and owned, operated, maintained or controlled by the County of Orange, the Orange County Flood Control District or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of storm water. The Airport storm drain system shall mean any gutter, channel, storm drain, constructed drain, wash area, inlet or outlet or other facility that flows into, onto, through or out of the Airport property.

SECTION 1.17 TERMINAL

“Terminal” means the Thomas F. Riley commercial passenger terminal at John Wayne Airport.

SECTION 1.18 TSA

“TSA” shall mean the Transportation Security Administration of the United States Department of Homeland Security, the federal agency responsible for regulation of airport security, or any similar successor agency.

ARTICLE II - TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this Lease shall be thirty-five (35) years commencing on January 1, 2021 (“Commencement Date”), and continuing through December 31, 2055.

SECTION 2.02 HOLDING OVER

In the event LESSEE shall continue in possession of the Leased Premises after the term of this Lease, such possession shall not be considered an extension or renewal of this Lease but a tenancy from month-to-month and shall be terminable upon 30 days’ written notice and otherwise governed



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by the conditions and covenants contained in this Lease. The Minimum Annual Rent used as the basis to calculate monthly rents for any month-to-month holdover period shall be subject to the terms in Section 4.01 of this Lease.

ARTICLE III - LEASED PREMISES

SECTION 3.01 LEASED PREMISES

COUNTY leases to LESSEE that certain real property as shown in Exhibits A and B hereinafter referred to as "Leased Premises" and incorporated herein by this reference. **Said Leased Premises are being leased to LESSEE in their "as-is" and "where-is" condition.**

LESSEE further acknowledges that COUNTY has made no representation or warranty regarding the condition of the Leased Premises or the suitability of such Leased Premises for the operation or conduct of LESSEE's use thereon or for any other purpose. The taking of possession of the Leased Premises by LESSEE shall conclusively establish that the Leased Premises is acceptable to LESSEE and in satisfactory condition for LESSEE's use at such time. LESSEE further, by taking possession of the Leased Premises, expressly acknowledges and represents to COUNTY that LESSEE is accepting LESSEE's interest in, and possession of, the Leased Premises in their present condition "**as-is**" and "**where-is**" including, but not limited to, the physical condition and environmental condition of the Leased Premises and all applicable laws affecting or related to the Leased Premises, or any part thereof, including, but not limited to, building and safety codes, zoning ordinances, land use restrictions and regulations, Environmental Laws, and other such matters. LESSEE acknowledges and represents to COUNTY that neither COUNTY nor any agent or representative of COUNTY has made any representation, warranty or promise with respect to the Leased Premises, or any part thereof; that LESSEE has satisfied itself with the condition of the Leased Premises and the suitability of the Leased Premises for LESSEE's intended use; and that LESSEE has made all such investigations as LESSEE deems necessary with reference to the Leased Premises and assumes all responsibility therefor as the same relates to LESSEE's occupancy thereof.

SECTION 3.02 NATURE OF LESSEE'S ESTATE

LESSEE acknowledges and agrees to all of the following:

- A. COUNTY has granted to LESSEE a leasehold interest in the Leased Premises only.
- B. COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- C. LESSEE has not been granted any direct or indirect right or option to purchase the Leased Premises from COUNTY at any time during or after the termination and/or expiration of this Lease.



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SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

LESSEE shall not make any alteration or install any fixture or equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director prior to installation.

ARTICLE IV - RENT

SECTION 4.01 RENT, FEES, AND CHARGES

Rent shall consist of Minimum Annual Rent and Additional Rent, as defined and adjusted from time to time as set forth hereinafter.

A. Minimum Annual Rent

For purposes of this Lease the "Minimum Annual Rent" is defined as the sum of Ground Rent and Building Rent. The Minimum Annual Rent shall be payable in twelve (12) equal monthly installments on or before the first (1st) day of each calendar month beginning on the Commencement Date. Said amount shall be subject to annual adjustment as set forth in that section of the Lease entitled "REVISION OF RENT, FEES AND CHARGES."

1) Ground Rent

Ground Rent shall consist of \$1.77 price per square foot (psf) for the square footage of all land that makes up the Leased Premises.

Ground Rent = \$200,349.10 per month

2) Building Rent

Subject to the provisions of Sections 4.01(B)(5) and 4.01(B)(6) below, Building Rent shall consist of \$8.16 price per square foot (psf) for the square footage of all enclosed structures located upon the Leased Premises on the Commencement Date.

Building Rent at Commencement Date = \$183,867.24 per month

LESSEE shall pay 150% of Minimum Annual Rent during any holdover period, which shall be calculated based on the most current month prior to holdover period commencement.

B. Additional Rent

Additional Rent shall include Percentage Rent of Gross Receipts, Rent-a Car Fees, Advertising Fees, Fuel Flowage Fees, and Lubricant Fees as defined below. Additionally, NSF Check Fees, Charges for Late Payments, Penalty Fees, and Unauthorized Use and



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Services Fees, and all other monetary obligations under this Lease shall be deemed Additional Rent. Further, COUNTY has the right to make any payment to any third-party on any delinquent obligation which LESSEE is obligated to pay under this Lease and recover that amount from LESSEE as Additional Rent.

LESSEE agrees to pay all Additional Rent monthly, in arrears, on or before the fifteenth day of each month, up to and including the last day of the preceding month.

1) Percentage Rent of Gross Receipts

LESSEE shall pay an amount equal to five percent (5%) of all Gross Receipts (as defined in Section 4.02) realized by LESSEE from its business operations on or from the Leased Premises including any amounts received by LESSEE from subtenant(s), sublessee(s), or licensee(s), as more fully set forth in Section 4.02, below.

LESSEE shall pay an amount equal to one-quarter of one percent (.25%) of all Gross Receipts realized by LESSEE for aircraft charter operations, the sale of aircraft, the sale of aircraft parts, and third-party aircraft maintenance services.

2) Rent-A-Car Fees

LESSEE shall pay its percentage of reportable Gross Receipts from rental car activities equal to the percentages paid by other rental car companies operating on Airport, which on the Commencement Date equals ten percent (10%), and which is subject to adjustment from time to time.

3) Advertising Receipts

LESSEE shall pay fifty percent (50%) of its Gross Receipts from all third-party advertising activities conducted on the Leased Premises. At least fifteen (15) days in advance of any advertising activity, LESSEE shall submit all advertising creatives and programs to JWA for Airport Director's prior written approval.

4) Fuel Flowage Fees and Lubricant Fees

LESSEE shall pay a fuel flowage fee of six cents (\$0.06) per gallon of fuel delivered to the Airport and lubricant fees of ten cents (\$0.10) per gallon or as otherwise set by COUNTY's Board of Supervisors.

All fuel flowage fees shall be applied to all fuel handlers without unjust discrimination. All such fees shall be calculated upon deliveries made to LESSEE at the airport. The fuel gallonage shall be computed on the basis of net gallonage delivered and invoiced to LESSEE. Oil gallonage and lubricant weights shall be based on delivery invoices as supplied by the oil delivery company to LESSEE.



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5) Building Rent Adjustment During Construction

Beginning upon the initiation of demolition of enclosed structures located on the Leased Premises as of the Commencement Date, Building Rent shall be adjusted each month to reflect, on a pro-rata basis, the maximum square footage of usable space of such buildings at any point during the prior month. Ground Rent and Additional Rent shall remain unchanged during the course of any demolition or construction activities.

6) No Building Rent for New Improvements

In recognition that LESSEE will be constructing or causing new improvements to be constructed without cost to COUNTY and that LESSEE will be obligated to pay the property taxes, insurance, and other costs that become payable with respect to the Leased Premises, including any new improvements, and that all new improvements will revert to COUNTY at the expiration or termination of this Lease, no Building Rent will be due or payable by LESSEE for such new improvements.

C. Fuel Pricing

LESSEE's highest fuel prices for aircraft fuel sold at JWA shall be established with reference to a regional average of the following airports: McClellan-Palomar Airport (CRQ), Van Nuys Airport (VNY), Hollywood Burbank Airport (BUR) and Long Beach Airport (LGB), and shall not be more than ten percent (10%) above the median retail price of fuel sold at those four airports, as published weekly by Airnav.com.

LESSEE may also provide other discounts and shall seek to maintain competitive fuel pricing for customers purchasing fuel at JWA.

Fuel pricing shall be accessible and subject to inspection or audit by Airport Director or designee upon request.

Notwithstanding anything in this Lease to the contrary, all amounts payable by LESSEE to or on behalf of COUNTY under this Lease, whether or not expressly denominated as Minimum Annual Rent, Ground Rent, Building Rent, or Additional Rent, shall also constitute rent for the purposes of the Bankruptcy Code, 11 United States Code Section 502(b). Rent payments shall be made in accordance with the provisions with that section of the Lease entitled "PAYMENT PROCEDURE."

SECTION 4.02 DEFINITION OF GROSS RECEIPTS

As used in this section, the term "LESSEE" shall include LESSEE, its officers, directors, employees, agents, affiliates, assigns, and successors. The term "Gross Receipts" upon which five percent (5%) of Gross Receipts is to be calculated, shall include the following:



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- A. All business activities that generate income or revenue for LESSEE on or from the Leased Premises, which shall include but not be limited to, the sale price of all goods, services, wares, and products sold, performed or traded on or from the Leased Premises, whether for cash or credit and whether payment is actually made or not (provided, however, that it is expressly understood that the activities encompassed in this Subsection 4.02(A) do not include those activities that are covered by the separate percentage (.25%) provided for in the second paragraph of Subsection 4.01(B)(1);
- B. All admission, entry, rental and other fees of any nature or kind charged by LESSEE;
- C. The fair rental value of facilities on the Leased Premises used by LESSEE or its employees for purposes other than the business purposes for which the Leased Premises are leased;
- D. The value of all consideration received by LESSEE including, without limitation, non-monetary considerations, including trades, for the items sold, leased, rented or services rendered.
- E. Any rent, consideration or other amounts paid to LESSEE by subtenant(s), sublessee(s), or licensee(s), or any person acting under contract with LESSEE based on LESSEE's operations at JWA.
- F. Revenue from box hangars.

Gross Receipts subject to the five percent (5%) payment amount shall exclude revenue from tie-downs, sunshades, and T-hangars; Rent-a-Car Fees; Advertising Receipts; Fuel Sales; Fuel Flowage Fees and Lubricant Fees; pass-through costs (which are understood to be expenses that LESSEE prepays on behalf of aircraft owners in the course of aircraft operations as a matter of convenience, and which are then reimbursed by said aircraft owners and on which LESSEE charges no markup), and all sales and excise taxes as defined by federal, State, county or municipal government tax codes, and that are paid by LESSEE as a direct result of operations under this Lease.

Refunds for goods returned shall be deducted from current Gross Receipts upon return. Bad debt losses, including but not limited to NSF checks and uncollectible credit card charges, shall not be deducted from Gross Receipts.

Discounts including but not limited to allowances, deductions, rebates, trades, kickbacks, hidden credit, promotional sales, or any other reductions shall not be deducted from Gross Receipts, unless the Airport Director provides written approval for such a discount.

SECTION 4.03 CHARGE FOR UNAUTHORIZED SERVICES AND USES

In the event LESSEE breaches this Lease by using or permitting the Leased Premises to be used in any manner other than as expressly permitted under this Lease or by providing unauthorized services on the Airport outside of the Leased Premises, LESSEE shall pay COUNTY a sum equal



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to one hundred percent (100%) of the Gross Receipts for any such service or use. Said payment shall be subject to the charge for late payment in that section of the Lease entitled "CHARGE FOR LATE PAYMENT." As used in this section, the term "LESSEE" shall include LESSEE, its employees, agents, successors, assigns, affiliates, sublessees, concessionaires, licensees, or any person acting under contract with LESSEE, or on LESSEE's behalf. All charges for unauthorized services and uses are due and payable as Additional Rent. Furthermore, this Lease may be subject to termination by the COUNTY for LESSEE's unauthorized services or uses, which termination would be governed by the provisions of Section 9.02.

SECTION 4.04 REVISION OF RENT, FEES AND CHARGES

A. Minimum Annual Rent

The Minimum Annual Rent specified in that section of the Lease entitled "RENT, FEES AND CHARGES" shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for Los Angeles-Long Beach-Anaheim, CA (All Urban Consumers - All Items 1982-1984=100) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor.

The automatic adjustment shall be effective on each anniversary of the Commencement Date of the Lease and shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

- A = Adjusted Rent
- B = Minimum Annual Rent as originally set forth in that section of the Lease entitled "RENT, FEES AND CHARGES"
- C = Monthly index for the fourth month prior to the month in which each rental rate adjustment is to become effective
- D = Monthly index for the month in which this Lease becomes effective

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated (or as close to such figure as shall be practicable) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the CPI is not issued or published for the period for which such minimum annual rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.



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Notwithstanding the foregoing, in no event shall the rent be reduced by reason of any such adjustment.

B. Fees and Charges

The fuel flowage and lubricant fees shall be adjusted periodically by COUNTY based on the latest schedule established by Board of Supervisors. The rent-a-car percentage fees shall be the same as the percentage fees paid by other rental car companies operating on Airport.

SECTION 4.05 PAYMENT PROCEDURE

- A. Place of Payment and Filing. Payments and statements required by Section 4.01 "RENT" shall be delivered to the County of Orange, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment, filing and reporting may be changed at any time by COUNTY upon ten (10) days' written notice to LESSEE. Payments may be made by check payable to the County of Orange. LESSEE assumes all risk of loss if payments are made by mail.
- B. Form of Payment. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by LESSEE or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of the amount due or pursue any other remedy in this Lease. All Electronic Funds Transfer (EFT) payments must be remitted by Automated Clearing House (ACH) / direct deposit to the COUNTY's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY's bank account due to the use of other form of payment (e.g. wire transfer) not prescribed or approved by the COUNTY, shall be passed through to the LESSEE plus \$25 processing fee.
- C. In the event the obligation to pay rent begins or terminates on some day other than the first or last day of the month, the rent shall be prorated to reflect the actual period of use on the basis of a thirty (30) day month. The rent for any partial calendar month during which this Lease becomes effective will be payable on such effective date.
- D. NSF Check Fees. In the event a check submitted by LESSEE is returned for non-sufficient funds ("NSF"), LESSEE agrees to pay COUNTY a fee in the amount of twenty-five dollars (\$25) for the first check, and thirty-five dollars (\$35) for each subsequent check. All NSF check fees are due and payable as Additional Rent. LESSEE will be liable for treble the amount of the check under certain circumstances described by California Civil Code Section 1719.



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SECTION 4.06 CHARGE FOR LATE PAYMENT

LESSEE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of rent as specified in that section of the Lease entitled "RENT, FEES AND CHARGES" or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid. All charges for late payments are due and payable as Additional Rent.

LESSEE and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of LESSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of LESSEE's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.07 PROVISION AGAINST SET-OFFS

It is the obligation of LESSEE to pay all rents, fees, and charges, free of any set-offs or claims, in the amount and at the times specified in this Lease. In the event that LESSEE desires to contest the validity or amount due and owing, LESSEE shall first pay the same to COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.08 SECURITY DEPOSIT

No less than thirty (30) days prior to the Commencement Date of this Lease, LESSEE shall deposit with COUNTY a security deposit subject to the provisions for adjustment as provided hereinafter. Concurrently with each revision of the rent pursuant to that section of the Lease entitled "RENT, FEES, AND CHARGES," the security deposit to be provided by LESSEE shall be adjusted to six (6) times the total monthly building and ground rent to guarantee the faithful performance by LESSEE of its obligations under this Lease and the payment of all rents, fees and charges due hereunder. Any increased security deposit is due within ten (10) business days of such adjustment.

The security deposit shall take one of the forms set out below and shall guarantee LESSEE's full and faithful payment and performance of all the terms, covenants, and conditions of this Lease:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing



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LESSEE's performance and that all or any part shall be paid to COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.

- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete payment and performance of all the terms, conditions and covenants herein to be performed on the part of the LESSEE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the LESSEE throughout the existence of this Lease. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this Lease.

Regardless of the form in which LESSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this Lease by LESSEE, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of LESSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Any instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, LESSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

LESSEE shall be obligated to maintain the security deposit in effect until all obligations of LESSEE under this Lease have been fully paid and/or performed. LESSEE shall deliver to the COUNTY an original copy of all instruments obtained under this Section including renewals and amendments as applicable.

The security deposit, after deduction of all amounts due COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to LESSEE or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the Lease term, provided LESSEE has fully and faithfully performed each and every term, covenant, and condition of this Lease.



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ARTICLE V - USE

SECTION 5.01 USE

LESSEE's use of the Leased Premises shall be for operation of a Full Service FBO. LESSEE shall furnish all services on a reasonable, and not unjustly discriminatory, basis to all Airport users, and shall charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Any use or provision of services on Airport is specifically subject to rules and regulations as may be promulgated from time to time by COUNTY.

LESSEE shall ensure that aircraft fueling or self-fueling facilities (as applicable), aircraft storage (hangars and tie-downs), aircraft charters, and aircraft maintenance and repair services are provided from the Leased Premises throughout the term of this Lease. LESSEE shall designate an area for transient aircraft self-service activity as approved by Airport Director in his/her reasonable discretion.

Other required services and operations include, without limitation:

- A. Maintenance, repair, overhaul, and modification of general aviation aircraft, aircraft engines, airframes, automatic flight systems, instruments, radio, electronic equipment, propellers and other aircraft components under cover or indoors.
- B. All taxiing and movement of aircraft must be accomplished in a manner that does not disturb or damage other aircraft or pavement outside the Leased Premises. Aircraft must be parked so that no portion of the aircraft extends outside the Leased Premises. Any takeoff and landing of rotorcraft may only be from an area approved by both the Airport and FAA for such use.
- C. Effective upon LESSEE's completion of a given phase of construction, as approved by the Airport Director, LESSEE shall park or store aircraft affected by such construction phase on the Leased Premises in strict accordance with the uses depicted on Exhibit C for the remaining term of the Lease. Full implementation of Exhibit C shall occur no later than seven (7) years from the initial date of demolition.

For purposes of the uses depicted on Exhibit C, the following definitions shall apply:

- a. The green area marked as "SMALL GA" on Exhibit C shall only be used for the parking or storage of aircraft that meet at least one of the following criteria:
 - i. The aircraft has a wingspan of less than 49 feet in accordance with FAA Airplane Design Group I (*see Advisory Circular AC 150/5300-13A regarding Airport Design, updated September 28, 2012*); or
 - ii. The aircraft is a "small aircraft" with a maximum certificated takeoff weight of



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12,500 pounds or less in accordance with Title 14 CFR § 1.1.

- b. The yellow area marked as “MIXED USE” may be used for the parking or storage of aircraft of any size.

Any modification to the parking areas depicted on Exhibit C shall be permitted only with Airport Director’s prior written approval and shall not increase the acreage allotted for MIXED USE.

For each violation of this provision, LESSEE shall pay to COUNTY liquidated damages in the amount of \$1,000 per occurrence, per day. LESSEE agrees this amount is reasonable in light of the anticipated harm to COUNTY for each such occurrence, which would otherwise be difficult to calculate with certainty.

- D. Storage of aircraft-related supplies, parts and equipment necessary for support of said aircraft.
- E. Retail and wholesale sales of aircraft fuel by into-plane full service fueling, engine oil, and lubricants. LESSEE acknowledges that COUNTY has installed a hydrant fueling system and fuel storage tanks to serve commercial airline aircraft, and LESSEE’s fuel storage improvements and wholesale deliveries will be serving only general aviation aircraft.
- F. Line service for the purpose of fueling, supplying engine oil, checking tire pressures, and use of auxiliary power units for starting and/or on-the-ground utility service on the Leased Premises or in the public transit area.
- G. Flight instruction (schools or individual instructors), including flight training and demonstration of aircraft for sale or charter.
- H. Towing of disabled aircraft.
- I. Maintenance and servicing of general aviation automotive ramp equipment (under cover or indoors), and the sale of aircraft fuel, subject to Airport Director approval.
- J. Installation of food vending equipment and/or a coffee bar for the purpose of serving LESSEE’s employees and customers. Sale or vending of tobacco products is prohibited. Use of tobacco products is prohibited within any building on the Leased Premises.
- K. Provision of aircraft washing beginning at such time as appropriate facilities are constructed and operational on the Leased Premises.
- L. Office space incidental to LESSEE’s operations permitted herein.



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Other allowed services and operations may be provided, including:

- A. Sale, lease, and rental of new and used aircraft (both retail and wholesale).
- B. Sale of aircraft parts and accessories (retail or wholesale).
- C. Sale of new and used radio and other electronic equipment, including aircraft instruments.
- D. Sale of navigational and aviation supplies and accessories.
- E. Aircraft chartering, operation, and management services.
- F. Financing, leasing, and insuring of aircraft.
- G. Rent-a-car service.
- H. Upholstery and maintenance of aircraft interiors.
- I. Operation of a general aviation facility for customs clearance of international general aviation arrivals by United States Customs and Border Protection between the hours of 5:00 a.m. and 12:00 a.m.
- J. Such other services or uses as Airport Director may approve in writing.

Additional Use Requirements and Prohibitions:

LESSEE shall provide on-site management personnel for hangars, tie-downs, and other uses permitted above. On the Commencement Date of this Lease, LESSEE shall accept the assignment from COUNTY to LESSEE of all aircraft parking and storage licenses (including all tie-down, sunshade, and hangar licenses) on the Leased Premises, and LESSEE shall assume responsibility for any waitlists for formerly COUNTY-operated facilities on the Leased Premises. LESSEE shall offer aircraft storage and maintain any waitlists for aircraft storage in a fair and transparent manner. Within fifteen (15) days of the Commencement Date, LESSEE shall submit to JWA an operational plan on managing the existing COUNTY waiting list for the COUNTY hangar spaces.

LESSEE shall provide the Airport with copies of all subleases and/or agreements with subtenants and/or third parties for the leasing of office space or another portion of the Leased Premises, community hangars, box hangars, flight instruction, maintenance and servicing of aircraft, wash and wax services, and rent-a-car services, within fifteen (15) days following execution of this Lease (in the case of pre-existing subleases and agreements), or within fifteen (15) days following the execution of any new such subleases or agreements.

LESSEE shall make restroom facilities available for general aviation users, as well as allow Airport Security personnel staffing perimeter gates to use such facilities closest to the gate they are staffing.



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LESSEE shall comply with all applicable federal, State, and local laws and regulations. LESSEE agrees not to use the Leased Premises for any unauthorized commercial airline aviation purposes or to engage in or permit any activity not enumerated by this section within or from the Leased Premises. Additionally, LESSEE shall not permit the operation of a Regularly Scheduled Commercial User as defined in section 2.40 of John Wayne Airport's Phase 2 Commercial Airline Access Plan and Regulation, as may be amended from time to time. LESSEE agrees not to conduct or permit to be conducted any public and/or private nuisance (as defined in Civil Code, §§3479 – 3481, et seq.) at, in, on, or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

However, LESSEE may be permitted to provide certain commercial aviation ramp services and other contract ground services to commercial airlines pursuant to a separate Airline Related Services License.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

COUNTY grants the LESSEE a license for the non-exclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of LESSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law. The use of these areas shall be subject to the control and regulation of Airport Director, in his/her sole discretion. This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate, and relocate concessionaires and other Airport lessees.

SECTION 5.03 RULES AND REGULATIONS

During the term of this Lease, the COUNTY may adopt and enforce rules and regulations which LESSEE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations, and orders of the FAA and TSA with respect to all operations of the Airport. Except in the case of emergency, the COUNTY shall give LESSEE written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact LESSEE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to LESSEE.

LESSEE must comply with the Minimum Standards promulgated by the Airport and presently in effect at the Commencement Date or in effect at such time as this Lease is amended.

LESSEE shall comply with all Airport Rules and Regulations, the Airport's General Aviation Minimum Standards, and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority,



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whether federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations, grant assurances, and plans. The Airport Rules and Regulations contain environmental and sustainability requirements that LESSEE agrees to make reasonable efforts to participate in, help facilitate, and cooperate with, including those related to air quality, waste, and water and energy conservation.

To the fullest extent authorized by law, LESSEE shall be liable to COUNTY for any and all claims, losses, expenses, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to LESSEE's violation of any governmental rules, regulations, or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto Airport, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse, or carelessness on the part of LESSEE, its employees, sublessees, agents, or suppliers.

COUNTY shall not be liable to LESSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall LESSEE be entitled to terminate the whole or any portion of the Leasehold estate herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with LESSEE's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

SECTION 5.04 FUEL STORAGE PARCEL

The Leased Premises includes an area designated as "Fuel Storage Parcel" which is described in the Exhibits attached hereto. LESSEE shall not use any other fuel storage tanks or facilities at the Airport without the prior written approval of the Airport Director, subject to any conditions described therein.

A. Use

The use of said Fuel Storage Parcel shall be limited to the storage and transfer of fuel, the installation and maintenance of all auxiliary equipment, and facilities required to handle such fuel storage and parking of aircraft refueling vehicles. Except as approved by Airport Director in writing, parking of fuel delivery or other vehicles is prohibited. LESSEE is prohibited from replacing, altering, or modifying the fuel storage tanks located on LESSEE's designated Fuel Storage Parcel without the prior written approval of the Airport Director.

B. Fuel Storage Parcel Access

COUNTY agrees to provide LESSEE with access to the Fuel Storage Parcel from the ramp and runway areas which will not require LESSEE's fuel handling equipment to travel upon



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a public roadway. COUNTY reserves the right to access groundwater and/or soil below the Fuel Storage Parcel, for monitoring, assessment, evaluation, remediation, or as otherwise deemed necessary by the Airport Director.

C. Liability

LESSEE acknowledges that said Fuel Storage Parcel was under control and operation of prior lessees during a previous lease with COUNTY which expired. As set forth in this Lease, and without releasing any other party that may be legally responsible and/or financially liable for the environmental conditions that exist upon execution of this Lease, LESSEE agrees that LESSEE shall be liable and assume responsibility for the environmental conditions associated with the fuel storage tanks on the Leased Premises and for the cleanup of any Hazardous Materials in, at, on, under, and/or emanating from said Fuel Storage Parcel which were present during that prior occupancy or control and to indemnify and hold COUNTY harmless for any such condition as required by the "ENVIRONMENTAL INDEMNIFICATION" section of this Lease.

D. Termination for Non-Use

In the event LESSEE ceases all use and activity on said Fuel Storage Parcel for a period of six (6) months, as shown by fuel not being delivered or withdrawn from the fuel storage tanks on said parcel for that period, then Airport Director, may elect to terminate that portion of the Lease relating to the Fuel Storage Parcel. Termination shall occur upon the date the Notice of Termination is issued. LESSEE shall not be entitled to any compensation for termination of the portion of the Leased Premises covering the Fuel Storage Parcel if said termination occurs due to non-use by LESSEE.

Airport Director shall also notify LESSEE whether to leave the existing improvements on the Fuel Storage Parcel or to remove all or a portion of said improvements. LESSEE agrees that should the Fuel Storage Parcel of this Lease be terminated for non-use under the provisions of this section, LESSEE shall leave the Fuel Storage Parcel in such condition as is required to conform with federal, State, and local regulations, particularly those regulations relating to underground storage tanks and the cleanup of Hazardous Materials.

If LESSEE's use of the Fuel Storage Parcel is terminated, the monthly rent required under this Lease shall be reduced in proportion to the square footage eliminated from the total Leased Premises.

SECTION 5.05 LIMITATION OF THE LEASEHOLD

This Lease and the rights and privileges granted LESSEE in and to the Leased Premises are subject to all covenants, conditions, restrictions, and other exceptions of record. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to LESSEE of rights in the Leased Premises which exceed those owned by COUNTY, or any representation or warranty, either expressed or implied, relating to the nature or condition of the Leased Premises



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or COUNTY's interest therein. LESSEE acknowledges that LESSEE has conducted a complete and adequate investigation of the Leased Premises and that LESSEE has accepted the Leased Premises in "as is" condition.

SECTION 5.06 PROVISION OF SUFFICIENT PARKING

LESSEE shall provide sufficient vehicular parking to accommodate LESSEE's operation within the Leased Premises consistent with applicable building or zoning regulations. Should LESSEE need off-site parking to meet the parking requirements for its operations or improvements on the Leased Premises, then LESSEE shall first obtain the approval of the Airport Director and, if approved, agrees that any future sale or assignment of this Lease shall also include an assignment of LESSEE's off-site parking or provision of a comparable alternate off-site parking area outside the Airport perimeter fence to be available for use during the remaining term of the Lease.

COUNTY has no obligation whatsoever to make vehicular parking available to accommodate LESSEE's operation.

SECTION 5.07 RECORDS AND ACCOUNTS

- A. Records. LESSEE shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.
- B. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by LESSEE, provided LESSEE notifies the COUNTY in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by COUNTY unless COUNTY has objected to LESSEE's selection in writing within sixty (60) days of LESSEE's written notification.

In the event LESSEE fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Commencement Date not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the Lease unless COUNTY specifically approves in writing a different accounting year. COUNTY shall only approve a change in accounting years in the event of undue hardship being placed on either the LESSEE or COUNTY, and not because of mere convenience or inconvenience.



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C. Financial Statements.

1) Annual Balance Sheet and Income Statement

Within one hundred twenty (120) days after the end of each accounting year, LESSEE shall at its own expense submit to COUNTY a detailed balance sheet and income statement prepared in accordance with generally accepted accounting principles reflecting all business transacted by the LESSEE on or from the Leased Premises during the preceding accounting year. The LESSEE shall attest in writing that the balance sheet and income statement submitted are true and accurate representation of LESSEE's records. LESSEE shall also provide standalone audited financial statements of the LESSEE's business entity if they are available from LESSEE's corporate audit or upon request of the COUNTY. The COUNTY has the option to require LESSEE's submission of audited financial statements.

2) CPA-Audited Gross Receipts

Within one hundred twenty (120) days after the end of each accounting year, LESSEE shall at its own expense submit to COUNTY an audited statement of total Gross Receipts and total gallons of fuel delivered to LESSEE. This statement must include a breakdown schedule of all total gallons and all total Gross Receipts by type and month. At a minimum, Gross Receipts should be divided into the categories as set forth in Section 4.01(B). This statement must be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) or the California Society of CPA's. The audit must be performed in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA. The reference for this is Statement on Auditing Standards (SAS) #95. The audited statement of fuel and lubricant deliveries and Gross Receipts shall include total Gross Receipts for the accounting year classified according to the categories of business established for fuel flowage and lubricant fees and for rent-a-car fees as listed in Section 4.01 of this Lease entitled "RENT, FEES AND CHARGES."

A reviewed statement of Gross Receipts may be requested by LESSEE instead of an audited statement of fuel deliveries and Gross Receipts if undue hardship is placed on the LESSEE to obtain an audited statement. LESSEE must request and obtain written approval for a reviewed statement from the COUNTY prior to the start of the financial statement engagement for the year to be audited. If a reviewed statement of Gross Receipts is approved by the COUNTY, COUNTY retains the right to require an audited statement of Gross Receipts for future years.

LESSEE shall provide COUNTY with copies of any CPA audit or review report and audited or reviewed financial statements prepared in conjunction with their audit of LESSEE's operations from the leased premises. Copies of reports and/or



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financial statements shall be provided directly to COUNTY by the CPA at the same time LESSEE's copy is provided to LESSEE.

LESSEE acknowledges its understanding that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become public records subject to public inspection as required by California Government Code Section 6250 *et seq.*

- D. Failure to Submit Financial Statements. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that LESSEE fails to submit any financial statements by the due date listed in Section 5.07 "RECORDS AND ACCOUNTS", Airport Director may require LESSEE to pay the greater of:
- 1) Five thousand dollars (\$5,000); or
 - 2) Any and all costs incurred by COUNTY for the Certified Public Accountant hired by the COUNTY to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.
- E. Audits. All LESSEE's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Leased Premises shall be kept and made available at one location within the limits of the County of Orange. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times.

The COUNTY, upon request of LESSEE and at said COUNTY's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided LESSEE shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for COUNTY to send a representative to audit said books and records. Said right shall not be exercised by COUNTY more than once each accounting year.

The full cost of said audit, as determined by COUNTY, shall be borne by LESSEE if either or both of the following conditions exist:

- 1) The audit reveals an underpayment of more than two percent between the rent due as reported and paid by LESSEE in accordance with this Lease and the rent due as determined by said audit;
- 2) LESSEE has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section A "Records" above. The adequacy of records shall be determined at the sole discretion of COUNTY in accordance with the provisions of a letter of agreement between LESSEE and COUNTY.



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Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of COUNTY, LESSEE shall promptly provide, at LESSEE's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to LESSEE's use of the Leased Premises. Such data shall include, if required, a detailed breakdown of LESSEE's receipts and expenses.

- F. Environmental Compliance Audits. LESSEE shall provide the COUNTY Airport Environmental Resources Manager with any documentation of environmental compliance audits, inspections, and violations within 5 days. LESSEE is responsible for correcting environmental conditions to address the findings, paying fines/fees to maintain compliance, and responding to the oversight agency. A copy of correspondence shall be submitted to the Airport's Environmental Resources Manager within 5 days.

- G. Failure to Maintain Adequate Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that LESSEE fails to maintain and keep books, records and accounts of Gross Receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to COUNTY regarding gross sales as required by this Lease, COUNTY, at COUNTY's option, may:
 - 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by LESSEE under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by LESSEE upon demand.

 - 2) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by LESSEE in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during LESSEE's business hours, or from time to time, all at LESSEE's sole cost and expense and, in such event, LESSEE shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or

 - 3) Require that LESSEE pay percentage rents based on COUNTY's best good faith estimate of LESSEE's Gross Receipts from business operations conducted on or from the Leased Premises and any such determination made by COUNTY shall be conclusive and binding upon LESSEE.

The above costs payable by LESSEE shall include reimbursement to COUNTY of



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COUNTY provided services at such rates as COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by COUNTY's employees, such rates shall be sufficient to reimburse COUNTY for employee salaries, including employee taxes and benefits and COUNTY's overhead or, at COUNTY's option, may be the rate for such services that would be charged by a qualified third-party or parties, approved by COUNTY, if engaged by COUNTY to perform such services.

- H. Review Period. COUNTY or its designee may conduct such audits or inspections throughout the term of this Lease and for a period of three (3) years after final payment or longer if permitted by law.
- I. Methodology. COUNTY or designee may, without limitation by LESSEE, conduct verifications including, but not limited to, inspection of LESSEE's Records, observation of LESSEE's employees in or about the Leased Premises, and verification of information and amounts through interview and/or written communications with LESSEE's employees or sub-contractors.
- J. Record Retention. All of LESSEE's Records shall be retained by LESSEE for a period of the balance of the fiscal year in which the Record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this Lease expires or is terminated.
- K. The Airport is developing a tenant portal/revenue system for daily automated reporting of operations, revenues and data exchange. Airport shall have the right to implement such system that can provide daily reports to Airport. If Airport exercises such right, LESSEE must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system. Until such time as the system is implemented, LESSEE shall comply with the following:
 - 1) Sales Recording System. LESSEE shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to Airport Director, or designee for approval no later than thirty (30) days after Commencement Date. Following approval by Airport Director, or designee, such systems and equipment shall be utilized by LESSEE. LESSEE shall accurately record each transaction on a system that can generate daily electronic reporting. LESSEE shall report on a daily basis and in an electronic format all business activities. Such system shall be sufficient to supply an accurate record of all sales.
 - 2) Electronic Reporting Requirements. LESSEE shall install in the Leased Premises an electronic reporting system which shall meet current industry standards for transmitting, capturing and recording transactions, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said system shall be accessible to and subject to inspection or audit by Director or designee upon request. All cash receipts must include LESSEE's identification thereon. Customer must be issued a



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receipt or sales slip for each transaction, which transaction must be recorded either on or serially numbered sales slip or digital record produced. COUNTY should have the right during business hours to examine the totals of the electronic reporting system used in the Leased Premises and to inspect for compliance with this section. LESSEE shall ensure a capability for the installation of Airport and Airport partner applications that can be integrated with LESSEE's system to exchange data. Any sales captured from third-party applications, LESSEE branded applications, cell phone applications must be provided to the COUNTY as part of the monthly sales reporting.

SECTION 5.08 MAINTENANCE AND OPERATION OF LEASED PREMISES

At LESSEE's sole cost and expense, LESSEE shall keep and maintain the Leased Premises in good working order, and in a safe, clean, wholesome, sanitary condition in compliance with all applicable laws, rule, regulations, and ordinances, and as provided in LESSEE's maintenance plan attached hereto as Exhibit H. At LESSEE's sole cost and expense, LESSEE shall be responsible to make all necessary replacements and/or repairs required to maintain the Leased Premises and improvements in good condition and working order. In addition to the building facilities, drainage facilities (storm and sanitary sewer), above and below ground utilities, lighting, and security (i.e. gates, fencing, etc.), this includes routine maintenance, replacements, and/or repairs of all pavements (including subgrade) and below-ground improvements including underground storage tanks, wash racks, and/or clarifiers that may be on the Leased Premises. All repairs and/or replacements shall be of a quality equal to or exceeding the original. All repairs, replacements, and improvements made by the LESSEE to the Leased Premises shall be submitted to JWA for review and approval prior to construction, require JWA inspection upon completion of construction, and shall be in compliance with all current federal, State, and local ordinances and building codes, fire codes, zoning, safety, all Airport Regulations, and with the requirements of Title III of The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, et seq., and the regulations issued pursuant thereto (Codes). The Codes encompass all fire, life, and safety aspects and apply to the construction, alteration, moving, demolition, repair, replacement, and use of the Leased Premises. LESSEE is prohibited from engaging in any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment of the leased premises. All devices or safeguards which are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

LESSEE shall engage the services of an independent and qualified State of California licensed and registered professional engineer who shall conduct an annual pavement inspection of all paved areas used by aircraft within the Leased Premised in compliance with FAA Advisory Circular 150/5380-6 Guidelines and Procedures for Maintenance of Airport Pavements ("FAA AC 150/5380-6"), as amended from time to time, and ASTM D 5340 Standard Test Method for Airport Pavement Condition Index Surveys ("ASTM D 5340") as amended from time to time. A detailed report signed, stamped, and sealed by the professional engineer shall be submitted to the COUNTY on each anniversary of the Commencement Date. The report shall meet Airport Director's requirements, including, as applicable, complete plans, specifications, and schedules for repair or replacement of any found defects or deficiencies in accordance with FAA AC 150/5380-6 and ASTM D 5340.



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LESSEE shall immediately notify Airport Director and the Airport Operations Center at 949-252-5000 of any fire, emergency, accident, release, discharge, and/or reportable spill of fuel, lubricants, solvents and/or Hazardous Materials. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental Law as defined in this Lease. In addition to reimbursing County the costs of all services provided by third parties to mitigate such spills, LESSEE shall pay to County administrative costs in the amount of one thousand dollars (\$1,000) per incident.

LESSEE shall further notify the Airport's Environmental Services Manager within 24 hours of any release, discharge, leak or spill of any fuel, lubricants, solvents and/or Hazardous Materials that LESSEE knows or reasonably should have known about within the Leased Premises.

LESSEE shall report to Airport Director any accidents or incidents for which LESSEE is wholly or partially responsible, which occur on the Leased Premises and are reportable to the FAA or other governmental or regulatory agencies. LESSEE shall pay to COUNTY administrative costs in the amount of one thousand dollars (\$1,000) per such reportable accident or incident.

LESSEE further agrees to provide approved containers for trash, garbage, recyclables, and regulated waste and to keep the Leased Premises free and clear of rubbish, litter, and hazardous waste. The Airport Director shall have the right to enter upon and inspect the LESSEE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections. LESSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If LESSEE fails to maintain or make repairs or replacements as required herein, Airport Director shall notify or attempt to notify the LESSEE in writing of said failure. Should LESSEE fail to correct the failure within fifteen (15) days or as otherwise specified in the notice, Airport Director shall have the right, but not the obligation, to enter the Leased Premises to make the necessary correction, repair, and/or replacement, or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to LESSEE as Additional Rent. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items also shall be paid by LESSEE within ten (10) days of receipt of a statement of said cost from Airport Director as Additional Rent. Airport Director may, at Director's option, choose other remedies available herein, including termination, or as provided by law.

LESSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to LESSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, internet, electrical supply system or electrical apparatus, cable or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.



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SECTION 5.09 PAYMENT OF AND RESPONSIBILITY FOR UTILITIES

LESSEE shall be responsible for and pay, prior to the delinquency date, all charges for utility connections and services supplied to the Leased Premises. COUNTY shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle LESSEE to terminate this lease or abate the rent due hereunder.

SECTION 5.10 REPORTING OF BASED AIRCRAFT

LESSEE shall submit to COUNTY with its monthly payment of rents a listing of all Based Aircraft parked on the Leased Premises. For purposes of this Section, "Based Aircraft" shall mean an aircraft that is operational and airworthy, and which is based at the Airport for a majority of the year. Therefore, LESSEE must track the daily activity of aircraft parked on the Leased Premises and determine, on a rolling basis, which aircraft have been parked on the Leased Premises for at least 183 days out of the prior 365 days. The monthly listing shall be provided to the Airport using a JWA-approved Microsoft Excel template.

ARTICLE VI - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 6.01 LIABILITY FOR EXISTING ENVIRONMENTAL CONDITIONS

Notwithstanding the liability of prior tenants of the Leased Premises, LESSEE understands and agrees that it may be found legally responsible and/or financially liable for existing environmental conditions on, under, and/or emanate from the Leased Premises upon entering into this Lease, including, but not limited to, associated costs and expenses related to Hazardous Materials, fuel storage tanks, including underground storage tanks, and compliance with all Environmental Laws.

SECTION 6.02 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

LESSEE shall comply with all Environmental Laws, including laws regulating Hazardous Materials, and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this Lease, LESSEE shall comply with such regulations regarding the storage, distribution, processing, handling, release, removal, and/or disposal, including the storm water discharge requirements, of Hazardous Materials including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements. Violation by LESSEE or any of its agents, assigns, successors, sublessees, subcontractors, or employees of any Environmental Law are grounds for termination of this Lease in accordance with Article IX of this Lease, and for termination of all operations by LESSEE at or on the Airport.

Notwithstanding the liability of prior tenants of the Leased Premises, LESSEE shall at its sole cost and expense investigate, evaluate, assess, remove, and/or remediate any and all Hazardous Materials that may be required or ordered by any governmental agency or Environmental Law. In



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conducting a clean-up of a Hazardous Material release under this Lease, LESSEE shall comply with all applicable Environmental Laws. LESSEE shall not use the COUNTY hazardous waste generator ID for waste disposal.

SECTION 6.03 STORM WATER CONTROL AND CONTAMINATION

Storm Water Laws and Regulations. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) (40 CFR Parts 122, 123, and 124). The U.S. EPA, through the NPDES permitting program, regulates discharges of potentially contaminated wastewater and storm water into waters of the United States. California has been delegated NPDES general permitting authority by the U.S. EPA. California's State Water Board has issued NPDES permits to regulate municipal, industrial, and construction storm water discharges under the NPDES permitting program.

Section 402(p) of the Clean Water Act (CWA) requires NPDES permits for storm water discharges from municipal separate storm sewer systems (MS4s). The County of Orange is the principal permittee for Orange County's MS4 Permit Order No. R8-2009-0030 (or currently effective permit) No. CAS 618030 (MS4 Permit). As a facility owned and operated by the County of Orange, the Airport implements requirements in the MS4 permit and is responsible for discharges into the system. One of the MS4 Permit requirements is to establish the legal authority to control discharges. The County's Water Quality Ordinance (OCCO Title 4, Division 13, Sections 4-13-10 et. seq.) regulates non-storm water discharges into the MS4 to reduce the discharge of pollutants into the waters of the State. The CWA and the resulting MS4 permit require the County to take steps to reduce pollutants leaving its systems to the maximum extent practicable. The MS4 permit requires the County to develop and implement a Local Implementation Plan (LIP) describing the programs and procedures required by the MS4 permit.

COUNTY will provide the required annual training for LESSEE as part of the MS4 LIP training program requirements. LESSEE shall have all personnel who may affect discharges to the storm system or who work within the airside portion of John Wayne Airport attend annual training or LESSEE shall provide annual training to personnel using JWA-approved training materials.

LESSEE shall not have prohibited discharge to the MS4 system or on-site storm drains. Some non-storm water discharges (i.e., fire sprinkler tests) require additional permits with the Regional Water Quality Control Board (RWQCB). LESSEE is responsible for obtaining and implementing monitoring requirements associated with any non-storm water discharge permits. LESSEE shall notify COUNTY prior to any non-storm water discharge.

In the furtherance of these regulations and Section 402 of the Clean Water Act (CWA), the State of California has adopted a General Permit for discharges of Storm Water associated with industrial activities: "State Water Resources Control Board (State Water Board) Water Quality Order No. 2014-0057-DWQ, NPDES General Permit No. CAS 000001 (Industrial General Permit or IGP)." JWA has applied for and received coverage to discharge storm water and authorized non-storm water discharges pursuant to the general permit for industrial activities and are subject to the permit's requirements, conditions, and penalties. The permit requires the development and



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implementation of an effective Industrial Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Implementation Plan (MIP). This plan is developed by COUNTY and covers LESSEE. The airside portion of JWA where industrial activities take place is covered by the IGP. Industrial activities include maintenance, fueling, equipment cleaning, storage areas, and material handling activities.

LESSEE shall comply with applicable storm water discharge requirements for industrial facilities, including numeric effluent limits (NELs) and numeric action levels (NALs), as may be promulgated, updated, or amended from time to time. The current IGP includes NELs for copper, zinc, and lead. LESSEE shall, to the extent possible:

- A. Separate industrial storm water flows off their leasehold from the airfield non-industrial flows. The LESSEE drainage system must consolidate storm water flows and allow for monitoring of storm water quality by JWA at the LESSEE discharge location(s) to the JWA storm water drainage system.
- B. Install and implement appropriate BMPs to meet the COUNTY's WQMP requirements and to meet pollutant discharge limits identified in the IGP at their discharge point(s) to the JWA storm drain system. LESSEE shall consider space planning, policies, and practices to reduce storm water flow from industrial activities that would require management and treatment to meet NALs and NELs under the IGP.
- C. COUNTY will coordinate design and construction of the Airport's responsible portion of the industrial storm water system with LESSEE's phasing plan.

COUNTY will provide the required annual training for LESSEE personnel that work on the airfield as part of the airport-wide IGP SWPPP requirements. LESSEE shall have all personnel working within the airside portion of JWA to attend annual training or LESSEE shall provide annual training to personnel using JWA-approved training materials. LESSEE shall implement BMPs in accordance with the COUNTY's IGP SWPPP.

LESSEE shall submit a Water Quality Management Plan (WQMP) for approval for significant redevelopment projects, defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site to address post-construction urban runoff and storm water pollution.

When LESSEE engages in a constructed project with an approved WQMP, LESSEE shall implement post-construction BMPs, including operation and maintenance (O&M) requirements, described in the WQMP. LESSEE shall notify the COUNTY at least five (5) days prior to any O&M conducted for post-construction BMPs. LESSEE shall provide the O&M records to the COUNTY within 30 days of completing the maintenance.

LESSEE activities may require additional separate permits, which LESSEE may be responsible for, and which will be clarified with COUNTY at the time of planning and design. LESSEE shall contact COUNTY prior to new construction activities, operational changes, and/or prior to any



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activity that may result in a non-storm water discharge. LESSEE will comply with all applicable NPDES storm water permit requirements for LESSEE activities.

LESSEE shall not allow or cause the entry of any materials, waste, or hazardous materials under its control into the Airport Storm Water Drainage System unless authorized by Environmental Law and the Airport's Storm Water Discharge Permit. LESSEE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water Drainage System of the Airport or into the Storm Water Drainage System of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of COUNTY for that purpose, and LESSEE complies with recommendations made by the California and/or U.S. Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. LESSEE shall bear all costs and any other expenses related to unauthorized non-storm water discharges.

LESSEE shall assure the protection of storm water from aircraft maintenance and washing activities, including GA self-service activities, through implementation of policies or Best Management Practices. Wet washing of aircraft is only allowed in designated wash rack areas. Only dry wash methods are allowed for cleaning aircraft outside of the designated wash rack areas. Aircraft maintenance can only occur in designated areas; these areas must be protective of storm water through covering or other means.

Spill Control and Hazardous Materials

Within 60 days following the Commencement Date of this Lease, LESSEE shall furnish COUNTY with an updated Spill Prevention, Control, and Countermeasures (SPCC) Plan and Hazardous Material Disclosure/Business Emergency Plan for activities that will be performed at the Airport for JWA's review and approval. LESSEE shall register on the Orange County Health Care Agency/Certified Unified Program Agency (OCHCA/CUPA) E-Submit Business Portal, upload the updated Plans, and show proof of submittal to the COUNTY within 90 days of the Commencement Date. Any modifications to SPCC Plans and/or Hazardous Material Disclosure/Business Emergency Plans shall be submitted as soon as practicable following the change, but no later than 30 days from the correction.

The SPCC Plan shall meet the applicable requirements of 40 CFR Part 112. LESSEE will take necessary steps to prevent spills and, if a spill does occur, will minimize the impacts to human health and the environment. LESSEE shall commit the necessary resources to maintain spill prevention systems, provide appropriate security, respond to spills, inspect storage areas, test storage equipment, make required notifications, maintain records, and provide training for personnel. LESSEE shall meet the General Secondary Containment Requirements for refueling vehicles, §112.7(c), without relying on the Oil Water Separators installed at JWA.

The Hazardous Material Disclosure/Business Emergency Plan shall be updated if there is a substantial change in quantities, storage locations, or material types. LESSEE shall include details on the emergency contacts, training, mitigation, abatement, and evacuation procedures that will be followed in an emergency. Maps and chemical inventories shall be accurate and kept up-to-date.



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SECTION 6.04 GENERAL HEALTH AND SAFETY CONDITIONS

Precaution shall be exercised at all times by LESSEE for the health, safety, and welfare of persons, including employees and property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used shall comply with the Occupational Safety & Health Administration (OSHA) requirements including but not limited to OSHA Hazard Communication Standard 29 CFR 1910.1200, and federal and State safety orders.

LESSEE shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, State, and local laws and regulations. LESSEE shall properly post Manufacturer's Safety Data Sheets as required by law and shall use and dispose of all materials in conformance with all applicable codes, rules, regulations, and manufacturer's recommendations.

LESSEE shall submit to the Airport's Environmental Resources Manager, annually on December 31, a report on compliance with and the status of all required permits including, but not limited to, Fire, OSHA, Air Quality Management, and Health Care Agency. The report must summarize all spills, leaks or permit violations for the previous year. The annual report must also contain copies of all reports and annual testing reports (such as fuel tank tightness testing) sent to any regulatory agency and documentation of required maintenance and inspection of fire and safety fixtures and equipment and an updated inventory of all Hazardous Materials used or stored on site.

LESSEE shall provide all notices required pursuant to the Environmental Laws. LESSEE shall provide prompt written notice to COUNTY within five (5) days of receipt of any written notices of violation of any Environmental Law received by LESSEE.

The annual report and all written notices must be submitted to COUNTY by the due date. Liquidated damages of five hundred dollars (\$500) will be assessed against LESSEE for each day the annual report or written notice of violation is late.

SECTION 6.05 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LESSEE shall indemnify, defend, and hold the COUNTY, its officers, directors, agents, and employees and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing body harmless for compliance with all Environmental Laws, from and against any and all Environmental Law claims, judgments, damages, penalties, actions, fines, costs, liabilities, losses, orders, expenses, and lawsuits (including fees and costs for attorneys, experts, and expert consultants) arising from the Leased Premises, and/or out of or related to any actions or omissions of LESSEE, the LESSEE's operations at the Airport or any action arising from and which involve the LESSEE's officers, agents, successors, assigns, sublessees, subcontractors, and employees (whether or not they are negligent, intentional, willful or unlawful), including defense expenses arising therefrom, including, but not limited to, the following:



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- (1) The historical environmental conditions at, on, under, and/or emanating from the Leased Premises that LESSEE may be required to pay.
- (2) The LESSEE's placement, disposal, allowing, or releasing of Hazardous Materials upon or within the Airport including any such claims, demands, liabilities, cost, expenses, and/or obligations related to LESSEE's release or threatened release of Hazardous Materials on, at, and/or under the Airport.
- (3) The LESSEE's release or threatened release of Hazardous Materials at, on, under, and/or emanating from the Airport.
- (4) The LESSEE's noncompliance with any Environmental Law, except that LESSEE's obligations under this paragraph shall not extend to remediation conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, sublessee, assignee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE.
- (5) The LESSEE's causing or allowing any prohibited discharge into the Airport Drainage System.

This indemnification includes, without limitation, reasonable fees, costs, and expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, State, or local governmental or regulatory entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, LESSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage, or expense arising from the sole negligence or willful misconduct of COUNTY or its officers, employees, agents, or contractors.

In the event the indemnitees as described herein are parties in any proceeding (legal, administrative, or otherwise), the LESSEE shall, at the request of the COUNTY, defend the indemnitees with qualified counsel approved in writing by COUNTY, unless the COUNTY, in its sole and absolute discretion, undertakes legal representation, in which event the LESSEE shall reimburse the COUNTY for the expenses incurred by it in defending such proceeding, including reasonable attorneys' fees, expert and/or consultant fees, and investigative and court costs.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease.



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The rights and obligations set forth in this indemnification shall survive the termination and expiration of this Lease.

SECTION 6.06 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of the environmental requirements codified in this Article conflict with any other terms of this Lease, the environmental requirements contained in Article VI shall apply.

SECTION 6.07 EXISTING ENVIRONMENTAL CONDITIONS AND HISTORICAL ASSESSMENTS

COUNTY and others have conducted environmental assessments on portions of the Leased Premises which provide a historical assessment of the environmental condition on portions of the Leased Premises regarding Hazardous Materials (the "Historical Conditions"). A list of references is provided in Exhibit D.

LESSEE hereby expressly acknowledges that it has reviewed the Historical Conditions and agrees that it shall be responsible for remediation of any and all Hazardous Materials at, on, and/or under the Leased Premises including and in excess of the Historical Conditions. Without releasing any other party that may be legally responsible and/or financially liable for the environmental conditions that exist upon execution of this Lease, LESSEE agrees to be legally responsible and/or financially liable for the environmental conditions related to Hazardous Materials and underground storage. LESSEE further agrees that it shall also be responsible for any release, threatened release, and/or disposal of Hazardous Materials which occur on or off the Leased Premises as a result of LESSEE's acts or omissions or by those who are affiliated with LESSEE. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, assign, sublessee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE. LESSEE shall not be responsible to remediate conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport.

LESSEE agrees to provide COUNTY and COUNTY's consultants with complete access to the Leased Premises for the purpose of investigation and remediation of contamination. LESSEE agrees to preserve all existing and future remediation infrastructure including, without limitation, any groundwater monitoring wells, groundwater extraction wells, and related piping.

SECTION 6.08 ANTI-IDLING POLICY

Within six months of LEASE execution, LESSEE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LESSEE's policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the LESSEE.



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SECTION 6.09 ENVIRONMENTAL STEWARDSHIP

Environmental stewardship is one of the key pillars in JWA's mission to be a good neighbor. JWA is committed to upholding best practices in environmental responsibility and has been an industry leader in implementing policies that provide both sustainability and cost-effectiveness. JWA has adopted a variety of environmental policies and practices.

LESSEE shall support JWA's Environmental Stewardship program by complying with JWA's Tenant Design Guidelines and shall make reasonable efforts to participate in, help facilitate, and cooperate with JWA's sustainability efforts.

The LESSEE shall support the COUNTY's Environmental Stewardship program through participation in various efforts or implementation of plans, as amended from time to time, and the following requirements. Full implementation of this program shall be applicable to all GSE effective on January 1, 2023, and will apply to all facilities and capital improvements as they are constructed.

- 1) Climate Action Plan
- 2) Waste and Recycling Plan
- 3) SWPPP
- 4) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District
- 5) Ground Support Equipment ("GSE")
 - a. LESSEE shall employ Zero Emission Vehicle ("ZEV") GSE where available (e.g. tugs, water carts, lavatory carts, other ramp service equipment/vehicles) for 90 percent or greater of the GSE operating hours.
 - b. Where ZEVs are not available, vehicles shall meet Ultra Low Emission Vehicle ("ULEV") requirements.
 - c. Where ULEVs are not available, and only diesel fuel engine trucks are available, the diesel-fueled truck shall comply with the On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation.
 - d. LESSEE shall maintain monthly records regarding GSE type, make, model, year, fuel type, horsepower (if non-electric), and hours in-use. Monthly records are subject to audit and verification by JWA. These records shall be provided to JWA annually in December.
- 6) Conservation
 - a. LESSEE shall use ENERGY STAR and EPA Water Sense appliances.



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- b. LESSEE shall use ENERGY STAR Portfolio Manager to track use of electricity, natural gas, and water and waste quantities. LESSEE shall share this data with COUNTY Airport Environmental Resources Manager quarterly and annually.
- c. LESSEE shall adopt a Waste and Recycling Plan meeting CALGreen Tier 1 requirements, or better, and acceptable to LESSOR. LESSEE shall provide waste diversion data quarterly and annually to COUNTY Airport Environmental Resources Manager.
- d. LESSEE shall install Electric Vehicle chargers in public and employee parking areas, provide preferential parking for vehicles powered by low emission sources, and provide secure bicycle racks.
- e. LESSEE shall practice water conservation through design, construction, and ongoing maintenance activities.
- f. LESSEE shall include over 50% of solar-ready roof-top on new construction; COUNTY maintains the option to lease any solar-ready areas not covered by owner's solar arrays and to install renewable energy equipment.
- g. LESSEE shall implement the following conservation measures:
 - i. Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs
 - ii. Install sensors in office areas to turn off when unoccupied
 - iii. Install energy-efficient heating and cooling equipment when replacing or upgrading
 - iv. Purchase and use energy-efficient computers and servers
 - v. Select equipment with variable speed motors and fan drives, when possible

7) Environmental Policies

- a. LESSEE shall adopt the COUNTY's Environmentally Preferable Purchasing Policy (2008) or develop a similar policy that addresses the LESSEE's procurement of goods and services. Policy shall be submitted to the COUNTY Airport Environmental Resources Manager.
- b. LESSEE shall develop an Environmental Sustainability Policy that covers water and power conservation, waste diversion, and pollution prevention. Policy shall be submitted to the COUNTY Airport Environmental Resources Manager.
- c. LESSEE shall provide reports necessary for environmental compliance, regulatory requirements, and airport mitigation measure obligations upon request from COUNTY, including but not limited to GSE data, fuel delivery and usage, spills, and business emergency plans.



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ARTICLE VII - CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 IMPROVEMENTS BY LESSEE

LESSEE shall cause to be designed and constructed, at no cost to COUNTY, those initial improvements shown on the conceptual plans attached hereto as Exhibit F. The development and phasing of said construction shall proceed as described in Exhibit G, and may be subject to reasonable modification or amendment by the Airport Director in consultation with LESSEE. All costs related to the initial redevelopment of the Leased Premises are collectively referred to as LESSEE's "Initial Capital Investment." The minimum cost of LESSEE's Initial Capital Investment shall be \$86,508,650, and excludes the cost of any and all refurbishments or improvements made pursuant to Section 7.11. In the event the minimum cost of Initial Capital Investment exceeds the actual construction costs of all LESSEE improvements itemized in accordance with Section 7.06 of this Lease, LESSEE's savings resulting from lower actual construction costs will be shared equally between LESSEE and COUNTY, and LESSEE shall pay to COUNTY one half (50%) of the difference between the minimum cost of Initial Capital Investment and the actual construction costs within 30 days of LESSEE's submittal of itemized costs required by Section 7.06.

The term "cost of improvements" shall mean direct construction costs, including costs paid to contractors, architects, engineers, laborers and suppliers, premiums for bonds required by COUNTY, and permit and developer fees required by governmental agencies, but shall exclude indirect costs, such as costs of financing, and administrative and overhead expenses.

LESSEE shall not perform any construction upon the Leased Premises nor shall LESSEE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of COUNTY.

- A. COUNTY and Federal Approvals Required. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of COUNTY, which consent may be withheld or conditioned in COUNTY's sole and absolute discretion.

FAA approval of JWA's Airport Layout Plan ("ALP") is required prior to any FBO construction activities. The ALP shows the boundaries and proposed additions to all areas of the Airport, the location and nature of existing and proposed Airport facilities and structures, and the location on the Airport of existing and proposed non-aviation areas and improvements thereon, and shall incorporate LESSEE's development plans, which must be submitted to the FAA for review. LESSEE shall provide CADD/GIS files of the LESSEE's development plans to JWA. Airport-approved development plans will not be released for permitting until the ALP is approved.

National Environmental Policy Act ("NEPA") approval by the FAA is required prior to any FBO construction activities. As the Airport Sponsor, JWA will prepare all required NEPA documentation for submission to the FAA. LESSEE shall provide CADD/GIS files



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of the LESSEE's development plans to JWA. Upon receipt of NEPA approval, JWA will invoice LESSEE for JWA's actual costs associated with NEPA review and approval of LESSEE's project, and LESSEE shall reimburse such costs within thirty (30) days of such invoice. If a facility for the screening of international general aviation arrivals is part of LESSEE's project, then such facility may also require additional NEPA approval by U.S. Customs and Border Protection, Department of Homeland Security. Airport-approved development plans will not be released for permitting until the ALP is approved and NEPA approval has been received.

- B. Compliance with Plans, Schedule, Design and Construction Standards. LESSEE shall construct (or cause to be constructed) all improvements within the Leased Premises in strict compliance with detailed plans and specifications complying with the Airport's Tenant Design Guidelines, including all other available John Wayne Airport Design and Construction Standards, and approved in writing by Airport Director. LESSEE shall submit to JWA for review plans and specifications at the 50% complete, 90% complete, and 100% complete milestones, which are prepared by a State of California licensed and registered Architect and Engineer (A/E) firm with qualifying experience for the intended improvements at an airport setting. Submittals shall include all required reports, basis of designs, studies, exhibits, and calculations. Upon completion of JWA's review of the plans and specifications, and when approved in writing by the Airport Director, the LESSEE shall submit the construction documents to the County of Orange Public Works Department and any other required agencies for approval and permitting.

The plans and specifications shall include detailed phasing and sequencing plans which clearly show the extent of work within each phase of demolition and construction, the area of each phase, and the number and type of aircraft to be located within each completed phase. The plans shall include an operational plan which identifies the number and type of aircraft to be displaced during each phase and to where displaced aircraft will be relocated. The plans shall show the capacity of the relocation site(s).

LESSEE shall begin coordination of the fire-life safety designs with the Orange County Fire Authority as early as practicable.

Along with plans and specifications for proposed improvements, LESSEE shall provide to Airport Director a detailed project critical path method (CPM) schedule (in Primavera P6 format) enumerating, at a minimum, all activities affecting the baseline schedule of work from mobilization through substantial completion of construction. The schedule shall include 90-day transitional plan, design and construction documents preparation, reviews and permits, NEPA processes and approvals, bidding and awards, inspections and occupancy certifications, closeout, commissioning, activations and start-up of operations. The schedule shall match the plans and specifications and shall be organized in a manner that clearly shows the phasing and sequencing of each phase of the development, identifying the beginning and completion dates for each phase of the work. In order to facilitate phasing of construction projects among multiple Airport tenants, said schedule shall be subject to Airport Director's approval, and work shall not



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commence until Airport Director provides a notice to proceed, which notice may be conditioned or delayed at Airport Director's sole discretion without cost or liability to COUNTY. Upon receipt of the Airport Director's notice to proceed with the work, LESSEE must maintain compliance with its baseline schedule. Except as otherwise agreed in writing by Airport Director, liquidated damages in the amount of two thousand dollars (\$2,000) will be assessed for each day beyond the substantial completion date identified in the schedule that the work has not been substantially completed. At a minimum, LESSEE shall provide to JWA monthly updates of the schedule, including a summary report of any changes.

All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," including all other available John Wayne Airport Design and Construction Standards, which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits, and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. LESSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by LESSEE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain LESSEE's responsibility. LESSEE, at its own cost and expense, shall procure all permits necessary for such construction.

As applicable depending on the type of project, all design and construction shall meet CALGreen Tier 1 requirements, or better (at time of permit submittal), include documentation for construction requirements (i.e. waste management, low emissions vehicles, etc.), and meet the most recent applicable Envision Gold certification requirements, or better, at permit submittal. LESSEE shall use the Envision pre-assessment checklist to guide the sustainability efforts early in project planning and strive to achieve a level of Gold; certification shall be required if applicable to the project type.

LESSEE shall participate in the COUNTY's storm water site development plan, if available, or obtain approval from COUNTY for LESSEE's water quality management plan as required by COUNTY for significant redevelopment projects. Architectural coatings applied to pavement surfaces shall be marked using low VOC coatings. Specifically, with paint that contains less than 50 grams of VOC emissions per liter of paint. If needed, LESSEE shall use heavy-duty, off-road, diesel-powered construction equipment to meet or exceed the USEPA's Tier 4 off-road emissions engine standards during Airport construction to reduce construction-related NOx emissions.



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- C. Performance of Work. LESSEE agrees that any improvement being constructed by or under the direction of LESSEE shall be constructed in substantial compliance with COUNTY-approved plans, which requires those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of COUNTY. In satisfaction of the requirements of the COUNTY, LESSEE shall be required to secure the faithful performance of construction and completion of construction of the improvement by appropriate contractor's bonds and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided by the California Labor Code and California Department of Industrial Relations.
- D. Insurance Requirements. LESSEE shall be required to carry comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in LESSEE's and COUNTY's name. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services in its reasonable discretion. LESSEE shall indemnify COUNTY and hold COUNTY harmless for any and all claims, demands, damages, costs or expenses of any nature, including defense costs by reason of construction or alteration by LESSEE.
- E. Noninterference. LESSEE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the Terminal or on the Airport. LESSEE agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of LESSEE or its contractor.
- F. Trailers and Modular Structures. All improvements constructed by LESSEE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of COUNTY approved temporary modulars or trailers during construction. LESSEE shall maintain restroom facilities and provide existing or comparable restrooms to customers, guests, and flight crew personnel throughout the redevelopment of the Leased Premises. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.
- G. LESSEE's Cost and Expense. All renovation or construction by LESSEE pursuant to this Section shall be at LESSEE's sole cost and expense. LESSEE shall keep the Leased Premises and the improvements constructed thereon free and clear of all liens, except for construction or take-out financing with respect solely to LESSEE's improvements, and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. Nothing contained herein shall be understood to foreclose the right of contractors, suppliers or laborers to file preliminary notices with respect to the Leased Premises (and not the COUNTY's underlying fee interest) in connection with construction performed on the Leased Premises and the filing of such preliminary notices shall not constitute a violation of LESSEE's obligations under



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this Section, and LESSEE shall also hold COUNTY harmless from any liability based on the filing of such notice.

- H. Utilities. LESSEE shall bear sole financial responsibility for all connection fees, design, construction, removal, relocation, and installation of utilities related to the development of its facilities, as well as any costs related to compliance with local governmental or utility provider requirements when utilities are impacted as a result of the development. All impacts to utilities shall be brought to the attention of Airport Director for review and approval. All energy and water utilities to the Leased Premises shall be separately metered. Those utilities not separately metered shall be specified in writing and COUNTY and LESSEE shall reach agreement, either in this Lease or in a separate written agreement, on the proration of utility expenses. Those payments may include, without limitation, restrictions on or special allocation provisions with respect to excess utility usage upon the Leased Premises for exceptional equipment, ventilation or cooling requirements. LESSEE shall use ENERGY STAR Portfolio Manager to track use of electricity, natural gas, and water and waste quantities. LESSEE shall share this data with COUNTY Airport Environmental Resources Manager quarterly and annually.

- I. Damage during Construction. LESSEE shall repair all damage to Airport facilities caused by LESSEE's construction within seven calendar days, unless other arrangements are approved by Airport Director. Damages or conditions which impact safety must be corrected immediately by LESSEE. All Airport roads must be maintained as open and passable by emergency equipment at all times during construction and shall not conflict with normal Airport operation.

- J. Ownership of Improvements. All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by LESSEE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require LESSEE, at LESSEE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 7.02 CONSTRUCTION AND/OR ALTERATION BY COUNTY

In the event COUNTY should require any portion of the Leased Premises in connection with construction of improvements, future expansion, and/or alterations by the Airport, Airport Director may, upon sixty (60) days' written notice (or immediately should Airport Director determine in Director's sole discretion that an emergency exists) make his/her best effort to substitute alternate space for that portion of the Leased Premises necessary to accommodate the construction. Airport Director will make every reasonable effort to provide replacement space during the construction period that will furnish LESSEE the same utility as the space replaced. In the event alternate space is not available, LESSEE will be reimbursed pursuant to Section 7.03.



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SECTION 7.03 LESSEE REIMBURSEMENT

In the event COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose, COUNTY may terminate this Lease as to all or any portion of the Leased Premises. In that event, if this Lease is terminated in its entirety, COUNTY shall reimburse LESSEE for improvements to the Leased Premises completed during the term of this Lease.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

$$\text{COMPENSATION} = \frac{B}{C} \times A$$

A = LESSEE's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled "RECORD DOCUMENTS, AS-BUILT DOCUMENTS, AND CONSTRUCTION COSTS," plus any amounts paid to COUNTY by LESSEE in accordance with Section 7.01.

B = Number of full months remaining in the Lease term.

C = Number of full months between the date LESSEE completed construction of Leased Premises improvements and the date the Lease would expire by its terms if COUNTY did not exercise its right to early termination.

LESSEE shall submit to COUNTY within sixty (60) days of completion of construction of any Leased Premises improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "as-built"/record documents as required elsewhere in this Lease. LESSEE acknowledges and agrees if LESSEE fails to submit notifications and supporting documentation for any such Leased Premises improvements in a timely manner, LESSEE waives its right to compensation for such improvements.

SECTION 7.04 LESSEE'S ASSURANCE OF CONSTRUCTION COMPLETION

A. Within nine (9) months of the Commencement Date of this Lease, LESSEE shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to LESSEE to complete the first phase of Initial Capital Investment as described in Exhibit G. The amount of money available shall be at least \$13,905,700, the total estimated construction cost of this first phase. Such evidence may take one of the following forms:

- a. Completion Bond issued to COUNTY as obligee.
- b. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction or until the assurances required by sub-section B, hereafter, have been provided.



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- c. Any combination of the above to equal total estimated cost of construction for the first phase.

In the event that LESSEE complies with sub-section B, below, within nine (9) months of the full execution of this Lease, LESSEE shall not be required to comply with this sub-section A.

- B. Notwithstanding the requirements of Section 7.04(A), above, prior to commencement of demolition of existing facilities and construction of approved facilities, LESSEE shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to LESSEE and COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- a. Completion Bond issued to COUNTY as obligee.
- b. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction.
- c. Any combination of the above to equal total estimated cost of construction.

The assurances required by sub-section A, above, shall no longer be required once LESSEE complies with this sub-section B.

All bonds and letters of credit pursuant to this Section must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit pursuant to this Section shall insure faithful and full observance and performance by LESSEE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third-party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.05 MECHANICS LIENS OR STOP NOTICES

LESSEE shall at all times indemnify and hold COUNTY harmless from all Mechanics Liens, Stop Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by LESSEE, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop notice is imposed upon the Leased Premises, LESSEE shall either:



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- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien.

Should LESSEE fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop notice, the Lease shall be in default and shall be subject to immediate termination. LESSEE shall indemnify, defend, and hold COUNTY harmless from and against any and all claims, damages, liabilities, costs and expenses (including attorneys' fees and costs) arising out of or related to any mechanic's liens recorded against any portion of the Leased Premises caused by LESSEE, or its agents, employees, contractors, sublessees, successors, and/or assigns, and any and all monetary amounts incurred by COUNTY to obtain a lien release shall be due and payable as Additional Rent. This indemnity shall survive the expiration or earlier termination of this Lease.

SECTION 7.06 RECORD DOCUMENTS, AS-BUILT DOCUMENTS, AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the LESSEE shall furnish the Airport Director a complete package of "As-Built Documents" and "Record Documents," which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the "As-Built Documents" and "Record Documents," organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

Drawings and Models:

- All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
- All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
- All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
- In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

Documents and Reports:



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- All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance (O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: "Record Documents," e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the "John Wayne Airport Construction Standards" for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the LESSEE with the thumb drives containing the "As-Built Documents" and "Record Documents." Basic specifications, standards, and requirements for BIM, CADD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request. Additional requirements for digital record files are described in Exhibit E.

Furthermore, within 90 days of the date the LESSEE begins to use such improvements ("Date of Beneficial Occupancy"), the LESSEE shall furnish to the Airport Director an itemized statement of the actual, direct construction costs of any such improvement. All such costs related to the initial redevelopment of the Leased Premises are collectively referred to as LESSEE's "Initial Capital Investment." The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the LESSEE or its responsible agent under penalty of perjury. The LESSEE must obtain the Airport Director's approval of acceptance of the "As-Built Documents" and "Record Documents" and the form and content of the itemized statement for the release of any construction bond.

SECTION 7.07 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

In the event of damage to or destruction of LESSEE-owned or constructed buildings, facilities, or improvements located within the Leased Premises or in the event LESSEE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, LESSEE shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease. Repair, replacement, or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Director. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify LESSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY



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elects to repair, LESSEE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

In the event that (a) such damage or destruction to LESSEE-owned or constructed buildings, facilities or improvements (“improvements”) located within the Leased Premises occurs, or (b) said improvements are declared unsafe or unfit for use and occupancy, within one (1) year of the expiration date of this Lease, COUNTY and LESSEE may mutually agree to terminate this Lease, in which case, COUNTY may, at COUNTY’s sole option, accept monetary consideration from LESSEE in lieu of LESSEE’s reconstruction of improvements located on the Leased Premises, and after such termination, neither party shall have any further obligations under this Lease, except for obligations that expressly survive the termination or expiration of the Lease hereunder.

SECTION 7.08 CONSTRUCTION HEALTH AND SAFETY

LESSEE’s contractor for demolition and/or construction (“the Contractor”) shall have at the work site copies of or suitable exacts of “Construction Safety Orders” and “General Industry Safety Orders” issued by the California State Division of Industrial Safety. The Contractor shall comply with the provisions of these and all other applicable laws, ordinances, and regulations.

Contractor’s Safety Plan. The Contractor shall submit for approval, prior to beginning construction, a comprehensive Safety Plan (“the Safety Plan”) outlining code of safe work practices and procedures as listed in Appendix C: Code of Safe Practices in the Guide to Developing Your Workplace Injury and Illness Prevention Program, CCR Title 8, Section 1509, Industrial and Illness Prevention Program, Subchapter 4, Construction Safety Orders, Article 3, General, for all construction activities including, but not limited to, trenching and shoring, fall protection, confined space entry, hazardous materials, night work, and lockout/block-out. The plan shall provide a list of competent persons for activities for which competent persons are defined and are required by state law. The plan shall also describe Airport security procedures.

The Safety Plan(s) must be site-specific and job task(s) specific. They must identify job/site-specific workplace hazards as part of an Injury and Illness Prevention Program. The plan(s) must outline the site-specific Code of Safe Work Practices and Procedures for all equipment used or work activities performed at the Airport, and for all materials and “HAZARDOUS MATERIALS” used or stored onsite. The plan(s) must include the JWA worksite specific emergency contact lists, and emergency response and personnel training procedures.

The Safety Plan shall contain directions to the closest hospital and provide a map showing the Airport and the location of hospitals. Information regarding spill response and hazardous materials is to be included. The plan shall be reviewed and signed by all personnel entering Airport property. The plan shall identify the projects included in the Safety Plan, describe operational safety during construction, construction activity and aircraft movement, and limitations of construction. It shall list safety considerations to be discussed at the preconstruction conference and safety meetings. The Contractor shall prepare and distribute to JWA three complete bound booklets identified as “SAFETY PLAN.”



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SECTION 7.09 CONSTRUCTION STORMWATER PLAN

LESSEE's Contractor shall submit for Airport approval, prior to beginning construction, its Construction SWPPP or Erosion and Sediment Control Plan ("ESCP") concerning BMP implementation including how Storm Water run-off will be controlled, how the discharge of unauthorized Non-Storm Water Discharges will be contained and prevented, and how soil erosion and sedimentation of surface run-off will be prevented at the site. Projects disturbing one (1) or more acres of soil or projects that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to develop a SWPPP and obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity – General Permit Order 2009-0009-DWQ ("Construction General Permit"). Projects disturbing less than one acre of soil and not required a Construction SWPPP shall develop an ESCP.

- A. The SWPPP or ESCP shall be site-specific and shall be approved by the Airport Director before the start of construction. It shall be incorporated into the design and planning phases of the project.
- B. Contractor shall select BMPs for the site-specific SWPPP or ESCP. The plan must cover the construction area, construction lay-down areas, haul routes, and off-site migration or tracking of contaminants such as mud. This includes keeping Aircraft Operating Areas ("AOA") clear of mud and debris. The plan must minimize potential soil and water quality impacts, including impacts resulting from total suspended solids ("TSS"), oil and grease, total petroleum hydrocarbons ("TPH"), or chemicals or materials used for construction. The plan must also include leak or spill cleanup.

SECTION 7.10 CONSTRUCTION WASTE MANAGEMENT PLAN

LESSEE's Contractor shall submit for approval, prior to the beginning of construction, its Construction Waste Management ("CWM") Plan detailed how waste generated during construction activities will be contained, stored, labeled, tracked, and disposed of. The plan should address waste diversion for recyclables and organic waste and meet the requirements of CALGreen Tier 1. CWM forms can be found in the Guide to the 2019 California Green Building Standards Code published by the California Building Standards Commission and the International Code Council.

- A. The CWM Plan shall be project-specific and cover all the construction activities.
- B. The CWM Plan shall be incorporated into the design and planning phases of the project and shall be approved by the Airport Director before the start of construction.
- C. LESSEE's Contractor shall use the CWM Worksheet and Acknowledgement forms to report waste disposal monthly and at the conclusion of the construction project.



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SECTION 7.11 TEN-YEAR REFURBISHMENTS

Every ten (10) years from date LESSEE begins to use its improvements to the Leased Premises (“Date of Beneficial Occupancy”), LESSEE shall make refurbishments to its facilities for the purpose of keeping the FBO contemporary and competitive with current FBO industry standards; provided, however, that no program of refurbishment, renovation or capital improvement shall be mandated or compelled so long as LESSEE maintains its facilities and improvements in good working order and condition. LESSEE shall consult with the Airport Director prior to making any such refurbishments and, in particular, shall consult with the Airport Director on or before the tenth (10th), twentieth (20th) and thirtieth (30th) anniversaries of the Commencement Date to discuss such refurbishment of facilities as may be necessary or appropriate to satisfy the requirements of this Section. LESSEE’s refurbishments must provide for a capital reinvestment in facilities on the Leased Premises meeting the following requirements, where the amount of the reinvestment will be reasonably determined by Airport Director with consideration given to the conditions of the facilities at each reinvestment milestone.

Should the Airport Director and LESSEE disagree on the necessary improvements required, the parties shall engage a third-party, selected and agreed to by COUNTY and LESSEE, at LESSEE’s sole cost and expense, to assess the condition of the premises relative to industry standards and to make a determination as to what improvements shall be required. In no case will the cost of such improvements exceed the amounts specified below relative to each reinvestment milestone.

- A. On or before the tenth (10th) anniversary of the Date of Beneficial Occupancy, LESSEE may be required by JWA to make a reinvestment of up to twenty percent (20%) of its Initial Capital Investment.

- B. On or before the twentieth (20th) anniversary of the Date of Beneficial Occupancy, LESSEE may be required by JWA to make a reinvestment of up to twenty percent (20%) of its Initial Capital Investment.

- C. At such time that five (5) years remain on the term of this Lease, LESSEE may be required by JWA to make a reinvestment of up to ten percent (10%) of its Initial Capital Investment.

Prior to reaching each reinvestment milestone, and with sufficient time for all required review and approval in accordance with this ARTICLE VII but in no event later than one hundred eighty (180) days prior to the milestone date, LESSEE shall provide to JWA its plans and specifications for the refurbishment project, as well as a breakdown of the costs for design, construction, upgrades, and installations of new fixtures or equipment proposed for the refurbishment project. LESSEE shall complete each refurbishment project within one hundred eighty (180) days from the date of its final approval by JWA unless otherwise approved in writing by Airport Director. Failure to complete the refurbishment within the prescribed time will subject LESSEE to liquidated damages in the amount of two thousand dollars (\$2,000) per day until the refurbishment has been completed to the satisfaction of the Airport Director.

Within sixty (60) days following the completion of each refurbishment project, LESSEE shall



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provide certified documentation of the capital investment actually expended in the project, together with “as-built”/record documents as required by this ARTICLE VII. In the event of a shortfall between the required reinvestment amount and the actual refurbishment cost, LESSEE shall pay to COUNTY an amount equal to the shortfall as of one hundred eighty (180) days after completion of the refurbishment project. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as reasonably determined by Airport Director.

ARTICLE VIII – ASSIGNMENT, SUBLETTING, AND ENCUMBERING

SECTION 8.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to the limitations of Section 5.01 “USE.”

- A. Transfers. Except as provided by this Article, LESSEE shall not voluntarily, involuntarily, or by operation of law transfer, assign, sublet, encumber, or hypothecate (hereinafter referred to as “Transfer”) any interest of the LESSEE in the Leased Premises without the prior written approval of the COUNTY. Occupancy of the Leased Premises by a prospective transferee prior to approval shall constitute a breach of this Lease. LESSEE shall give the COUNTY sixty (60) days’ prior written notice of all proposed Transfers. The LESSEE shall not make any such Transfers for a period longer than the remaining term of the Lease. All subleases of hangar space, ramp parking space, and office/facility space shall be between LESSEE and sublessee; sub-subleases are prohibited and shall constitute a breach of this Lease. LESSEE shall provide Airport Director copies of all subleases within fifteen (15) days following their approval.

If the COUNTY approves any Transfer, such approval does not constitute a waiver of any of the terms of the Lease. LESSEE agrees that a Transfer of this Lease shall not release LESSEE from any of the obligations found in this Lease. All Transfer documents shall be consistent with the terms, covenants, and conditions of the Lease, and in the event of any inconsistency, the provisions of this Lease shall govern. LESSEE must submit all required COUNTY forms with backup documentation, and include payment to COUNTY of a \$3,000 administrative charge, for COUNTY to process such request.

If the LESSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LESSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

Except as provided by this Article, the failure by the LESSEE to obtain the prior written approval by the COUNTY of any Transfer of the Lease or any interest in the Leased Premises shall constitute a material breach of this Lease by, and shall not confer any Leasehold rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per Article IX, Section 9.02.



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- B. Conditions of COUNTY Approval. COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but COUNTY and LESSEE expressly agree it shall be reasonable for COUNTY to withhold consent to any Transfer for the following reasons:
- (1) LESSEE, its successors or assigns are in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by COUNTY.
 - (2) The prospective sublessee, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
 - (3) The prospective sublessee, assignee or transferee is not financially capable or not experienced in performing the Lease obligations, as determined by the Airport Director.
 - (4) Sublessee's use is in conflict with the terms of this Lease.
 - (5) All the terms, covenants and conditions of Transfer, including the consideration therefor, of any and every kind, have not been revealed in writing to Airport Director. On the first day of each month, LESSEE shall submit a monthly rent roll of all its existing sublessees indicating the sublessee/customer name, sublessee type, start date, end date, square footage and monthly rent.
 - (6) Any construction required of LESSEE as a condition of this Lease has not been completed to the satisfaction of COUNTY.
 - (7) LESSEE has not provided Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, and escrow instructions.
 - (8) LESSEE attempts to hypothecate the Leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the Leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.
 - (9) If a release or threatened release of Hazardous Materials is materially increased as a result of a Transfer or if COUNTY does not receive reasonable assurances that a prospective sublessee, assignee or transferee has the experience and/or the financial ability to remedy a violation of Environmental Laws related to Hazardous Materials and/or fulfill all obligations under this Lease.
- C. Bankruptcy Transaction. If LESSEE assumes this Lease and proposes to assign the same pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to COUNTY.
- (1) The name and address of proposed assignee,



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- (2) All of the terms and conditions of such offer, and
- (3) Adequate assurance to COUNTY of the proposed assignee's future performance under the Lease, including, without limitation, the assurance referred to in the United States Bankruptcy Code, 11 U.S.C. §365(b)(3).

Any person or entity to which this Lease is assigned pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to COUNTY an instrument confirming such assumption.

SECTION 8.02 LEASEHOLD MORTGAGES

- A. LESSEE's Right to Encumber Leasehold Estate; No Right to Encumber COUNTY's Fee Interest. LESSEE may, at any time during the Term of this Lease (with the consent of COUNTY after prior written notice providing evidence that all requirements of this Lease applicable at the time have been complied with) encumber all or any portion of LESSEE's leasehold estate in and to this Lease, including LESSEE's rights, title and interest in and to the Leased Premises and Improvements, or any applicable portion thereof or interest therein ("Leasehold Estate") with one (1) or more mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by an institutional lender by which LESSEE's Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation ("Leasehold Mortgages"); provided, however:

- 1) Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed 80% of the costs of the improvements and facilities to be constructed by LESSEE prior to completion and 80% of the Leasehold Estate value after completion;
- 2) That LESSEE shall not have the power to encumber, and no Leasehold Mortgage shall encumber, COUNTY's fee interest in the property underlying the Leased Premises ("COUNTY's Fee Interest");
- 3) The Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of COUNTY hereunder, except as otherwise provided in this Lease;
- 4) Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the COUNTY's Fee Interest to any Leasehold Mortgage; and
- 5) In the event of any conflict between the provisions of this Lease and the provisions of any such trust Leasehold Mortgage, the provisions of this Lease shall control.



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- B. Notification to COUNTY of Leasehold Mortgage. LESSEE or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide COUNTY with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, LESSEE shall furnish to Airport Director a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, LESSEE or any Leasehold Mortgagee shall notify COUNTY of any change in the identity or address of such Leasehold Mortgagee.

SECTION 8.03 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE IX - TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

This Lease creates a new Leasehold concerning all or any portion of the Leased Premises. Upon the Commencement Date of this Lease, any prior agreement with relation to the Leased Premises between the parties shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Lease.

SECTION 9.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this Lease and all of its obligations hereunder with or without prior notice to LESSEE and may exercise all rights of entry for default and breach if the LESSEE fails to perform on any of its obligations under this Lease, including but not limited to the following:

- A. Payment of all rents, fees, and charges if not cured within ten (10) days following written notice from COUNTY;
- B. A general assignment for the benefit of creditors and any Transfer in violation of Article VIII, above;
- C. The issuance of any execution or attachment against LESSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than LESSEE;
- D. The voluntary vacation or abandonment by LESSEE of the conduct of a fixed base operation at the Airport;



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- E. The violation by LESSEE of any of the terms of any insurance policy referred to in this Lease, the remedies for which are provided in that section of the Lease entitled "INSURANCE";
- F. If LESSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated safety standards in the conduct of LESSEE's business, it being understood that this requirement pertains specifically to a substantial and material breach of the standards and policies established and administered by the FAA's Office of Safety Standards (to the extent they are applicable to fixed base operations), and/or those standards established by the TSA specifically pertaining to airport safety pursuant to its authority arising under Title 49 Code of Federal Regulations ("CFR") § 1542. Citations, enforcement actions, and proceedings related to minor violations shall not constitute a breach of this Lease.
- G. The violation of any written directions of the Airport Director if not cured within three (3) business days following written notice from Airport Director;
- H. The appointment of a receiver to take possession of all, or substantially all, the assets of LESSEE located at the Leased Premises or of LESSEE's Leasehold interest in the Leased Premises where such appointment or seizure is not discharged within sixty (60) days following the appointment of the receiver or seizure of assets; and,
- I. All other violations not specified above if not cured within five (5) business days following written notice from COUNTY, provided that if the nature of such failure is such that it can be cured by LESSEE but that more than five (5) business days are reasonably required for its cure (for any reason other than financial inability), then LESSEE shall not be deemed to be in default if LESSEE shall commence such cure within said five (5) business days, and thereafter diligently prosecutes such cure to completion.

SECTION 9.03 COUNTY REMEDIES

In the event of any default by LESSEE, then, in addition to any other remedies available to COUNTY at law or in equity, COUNTY shall have the immediate option to terminate this Lease and all rights of LESSEE hereunder by giving written notice of such termination. In the event that COUNTY shall elect to so terminate this Lease, then COUNTY may recover from LESSEE:

- A. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
- B. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss LESSEE proves reasonably could have been avoided; plus



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- C. The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves reasonably could be avoided; plus
- D. Any other amount necessary to compensate COUNTY for all detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, plus
- E. At COUNTY's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California Law.

As used above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

SECTION 9.04 TERMINATION FOR NONUSE

COUNTY has entered into this Lease for the express purpose of having LESSEE provide those services and uses to the public at the Airport as authorized in that section of the Lease entitled "USE." Should such services and uses of the Leased Premises be discontinued for thirty (30) consecutive calendar days or more, the Airport Director may terminate this Lease and all rights, but not the obligations, of LESSEE shall end at time of such termination subject to that section of the Lease entitled "LESSEE REIMBURSEMENT." Said thirty consecutive calendar day requirement shall not include periods during which LESSEE performs demolition of existing facilities, construction of site improvements, remodeling, renovations, or repairs as approved by Airport Director.

SECTION 9.05 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise provided by this Lease or approved in writing by COUNTY, upon termination of this Lease, LESSEE shall redeliver possession of the Leased Premises to COUNTY in substantially the same or better condition than existed immediately prior to LESSEE's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the Lease in this Lease shall include termination by reason of expiration.

SECTION 9.06 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If LESSEE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to LESSEE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to LESSEE or to any person claiming under LESSEE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the Lease shall not be construed as giving LESSEE possession of the Leased Premises during the fifteen (15) days after termination, expiration, or abandonment of the Lease.



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SECTION 9.07 QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION OR DEFAULT

Upon termination of this Lease for any reason, including, but not limited to, termination because of default by LESSEE, LESSEE shall execute, acknowledge, and deliver to COUNTY, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of LESSEE in the Leased Premises is quitclaimed to COUNTY. Should LESSEE fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of LESSEE to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of LESSEE or those claiming under LESSEE in and to the Leased Premises.

SECTION 9.08 COUNTY'S RIGHT TO RE-ENTER

LESSEE agrees to yield and peaceably deliver possession of the Lease Premises to COUNTY on the date of termination or default of this Lease, whatsoever the reason for such termination or default.

Upon giving written notice of termination or default to LESSEE, COUNTY shall have the right to re-enter and take possession of the Leased Premises on the date such termination or default becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination or default of the Lease and re-entry of the Leased Premises by COUNTY shall in no way alter or diminish any obligation of LESSEE under the Lease terms and shall not constitute an acceptance or surrender.

LESSEE waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE X - SECURITY

SECTION 10.01 AIRPORT SECURITY

In addition to FAA safety regulations, the LESSEE must also comply with all Airport security rules, regulations and plans, Department of Homeland Security-Transportation Security Administration (TSA) regulations, United States Customs and Border Protection (USCBP) regulations, and all other applicable federal, State and local regulations regarding security during the term of this Lease. LESSEE is responsible for fines imposed by any regulatory agency as a result of LESSEE's failure to comply with applicable rules and regulations regarding airport security.

LESSEE shall be required to obtain airport security clearance in order to operate on the Leased Premises pursuant this Lease. LESSEE must designate one or more Authorized Signatories to attend training by the Airport, and to be the primary point(s) of contact for Airport Issued I.D. security badge related correspondence and records management. LESSEE, its employees and



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contractors must complete a background clearance, and a Security Identification Display Area (SIDA) class in order to obtain an Airport issued I.D. security badge for access to secure areas. All Airport Operations Area (AOA) drivers must also complete training to receive driver's authorization to drive on the airfield.

A. Authorized Signatory

Authorized Signatories are individuals or designated representatives authorized to sponsor badge applicants and request Airport issued I.D. security badges on behalf of their organization. They are responsible for initiating and understanding the security I.D. badge application process, and certify applicant employment. Authorized Signatories are also the primary points of contact for the Airport I.D. Badge Office correspondence related to audits, changes to employee access authority, if an employee is arrested or convicted of a disqualifying criminal offense, and if an employee is terminated.

B. Airport Issued I.D. Security Badge Acquisition

Prior to issuance of I.D. security badge(s), LESSEE's personnel must successfully complete the Airport issued I.D. security badge acquisition process. LESSEE personnel who will be working onsite, and engaged in the performance of work under this Lease, must be sponsored by a Lessee identified Authorized Signatory, pass Airport's screening requirements, which includes, but may not be limited to, an F.B.I. Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon successful completion of the background checks, LESSEE personnel will be required to attend a 3-hour SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver's Training class and written test. The physical Airport issued I.D. security badges are not issued until LESSEE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed all required background checks, 3) completed and passed appropriate classroom training and 4) paid an I.D. badge fee for each badged person. LESSEE should anticipate a minimum of five (5) business days to complete the Airport issued I.D. security badge process if all requirements listed above are fulfilled by individual applicants in a timely manner. LESSEE shall be responsible for all applicable fees and costs associated with the background checks and I.D. security badging process. The amount of such fees is subject to change without notice.

C. Airport Issued I.D. Security Badge Holder Requirements and Responsibilities

The Airport Security Plan (ASP) requires that each person issued an Airport issued I.D. security badge be made aware of his/her responsibilities regarding the privilege of access to SIDA, Secure, Sterile, and AOA areas of the Airport.

LESSEE and all its personnel within access controlled areas (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport issued I.D. security badge,



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unless they are escorted by a properly badged individual with escort privileges. When working in a SIDA, AOA, Sterile or Secure area, each badged person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid I.D. badge. Any person who is not properly displaying or who cannot produce a valid Airport issued I.D. security badge must immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport issued I.D. security badge is the property of the County of Orange and must be returned upon termination of employment and/or termination of the Lease. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. LESSEE or its personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable. In the event that the LESSEE's badge is not returned to the Airport upon termination of employment and/or termination of the Lease, the LESSEE and/or LESSEE personnel shall be liable to the County of Orange for a fine in the amount of \$250 per unreturned badge. The amount of the fine is subject to change without notice. LESSEE's security deposit may be applied to cover the cost of the fine.

ARTICLE XI - INSURANCE AND INDEMNITY

SECTION 11.01 INSURANCE

LESSEE agrees to purchase all required insurance at LESSEE's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

LESSEE agrees that LESSEE shall not operate on the Lease Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Airport Director. In no cases shall assurances by LESSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. LESSEE also agrees that upon cancellation, termination, or expiration of LESSEE's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Lease Premises until such time as the Airport Director reinstates the Lease.

If LESSEE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, COUNTY and LESSEE agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to LESSEE, said material breach shall permit COUNTY to take whatever steps necessary to



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interrupt any operation from or on the Lease Premises, and to prevent any persons, including, but not limited to, members of the general public, and LESSEE's employees and agents, from entering the Lease Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. LESSEE further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY'S action.

LESSEE may occupy the Leased Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this Lease. COUNTY reserves the right to terminate this Lease at any time LESSEE's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LESSEE shall pay COUNTY a fee of \$300.00 for processing the reinstatement of the Lease. LESSEE shall provide to COUNTY immediate notice of said insurance cancellation or termination.

LESSEE shall ensure that all contractors performing work on behalf of LESSEE pursuant to this Lease and all tenants operating within the Lease Premises shall carry appropriate lines of insurance subject to the same terms and conditions as set forth herein for LESSEE. LESSEE shall not allow contractors or tenants to operate within the Lease Premises if they have less than an appropriate level of coverage required by the LESSEE under this Lease. It is the obligation of the LESSEE to provide written notice of the insurance requirements to every contractor and tenant and to receive proof of insurance prior to allowing any contractor or tenant to begin operations within the Lease Premises. Such proof of insurance must be maintained by LESSEE through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of LESSEE's current audited financial report. If LESSEE's SIR is approved, LESSEE, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from LESSEE's, its agents, employee's or subcontractor's performance of this Agreement, LESSEE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) LESSEE's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the LESSEE's SIR provision shall be interpreted as though the LESSEE was an insurer and the COUNTY was the insured.



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Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the LESSEE shall provide the minimum limits and coverage as set forth below:

| <u>Coverages</u> | <u>Minimum Limits</u> |
|---|--|
| Aviation General Liability (Including but not limited to General Liability, Contractual, Premises, Products/Completed Operations, Hangarkeepers and Vehicles/Mobile Equipment operated on restricted airport premises) | \$10,000,000 per occurrence \$10,000,000 aggregate |
| Workers' Compensation | Statutory |
| Employers' Liability Insurance | \$1,000,000 per occurrence |
| Pollution Liability | \$5,000,000 per claims-made or per occurrence |
| Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit. Property Schedule to include all assigned fuel storage tanks, piping, fittings, associated equipment, vaults and clarifiers. | 100% of the Replacement Cost Value and no coinsurance provision. |



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Required Endorsements

The following endorsements must be submitted with the Certificate of Insurance:

1. The Aviation General Liability and Pollution Liability policies shall contain an Additional Insured endorsement providing coverage at least as broad as ISO forms CG 2010 or CG 2033 naming the ***County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds***. Blanket coverage may also be provided which will state - ***As Required by Written Agreement***.
2. The Aviation General Liability and Pollution Liability policies shall contain a primary non-contributing endorsement evidencing that the LESSEE's insurance is primary and any insurance or self-insurance maintained by County of Orange shall be excess and non-contributing.
3. The Workers' Compensation policy shall contain a Waiver of Subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees***. Blanket coverage may also be provided which will state - ***As Required by Written Agreement***.
4. The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the COUNTY'S financial interest when applicable.

All insurance policies required by this lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Aviation General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

If LESSEE's Pollution Liability policy is a claims-made policy, LESSEE shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director. LESSEE has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

COUNTY expressly retains the right to require LESSEE to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify LESSEE in writing of changes in the insurance requirements. If LESSEE does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to LESSEE, and COUNTY shall be entitled to all legal remedies.



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The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

SECTION 11.02 INDEMNITY

To the fullest extent authorized by law, the LESSEE shall indemnify, defend with counsel approved in writing by COUNTY, and hold the COUNTY, its officers, directors, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing body harmless from any and all claims, demands, or liability of any kind or nature arising out of or related to the LESSEE's operations at the Airport, including the cost of defense arising therefrom. LESSEE's indemnity obligations stated herein also apply to those actions arising out of or related to LESSEE's officers, agents, successors, assigns, sublessees, subcontractors, and employees. LESSEE's indemnity obligations stated herein shall not apply in the event of any loss, damage, or expense arising from the sole negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors. The rights and obligations set forth in this indemnification shall survive the termination and/or expiration of this Lease.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this Lease. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

ARTICLE XII - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 12.01 CIVIL RIGHTS AND NONDISCRIMINATION

- A. LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LESSEE transfers its obligation to another, the transferee is obligated in the same manner as LESSEE.
- B. LESSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
 - 1) LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.



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- 2) LESSEE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
 - 3) In all solicitations, either by competitive bidding or negotiation made by LESSEE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by LESSEE of the LESSEE's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 - 4) LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, LESSEE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
 - 5) In the event of LESSEE's noncompliance with the non-discrimination provisions of this Lease, COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until LESSEE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
 - 6) LESSEE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. LESSEE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LESSEE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, LESSEE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, LESSEE may request the United States to enter into the litigation to protect the interests of the United States.
- C. LESSEE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is



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extended or for another purpose involving the provision of similar services or benefits, LESSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
 - 4) LESSEE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. LESSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. LESSEE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:
- (1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d *et seq.* (prohibiting discrimination on the basis of race, color, national origin);
 - (2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;
 - (3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);
 - (4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (prohibiting discrimination on the basis of disability), and 49 CFR part 27;
 - (5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* (prohibiting discrimination on the basis of age);



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- (6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);
 - (7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Acts Right of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;
 - (8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);
 - (9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);
 - (10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - (11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and
 - (12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).
- F. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Lease in accordance with the provisions of Section 9.02, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 12.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of LESSEE, and without interference or hindrance. COUNTY reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard.



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SECTION 12.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport. In the event the FAA, or its successors, request modifications or changes to this Lease which may or may not be condition precedent to obtaining funds for the improvement of the Airport, LESSEE hereby consents to any and all such modifications and changes as may be requested and without further consideration, and LESSEE agrees to immediately execute an amendment to this lease to reflect the requested modifications or changes.

SECTION 12.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

LESSEE agrees that LESSEE's use of the Leased Premises, including all construction thereon, shall conform to applicable Federal Aviation Regulations.

LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 12.05 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 12.06 RESERVATION OF AVIGATION EASEMENT

COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise, vibration, fumes, and soot as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 12.07 HEIGHT LIMITATION OF STRUCTURES

LESSEE by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the Federal Aviation Regulations (as same may be amended from time to time or as such



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regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the land Leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of LESSEE. LESSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

LESSEE acknowledges that it accepts the Leased Premises in "as is" condition and by entering into this Lease accepts liability, and agrees to indemnify COUNTY pursuant to Section 11.02 for all existing conditions whether known or unknown on the Commencement Date.

SECTION 12.08 NONINTERFERENCE WITH AIRCRAFT

LESSEE by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the Leased premises and hereby cause the abatement of such interference at the expense of LESSEE.

SECTION 12.09 WAR OR NATIONAL EMERGENCY

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

SECTION 12.10 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

It is the policy of the Department of Transportation that disadvantaged business enterprises (DBE) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Lease. To the extent applicable to LESSEE's operations at the Airport, LESSEE agrees to comply with all DBE requirements.

SECTION 12.11 RESERVATION OF RIGHT OF ENTRY AND EASEMENT FOR NAVIGATIONAL AIDS

COUNTY reserves the right to enter the Leased Premises for the installation and maintenance of Airport navigational aids. Said navigational aids may be installed on land or improvements within the Leased Premises. Said installation and any required maintenance shall be coordinated with LESSEE so as to cause the least interference with LESSEE's use of the Leased Premises. All installation and maintenance costs will be paid by COUNTY.

COUNTY also reserves the right to grant easements to provide utilities to serve the navigational aids. All utility costs for the operation of navigational aids shall be the responsibility of COUNTY.



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SECTION 12.12 ACCESS TO LEASED PREMISES

The COUNTY has exclusive access and control over the perimeter gates to the airfield. LESSEE shall not unlock, tamper or open any Airport perimeter gate on the Leased Premises unless specifically authorized by the COUNTY in writing. In order to meet reasonable requirements for Airport operation and traffic safety and control, COUNTY, at COUNTY's sole discretion, shall determine and may from time to time change the location of ingress and egress connecting the Leased Premises to public road right-of-way or Airport on-site roads and taxiways. Access locations to the Leased Premises from public road right-of-ways shall be limited to a single location unless an additional access point is approved by COUNTY. Should it be necessary for COUNTY to change the location of said access point LESSEE shall be given sixty (60) days prior written notice.

SECTION 12.13 AIRPORT MAINTENANCE AND CONSTRUCTION BY COUNTY

COUNTY may, from time to time, need to perform construction, maintenance, repairs or installations on, near or under the Leased Premises. Such work may include, but is not limited to, construction and maintenance of Airport aprons, taxiways and access roads; repair or installation of utilities; and improvement or repair of Airport drainage. Should such work by COUNTY adversely affect LESSEE's operations within or from the Leased Premises, LESSEE shall only be entitled to a reduction in rent payable to COUNTY during the period of interference which shall be reduced in proportion to the interference with LESSEE's use of the Leased Premises. LESSEE shall not be entitled to any other form of compensation, payment or damages.

SECTION 12.14 AMERICANS WITH DISABILITIES ACT

LESSEE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, LESSEE's furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the LESSEE's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. LESSEE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. LESSEE shall deliver to the COUNTY, upon the COUNTY's request, a copy of each report and work plan. The COUNTY's approval of or acceptance of any aspect of the LESSEE's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. LESSEE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the LESSEE's failure to comply with the ADA.



JOHN WAYNE AIRPORT FBO LEASE

ARTICLE XIII - MISCELLANEOUS PROVISIONS

SECTION 13.01 TIME

Time is of the essence in this Lease.

SECTION 13.02 LEASE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this Lease into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

SECTION 13.03 AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 13.04 SIGNS

LESSEE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director. Unapproved signs, banners, flags, etc., may be removed by Airport Director without prior notice to LESSEE.

SECTION 13.05 PERMITS AND LICENSES

LESSEE shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Leased Premises as set forth herein. No permit approval or consent given hereunder by COUNTY in its governmental capacity shall affect or limit LESSEE's obligations hereunder, nor shall any approvals or consents given by COUNTY as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

LESSEE's obligation under this section includes the responsibility to pay any and all fees associated with permitting, including any development fees due to the Transportation Corridor Agency which may be assessed at the time of permitting.

SECTION 13.06 TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to possessory interest tax, personal property taxes, and taxes and fees associated with permitting, including without limitation any development fees due to the Transportation Corridor Agency) which become due and payable upon the Leased Premises or upon fixtures, equipment, or other



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property installed or constructed thereon, shall be the full responsibility of LESSEE, and LESSEE shall cause said taxes and assessments to be paid promptly.

SECTION 13.07 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse LESSEE from the prompt payment of any rental or other charge required of LESSEE except as may be expressly provided elsewhere in this Lease.

SECTION 13.08 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 13.09 WAIVER OF RIGHTS

The failure of COUNTY or LESSEE to insist upon strict performance of any of the terms, covenants or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or LESSEE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 13.10 RESERVATIONS TO COUNTY

The Leased Premises are accepted "as is" by LESSEE subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder or to impair the security of any secured creditor of LESSEE.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original



JOHN WAYNE AIRPORT FBO LEASE

condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by LESSEE, LESSEE shall only be entitled to a reduction in the rent payable to COUNTY during the period of interference, which shall be reduced in proportion to the interference with LESSEE's use of the Leased Premises. LESSEE shall not be entitled to any other form of compensation.

SECTION 13.11 AUTHORITY OF LESSEE

If LESSEE is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

LESSEE has had access to legal advice from an attorney with respect to the advisability of entering into this Lease. COUNTY has made no statement or representation to LESSEE regarding any fact relied upon in entering into this Lease; and LESSEE did not rely upon any statement, representation, or promise of COUNTY in executing this Lease. LESSEE has made its own independent investigation of all facts pertaining to this Lease and the Lease Premises, and of all the matters pertaining thereto, as LESSEE deemed necessary. LESSEE expressly acknowledges it has read and understood the terms and conditions set forth in this Lease and has authority to execute this Lease.

SECTION 13.12 COUNTY REPRESENTATIVE

The Board of Supervisors hereby designates the Airport Director to be its designated representative for purposes of contact between the COUNTY and LESSEE in connection with this Lease, including, without limitation, the giving of consents and approvals in a timely manner and in accordance with the terms hereof. The Board of Supervisors may at any time, by notice given to LESSEE, remove the Director as the COUNTY's representative and appoint another individual to act as the County's representative.

SECTION 13.13 PUBLIC RECORDS

LESSEE understands that written information submitted to and/or obtained by COUNTY from LESSEE related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, may be open to inspection by the public as required by the California Public Records Act (Government Code § 6250, *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof.

SECTION 13.14 NATIONAL SECURITY

LESSEE agrees to follow all laws, rules, regulations, and/or executive orders of the United States promulgated to protect national security, including, without limitation, the following: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. § 1, *et seq.*, as amended; (2) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, *et seq.*, as amended; (3) the Anti-



JOHN WAYNE AIRPORT FBO LEASE

Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405W, as amended; (4) Executive Order No. 13224 on Terrorist Financing (effective, September 24, 2001, as may be amended or supplemented); (5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756, as amended); and (6) the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including the prohibitions against doing business with persons or entities named on the list of “Specially Designated Nationals and Blocked Persons,” as modified from time to time).

SECTION 13.15 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of COUNTY and LESSEE, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of LESSEE in the conduct of LESSEE's business or otherwise, or a joint venturer with LESSEE; and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained. This Lease is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 13.16 ATTORNEYS' FEES

In any action or proceeding to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorneys' fees, costs and expenses.

SECTION 13.17 PORT OF ENTRY DESIGNATION

LESSEE acknowledges the Airport's desire to be granted USCBP Port of Entry status by the federal government, and will support Airport in any efforts to that end. LESSEE shall refrain from undertaking any action to diminish the likelihood of the Airport receiving a Port of Entry designation.

SECTION 13.18 TRAINING AND CUSTOMER SERVICE PLANS

LESSEE will implement a customer service plan and training plan as provided for in Training and Customer Service Plan, Exhibit I, attached hereto, which plans may be amended, updated, or superseded from time to time, with the concurrence of the Airport Director.

SECTION 13.19 LESSEE'S SERVICE OF ALCOHOL

LESSEE shall comply with all applicable federal, State, and local laws and regulations for the service of alcohol. LESSEE agrees to adhere to the guidelines of 14 CFR Part 91.17 in serving alcohol to aircraft crewmembers. LESSEE shall maintain appropriate insurance coverage for the



JOHN WAYNE AIRPORT FBO LEASE

service of alcohol.

SECTION 13.20 NOTICES

All notices pursuant to this Lease shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing. Notwithstanding the above, COUNTY may also provide notices to LESSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: LESSEE

William R. Borgsmiller
President and Chief Executive Officer
ACI Jet
945 Airport Drive
San Luis Obispo, California 93401

With a copy (which shall not constitute notice) to:

Stephen R. Hofer
Aerlex Law Group
11900 West Olympic Boulevard
Suite 450
Los Angeles, California 90064-1171

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

[Signature Page Follows.]



**JOHN WAYNE AIRPORT
FBO LEASE**

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

LESSEE, Aviation Consultants, Inc., doing
business as ACI Jet

By: [Signature]

By: _____

APPROVED AS TO FORM:

County Counsel

By: [Signature: Rebecca M. Walsh]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____
Barry A. Rondinella
Airport Director

Signed and certified that a copy of this
document has been delivered to the Chair
of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY

COUNTY OF ORANGE

Robin Stieler
Clerk of the Board of Supervisors
County of Orange

Chairwoman, Board of Supervisors



**NORTHWEST FULL-SERVICE
FIXED BASE OPERATION (FBO) LEASE**

Dated _____

between

County of Orange

and

Clay Lacy Aviation, Inc.

LESSEE



JOHN WAYNE AIRPORT FBO LEASE

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EXHIBIT DISCLAIMER

Some information contained in the Exhibits to this Lease has been obtained by COUNTY's representatives and/or third parties. The information is believed to be reasonably correct, but the COUNTY does not warrant either the completeness or accuracy of such information. It is the responsibility of the LESSEE to verify all such information.



JOHN WAYNE AIRPORT FBO LEASE

THIS FBO Lease ("Lease") is made and entered into this ____ day of _____, 20__, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and CLAY LACY AVIATION, INC. ("LESSEE").

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and airport proprietor of John Wayne Airport ("JWA" or "Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, JWA is in the process of implementing a comprehensive General Aviation Improvement Program ("GAIP") with the intent to improve service, safety, security and efficiency for general aviation services and activities at JWA; and

WHEREAS, on June 25, 2019, COUNTY certified the GAIP Environmental Impact Report ("EIR") 627 and selected the Proposed Project, providing a framework for general aviation improvements at the Airport and a comprehensive update of JWA's general aviation facilities; and

WHEREAS, JWA conducted a competitive Request for Proposal ("RFP") process and COUNTY selected LESSEE to develop and operate an updated Fixed Based Operator ("FBO") facility at the Airport under this long-term Lease;

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I - DEFINITIONS

The following words, terms and phrases whenever used in this Lease shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AIRPORT

"Airport" or "JWA" shall mean the John Wayne Airport, Orange County, California.

SECTION 1.02 AIRPORT DIRECTOR

"Airport Director" or "Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office, or Director's designee.



JOHN WAYNE AIRPORT FBO LEASE

SECTION 1.03 AIRPORT FUEL FARM

“Airport Fuel Farm” or “Fuel Farm” shall mean the area located at the Southeast corner of the Airport located at the intersection of Campus Drive and Bristol Street, which contains COUNTY and LESSEE fueling facilities consisting of above ground sump tanks, underground fuel storage tanks, piping and associated fueling apparatus of which LESSEE’S Fuel Storage Parcel comprises a portion.

SECTION 1.04 BEST MANAGEMENT PRACTICES

“Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, safety plans, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment measures, operating procedures, and practices to control erosion, facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include any type of pollution prevention and pollution control measure necessary to achieve compliance.

SECTION 1.05 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

SECTION 1.06 COUNTY

“COUNTY” shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.07 DOT

“DOT” shall mean the United States Department of Transportation.

SECTION 1.08 ENVIRONMENTAL LAWS

“Environmental Laws” shall mean any federal, State, or local laws, statutes, ordinances, codes, judgments, orders, rules, or regulations pertaining to the environment and/or human health, Hazardous Materials, Pollutants, occupational safety and health, industrial hygiene, or the environmental conditions on, at, under or about the Airport, and includes, without limitation, the following: (i) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (ii) Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act Of 1986 (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; (iv) 49 C.F.R. Subchapter C (Transportation of Hazardous Materials); (v) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6901 *et seq.*; (vi) the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; (vii) the Federal Water Pollution Control Act, 33 U.S.C. § 1317 *et seq.*; (viii) the Safe Drinking Water and Toxic Enforcement Act



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of 1986 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 *et seq.*; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) California Civil Code § 3479 *et seq.*; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the Carpenter-Presley-Tanner Hazardous Substances Account Act; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, *et seq.*; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.09 FAA

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over LESSEE or its business, and the Airport.

SECTION 1.10 HAZARDOUS MATERIALS

“Hazardous Materials” shall mean any pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term “Hazardous Materials” includes, without limitation, any material or substance which is: (i) defined or listed as a “hazardous waste,” “extremely hazardous waste,” “restrictive hazardous waste” or “hazardous substance” or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos-containing materials; (iv) flammable or explosive substances; (v) mold-containing materials; poly-chlorinated biphenyl compounds; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.



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SECTION 1.11 NON-STORM WATER DISCHARGE

“Non-Storm Water Discharge” shall mean any discharge to storm sewer systems that is not entirely composed of storm water. “Non-Storm Water Discharge” includes “Unauthorized Non-Storm Water Discharges” and “Authorized Non-Storm Water Discharges” as defined by the California Environmental Protection Agency State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.12 NPDES PERMIT

“National Pollutant Discharge Elimination System (NPDES) Permit” means the currently applicable discharge permit(s) issued by the Regional Water Quality Control Board, Santa Ana Region, which establish waste discharge requirements applicable to storm runoff within the County and Airport.

SECTION 1.13 POLLUTANT

“Pollutant” means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

- a. Artificial materials (such as floatable plastics, wood products or metal shavings);
- b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
- c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
- d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
- e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
- f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
- g. Materials which contain base/neutral or acid extractable organic compounds;
- h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
- i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
- j. Any substance listed under Health and Safety Code, §25316.



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SECTION 1.14 PROHIBITED DISCHARGE

“Prohibited Discharge” shall mean any discharge that contains any pollutant, from public or private property to (i) the storm water drainage system; (ii) any upstream flow, which is tributary to the storm water drainage system; (iii) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, or coastal slough; or (iv) any coastal harbor, bay, or the Pacific Ocean.

SECTION 1.15 STORM WATER

“Storm Water” shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.16 STORM WATER DRAINAGE SYSTEM

“Storm Water Drainage System” means street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of a tributary to the county-wide storm water runoff system and owned, operated, maintained or controlled by the County of Orange, the Orange County Flood Control District or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of storm water. The Airport storm drain system shall mean any gutter, channel, storm drain, constructed drain, wash area, inlet or outlet or other facility that flows into, onto, through or out of the Airport property.

SECTION 1.17 TERMINAL

“Terminal” means the Thomas F. Riley commercial passenger terminal at John Wayne Airport.

SECTION 1.18 TSA

“TSA” shall mean the Transportation Security Administration of the United States Department of Homeland Security, the federal agency responsible for regulation of airport security, or any similar successor agency.

ARTICLE II - TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this Lease shall be thirty-five (35) years commencing on January 1, 2021 (“Commencement Date”), and continuing through December 31, 2055.

SECTION 2.02 HOLDING OVER

In the event LESSEE shall continue in possession of the Leased Premises after the term of this Lease, such possession shall not be considered an extension or renewal of this Lease but a tenancy from month-to-month and shall be terminable upon 30 days’ written notice and otherwise governed



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by the conditions and covenants contained in this Lease. The Minimum Annual Rent used as the basis to calculate monthly rents for any month-to-month holdover period shall be subject to the terms in Section 4.01 of this Lease.

ARTICLE III - LEASED PREMISES

SECTION 3.01 LEASED PREMISES

COUNTY leases to LESSEE that certain real property as shown in Exhibits A and B hereinafter referred to as "Leased Premises" and incorporated herein by this reference. **Said Leased Premises are being leased to LESSEE in their "as-is" and "where-is" condition.**

LESSEE further acknowledges that COUNTY has made no representation or warranty regarding the condition of the Leased Premises or the suitability of such Leased Premises for the operation or conduct of LESSEE's use thereon or for any other purpose. The taking of possession of the Leased Premises by LESSEE shall conclusively establish that the Leased Premises is acceptable to LESSEE and in satisfactory condition for LESSEE's use at such time. LESSEE further, by taking possession of the Leased Premises, expressly acknowledges and represents to COUNTY that LESSEE is accepting LESSEE's interest in, and possession of, the Leased Premises in their present condition "**as-is**" and "**where-is**" including, but not limited to, the physical condition and environmental condition of the Leased Premises and all applicable laws affecting or related to the Leased Premises, or any part thereof, including, but not limited to, building and safety codes, zoning ordinances, land use restrictions and regulations, Environmental Laws, and other such matters. LESSEE acknowledges and represents to COUNTY that neither COUNTY nor any agent or representative of COUNTY has made any representation, warranty or promise with respect to the Leased Premises, or any part thereof; that LESSEE has satisfied itself with the condition of the Leased Premises and the suitability of the Leased Premises for LESSEE's intended use; and that LESSEE has made all such investigations as LESSEE deems necessary with reference to the Leased Premises and assumes all responsibility therefor as the same relates to LESSEE's occupancy thereof.

SECTION 3.02 NATURE OF LESSEE'S ESTATE

LESSEE acknowledges and agrees to all of the following:

- A. COUNTY has granted to LESSEE a leasehold interest in the Leased Premises only.
- B. COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- C. LESSEE has not been granted any direct or indirect right or option to purchase the Leased Premises from COUNTY at any time during or after the termination and/or expiration of this Lease.



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SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

LESSEE shall not make any alteration or install any fixture or equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director prior to installation.

ARTICLE IV - RENT

SECTION 4.01 RENT, FEES, AND CHARGES

Rent shall consist of Minimum Annual Rent and Additional Rent, as defined and adjusted from time to time as set forth hereinafter.

A. Minimum Annual Rent

For purposes of this Lease the "Minimum Annual Rent" is defined as the sum of Ground Rent and Building Rent. The Minimum Annual Rent shall be payable in twelve (12) equal monthly installments on or before the first (1st) day of each calendar month beginning on the Commencement Date. Said amount shall be subject to annual adjustment as set forth in that section of the Lease entitled "REVISION OF RENT, FEES AND CHARGES."

1) Ground Rent

Ground Rent shall consist of \$1.77 price per square foot (psf) for the square footage of all land that makes up the Leased Premises.

Ground Rent = \$93,688.76 per month

2) Building Rent

Subject to the provisions of Sections 4.01(B)(5) and 4.01(B)(6) below, Building Rent shall consist of \$8.76 price per square foot (psf) for the square footage of all enclosed structures located upon the Leased Premises on the Commencement Date.

Building Rent at Commencement Date = \$72,865.68 per month

LESSEE shall pay 150% of Minimum Annual Rent during any holdover period, which shall be calculated based on the most current month prior to holdover period commencement.

B. Additional Rent

Additional Rent shall include Percentage Rent of Gross Receipts, Rent-a Car Fees, Advertising Fees, Fuel Flowage Fees, and Lubricant Fees as defined below. Additionally, NSF Check Fees, Charges for Late Payments, Penalty Fees, and Unauthorized Use and



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Services Fees, and all other monetary obligations under this Lease shall be deemed Additional Rent. Further, COUNTY has the right to make any payment to any third-party on any delinquent obligation which LESSEE is obligated to pay under this Lease and recover that amount from LESSEE as Additional Rent.

LESSEE agrees to pay all Additional Rent monthly, in arrears, on or before the fifteenth day of each month, up to and including the last day of the preceding month.

1) Percentage Rent of Gross Receipts

LESSEE shall pay an amount equal to five percent (5%) of all Gross Receipts (as defined in Section 4.02) realized by LESSEE from its business operations on or from the Leased Premises including any amounts received by LESSEE from subtenant(s), sublessee(s), or licensee(s), as more fully set forth in Section 4.02, below.

LESSEE shall pay an amount equal to one-quarter of one percent (.25%) of all Gross Receipts realized by LESSEE for aircraft charter operations, the sale of aircraft, the sale of aircraft parts, and third-party aircraft maintenance services.

2) Rent-A-Car Fees

LESSEE shall pay its percentage of reportable Gross Receipts from rental car activities equal to the percentages paid by other rental car companies operating on Airport, which on the Commencement Date equals ten percent (10%), and which is subject to adjustment from time to time.

3) Advertising Receipts

LESSEE shall pay fifty percent (50%) of its Gross Receipts from all third-party advertising activities conducted on the Leased Premises. At least fifteen (15) days in advance of any advertising activity, LESSEE shall submit all advertising creatives and programs to JWA for Airport Director's prior written approval.

4) Fuel Flowage Fees and Lubricant Fees

LESSEE shall pay a fuel flowage fee of six cents (\$0.06) per gallon of fuel delivered to the Airport and lubricant fees of ten cents (\$0.10) per gallon or as otherwise set by COUNTY's Board of Supervisors.

All fuel flowage fees shall be applied to all fuel handlers without unjust discrimination. All such fees shall be calculated upon deliveries made to LESSEE at the airport. The fuel gallonage shall be computed on the basis of net gallonage delivered and invoiced to LESSEE. Oil gallonage and lubricant weights shall be based on delivery invoices as supplied by the oil delivery company to LESSEE.



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5) Building Rent Adjustment During Construction

Beginning upon the initiation of demolition of enclosed structures located on the Leased Premises as of the Commencement Date, Building Rent shall be adjusted each month to reflect, on a pro-rata basis, the maximum square footage of usable space of such buildings at any point during the prior month. Ground Rent and Additional Rent shall remain unchanged during the course of any demolition or construction activities.

6) No Building Rent for New Improvements

In recognition that LESSEE will be constructing or causing new improvements to be constructed without cost to COUNTY and that LESSEE will be obligated to pay the property taxes, insurance, and other costs that become payable with respect to the Leased Premises, including any new improvements, and that all new improvements will revert to COUNTY at the expiration or termination of this Lease, no Building Rent will be due or payable by LESSEE for such new improvements.

C. Fuel Pricing

LESSEE's highest fuel prices for aircraft fuel sold at JWA shall be established with reference to a regional average of the following airports: McClellan–Palomar Airport (CRQ), Van Nuys Airport (VNY), Hollywood Burbank Airport (BUR) and Long Beach Airport (LGB), and shall not be more than ten percent (10%) above the median retail price of fuel sold at those four airports, as published weekly by Airnav.com.

LESSEE may also provide other discounts and shall seek to maintain competitive fuel pricing for customers purchasing fuel at JWA.

Fuel pricing shall be accessible and subject to inspection or audit by Airport Director or designee upon request.

Notwithstanding anything in this Lease to the contrary, all amounts payable by LESSEE to or on behalf of COUNTY under this Lease, whether or not expressly denominated as Minimum Annual Rent, Ground Rent, Building Rent, or Additional Rent, shall also constitute rent for the purposes of the Bankruptcy Code, 11 United States Code Section 502(b). Rent payments shall be made in accordance with the provisions with that section of the Lease entitled "PAYMENT PROCEDURE."

SECTION 4.02 DEFINITION OF GROSS RECEIPTS

As used in this section, the term "LESSEE" shall include LESSEE, its officers, directors, employees, agents, affiliates, assigns, and successors. The term "Gross Receipts" upon which five percent (5%) of Gross Receipts is to be calculated, shall include the following:



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- A. All business activities that generate income or revenue for LESSEE on or from the Leased Premises, which shall include but not be limited to, the sale price of all goods, services, wares, and products sold, performed or traded on or from the Leased Premises, whether for cash or credit and whether payment is actually made or not (provided, however, that it is expressly understood that the activities encompassed in this Subsection 4.02(A) do not include those activities that are covered by the separate percentage (.25%) provided for in the second paragraph of Subsection 4.01(B)(1);
- B. All admission, entry, rental and other fees of any nature or kind charged by LESSEE;
- C. The fair rental value of facilities on the Leased Premises used by LESSEE or its employees for purposes other than the business purposes for which the Leased Premises are leased;
- D. The value of all consideration received by LESSEE including, without limitation, non-monetary considerations, including trades, for the items sold, leased, rented or services rendered.
- E. Any rent, consideration or other amounts paid to LESSEE by subtenant(s), sublessee(s), or licensee(s), or any person acting under contract with LESSEE based on LESSEE's operations at JWA.
- F. Revenue from box hangars.

Gross Receipts subject to the five percent (5%) payment amount shall exclude revenue from tie-downs, sunshades, and T-hangars; Rent-a-Car Fees; Advertising Receipts; Fuel Sales; Fuel Flowage Fees and Lubricant Fees; pass-through costs (which are understood to be expenses that LESSEE prepays on behalf of aircraft owners in the course of aircraft operations as a matter of convenience, and which are then reimbursed by said aircraft owners and on which LESSEE charges no markup), and all sales and excise taxes as defined by federal, State, county or municipal government tax codes, and that are paid by LESSEE as a direct result of operations under this Lease.

Refunds for goods returned shall be deducted from current Gross Receipts upon return. Bad debt losses, including but not limited to NSF checks and uncollectible credit card charges, shall not be deducted from Gross Receipts.

Discounts including but not limited to allowances, deductions, rebates, trades, kickbacks, hidden credit, promotional sales, or any other reductions shall not be deducted from Gross Receipts, unless the Airport Director provides written approval for such a discount.

SECTION 4.03 CHARGE FOR UNAUTHORIZED SERVICES AND USES

In the event LESSEE breaches this Lease by using or permitting the Leased Premises to be used in any manner other than as expressly permitted under this Lease or by providing unauthorized services on the Airport outside of the Leased Premises, LESSEE shall pay COUNTY a sum equal



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to one hundred percent (100%) of the Gross Receipts for any such service or use. Said payment shall be subject to the charge for late payment in that section of the Lease entitled "CHARGE FOR LATE PAYMENT." As used in this section, the term "LESSEE" shall include LESSEE, its employees, agents, successors, assigns, affiliates, sublessees, concessionaires, licensees, or any person acting under contract with LESSEE, or on LESSEE's behalf. All charges for unauthorized services and uses are due and payable as Additional Rent. Furthermore, this Lease may be subject to termination by the COUNTY for LESSEE's unauthorized services or uses, which termination would be governed by the provisions of Section 9.02.

SECTION 4.04 REVISION OF RENT, FEES AND CHARGES

A. Minimum Annual Rent

The Minimum Annual Rent specified in that section of the Lease entitled "RENT, FEES AND CHARGES" shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for Los Angeles-Long Beach-Anaheim, CA (All Urban Consumers - All Items 1982-1984=100) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor.

The automatic adjustment shall be effective on each anniversary of the Commencement Date of the Lease and shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

- A = Adjusted Rent
- B = Minimum Annual Rent as originally set forth in that section of the Lease entitled "RENT, FEES AND CHARGES"
- C = Monthly index for the fourth month prior to the month in which each rental rate adjustment is to become effective
- D = Monthly index for the month in which this Lease becomes effective

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated (or as close to such figure as shall be practicable) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the CPI is not issued or published for the period for which such minimum annual rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.



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Notwithstanding the foregoing, in no event shall the rent be reduced by reason of any such adjustment.

B. Fees and Charges

The fuel flowage and lubricant fees shall be adjusted periodically by COUNTY based on the latest schedule established by Board of Supervisors. The rent-a-car percentage fees shall be the same as the percentage fees paid by other rental car companies operating on Airport.

SECTION 4.05 PAYMENT PROCEDURE

- A. Place of Payment and Filing. Payments and statements required by Section 4.01 "RENT" shall be delivered to the County of Orange, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment, filing and reporting may be changed at any time by COUNTY upon ten (10) days' written notice to LESSEE. Payments may be made by check payable to the County of Orange. LESSEE assumes all risk of loss if payments are made by mail.
- B. Form of Payment. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by LESSEE or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of the amount due or pursue any other remedy in this Lease. All Electronic Funds Transfer (EFT) payments must be remitted by Automated Clearing House (ACH) / direct deposit to the COUNTY's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY's bank account due to the use of other form of payment (e.g. wire transfer) not prescribed or approved by the COUNTY, shall be passed through to the LESSEE plus \$25 processing fee.
- C. In the event the obligation to pay rent begins or terminates on some day other than the first or last day of the month, the rent shall be prorated to reflect the actual period of use on the basis of a thirty (30) day month. The rent for any partial calendar month during which this Lease becomes effective will be payable on such effective date.
- D. NSF Check Fees. In the event a check submitted by LESSEE is returned for non-sufficient funds ("NSF"), LESSEE agrees to pay COUNTY a fee in the amount of twenty-five dollars (\$25) for the first check, and thirty-five dollars (\$35) for each subsequent check. All NSF check fees are due and payable as Additional Rent. LESSEE will be liable for treble the amount of the check under certain circumstances described by California Civil Code Section 1719.



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SECTION 4.06 CHARGE FOR LATE PAYMENT

LESSEE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of rent as specified in that section of the Lease entitled "RENT, FEES AND CHARGES" or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid. All charges for late payments are due and payable as Additional Rent.

LESSEE and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of LESSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of LESSEE's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.07 PROVISION AGAINST SET-OFFS

It is the obligation of LESSEE to pay all rents, fees, and charges, free of any set-offs or claims, in the amount and at the times specified in this Lease. In the event that LESSEE desires to contest the validity or amount due and owing, LESSEE shall first pay the same to COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.08 SECURITY DEPOSIT

No less than thirty (30) days prior to the Commencement Date of this Lease, LESSEE shall deposit with COUNTY a security deposit subject to the provisions for adjustment as provided hereinafter. Concurrently with each revision of the rent pursuant to that section of the Lease entitled "RENT, FEES, AND CHARGES," the security deposit to be provided by LESSEE shall be adjusted to six (6) times the total monthly building and ground rent to guarantee the faithful performance by LESSEE of its obligations under this Lease and the payment of all rents, fees and charges due hereunder. Any increased security deposit is due within ten (10) business days of such adjustment.

The security deposit shall take one of the forms set out below and shall guarantee LESSEE's full and faithful payment and performance of all the terms, covenants, and conditions of this Lease:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing



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LESSEE's performance and that all or any part shall be paid to COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.

- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete payment and performance of all the terms, conditions and covenants herein to be performed on the part of the LESSEE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the LESSEE throughout the existence of this Lease. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this Lease.

Regardless of the form in which LESSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this Lease by LESSEE, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of LESSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Any instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, LESSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

LESSEE shall be obligated to maintain the security deposit in effect until all obligations of LESSEE under this Lease have been fully paid and/or performed. LESSEE shall deliver to the COUNTY an original copy of all instruments obtained under this Section including renewals and amendments as applicable.

The security deposit, after deduction of all amounts due COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to LESSEE or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the Lease term, provided LESSEE has fully and faithfully performed each and every term, covenant, and condition of this Lease.



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ARTICLE V - USE

SECTION 5.01 USE

LESSEE's use of the Leased Premises shall be for operation of a Full Service FBO. LESSEE shall furnish all services on a reasonable, and not unjustly discriminatory, basis to all Airport users, and shall charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Any use or provision of services on Airport is specifically subject to rules and regulations as may be promulgated from time to time by COUNTY.

LESSEE shall ensure that aircraft fueling or self-fueling facilities (as applicable), aircraft storage (hangars and tie-downs), aircraft charters, and aircraft maintenance and repair services are provided from the Leased Premises throughout the term of this Lease. LESSEE shall designate an area for transient aircraft self-service activity as approved by Airport Director in his/her reasonable discretion.

LESSEE shall offer a right of first refusal to the Orange County Sheriff's Department ("OCSD") and Orange County Fire Authority ("OCFA") to sublease an Air Support Facility ("ASF") to be constructed and maintained by LESSEE on the Leased Premises in accordance with a mutually agreed design providing for operations and administrative support functions, an aircraft hangar and apron area for OCSD's and OCFA's helicopters, and auto parking. Such sublease will be negotiated between LESSEE and OCSD and OCFA on reasonable terms consistent with a fair market appraisal of the leased value of the ASF.

Other required services and operations include, without limitation:

- A. Maintenance, repair, overhaul, and modification of general aviation aircraft, aircraft engines, airframes, automatic flight systems, instruments, radio, electronic equipment, propellers and other aircraft components under cover or indoors.
- B. All taxiing and movement of aircraft must be accomplished in a manner that does not disturb or damage other aircraft or pavement outside the Leased Premises. Aircraft must be parked so that no portion of the aircraft extends outside the Leased Premises. Any takeoff and landing of rotorcraft may only be from an area approved by both the Airport and FAA for such use.
- C. Effective upon LESSEE's completion of a given phase of construction, as approved by Airport Director, LESSEE shall park or store aircraft affected by such construction phase on the Leased Premises in strict accordance with the uses depicted on Exhibit C for the remaining term of the Lease.

For purposes of the uses depicted on Exhibit C, the following definitions shall apply:



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- a. The green area marked as "SMALL GA" on Exhibit C shall only be used for the parking or storage of aircraft that meet at least one of the following criteria:
 - i. The aircraft has a wingspan of less than 49 feet in accordance with FAA Airplane Design Group I (*see Advisory Circular AC 150/5300-13A regarding Airport Design, updated September 28, 2012*); or
 - ii. The aircraft is a "small aircraft" with a maximum certificated takeoff weight of 12,500 pounds or less in accordance with Title 14 CFR § 1.1.
- b. The yellow area marked as "MIXED USE" may be used for the parking or storage of aircraft of any size.

Any modification to the parking areas depicted on Exhibit C shall be permitted only with Airport Director's prior written approval and shall not increase the acreage allotted for MIXED USE.

For each violation of this provision, LESSEE shall pay to COUNTY liquidated damages in the amount of \$1,000 per occurrence, per day. LESSEE agrees this amount is reasonable in light of the anticipated harm to COUNTY for each such occurrence, which would otherwise be difficult to calculate with certainty.

- D. Storage of aircraft-related supplies, parts and equipment necessary for support of said aircraft.
- E. Retail and wholesale sales of aircraft fuel by into-plane full service fueling, engine oil, and lubricants. LESSEE acknowledges that COUNTY has installed a hydrant fueling system and fuel storage tanks to serve commercial airline aircraft, and LESSEE's fuel storage improvements and wholesale deliveries will be serving only general aviation aircraft.
- F. Line service for the purpose of fueling, supplying engine oil, checking tire pressures, and use of auxiliary power units for starting and/or on-the-ground utility service on the Leased Premises or in the public transit area.
- G. Flight instruction (schools or individual instructors), including flight training and demonstration of aircraft for sale or charter.
- H. Towing of disabled aircraft.
- I. Maintenance and servicing of general aviation automotive ramp equipment (under cover or indoors), and the sale of aircraft fuel, subject to Airport Director approval.
- J. Installation of food vending equipment and/or a coffee bar for the purpose of serving LESSEE's employees and customers. Sale or vending of tobacco products is prohibited. Use of tobacco products is prohibited within any building on the Leased Premises.



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- K. Provision of aircraft washing beginning at such time as appropriate facilities are constructed and operational on the Leased Premises.
- L. Office space incidental to LESSEE's operations permitted herein.

Other allowed services and operations may be provided, including:

- A. Sale, lease, and rental of new and used aircraft (both retail and wholesale).
- B. Sale of aircraft parts and accessories (retail or wholesale).
- C. Sale of new and used radio and other electronic equipment, including aircraft instruments.
- D. Sale of navigational and aviation supplies and accessories.
- E. Aircraft chartering, operation, and management services.
- F. Financing, leasing, and insuring of aircraft.
- G. Rent-a-car service.
- H. Upholstery and maintenance of aircraft interiors.
- I. Such other services or uses as Airport Director may approve in writing.

Additional Use Requirements and Prohibitions:

LESSEE shall provide on-site management personnel for hangars, tie-downs, and other uses permitted above. On the Commencement Date of this Lease, LESSEE shall accept the assignment from COUNTY to LESSEE of all aircraft parking and storage licenses (including all tie-down, sunshade, and hangar licenses) on the Leased Premises, and LESSEE shall assume responsibility for any waitlists for formerly COUNTY-operated facilities on the Leased Premises. LESSEE shall offer aircraft storage and maintain any waitlists for aircraft storage in a fair and transparent manner.

LESSEE shall provide the Airport with copies of all subleases and/or agreements with subtenants and/or third parties for the leasing of office space or another portion of the Leased Premises, community hangars, box hangars, flight instruction, maintenance and servicing of aircraft, wash and wax services, and rent-a-car services, within fifteen (15) days following execution of this Lease (in the case of pre-existing subleases and agreements), or within fifteen (15) days following the execution of any new such subleases or agreements.

LESSEE shall make restroom facilities available for general aviation users, as well as allow Airport Security personnel staffing perimeter gates to use such facilities closest to the gate they are staffing.



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LESSEE shall comply with all applicable federal, State, and local laws and regulations. LESSEE agrees not to use the Leased Premises for any unauthorized commercial airline aviation purposes or to engage in or permit any activity not enumerated by this section within or from the Leased Premises. Additionally, LESSEE shall not permit the operation of a Regularly Scheduled Commercial User as defined in section 2.40 of John Wayne Airport's Phase 2 Commercial Airline Access Plan and Regulation, as may be amended from time to time. LESSEE agrees not to conduct or permit to be conducted any public and/or private nuisance (as defined in Civil Code, §§3479 – 3481, et seq.) at, in, on, or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

However, LESSEE may be permitted to provide certain commercial aviation ramp services and other contract ground services to commercial airlines pursuant to a separate Airline Related Services License.

SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES

COUNTY grants the LESSEE a license for the non-exclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of LESSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law. The use of these areas shall be subject to the control and regulation of Airport Director, in his/her sole discretion. This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate, and relocate concessionaires and other Airport lessees.

SECTION 5.03 RULES AND REGULATIONS

During the term of this Lease, the COUNTY may adopt and enforce rules and regulations which LESSEE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations, and orders of the FAA and TSA with respect to all operations of the Airport. Except in the case of emergency, the COUNTY shall give LESSEE written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact LESSEE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to LESSEE.

LESSEE must comply with the Minimum Standards promulgated by the Airport and presently in effect at the Commencement Date or in effect at such time as this Lease is amended.

LESSEE shall comply with all Airport Rules and Regulations, the Airport's General Aviation Minimum Standards, and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority,



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whether federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations, grant assurances, and plans. The Airport Rules and Regulations contain environmental and sustainability requirements that LESSEE agrees to make reasonable efforts to participate in, help facilitate, and cooperate with, including those related to air quality, waste, and water and energy conservation.

To the fullest extent authorized by law, LESSEE shall be liable to COUNTY for any and all claims, losses, expenses, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to LESSEE's violation of any governmental rules, regulations, or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto Airport, or from any other violations caused directly or indirectly by the act, omission, negligence, abuse, or carelessness on the part of LESSEE, its employees, sublessees, agents, or suppliers.

COUNTY shall not be liable to LESSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall LESSEE be entitled to terminate the whole or any portion of the Leasehold estate herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with LESSEE's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

SECTION 5.04 FUEL STORAGE PARCEL

The Leased Premises includes an area designated as "Fuel Storage Parcel" which is described in the Exhibits attached hereto. LESSEE shall not use any other fuel storage tanks or facilities at the Airport without the prior written approval of the Airport Director, subject to any conditions described therein.

A. Use

The use of said Fuel Storage Parcel shall be limited to the storage and transfer of fuel, the installation and maintenance of all auxiliary equipment, and facilities required to handle such fuel storage and parking of aircraft refueling vehicles. Except as approved by Airport Director in writing, parking of fuel delivery or other vehicles is prohibited. LESSEE is prohibited from replacing, altering, or modifying the fuel storage tanks located on LESSEE's designated Fuel Storage Parcel without the prior written approval of the Airport Director.

B. Fuel Storage Parcel Access

COUNTY agrees to provide LESSEE with access to the Fuel Storage Parcel from the ramp and runway areas which will not require LESSEE's fuel handling equipment to travel upon



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a public roadway. COUNTY reserves the right to access groundwater and/or soil below the Fuel Storage Parcel, for monitoring, assessment, evaluation, remediation, or as otherwise deemed necessary by the Airport Director.

C. Liability

LESSEE acknowledges that said Fuel Storage Parcel was under control and operation of prior lessees during a previous lease with COUNTY which expired. As set forth in this Lease, and without releasing any other party that may be legally responsible and/or financially liable for the environmental conditions that exist upon execution of this Lease, LESSEE agrees that LESSEE shall be liable and assume responsibility for the environmental conditions associated with the fuel storage tanks on the Leased Premises and for the cleanup of any Hazardous Materials in, at, on, under, and/or emanating from said Fuel Storage Parcel which were present during that prior occupancy or control and to indemnify and hold COUNTY harmless for any such condition as required by the "ENVIRONMENTAL INDEMNIFICATION" section of this Lease.

D. Termination for Non-Use

In the event LESSEE ceases all use and activity on said Fuel Storage Parcel for a period of six (6) months, as shown by fuel not being delivered or withdrawn from the fuel storage tanks on said parcel for that period, then Airport Director, may elect to terminate that portion of the Lease relating to the Fuel Storage Parcel. Termination shall occur upon the date the Notice of Termination is issued. LESSEE shall not be entitled to any compensation for termination of the portion of the Leased Premises covering the Fuel Storage Parcel if said termination occurs due to non-use by LESSEE.

Airport Director shall also notify LESSEE whether to leave the existing improvements on the Fuel Storage Parcel or to remove all or a portion of said improvements. LESSEE agrees that should the Fuel Storage Parcel of this Lease be terminated for non-use under the provisions of this section, LESSEE shall leave the Fuel Storage Parcel in such condition as is required to conform with federal, State, and local regulations, particularly those regulations relating to underground storage tanks and the cleanup of Hazardous Materials.

If LESSEE's use of the Fuel Storage Parcel is terminated, the monthly rent required under this Lease shall be reduced in proportion to the square footage eliminated from the total Leased Premises.

SECTION 5.05 LIMITATION OF THE LEASEHOLD

This Lease and the rights and privileges granted LESSEE in and to the Leased Premises are subject to all covenants, conditions, restrictions, and other exceptions of record. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to LESSEE of rights in the Leased Premises which exceed those owned by COUNTY, or any representation or warranty, either expressed or implied, relating to the nature or condition of the Leased Premises



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or COUNTY's interest therein. LESSEE acknowledges that LESSEE has conducted a complete and adequate investigation of the Leased Premises and that LESSEE has accepted the Leased Premises in "as is" condition.

SECTION 5.06 PROVISION OF SUFFICIENT PARKING

LESSEE shall provide sufficient vehicular parking to accommodate LESSEE's operation within the Leased Premises consistent with applicable building or zoning regulations. Should LESSEE need off-site parking to meet the parking requirements for its operations or improvements on the Leased Premises, then LESSEE shall first obtain the approval of the Airport Director and, if approved, agrees that any future sale or assignment of this Lease shall also include an assignment of LESSEE's off-site parking or provision of a comparable alternate off-site parking area outside the Airport perimeter fence to be available for use during the remaining term of the Lease.

COUNTY has no obligation whatsoever to make vehicular parking available to accommodate LESSEE's operation.

SECTION 5.07 RECORDS AND ACCOUNTS

- A. Records. LESSEE shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.
- B. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by LESSEE, provided LESSEE notifies the COUNTY in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by COUNTY unless COUNTY has objected to LESSEE's selection in writing within sixty (60) days of LESSEE's written notification.

In the event LESSEE fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Commencement Date not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the Lease unless COUNTY specifically approves in writing a different accounting year. COUNTY shall only approve a change in accounting years in the event of undue hardship being placed on either the LESSEE or COUNTY, and not because of mere convenience or inconvenience.



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C. Financial Statements.

1) Annual Balance Sheet and Income Statement

Within one hundred twenty (120) days after the end of each accounting year, LESSEE shall at its own expense submit to COUNTY a detailed balance sheet and income statement prepared in accordance with generally accepted accounting principles reflecting all business transacted by the LESSEE on or from the Leased Premises during the preceding accounting year. The LESSEE shall attest in writing that the balance sheet and income statement submitted are true and accurate representation of LESSEE's records. LESSEE shall also provide standalone audited financial statements of the LESSEE's business entity if they are available from LESSEE's corporate audit or upon request of the COUNTY. The COUNTY has the option to require LESSEE's submission of audited financial statements.

2) CPA-Audited Gross Receipts

Within one hundred twenty (120) days after the end of each accounting year, LESSEE shall at its own expense submit to COUNTY an audited statement of total Gross Receipts and total gallons of fuel delivered to LESSEE. This statement must include a breakdown schedule of all total gallons and all total Gross Receipts by type and month. At a minimum, Gross Receipts should be divided into the categories as set forth in Section 4.01(B). This statement must be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) or the California Society of CPA's. The audit must be performed in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA. The reference for this is Statement on Auditing Standards (SAS) #95. The audited statement of fuel and lubricant deliveries and Gross Receipts shall include total Gross Receipts for the accounting year classified according to the categories of business established for fuel flowage and lubricant fees and for rent-a-car fees as listed in Section 4.01 of this Lease entitled "RENT, FEES AND CHARGES."

A reviewed statement of Gross Receipts may be requested by LESSEE instead of an audited statement of fuel deliveries and Gross Receipts if undue hardship is placed on the LESSEE to obtain an audited statement. LESSEE must request and obtain written approval for a reviewed statement from the COUNTY prior to the start of the financial statement engagement for the year to be audited. If a reviewed statement of Gross Receipts is approved by the COUNTY, COUNTY retains the right to require an audited statement of Gross Receipts for future years.

LESSEE shall provide COUNTY with copies of any CPA audit or review report and audited or reviewed financial statements prepared in conjunction with their audit of LESSEE's operations from the leased premises. Copies of reports and/or



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financial statements shall be provided directly to COUNTY by the CPA at the same time LESSEE's copy is provided to LESSEE.

LESSEE acknowledges its understanding that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become public records subject to public inspection as required by California Government Code Section 6250 *et seq.*

D. Failure to Submit Financial Statements. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that LESSEE fails to submit any financial statements by the due date listed in Section 5.07 "RECORDS AND ACCOUNTS," Airport Director may require LESSEE to pay the greater of:

- 1) Five thousand dollars (\$5,000); or
- 2) Any and all costs incurred by COUNTY for the Certified Public Accountant hired by the COUNTY to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.

E. Audits. All LESSEE's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Leased Premises shall be kept and made available at one location within the limits of the County of Orange. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times.

The COUNTY, upon request of LESSEE and at said COUNTY's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided LESSEE shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for COUNTY to send a representative to audit said books and records. Said right shall not be exercised by COUNTY more than once each accounting year.

The full cost of said audit, as determined by COUNTY, shall be borne by LESSEE if either or both of the following conditions exist:

- 1) The audit reveals an underpayment of more than two percent between the rent due as reported and paid by LESSEE in accordance with this Lease and the rent due as determined by said audit;
- 2) LESSEE has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section A "Records" above. The adequacy of records shall be determined at the sole discretion of COUNTY in accordance with the provisions of a letter of agreement between LESSEE and COUNTY.



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Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of COUNTY, LESSEE shall promptly provide, at LESSEE's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to LESSEE's use of the Leased Premises. Such data shall include, if required, a detailed breakdown of LESSEE's receipts and expenses.

- F. Environmental Compliance Audits. LESSEE shall provide the COUNTY Airport Environmental Resources Manager with any documentation of environmental compliance audits, inspections, and violations within 5 days. LESSEE is responsible for correcting environmental conditions to address the findings, paying fines/fees to maintain compliance, and responding to the oversight agency. A copy of correspondence shall be submitted to the Airport's Environmental Resources Manager within 5 days.

- G. Failure to Maintain Adequate Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that LESSEE fails to maintain and keep books, records and accounts of Gross Receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to COUNTY regarding gross sales as required by this Lease, COUNTY, at COUNTY's option, may:
 - 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by LESSEE under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by LESSEE upon demand.

 - 2) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by LESSEE in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during LESSEE's business hours, or from time to time, all at LESSEE's sole cost and expense and, in such event, LESSEE shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or

 - 3) Require that LESSEE pay percentage rents based on COUNTY's best good faith estimate of LESSEE's Gross Receipts from business operations conducted on or from the Leased Premises and any such determination made by COUNTY shall be conclusive and binding upon LESSEE.

The above costs payable by LESSEE shall include reimbursement to COUNTY of



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COUNTY provided services at such rates as COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by COUNTY's employees, such rates shall be sufficient to reimburse COUNTY for employee salaries, including employee taxes and benefits and COUNTY's overhead or, at COUNTY's option, may be the rate for such services that would be charged by a qualified third-party or parties, approved by COUNTY, if engaged by COUNTY to perform such services.

- H. Review Period. COUNTY or its designee may conduct such audits or inspections throughout the term of this Lease and for a period of three (3) years after final payment or longer if permitted by law.
- I. Methodology. COUNTY or designee may, without limitation by LESSEE, conduct verifications including, but not limited to, inspection of LESSEE's Records, observation of LESSEE's employees in or about the Leased Premises, and verification of information and amounts through interview and/or written communications with LESSEE's employees or sub-contractors.
- J. Record Retention. All of LESSEE's Records shall be retained by LESSEE for a period of the balance of the fiscal year in which the Record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this Lease expires or is terminated.
- K. The Airport is developing a tenant portal/revenue system for daily automated reporting of operations, revenues and data exchange. Airport shall have the right to implement such system that can provide daily reports to Airport. If Airport exercises such right, LESSEE must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system. Until such time as the system is implemented, LESSEE shall comply with the following:
 - 1) Sales Recording System. LESSEE shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to Airport Director, or designee for approval no later than thirty (30) days after Commencement Date. Following approval by Airport Director, or designee, such systems and equipment shall be utilized by LESSEE. LESSEE shall accurately record each transaction on a system that can generate daily electronic reporting. LESSEE shall report on a daily basis and in an electronic format all business activities. Such system shall be sufficient to supply an accurate record of all sales.
 - 2) Electronic Reporting Requirements. LESSEE shall install in the Leased Premises an electronic reporting system which shall meet current industry standards for transmitting, capturing and recording transactions, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said system shall be accessible to and subject to inspection or audit by Director or designee upon request. All cash receipts must include LESSEE's identification thereon. Customer must be issued



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a receipt or sales slip for each transaction, which transaction must be recorded either on or serially numbered sales slip or digital record produced. COUNTY should have the right during business hours to examine the totals of the electronic reporting system used in the Leased Premises and to inspect for compliance with this section. LESSEE shall ensure a capability for the installation of Airport and Airport partner applications that can be integrated with LESSEE's system to exchange data. Any sales captured from third-party applications, LESSEE branded applications, cell phone applications must be provided to the COUNTY as part of the monthly sales reporting.

SECTION 5.08 MAINTENANCE AND OPERATION OF LEASED PREMISES

At LESSEE's sole cost and expense, LESSEE shall keep and maintain the Leased Premises in good working order, and in a safe, clean, wholesome, sanitary condition in compliance with all applicable laws, rule, regulations, and ordinances, and as provided in LESSEE's maintenance plan attached hereto as Exhibit H. At LESSEE's sole cost and expense, LESSEE shall be responsible to make all necessary replacements and/or repairs required to maintain the Leased Premises and improvements in good condition and working order. In addition to the building facilities, drainage facilities (storm and sanitary sewer), above and below ground utilities, lighting, and security (i.e. gates, fencing, etc.), this includes routine maintenance, replacements, and/or repairs of all pavements (including subgrade) and below-ground improvements including underground storage tanks, wash racks, and/or clarifiers that may be on the Leased Premises. All repairs and/or replacements shall be of a quality equal to or exceeding the original. All repairs, replacements, and improvements made by the LESSEE to the Leased Premises shall be submitted to JWA for review and approval prior to construction, require JWA inspection upon completion of construction, and shall be in compliance with all current federal, State, and local ordinances and building codes, fire codes, zoning, safety, all Airport Regulations, and with the requirements of Title III of The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, et seq., and the regulations issued pursuant thereto (Codes). The Codes encompass all fire, life, and safety aspects and apply to the construction, alteration, moving, demolition, repair, replacement, and use of the Leased Premises. LESSEE is prohibited from engaging in any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment of the leased premises. All devices or safeguards which are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

LESSEE shall engage the services of an independent and qualified State of California licensed and registered professional engineer who shall conduct an annual pavement inspection of all paved areas used by aircraft within the Leased Premised in compliance with FAA Advisory Circular 150/5380-6 Guidelines and Procedures for Maintenance of Airport Pavements ("FAA AC 150/5380-6"), as amended from time to time, and ASTM D 5340 Standard Test Method for Airport Pavement Condition Index Surveys ("ASTM D 5340") as amended from time to time. A detailed report signed, stamped, and sealed by the professional engineer shall be submitted to the COUNTY on each anniversary of the Commencement Date. The report shall meet Airport Director's requirements, including, as applicable, complete plans, specifications, and schedules for repair or replacement of any found defects or deficiencies in accordance with FAA AC 150/5380-6 and ASTM D 5340.



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LESSEE shall immediately notify Airport Director and the Airport Operations Center at 949-252-5000 of any fire, emergency, accident, release, discharge, and/or reportable spill of fuel, lubricants, solvents and/or Hazardous Materials. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental Law as defined in this Lease. In addition to reimbursing County the costs of all services provided by third parties to mitigate such spills, LESSEE shall pay to County administrative costs in the amount of one thousand dollars (\$1,000) per incident.

LESSEE shall further notify the Airport's Environmental Services Manager within 24 hours of any release, discharge, leak or spill of any fuel, lubricants, solvents and/or Hazardous Materials that LESSEE knows or reasonably should have known about within the Leased Premises.

LESSEE shall report to Airport Director any accidents or incidents for which LESSEE is wholly or partially responsible, which occur on the Leased Premises and are reportable to the FAA or other governmental or regulatory agencies. LESSEE shall pay to COUNTY administrative costs in the amount of one thousand dollars (\$1,000) per such reportable accident or incident.

LESSEE further agrees to provide approved containers for trash, garbage, recyclables, and regulated waste and to keep the Leased Premises free and clear of rubbish, litter, and hazardous waste. The Airport Director shall have the right to enter upon and inspect the LESSEE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections. LESSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If LESSEE fails to maintain or make repairs or replacements as required herein, Airport Director shall notify or attempt to notify the LESSEE in writing of said failure. Should LESSEE fail to correct the failure within fifteen (15) days or as otherwise specified in the notice, Airport Director shall have the right, but not the obligation, to enter the Leased Premises to make the necessary correction, repair, and/or replacement, or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to LESSEE as Additional Rent. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items also shall be paid by LESSEE within ten (10) days of receipt of a statement of said cost from Airport Director as Additional Rent. Airport Director may, at Director's option, choose other remedies available herein, including termination, or as provided by law.

LESSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to LESSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, internet, electrical supply system or electrical apparatus, cable or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.



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SECTION 5.09 PAYMENT OF AND RESPONSIBILITY FOR UTILITIES

LESSEE shall be responsible for and pay, prior to the delinquency date, all charges for utility connections and services supplied to the Leased Premises. COUNTY shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle LESSEE to terminate this lease or abate the rent due hereunder.

SECTION 5.10 REPORTING OF BASED AIRCRAFT

LESSEE shall submit to COUNTY with its monthly payment of rents a listing of all Based Aircraft parked on the Leased Premises. For purposes of this Section, "Based Aircraft" shall mean an aircraft that is operational and airworthy, and which is based at the Airport for a majority of the year. Therefore, LESSEE must track the daily activity of aircraft parked on the Leased Premises and determine, on a rolling basis, which aircraft have been parked on the Leased Premises for at least 183 days out of the prior 365 days. The monthly listing shall be provided to the Airport using a JWA-approved Microsoft Excel template.

ARTICLE VI - ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

SECTION 6.01 LIABILITY FOR EXISTING ENVIRONMENTAL CONDITIONS

Notwithstanding the liability of prior tenants of the Leased Premises, LESSEE understands and agrees that it may be found legally responsible and/or financially liable for existing environmental conditions on, under, and/or emanate from the Leased Premises upon entering into this Lease, including, but not limited to, associated costs and expenses related to Hazardous Materials, fuel storage tanks including underground storage tanks, and compliance with all Environmental Laws.

SECTION 6.02 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

LESSEE shall comply with all Environmental Laws, including laws regulating Hazardous Materials, and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this Lease, LESSEE shall comply with such regulations regarding the storage, distribution, processing, handling, release, removal, and/or disposal, including the storm water discharge requirements, of Hazardous Materials including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements. Violation by LESSEE or any of its agents, assigns, successors, sublessees, subcontractors, or employees of any Environmental Law are grounds for termination of this Lease in accordance with Article IX of this Lease, and for termination of all operations by LESSEE at or on the Airport.

Notwithstanding the liability of prior tenants of the Leased Premises, LESSEE shall at its sole cost and expense investigate, evaluate, assess, remove, and/or remediate any and all Hazardous Materials that may be required or ordered by any governmental agency or Environmental Law. In



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conducting a clean-up of a Hazardous Material release under this Lease, LESSEE shall comply with all applicable Environmental Laws. LESSEE shall not use the COUNTY hazardous waste generator ID for waste disposal.

SECTION 6.03 STORM WATER CONTROL AND CONTAMINATION

Storm Water Laws and Regulations. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) (40 CFR Parts 122, 123, and 124). The U.S. EPA, through the NPDES permitting program, regulates discharges of potentially contaminated wastewater and storm water into waters of the United States. California has been delegated NPDES general permitting authority by the U.S. EPA. California's State Water Board has issued NPDES permits to regulate municipal, industrial, and construction storm water discharges under the NPDES permitting program.

Section 402(p) of the Clean Water Act (CWA) requires NPDES permits for storm water discharges from municipal separate storm sewer systems (MS4s). The County of Orange is the principal permittee for Orange County's MS4 Permit Order No. R8-2009-0030 (or currently effective permit) No. CAS 618030 (MS4 Permit). As a facility owned and operated by the County of Orange, the Airport implements requirements in the MS4 permit and is responsible for discharges into the system. One of the MS4 Permit requirements is to establish the legal authority to control discharges. The County's Water Quality Ordinance (OCCO Title 4, Division 13, Sections 4-13-10 et. seq.) regulates non-storm water discharges into the MS4 to reduce the discharge of pollutants into the waters of the State. The CWA and the resulting MS4 permit require the County to take steps to reduce pollutants leaving its systems to the maximum extent practicable. The MS4 permit requires the County to develop and implement a Local Implementation Plan (LIP) describing the programs and procedures required by the MS4 permit.

COUNTY will provide the required annual training for LESSEE as part of the MS4 LIP training program requirements. LESSEE shall have all personnel who may affect discharges to the storm system or who work within the airside portion of John Wayne Airport attend annual training or LESSEE shall provide annual training to personnel using JWA-approved training materials.

LESSEE shall not have prohibited discharge to the MS4 system or on-site storm drains. Some non-storm water discharges (i.e., fire sprinkler tests) require additional permits with the Regional Water Quality Control Board (RWQCB). LESSEE is responsible for obtaining and implementing monitoring requirements associated with any non-storm water discharge permits. LESSEE shall notify COUNTY prior to any non-storm water discharge.

In the furtherance of these regulations and Section 402 of the Clean Water Act (CWA), the State of California has adopted a General Permit for discharges of Storm Water associated with industrial activities: "State Water Resources Control Board (State Water Board) Water Quality Order No. 2014-0057-DWQ, NPDES General Permit No. CAS 000001 (Industrial General Permit or IGP)." JWA has applied for and received coverage to discharge storm water and authorized non-storm water discharges pursuant to the general permit for industrial activities and are subject to the permit's requirements, conditions, and penalties. The permit requires the development and



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implementation of an effective Industrial Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Implementation Plan (MIP). This plan is developed by COUNTY and covers LESSEE. The airside portion of JWA where industrial activities take place is covered by the IGP. Industrial activities include maintenance, fueling, equipment cleaning, storage areas, and material handling activities.

LESSEE shall comply with applicable storm water discharge requirements for industrial facilities, including numeric effluent limits (NELs) and numeric action levels (NALs), as may be promulgated, updated, or amended from time to time. The current IGP includes NELs for copper, zinc, and lead. LESSEE shall, to the extent possible:

- A. Separate industrial storm water flows off their leasehold from the airfield non-industrial flows. The LESSEE drainage system must consolidate storm water flows and allow for monitoring of storm water quality by JWA at the LESSEE discharge location(s) to the JWA storm water drainage system.
- B. Install and implement appropriate BMPs to meet the COUNTY's WQMP requirements and to meet pollutant discharge limits identified in the IGP at their discharge point(s) to the JWA storm drain system. LESSEE shall consider space planning, policies, and practices to reduce storm water flow from industrial activities that would require management and treatment to meet NALs and NELs under the IGP.
- C. COUNTY will coordinate design and construction of the Airport's responsible portion of the industrial storm water system with LESSEE's phasing plan.

COUNTY will provide the required annual training for LESSEE personnel that work on the airfield as part of the airport-wide IGP SWPPP requirements. LESSEE shall have all personnel working within the airside portion of JWA to attend annual training or LESSEE shall provide annual training to personnel using JWA-approved training materials. LESSEE shall implement BMPs in accordance with the COUNTY's IGP SWPPP.

LESSEE shall submit a Water Quality Management Plan (WQMP) for approval for significant redevelopment projects, defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site to address post-construction urban runoff and storm water pollution.

When LESSEE engages in a constructed project with an approved WQMP, LESSEE shall implement post-construction BMPs, including operation and maintenance (O&M) requirements, described in the WQMP. LESSEE shall notify the COUNTY at least five (5) days prior to any O&M conducted for post-construction BMPs. LESSEE shall provide the O&M records to the COUNTY within 30 days of completing the maintenance.

LESSEE activities may require additional separate permits, which LESSEE may be responsible for, and which will be clarified with COUNTY at the time of planning and design. LESSEE shall contact COUNTY prior to new construction activities, operational changes, and/or prior to any



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activity that may result in a non-storm water discharge. LESSEE will comply with all applicable NPDES storm water permit requirements for LESSEE activities.

LESSEE shall not allow or cause the entry of any materials, waste, or hazardous materials under its control into the Airport Storm Water Drainage System unless authorized by Environmental Law and the Airport's Storm Water Discharge Permit. LESSEE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water Drainage System of the Airport or into the Storm Water Drainage System of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of COUNTY for that purpose, and LESSEE complies with recommendations made by the California and/or U.S. Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. LESSEE shall bear all costs and any other expenses related to unauthorized non-storm water discharges.

LESSEE shall assure the protection of storm water from aircraft maintenance and washing activities, including GA self-service activities, through implementation of policies or Best Management Practices. Wet washing of aircraft is only allowed in designated wash rack areas. Only dry wash methods are allowed for cleaning aircraft outside of the designated wash rack areas. Aircraft maintenance can only occur in designated areas; these areas must be protective of storm water through covering or other means.

Spill Control and Hazardous Materials

Within 60 days following the Commencement Date of this Lease, LESSEE shall furnish COUNTY with an updated Spill Prevention, Control, and Countermeasures (SPCC) Plan and Hazardous Material Disclosure/Business Emergency Plan for activities that will be performed at the Airport for JWA's review and approval. LESSEE shall register on the Orange County Health Care Agency/Certified Unified Program Agency (OCHCA/CUPA) E-Submit Business Portal, upload the updated Plans, and show proof of submittal to the COUNTY within 90 days of the Commencement Date. Any modifications to SPCC Plans and/or Hazardous Material Disclosure/Business Emergency Plans shall be submitted as soon as practicable following the change, but no later than 30 days from the correction.

The SPCC Plan shall meet the applicable requirements of 40 CFR Part 112. LESSEE will take necessary steps to prevent spills and, if a spill does occur, will minimize the impacts to human health and the environment. LESSEE shall commit the necessary resources to maintain spill prevention systems, provide appropriate security, respond to spills, inspect storage areas, test storage equipment, make required notifications, maintain records, and provide training for personnel. LESSEE shall meet the General Secondary Containment Requirements for refueling vehicles, §112.7(c), without relying on the Oil Water Separators installed at JWA.

The Hazardous Material Disclosure/Business Emergency Plan shall be updated if there is a substantial change in quantities, storage locations, or material types. LESSEE shall include details on the emergency contacts, training, mitigation, abatement, and evacuation procedures that will be followed in an emergency. Maps and chemical inventories shall be accurate and kept up-to-date.



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SECTION 6.04 GENERAL HEALTH AND SAFETY CONDITIONS

Precaution shall be exercised at all times by LESSEE for the health, safety, and welfare of persons, including employees and property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used shall comply with the Occupational Safety & Health Administration (OSHA) requirements including but not limited to OSHA Hazard Communication Standard 29 CFR 1910.1200, and federal and State safety orders.

LESSEE shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, State, and local laws and regulations. LESSEE shall properly post Manufacturer's Safety Data Sheets as required by law and shall use and dispose of all materials in conformance with all applicable codes, rules, regulations, and manufacturer's recommendations.

LESSEE shall submit to the Airport's Environmental Resources Manager, annually on December 31, a report on compliance with and the status of all required permits including, but not limited to, Fire, OSHA, Air Quality Management, and Health Care Agency. The report must summarize all spills, leaks or permit violations for the previous year. The annual report must also contain copies of all reports and annual testing reports (such as fuel tank tightness testing) sent to any regulatory agency and documentation of required maintenance and inspection of fire and safety fixtures and equipment and an updated inventory of all Hazardous Materials used or stored on site.

LESSEE shall provide all notices required pursuant to the Environmental Laws. LESSEE shall provide prompt written notice to COUNTY within five (5) days of receipt of any written notices of violation of any Environmental Law received by LESSEE.

The annual report and all written notices must be submitted to COUNTY by the due date. Liquidated damages of five hundred dollars (\$500) will be assessed against LESSEE for each day the annual report or written notice of violation is late.

SECTION 6.05 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LESSEE shall indemnify, defend, and hold the COUNTY, its officers, directors, agents, and employees and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing body harmless for compliance with all Environmental Laws, from and against any and all Environmental Law claims, judgments, damages, penalties, actions, fines, costs, liabilities, losses, orders, expenses, and lawsuits (including fees and costs for attorneys, experts, and expert consultants) arising from the Leased Premises, and/or out of or related to any actions or omissions of LESSEE, the LESSEE's operations at the Airport or any action arising from and which involve the LESSEE's officers, agents, successors, assigns, sublessees, subcontractors, and employees (whether or not they are negligent, intentional, willful or unlawful), including defense expenses arising therefrom, including, but not limited to, the following:



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- (1) The historical environmental conditions at, on, under, and/or emanating from the Leased Premises that LESSEE may be required to pay.
- (2) The LESSEE's placement, disposal, allowing, or releasing of Hazardous Materials upon or within the Airport including any such claims, demands, liabilities, cost, expenses, and/or obligations related to LESSEE's release or threatened release of Hazardous Materials on, at, and/or under the Airport.
- (3) The LESSEE's release or threatened release of Hazardous Materials at, on, under, and/or emanating from the Airport.
- (4) The LESSEE's noncompliance with any Environmental Law, except that LESSEE's obligations under this paragraph shall not extend to remediation conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, sublessee, assignee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE.
- (5) The LESSEE's causing or allowing any prohibited discharge into the Airport Drainage System.

This indemnification includes, without limitation, reasonable fees, costs, and expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, State, or local governmental or regulatory entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, LESSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage, or expense arising from the sole negligence or willful misconduct of COUNTY or its officers, employees, agents, or contractors.

In the event the indemnitees as described herein are parties in any proceeding (legal, administrative, or otherwise), the LESSEE shall, at the request of the COUNTY, defend the indemnitees with qualified counsel approved in writing by COUNTY, unless the COUNTY, in its sole and absolute discretion, undertakes legal representation, in which event the LESSEE shall reimburse the COUNTY for the expenses incurred by it in defending such proceeding, including reasonable attorneys' fees, expert and/or consultant fees, and investigative and court costs.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease.



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The rights and obligations set forth in this indemnification shall survive the termination and expiration of this Lease.

SECTION 6.06 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of the environmental requirements codified in this Article conflict with any other terms of this Lease, the environmental requirements contained in Article VI shall apply.

SECTION 6.07 EXISTING ENVIRONMENTAL CONDITIONS AND HISTORICAL ASSESSMENTS

COUNTY and others have conducted environmental assessments on portions of the Leased Premises which provide a historical assessment of the environmental condition on portions of the Leased Premises regarding Hazardous Materials (the "Historical Conditions"). A list of references is provided in Exhibit D.

LESSEE hereby expressly acknowledges that it has reviewed the Historical Conditions and agrees that it shall be responsible for remediation of any and all Hazardous Materials at, on, and/or under the Leased Premises including and in excess of the Historical Conditions. Without releasing any other party that may be legally responsible and/or financially liable for the environmental conditions that exist upon execution of this Lease, LESSEE agrees to be legally responsible and/or financially liable for the environmental conditions related to Hazardous Materials and underground storage. LESSEE further agrees that it shall also be responsible for any release, threatened release, and/or disposal of Hazardous Materials which occur on or off the Leased Premises as a result of LESSEE's acts or omissions or by those who are affiliated with LESSEE. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, assign, sublessee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE. LESSEE shall not be responsible to remediate conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport.

LESSEE agrees to provide COUNTY and COUNTY's consultants with complete access to the Leased Premises for the purpose of investigation and remediation of contamination. LESSEE agrees to preserve all existing and future remediation infrastructure including, without limitation, any groundwater monitoring wells, groundwater extraction wells, and related piping.

SECTION 6.08 ANTI-IDLING POLICY

Within six months of LEASE execution, LESSEE must develop, implement and submit to the Airport Director for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LESSEE's policy shall also include airfield GSE, ground transportation vehicles, and all sublessee and third-party vehicles that enter Airport property at the direction of the LESSEE.



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SECTION 6.09 ENVIRONMENTAL STEWARDSHIP

Environmental stewardship is one of the key pillars in JWA's mission to be a good neighbor. JWA is committed to upholding best practices in environmental responsibility and has been an industry leader in implementing policies that provide both sustainability and cost-effectiveness. JWA has adopted a variety of environmental policies and practices.

LESSEE shall support JWA's Environmental Stewardship program by complying with JWA's Tenant Design Guidelines and shall make reasonable efforts to participate in, help facilitate, and cooperate with JWA's sustainability efforts.

The LESSEE shall support the COUNTY's Environmental Stewardship program through participation in various efforts or implementation of plans, as amended from time to time, and the following requirements. Full implementation of this program shall be applicable to all GSE effective on January 1, 2023, and will apply to all facilities and capital improvements as they are constructed.

- 1) Climate Action Plan
- 2) Waste and Recycling Plan
- 3) SWPPP
- 4) Air Quality Improvement Plan and Memorandum of Understanding with the South Coast Air Quality Management District
- 5) Ground Support Equipment ("GSE")
 - a. LESSEE shall employ Zero Emission Vehicle ("ZEV") GSE where available (e.g. tugs, water carts, lavatory carts, other ramp service equipment/vehicles) for 90 percent or greater of the GSE operating hours.
 - b. Where ZEVs are not available, vehicles shall meet Ultra Low Emission Vehicle ("ULEV") requirements.
 - c. Where ULEVs are not available, and only diesel fuel engine trucks are available, the diesel-fueled truck shall comply with the On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation.
 - d. LESSEE shall maintain monthly records regarding GSE type, make, model, year, fuel type, horsepower (if non-electric), and hours in-use. Monthly records are subject to audit and verification by JWA. These records shall be provided to JWA annually in December.
- 6) Conservation
 - a. LESSEE shall use ENERGY STAR and EPA Water Sense appliances.
 - b. LESSEE shall use ENERGY STAR Portfolio Manager to track use of electricity, natural gas, and water and waste quantities. LESSEE shall share this data with COUNTY Airport Environmental Resources Manager quarterly and annually.



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- c. LESSEE shall adopt a Waste and Recycling Plan meeting CALGreen Tier 1 requirements, or better, and acceptable to LESSOR. LESSEE shall provide waste diversion data quarterly and annually to COUNTY Airport Environmental Resources Manager.
 - d. LESSEE shall install Electric Vehicle chargers in public and employee parking areas, provide preferential parking for vehicles powered by low emission sources, and provide secure bicycle racks.
 - e. LESSEE shall practice water conservation through design, construction, and ongoing maintenance activities.
 - f. LESSEE shall include over 50% of solar-ready roof-top on new construction; COUNTY maintains the option to lease any solar-ready areas not covered by owner's solar arrays and to install renewable energy equipment.
 - g. LESSEE shall implement the following conservation measures:
 - i. Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs
 - ii. Install sensors in office areas to turn off when unoccupied
 - iii. Install energy-efficient heating and cooling equipment when replacing or upgrading
 - iv. Purchase and use energy-efficient computers and servers
 - v. Select equipment with variable speed motors and fan drives, when possible
- 7) Environmental Policies
- a. LESSEE shall adopt the COUNTY's Environmentally Preferable Purchasing Policy (2008) or develop a similar policy that addresses the LESSEE's procurement of goods and services. Policy shall be submitted to the COUNTY Airport Environmental Resources Manager.
 - b. LESSEE shall develop an Environmental Sustainability Policy that covers water and power conservation, waste diversion, and pollution prevention. Policy shall be submitted to the COUNTY Airport Environmental Resources Manager.
 - c. LESSEE shall provide reports necessary for environmental compliance, regulatory requirements, and airport mitigation measure obligations upon request from COUNTY, including but not limited to GSE data, fuel delivery and usage, spills, and business emergency plans.



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ARTICLE VII - CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 IMPROVEMENTS BY LESSEE

LESSEE shall cause to be designed and constructed, at no cost to COUNTY, those initial improvements shown on the conceptual plans attached hereto as Exhibit F. The development and phasing of said construction shall proceed as described in Exhibit G, and may be subject to reasonable modification or amendment by the Airport Director in consultation with LESSEE. All costs related to the initial redevelopment of the Leased Premises are collectively referred to as LESSEE's "Initial Capital Investment." The minimum cost of LESSEE's Initial Capital Investment shall be \$57,897,531, and excludes the cost of any and all refurbishments or improvements made pursuant to Section 7.11. In the event the minimum cost of Initial Capital Investment exceeds the actual construction costs of all LESSEE improvements itemized in accordance with Section 7.06 of this Lease, LESSEE's savings resulting from lower actual construction costs will be shared equally between LESSEE and COUNTY, and LESSEE shall pay to COUNTY one half (50%) of the difference between the minimum cost of Initial Capital Investment and the actual construction costs within 30 days of LESSEE's submittal of itemized costs required by Section 7.06.

The term "cost of improvements" shall mean direct construction costs, including costs paid to contractors, architects, engineers, laborers and suppliers, premiums for bonds required by COUNTY, and permit and developer fees required by governmental agencies, but shall exclude indirect costs, such as costs of financing, and administrative and overhead expenses.

LESSEE shall not perform any construction upon the Leased Premises nor shall LESSEE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of COUNTY.

- A. COUNTY and Federal Approvals Required. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of COUNTY, which consent may be withheld or conditioned in COUNTY's sole and absolute discretion.

FAA approval of JWA's Airport Layout Plan ("ALP") is required prior to any FBO construction activities. The ALP shows the boundaries and proposed additions to all areas of the Airport, the location and nature of existing and proposed Airport facilities and structures, and the location on the Airport of existing and proposed non-aviation areas and improvements thereon, and shall incorporate LESSEE's development plans, which must be submitted to the FAA for review. LESSEE shall provide CADD/GIS files of the LESSEE's development plans to JWA. Airport-approved development plans will not be released for permitting until the ALP is approved.

National Environmental Policy Act ("NEPA") approval by the FAA is required prior to any FBO construction activities. As the Airport Sponsor, JWA will prepare all required NEPA documentation for submission to the FAA. LESSEE shall provide CADD/GIS files



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of the LESSEE's development plans to JWA. Upon receipt of NEPA approval, JWA will invoice LESSEE for JWA's actual costs associated with NEPA review and approval of LESSEE's project, and LESSEE shall reimburse such costs within thirty (30) days of such invoice. Airport-approved development plans will not be released for permitting until the ALP is approved and NEPA approval has been received.

- B. Compliance with Plans, Schedule, Design and Construction Standards. LESSEE shall construct (or cause to be constructed) all improvements within the Leased Premises in strict compliance with detailed plans and specifications complying with the Airport's Tenant Design Guidelines, including all other available John Wayne Airport Design and Construction Standards, and approved in writing by Airport Director. LESSEE shall submit to JWA for review plans and specifications at the 50% complete, 90% complete, and 100% complete milestones, which are prepared by a State of California licensed and registered Architect and Engineer (A/E) firm with qualifying experience for the intended improvements at an airport setting. Submittals shall include all required reports, basis of designs, studies, exhibits, and calculations. Upon completion of JWA's review of the plans and specifications, and when approved in writing by the Airport Director, the LESSEE shall submit the construction documents to the County of Orange Public Works Department and any other required agencies for approval and permitting. If required, LESSEE shall submit the construction documents to the City of Costa Mesa for permitting.

The plans and specifications shall include detailed phasing and sequencing plans which clearly show the extent of work within each phase of demolition and construction, the area of each phase, and the number and type of aircraft to be located within each completed phase. The plans shall include an operational plan which identifies the number and type of aircraft to be displaced during each phase and to where displaced aircraft will be relocated. The plans shall show the capacity of the relocation site(s). The plans and specifications shall provide an interim operating plan for the preservation of the joint OCSD/OCFA Air Support Facility.

LESSEE shall begin coordination of the fire-life safety designs with the Orange County Fire Authority as early as practicable.

Along with plans and specifications for proposed improvements, LESSEE shall provide to Airport Director a detailed project critical path method (CPM) schedule (in Primavera P6 format) enumerating, at a minimum, all activities affecting the baseline schedule of work from mobilization through substantial completion of construction. The schedule shall include 90-day transitional plan, design and construction documents preparation, reviews and permits, NEPA processes and approvals, bidding and awards, inspections and occupancy certifications, closeout, commissioning, activations and start-up of operations. The schedule shall match the plans and specifications and shall be organized in a manner that clearly shows the phasing and sequencing of each phase of the development, identifying the beginning and completion dates for each phase of the work. In order to facilitate phasing of construction projects among multiple Airport tenants, said schedule shall be subject to Airport Director's approval, and work shall not



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commence until Airport Director provides a notice to proceed, which notice may be conditioned or delayed at Airport Director's sole discretion without cost or liability to COUNTY. Upon receipt of the Airport Director's notice to proceed with the work, LESSEE must maintain compliance with its baseline schedule. Except as otherwise agreed in writing by Airport Director, liquidated damages in the amount of two thousand dollars (\$2,000) will be assessed for each day beyond the substantial completion date identified in the schedule that the work has not been substantially completed. At a minimum, LESSEE shall provide to JWA monthly updates of the schedule, including a summary report of any changes.

All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," including all other available John Wayne Airport Design and Construction Standards, which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits, and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. LESSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by LESSEE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain LESSEE's responsibility. LESSEE, at its own cost and expense, shall procure all permits necessary for such construction.

As applicable depending on the type of project, all design and construction shall meet CALGreen Tier 1 requirements, or better (at time of permit submittal), include documentation for construction requirements (i.e. waste management, low emissions vehicles, etc.), and meet the most recent applicable Envision Gold certification requirements, or better, at permit submittal. LESSEE shall use the Envision pre-assessment checklist to guide the sustainability efforts early in project planning and strive to achieve a level of Gold; certification shall be required if applicable to the project type.

LESSEE shall participate in the COUNTY's storm water site development plan, if available, or obtain approval from COUNTY for LESSEE's water quality management plan as required by COUNTY for significant redevelopment projects. Architectural coatings applied to pavement surfaces shall be marked using low VOC coatings. Specifically, with paint that contains less than 50 grams of VOC emissions per liter of paint. If needed, LESSEE shall use heavy-duty, off-road, diesel-powered construction equipment to meet or exceed the USEPA's Tier 4 off-road emissions engine standards during Airport construction to reduce construction-related NOx emissions.

C. Performance of Work. LESSEE agrees that any improvement being constructed by or



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under the direction of LESSEE shall be constructed in substantial compliance with COUNTY-approved plans, which requires those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of COUNTY. In satisfaction of the requirements of the COUNTY, LESSEE shall be required to secure the faithful performance of construction and completion of construction of the improvement by appropriate contractor's bonds and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided by the California Labor Code and California Department of Industrial Relations.

- D. Insurance Requirements. LESSEE shall be required to carry comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in LESSEE's and COUNTY's name. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services in its reasonable discretion. LESSEE shall indemnify COUNTY and hold COUNTY harmless for any and all claims, demands, damages, costs or expenses of any nature, including defense costs by reason of construction or alteration by LESSEE.

- E. Noninterference. LESSEE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the Terminal or on the Airport. LESSEE agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of LESSEE or its contractor.

- F. Trailers and Modular Structures. All improvements constructed by LESSEE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of COUNTY approved temporary modulars or trailers during construction. LESSEE shall maintain restroom facilities and provide existing or comparable restrooms to customers, guests, and flight crew personnel throughout the redevelopment of the Leased Premises. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

- G. LESSEE's Cost and Expense. All renovation or construction by LESSEE pursuant to this Section shall be at LESSEE's sole cost and expense. LESSEE shall keep the Leased Premises and the improvements constructed thereon free and clear of all liens, except for construction or take-out financing with respect solely to LESSEE's improvements, and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. Nothing contained herein shall be understood to foreclose the right of contractors, suppliers or laborers to file preliminary notices with respect to the Leased Premises (and not the COUNTY's underlying fee interest) in connection with construction performed on the Leased Premises and the filing of such preliminary notices shall not constitute a violation of LESSEE's obligations under this Section, and LESSEE shall also hold COUNTY harmless from any liability based on the filing of such notice.



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- H. Utilities. LESSEE shall bear sole financial responsibility for all connection fees, design, construction, removal, relocation, and installation of utilities related to the development of its facilities, as well as any costs related to compliance with local governmental or utility provider requirements when utilities are impacted as a result of the development. All impacts to utilities shall be brought to the attention of Airport Director for review and approval. All energy and water utilities to the Leased Premises shall be separately metered. Those utilities not separately metered shall be specified in writing and COUNTY and LESSEE shall reach agreement, either in this Lease or in a separate written agreement, on the proration of utility expenses. Those payments may include, without limitation, restrictions on or special allocation provisions with respect to excess utility usage upon the Leased Premises for exceptional equipment, ventilation or cooling requirements. LESSEE shall use ENERGY STAR Portfolio Manager to track use of electricity, natural gas, and water and waste quantities. LESSEE shall share this data with COUNTY Airport Environmental Resources Manager quarterly and annually.
- I. Damage during Construction. LESSEE shall repair all damage to Airport facilities caused by LESSEE's construction within seven calendar days, unless other arrangements are approved by Airport Director. Damages or conditions which impact safety must be corrected immediately by LESSEE. All Airport roads must be maintained as open and passable by emergency equipment at all times during construction and shall not conflict with normal Airport operation.
- J. Ownership of Improvements. All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by LESSEE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require LESSEE, at LESSEE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 7.02 CONSTRUCTION AND/OR ALTERATION BY COUNTY

In the event COUNTY should require any portion of the Leased Premises in connection with construction of improvements, future expansion, and/or alterations by the Airport, Airport Director may, upon sixty (60) days' written notice (or immediately should Airport Director determine in Director's sole discretion that an emergency exists) make his/her best effort to substitute alternate space for that portion of the Leased Premises necessary to accommodate the construction. Airport Director will make every reasonable effort to provide replacement space during the construction period that will furnish LESSEE the same utility as the space replaced. In the event alternate space is not available, LESSEE will be reimbursed pursuant to Section 7.03.



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SECTION 7.03 LESSEE REIMBURSEMENT

In the event COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose, COUNTY may terminate this Lease as to all or any portion of the Leased Premises. In that event, if this Lease is terminated in its entirety, COUNTY shall reimburse LESSEE for improvements to the Leased Premises completed during the term of this Lease.

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

$$\text{COMPENSATION} = \frac{B}{C} \times A$$

- A = LESSEE's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled "RECORD DOCUMENTS, AS-BUILT DOCUMENTS, AND CONSTRUCTION COSTS," plus any amounts paid to COUNTY by LESSEE in accordance with Section 7.01.
- B = Number of full months remaining in the Lease term.
- C = Number of full months between the date LESSEE completed construction of Leased Premises improvements and the date the Lease would expire by its terms if COUNTY did not exercise its right to early termination.

LESSEE shall submit to COUNTY within sixty (60) days of completion of construction of any Leased Premises improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "as-built"/record documents as required elsewhere in this Lease. LESSEE acknowledges and agrees if LESSEE fails to submit notifications and supporting documentation for any such Leased Premises improvements in a timely manner, LESSEE waives its right to compensation for such improvements.

SECTION 7.04 LESSEE'S ASSURANCE OF CONSTRUCTION COMPLETION

- A. Within nine (9) months of the Commencement Date of this Lease, LESSEE shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to LESSEE to complete the first phase of Initial Capital Investment as described in Exhibit G. The amount of money available shall be at least \$27,053,815, the total estimated construction cost of this first phase. Such evidence may take one of the following forms:
- a. Completion Bond issued to COUNTY as obligee.
 - b. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction or until the assurances required by sub-section B, hereafter, have been provided.



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- c. Any combination of the above to equal total estimated cost of construction for the first phase.

In the event that LESSEE complies with sub-section B, below, within nine (9) months of the full execution of this Lease, LESSEE shall not be required to comply with this sub-section A.

- B. Notwithstanding the requirements of Section 7.04(A), above, prior to commencement of demolition of existing facilities and construction of approved facilities, LESSEE shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to LESSEE and COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- a. Completion Bond issued to COUNTY as obligee.
- b. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction.
- c. Any combination of the above to equal total estimated cost of construction.

The assurances required by sub-section A, above, shall no longer be required once LESSEE complies with this sub-section B.

All bonds and letters of credit pursuant to this Section must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit pursuant to this Section shall insure faithful and full observance and performance by LESSEE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third-party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.05 MECHANICS LIENS OR STOP NOTICES

LESSEE shall at all times indemnify and hold COUNTY harmless from all Mechanics Liens, Stop Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by LESSEE, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop notice is imposed upon the Leased Premises, LESSEE shall either:



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- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Leased Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien.

Should LESSEE fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop notice, the Lease shall be in default and shall be subject to immediate termination. LESSEE shall indemnify, defend, and hold COUNTY harmless from and against any and all claims, damages, liabilities, costs and expenses (including attorneys' fees and costs) arising out of or related to any mechanic's liens recorded against any portion of the Leased Premises caused by LESSEE, or its agents, employees, contractors, sublessees, successors, and/or assigns, and any and all monetary amounts incurred by COUNTY to obtain a lien release shall be due and payable as Additional Rent. This indemnity shall survive the expiration or earlier termination of this Lease.

SECTION 7.06 RECORD DOCUMENTS, AS-BUILT DOCUMENTS, AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, the LESSEE shall furnish the Airport Director a complete package of "As-Built Documents" and "Record Documents," which include but are not limited to construction documents, specifications, cost estimates, engineering studies and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the "As-Built Documents" and "Record Documents," organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the COUNTY, to the COUNTY's satisfaction, as described below, unless otherwise allowed by the Airport Director.

Drawings and Models:

- All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
- All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
- All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
- In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

Documents and Reports:

- All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance



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(O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: "Record Documents," e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the "John Wayne Airport Construction Standards" for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the LESSEE with the thumb drives containing the "As-Built Documents" and "Record Documents." Basic specifications, standards, and requirements for BIM, CADD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request. Additional requirements for digital record files are described in Exhibit E.

Furthermore, within 90 days of the date the LESSEE begins to use such improvements ("Date of Beneficial Occupancy"), the LESSEE shall furnish to the Airport Director an itemized statement of the actual, direct construction costs of any such improvement. All such costs related to the initial redevelopment of the Leased Premises are collectively referred to as LESSEE's "Initial Capital Investment." The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers, and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums, or developer fees. The statement of cost shall be sworn to and signed by the LESSEE or its responsible agent under penalty of perjury. The LESSEE must obtain the Airport Director's approval of acceptance of the "As-Built Documents" and "Record Documents" and the form and content of the itemized statement for the release of any construction bond.

SECTION 7.07 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

In the event of damage to or destruction of LESSEE-owned or constructed buildings, facilities, or improvements located within the Leased Premises or in the event LESSEE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, LESSEE shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease. Repair, replacement, or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Director. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify LESSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, LESSEE waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).



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In the event that (a) such damage or destruction to LESSEE-owned or constructed buildings, facilities or improvements (“improvements”) located within the Leased Premises occurs, or (b) said improvements are declared unsafe or unfit for use and occupancy, within one (1) year of the expiration date of this Lease, COUNTY and LESSEE may mutually agree to terminate this Lease, in which case, COUNTY may, at COUNTY’s sole option, accept monetary consideration from LESSEE in lieu of LESSEE’s reconstruction of improvements located on the Leased Premises, and after such termination, neither party shall have any further obligations under this Lease, except for obligations that expressly survive the termination or expiration of the Lease hereunder.

SECTION 7.08 CONSTRUCTION HEALTH AND SAFETY

LESSEE’s contractor for demolition and/or construction (“the Contractor”) shall have at the work site copies of or suitable exacts of “Construction Safety Orders” and “General Industry Safety Orders” issued by the California State Division of Industrial Safety. The Contractor shall comply with the provisions of these and all other applicable laws, ordinances, and regulations.

Contractor’s Safety Plan. The Contractor shall submit for approval, prior to beginning construction, a comprehensive Safety Plan (“the Safety Plan”) outlining code of safe work practices and procedures as listed in Appendix C: Code of Safe Practices in the Guide to Developing Your Workplace Injury and Illness Prevention Program, CCR Title 8, Section 1509, Industrial and Illness Prevention Program, Subchapter 4, Construction Safety Orders, Article 3, General, for all construction activities including, but not limited to, trenching and shoring, fall protection, confined space entry, hazardous materials, night work, and lockout/block-out. The plan shall provide a list of competent persons for activities for which competent persons are defined and are required by state law. The plan shall also describe Airport security procedures.

The Safety Plan(s) must be site-specific and job task(s) specific. They must identify job/site-specific workplace hazards as part of an Injury and Illness Prevention Program. The plan(s) must outline the site-specific Code of Safe Work Practices and Procedures for all equipment used or work activities performed at the Airport, and for all materials and “HAZARDOUS MATERIALS” used or stored onsite. The plan(s) must include the JWA worksite specific emergency contact lists, and emergency response and personnel training procedures.

The Safety Plan shall contain directions to the closest hospital and provide a map showing the Airport and the location of hospitals. Information regarding spill response and hazardous materials is to be included. The plan shall be reviewed and signed by all personnel entering Airport property. The plan shall identify the projects included in the Safety Plan, describe operational safety during construction, construction activity and aircraft movement, and limitations of construction. It shall list safety considerations to be discussed at the preconstruction conference and safety meetings. The Contractor shall prepare and distribute to JWA three complete bound booklets identified as “SAFETY PLAN.”



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SECTION 7.09 CONSTRUCTION STORMWATER PLAN

LESSEE's Contractor shall submit for Airport approval, prior to beginning construction, its Construction SWPPP or Erosion and Sediment Control Plan ("ESCP") concerning BMP implementation including how Storm Water run-off will be controlled, how the discharge of unauthorized Non-Storm Water Discharges will be contained and prevented, and how soil erosion and sedimentation of surface run-off will be prevented at the site. Projects disturbing one (1) or more acres of soil or projects that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to develop a SWPPP and obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity – General Permit Order 2009-0009-DWQ ("Construction General Permit"). Projects disturbing less than one acre of soil and not required a Construction SWPPP shall develop an ESCP.

- A. The SWPPP or ESCP shall be site-specific and shall be approved by the Airport Director before the start of construction. It shall be incorporated into the design and planning phases of the project.
- B. Contractor shall select BMPs for the site-specific SWPPP or ESCP. The plan must cover the construction area, construction lay-down areas, haul routes, and off-site migration or tracking of contaminants such as mud. This includes keeping Aircraft Operating Areas ("AOA") clear of mud and debris. The plan must minimize potential soil and water quality impacts, including impacts resulting from total suspended solids ("TSS"), oil and grease, total petroleum hydrocarbons ("TPH"), or chemicals or materials used for construction. The plan must also include leak or spill cleanup.

SECTION 7.10 CONSTRUCTION WASTE MANAGEMENT PLAN

LESSEE's Contractor shall submit for approval, prior to the beginning of construction, its Construction Waste Management ("CWM") Plan detailed how waste generated during construction activities will be contained, stored, labeled, tracked, and disposed of. The plan should address waste diversion for recyclables and organic waste and meet the requirements of CALGreen Tier 1. CWM forms can be found in the Guide to the 2019 California Green Building Standards Code published by the California Building Standards Commission and the International Code Council.

- A. The CWM Plan shall be project-specific and cover all the construction activities.
- B. The CWM Plan shall be incorporated into the design and planning phases of the project and shall be approved by the Airport Director before the start of construction.
- C. LESSEE's Contractor shall use the CWM Worksheet and Acknowledgement forms to report waste disposal monthly and at the conclusion of the construction project.



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SECTION 7.11 TEN-YEAR REFURBISHMENTS

Every ten (10) years from date LESSEE begins to use its improvements to the Leased Premises (“Date of Beneficial Occupancy”), LESSEE shall make refurbishments to its facilities for the purpose of keeping the FBO contemporary and competitive with current FBO industry standards; provided, however, that no program of refurbishment, renovation or capital improvement shall be mandated or compelled so long as LESSEE maintains its facilities and improvements in good working order and condition. LESSEE shall consult with the Airport Director prior to making any such refurbishments and, in particular, shall consult with the Airport Director on or before the tenth (10th), twentieth (20th) and thirtieth (30th) anniversaries of the Commencement Date to discuss such refurbishment of facilities as may be necessary or appropriate to satisfy the requirements of this Section. LESSEE’s refurbishments must provide for a capital reinvestment in facilities on the Leased Premises meeting the following requirements, where the amount of the reinvestment will be reasonably determined by Airport Director with consideration given to the conditions of the facilities at each reinvestment milestone.

Should the Airport Director and LESSEE disagree on the necessary improvements required, the parties shall engage a third-party, selected and agreed to by COUNTY and LESSEE, at LESSEE’s sole cost and expense, to assess the condition of the premises relative to industry standards and to make a determination as to what improvements shall be required. In no case will the cost of such improvements exceed the amounts specified below relative to each reinvestment milestone.

- A. On or before the tenth (10th) anniversary of the Date of Beneficial Occupancy, LESSEE may be required by JWA to make a reinvestment of up to twenty percent (20%) of its Initial Capital Investment.
- B. On or before the twentieth (20th) anniversary of the Date of Beneficial Occupancy, LESSEE may be required by JWA to make a reinvestment of up to twenty percent (20%) of its Initial Capital Investment.
- C. At such time that five (5) years remain on the term of this Lease, LESSEE may be required by JWA to make a reinvestment of up to ten percent (10%) of its Initial Capital Investment.

Prior to reaching each reinvestment milestone, and with sufficient time for all required review and approval in accordance with this ARTICLE VII but in no event later than one hundred eighty (180) days prior to the milestone date, LESSEE shall provide to JWA its plans and specifications for the refurbishment project, as well as a breakdown of the costs for design, construction, upgrades, and installations of new fixtures or equipment proposed for the refurbishment project. LESSEE shall complete each refurbishment project within one hundred eighty (180) days from the date of its final approval by JWA unless otherwise approved in writing by Airport Director. Failure to complete the refurbishment within the prescribed time will subject LESSEE to liquidated damages in the amount of two thousand dollars (\$2,000) per day until the refurbishment has been completed to the satisfaction of the Airport Director.

Within sixty (60) days following the completion of each refurbishment project, LESSEE shall



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provide certified documentation of the capital investment actually expended in the project, together with “as-built”/record documents as required by this ARTICLE VII. In the event of a shortfall between the required reinvestment amount and the actual refurbishment cost, LESSEE shall pay to COUNTY an amount equal to the shortfall as of one hundred eighty (180) days after completion of the refurbishment project. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as reasonably determined by Airport Director.

ARTICLE VIII - ASSIGNMENT, SUBLETTING, AND ENCUMBERING

SECTION 8.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to the limitations of Section 5.01 “USE.”

- A. Transfers. Except as provided by this Article, LESSEE shall not voluntarily, involuntarily, or by operation of law transfer, assign, sublet, encumber, or hypothecate (hereinafter referred to as “Transfer”) any interest of the LESSEE in the Leased Premises without the prior written approval of the COUNTY. Occupancy of the Leased Premises by a prospective transferee prior to approval shall constitute a breach of this Lease. LESSEE shall give the COUNTY sixty (60) days’ prior written notice of all proposed Transfers. The LESSEE shall not make any such Transfers for a period longer than the remaining term of the Lease. All subleases of hangar space, ramp parking space, and office/facility space shall be between LESSEE and sublessee; sub-subleases are prohibited and shall constitute a breach of this Lease. LESSEE shall provide Airport Director copies of all subleases within fifteen (15) days following their approval.

If the COUNTY approves any Transfer, such approval does not constitute a waiver of any of the terms of the Lease. LESSEE agrees that a Transfer of this Lease shall not release LESSEE from any of the obligations found in this Lease. All Transfer documents shall be consistent with the terms, covenants, and conditions of the Lease, and in the event of any inconsistency, the provisions of this Lease shall govern. LESSEE must submit all required COUNTY forms with backup documentation, and include payment to COUNTY of a \$3,000 administrative charge, for COUNTY to process such request.

If the LESSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LESSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

Except as provided by this Article, the failure by the LESSEE to obtain the prior written approval by the COUNTY of any Transfer of the Lease or any interest in the Leased Premises shall constitute a material breach of this Lease by, and shall not confer any Leasehold rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per Article IX, Section 9.02.



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- B. Conditions of COUNTY Approval. COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but COUNTY and LESSEE expressly agree it shall be reasonable for COUNTY to withhold consent to any Transfer for the following reasons:
- (1) LESSEE, its successors or assigns are in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by COUNTY.
 - (2) The prospective sublessee, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
 - (3) The prospective sublessee, assignee or transferee is not financially capable or not experienced in performing the Lease obligations, as determined by the Airport Director.
 - (4) Sublessee's use is in conflict with the terms of this Lease.
 - (5) All the terms, covenants and conditions of Transfer, including the consideration therefor, of any and every kind, have not been revealed in writing to Airport Director. On the first day of each month, LESSEE shall submit a monthly rent roll of all its existing sublessees indicating the sublessee/customer name, sublessee type, start date, end date, square footage and monthly rent.
 - (6) Any construction required of LESSEE as a condition of this Lease has not been completed to the satisfaction of COUNTY.
 - (7) LESSEE has not provided Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, and escrow instructions.
 - (8) LESSEE attempts to hypothecate the Leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the Leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.
 - (9) If a release or threatened release of Hazardous Materials is materially increased as a result of a Transfer or if COUNTY does not receive reasonable assurances that a prospective sublessee, assignee or transferee has the experience and/or the financial ability to remedy a violation of Environmental Laws related to Hazardous Materials and/or fulfill all obligations under this Lease.
- C. Bankruptcy Transaction. If LESSEE assumes this Lease and proposes to assign the same pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to COUNTY.
- (1) The name and address of proposed assignee,



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- (2) All of the terms and conditions of such offer, and
- (3) Adequate assurance to COUNTY of the proposed assignee's future performance under the Lease, including, without limitation, the assurance referred to in the United States Bankruptcy Code, 11 U.S.C. §365(b)(3).

Any person or entity to which this Lease is assigned pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to COUNTY an instrument confirming such assumption.

SECTION 8.02 LEASEHOLD MORTGAGES

A. LESSEE's Right to Encumber Leasehold Estate; No Right to Encumber COUNTY's Fee Interest. LESSEE may, at any time during the Term of this Lease (with the consent of COUNTY after prior written notice providing evidence that all requirements of this Lease applicable at the time have been complied with) encumber all or any portion of LESSEE's leasehold estate in and to this Lease, including LESSEE's rights, title and interest in and to the Leased Premises and Improvements, or any applicable portion thereof or interest therein ("Leasehold Estate") with one (1) or more mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by an institutional lender by which LESSEE's Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation ("Leasehold Mortgages"); provided, however:

- 1) Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed 80% of the costs of the improvements and facilities to be constructed by LESSEE prior to completion and 80% of the Leasehold Estate value after completion;
- 2) That LESSEE shall not have the power to encumber, and no Leasehold Mortgage shall encumber, COUNTY's fee interest in the property underlying the Leased Premises ("COUNTY's Fee Interest");
- 3) The Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of COUNTY hereunder, except as otherwise provided in this Lease;
- 4) Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the COUNTY's Fee Interest to any Leasehold Mortgage; and
- 5) In the event of any conflict between the provisions of this Lease and the provisions of any such trust Leasehold Mortgage, the provisions of this Lease shall control.



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- B. Notification to COUNTY of Leasehold Mortgage. LESSEE or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide COUNTY with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, LESSEE shall furnish to Airport Director a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, LESSEE or any Leasehold Mortgagee shall notify COUNTY of any change in the identity or address of such Leasehold Mortgagee.

SECTION 8.03 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE IX - TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

This Lease creates a new Leasehold concerning all or any portion of the Leased Premises. Upon the Commencement Date of this Lease, any prior agreement with relation to the Leased Premises between the parties shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Lease.

SECTION 9.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this Lease and all of its obligations hereunder with or without prior notice to LESSEE and may exercise all rights of entry for default and breach if the LESSEE fails to perform on any of its obligations under this Lease, including but not limited to the following:

- A. Payment of all rents, fees, and charges if not cured within ten (10) days following written notice from COUNTY;
- B. A general assignment for the benefit of creditors and any Transfer in violation of Article VIII, above;
- C. The issuance of any execution or attachment against LESSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than LESSEE;
- D. The voluntary vacation or abandonment by LESSEE of the conduct of a fixed base operation at the Airport;
- E. The violation by LESSEE of any of the terms of any insurance policy referred to in this Lease, the remedies for which are provided in that section of the Lease entitled "INSURANCE";



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- F. If LESSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated safety standards in the conduct of LESSEE's business, it being understood that this requirement pertains specifically to a substantial and material breach of the standards and policies established and administered by the FAA's Office of Safety Standards (to the extent they are applicable to fixed base operations), and/or those standards established by the TSA specifically pertaining to airport safety pursuant to its authority arising under Title 49 Code of Federal Regulations ("CFR") § 1542. Citations, enforcement actions, and proceedings related to minor violations shall not constitute a breach of this Lease.
- G. The violation of any written directions of the Airport Director if not cured within three (3) business days following written notice from Airport Director;
- H. The appointment of a receiver to take possession of all, or substantially all, the assets of LESSEE located at the Leased Premises or of LESSEE's Leasehold interest in the Leased Premises where such appointment or seizure is not discharged within sixty (60) days following the appointment of the receiver or seizure of assets; and,
- I. All other violations not specified above if not cured within five (5) business days following written notice from COUNTY, provided that if the nature of such failure is such that it can be cured by LESSEE but that more than five (5) business days are reasonably required for its cure (for any reason other than financial inability), then LESSEE shall not be deemed to be in default if LESSEE shall commence such cure within said five (5) business days, and thereafter diligently prosecutes such cure to completion.

SECTION 9.03 COUNTY REMEDIES

In the event of any default by LESSEE, then, in addition to any other remedies available to COUNTY at law or in equity, COUNTY shall have the immediate option to terminate this Lease and all rights of LESSEE hereunder by giving written notice of such termination. In the event that COUNTY shall elect to so terminate this Lease, then COUNTY may recover from LESSEE:

- A. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
- B. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss LESSEE proves reasonably could have been avoided; plus
- C. The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves reasonably could be avoided; plus



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- D. Any other amount necessary to compensate COUNTY for all detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, plus
- E. At COUNTY's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California Law.

As used above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

SECTION 9.04 TERMINATION FOR NONUSE

COUNTY has entered into this Lease for the express purpose of having LESSEE provide those services and uses to the public at the Airport as authorized in that section of the Lease entitled "USE." Should such services and uses of the Leased Premises be discontinued for thirty (30) consecutive calendar days or more, the Airport Director may terminate this Lease and all rights, but not the obligations, of LESSEE shall end at time of such termination subject to that section of the Lease entitled "LESSEE REIMBURSEMENT." Said thirty consecutive calendar day requirement shall not include periods during which LESSEE performs demolition of existing facilities, construction of site improvements, remodeling, renovations, or repairs as approved by Airport Director.

SECTION 9.05 CONDITION OF LEASED PREMISES UPON TERMINATION

Except as otherwise provided by this Lease or approved in writing by COUNTY, upon termination of this Lease, LESSEE shall redeliver possession of the Leased Premises to COUNTY in substantially the same or better condition than existed immediately prior to LESSEE's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the Lease in this Lease shall include termination by reason of expiration.

SECTION 9.06 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If LESSEE abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to LESSEE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to LESSEE or to any person claiming under LESSEE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the Lease shall not be construed as giving LESSEE possession of the Leased Premises during the fifteen (15) days after termination, expiration, or abandonment of the Lease.



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SECTION 9.07 QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION OR DEFAULT

Upon termination of this Lease for any reason, including, but not limited to, termination because of default by LESSEE, LESSEE shall execute, acknowledge, and deliver to COUNTY, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of LESSEE in the Leased Premises is quitclaimed to COUNTY. Should LESSEE fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of LESSEE to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of LESSEE or those claiming under LESSEE in and to the Leased Premises.

SECTION 9.08 COUNTY'S RIGHT TO RE-ENTER

LESSEE agrees to yield and peaceably deliver possession of the Lease Premises to COUNTY on the date of termination or default of this Lease, whatsoever the reason for such termination or default.

Upon giving written notice of termination or default to LESSEE, COUNTY shall have the right to re-enter and take possession of the Leased Premises on the date such termination or default becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination or default of the Lease and re-entry of the Leased Premises by COUNTY shall in no way alter or diminish any obligation of LESSEE under the Lease terms and shall not constitute an acceptance or surrender.

LESSEE waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE X - SECURITY

SECTION 10.01 AIRPORT SECURITY

In addition to FAA safety regulations, the LESSEE must also comply with all Airport security rules, regulations and plans, Department of Homeland Security-Transportation Security Administration (TSA) regulations, United States Customs and Border Protection (USCBP) regulations, and all other applicable federal, State and local regulations regarding security during the term of this Lease. LESSEE is responsible for fines imposed by any regulatory agency as a result of LESSEE's failure to comply with applicable rules and regulations regarding airport security.

LESSEE shall be required to obtain airport security clearance in order to operate on the Leased Premises pursuant this Lease. LESSEE must designate one or more Authorized Signatories to attend training by the Airport, and to be the primary point(s) of contact for Airport Issued I.D. security badge related correspondence and records management. LESSEE, its employees and



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contractors must complete a background clearance, and a Security Identification Display Area (SIDA) class in order to obtain an Airport issued I.D. security badge for access to secure areas. All Airport Operations Area (AOA) drivers must also complete training to receive driver's authorization to drive on the airfield.

A. Authorized Signatory

Authorized Signatories are individuals or designated representatives authorized to sponsor badge applicants and request Airport issued I.D. security badges on behalf of their organization. They are responsible for initiating and understanding the security I.D. badge application process, and certify applicant employment. Authorized Signatories are also the primary points of contact for the Airport I.D. Badge Office correspondence related to audits, changes to employee access authority, if an employee is arrested or convicted of a disqualifying criminal offense, and if an employee is terminated.

B. Airport Issued I.D. Security Badge Acquisition

Prior to issuance of I.D. security badge(s), LESSEE's personnel must successfully complete the Airport issued I.D. security badge acquisition process. LESSEE personnel who will be working onsite, and engaged in the performance of work under this Lease, must be sponsored by a Lessee identified Authorized Signatory, pass Airport's screening requirements, which includes, but may not be limited to, an F.B.I. Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon successful completion of the background checks, LESSEE personnel will be required to attend a 3-hour SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver's Training class and written test. The physical Airport issued I.D. security badges are not issued until LESSEE personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed all required background checks, 3) completed and passed appropriate classroom training and 4) paid an I.D. badge fee for each badged person. LESSEE should anticipate a minimum of five (5) business days to complete the Airport issued I.D. security badge process if all requirements listed above are fulfilled by individual applicants in a timely manner. LESSEE shall be responsible for all applicable fees and costs associated with the background checks and I.D. security badging process. The amount of such fees is subject to change without notice.

C. Airport Issued I.D. Security Badge Holder Requirements and Responsibilities

The Airport Security Plan (ASP) requires that each person issued an Airport issued I.D. security badge be made aware of his/her responsibilities regarding the privilege of access to SIDA, Secure, Sterile, and AOA areas of the Airport.

LESSEE and all its personnel within access controlled areas (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport issued I.D. security badge,



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unless they are escorted by a properly badged individual with escort privileges. When working in a SIDA, AOA, Sterile or Secure area, each badged person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid I.D. badge. Any person who is not properly displaying or who cannot produce a valid Airport issued I.D. security badge must immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport issued I.D. security badge is the property of the County of Orange and must be returned upon termination of employment and/or termination of the Lease. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. LESSEE or its personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable. In the event that the LESSEE's badge is not returned to the Airport upon termination of employment and/or termination of the Lease, the LESSEE and/or LESSEE personnel shall be liable to the County of Orange for a fine in the amount of \$250 per unreturned badge. The amount of the fine is subject to change without notice. LESSEE's security deposit may be applied to cover the cost of the fine.

ARTICLE XI - INSURANCE AND INDEMNITY

SECTION 11.01 INSURANCE

LESSEE agrees to purchase all required insurance at LESSEE's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

LESSEE agrees that LESSEE shall not operate on the Lease Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Airport Director. In no cases shall assurances by LESSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. LESSEE also agrees that upon cancellation, termination, or expiration of LESSEE's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Lease Premises until such time as the Airport Director reinstates the Lease.

If LESSEE fails to provide Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, COUNTY and LESSEE agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to LESSEE, said material breach shall permit COUNTY to take whatever steps necessary to



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interrupt any operation from or on the Lease Premises, and to prevent any persons, including, but not limited to, members of the general public, and LESSEE's employees and agents, from entering the Lease Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. LESSEE further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY'S action.

LESSEE may occupy the Leased Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this Lease. COUNTY reserves the right to terminate this Lease at any time LESSEE's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. LESSEE shall pay COUNTY a fee of \$300.00 for processing the reinstatement of the Lease. LESSEE shall provide to COUNTY immediate notice of said insurance cancellation or termination.

LESSEE shall ensure that all contractors performing work on behalf of LESSEE pursuant to this Lease and all tenants operating within the Lease Premises shall carry appropriate lines of insurance subject to the same terms and conditions as set forth herein for LESSEE. LESSEE shall not allow contractors or tenants to operate within the Lease Premises if they have less than an appropriate level of coverage required by the LESSEE under this Lease. It is the obligation of the LESSEE to provide written notice of the insurance requirements to every contractor and tenant and to receive proof of insurance prior to allowing any contractor or tenant to begin operations within the Lease Premises. Such proof of insurance must be maintained by LESSEE through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of LESSEE's current audited financial report. If LESSEE's SIR is approved, LESSEE, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from LESSEE's, its agents, employee's or subcontractor's performance of this Agreement, LESSEE shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) LESSEE's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the LESSEE's SIR provision shall be interpreted as though the LESSEE was an insurer and the COUNTY was the insured.



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Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the LESSEE shall provide the minimum limits and coverage as set forth below:

| <u>Coverages</u> | <u>Minimum Limits</u> |
|---|--|
| Aviation General Liability (Including but not limited to General Liability, Contractual, Premises, Products/Completed Operations, Hangarkeepers and Vehicles/Mobile Equipment operated on restricted airport premises) | \$10,000,000 per occurrence \$10,000,000 aggregate |
| Workers' Compensation | Statutory |
| Employers' Liability Insurance | \$1,000,000 per occurrence |
| Pollution Liability | \$5,000,000 per claims-made or per occurrence |
| Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit. Property Schedule to include all assigned fuel storage tanks, piping, fittings, associated equipment, vaults and clarifiers. | 100% of the Replacement Cost Value and no coinsurance provision. |



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Required Endorsements

The following endorsements must be submitted with the Certificate of Insurance:

1. The Aviation General Liability and Pollution Liability policies shall contain an Additional Insured endorsement providing coverage at least as broad as ISO forms CG 2010 or CG 2033 naming the ***County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds***. Blanket coverage may also be provided which will state - ***As Required by Written Agreement***.
2. The Aviation General Liability and Pollution Liability policies shall contain a primary non-contributing endorsement evidencing that the LESSEE's insurance is primary and any insurance or self-insurance maintained by County of Orange shall be excess and non-contributing.
3. The Workers' Compensation policy shall contain a Waiver of Subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees***. Blanket coverage may also be provided which will state - ***As Required by Written Agreement***.
4. The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the COUNTY'S financial interest when applicable.

All insurance policies required by this lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Aviation General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

If LESSEE's Pollution Liability policy is a claims-made policy, LESSEE shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director. LESSEE has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

COUNTY expressly retains the right to require LESSEE to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify LESSEE in writing of changes in the insurance requirements. If LESSEE does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to LESSEE, and COUNTY shall be entitled to all legal remedies.



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The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

SECTION 11.02 INDEMNITY

To the fullest extent authorized by law, the LESSEE shall indemnify, defend with counsel approved in writing by COUNTY, and hold the COUNTY, its officers, directors, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing body harmless from any and all claims, demands, or liability of any kind or nature arising out of or related to the LESSEE's operations at the Airport, including the cost of defense arising therefrom. LESSEE's indemnity obligations stated herein also apply to those actions arising out of or related to LESSEE's officers, agents, successors, assigns, sublessees, subcontractors, and employees. LESSEE's indemnity obligations stated herein shall not apply in the event of any loss, damage, or expense arising from the sole negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors. The rights and obligations set forth in this indemnification shall survive the termination and/or expiration of this Lease.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this Lease. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

ARTICLE XII - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 12.01 CIVIL RIGHTS AND NONDISCRIMINATION

- A. LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LESSEE transfers its obligation to another, the transferee is obligated in the same manner as LESSEE.
- B. LESSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
 - 1) LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.



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- 2) LESSEE, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
 - 3) In all solicitations, either by competitive bidding or negotiation made by LESSEE for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by LESSEE of the LESSEE's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 - 4) LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, LESSEE will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
 - 5) In the event of LESSEE's noncompliance with the non-discrimination provisions of this Lease, COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until LESSEE complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
 - 6) LESSEE will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. LESSEE will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LESSEE becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, LESSEE may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, LESSEE may request the United States to enter into the litigation to protect the interests of the United States.
- C. LESSEE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is



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extended or for another purpose involving the provision of similar services or benefits, LESSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
 - 4) LESSEE will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. LESSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. LESSEE, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including without limitation:
- (1) Title VI of the Civil Rights Acts of 1964, 42 U.S.C. § 2000d *et seq.* (prohibiting discrimination on the basis of race, color, national origin);
 - (2) 49 Code of Federal Regulations part 21, Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964;
 - (3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);
 - (4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (prohibiting discrimination on the basis of disability), and 49 CFR part 27;
 - (5) The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.* (prohibiting discrimination on the basis of age);



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- (6) Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47123 (prohibiting discrimination based on race, creed, color, national origin, or sex);
 - (7) The Civil Rights Restoration Act of 1987, Pub.L 100-209, (broadening the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients, and contractors, whether such programs or activities are federally funded or not;
 - (8) Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12189, as implemented by 28 CFR parts 35 and 36, and 49 CFR parts 37 and 38 (prohibiting discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities);
 - (9) The FAA’s Nondiscrimination statute, 49 U.S.C. § 47123 (prohibiting discrimination on the basis of race, color, national origin, and sex);
 - (10) Executive Order 12898, Federal Actions to Address Environmental Justice in the Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - (11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 – 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and
 - (12) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).
- F. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Lease in accordance with the provisions of Section 9.02, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

SECTION 12.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of LESSEE, and without interference or hindrance. COUNTY reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard.



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SECTION 12.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport. In the event the FAA, or its successors, request modifications or changes to this Lease which may or may not be condition precedent to obtaining funds for the improvement of the Airport, LESSEE hereby consents to any and all such modifications and changes as may be requested and without further consideration, and LESSEE agrees to immediately execute an amendment to this lease to reflect the requested modifications or changes.

SECTION 12.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

LESSEE agrees that LESSEE's use of the Leased Premises, including all construction thereon, shall conform to applicable Federal Aviation Regulations.

LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 12.05 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to conduct aeronautical activities or provide aeronautical services to the public as prohibited by 49 U.S.C. § 40103(e) and 47107(a)(4), as amended from time to time, and the COUNTY reserves the right to grant others the privilege and right of conducting any or all activities of an aeronautical nature.

SECTION 12.06 RESERVATION OF AVIGATION EASEMENT

COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise, vibration, fumes, and soot as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 12.07 HEIGHT LIMITATION OF STRUCTURES

LESSEE by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the Federal Aviation Regulations (as same may be amended from time to time or as such



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regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the land Leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of LESSEE. LESSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

LESSEE acknowledges that it accepts the Leased Premises in "as is" condition and by entering into this Lease accepts liability, and agrees to indemnify COUNTY pursuant to Section 11.02 for all existing conditions whether known or unknown on the Commencement Date.

SECTION 12.08 NONINTERFERENCE WITH AIRCRAFT

LESSEE by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the Leased premises and hereby cause the abatement of such interference at the expense of LESSEE.

SECTION 12.09 WAR OR NATIONAL EMERGENCY

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

SECTION 12.10 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

It is the policy of the Department of Transportation that disadvantaged business enterprises (DBE) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Lease. To the extent applicable to LESSEE's operations at the Airport, LESSEE agrees to comply with all DBE requirements.

SECTION 12.11 RESERVATION OF RIGHT OF ENTRY AND EASEMENT FOR NAVIGATIONAL AIDS

COUNTY reserves the right to enter the Leased Premises for the installation and maintenance of Airport navigational aids. Said navigational aids may be installed on land or improvements within the Leased Premises. Said installation and any required maintenance shall be coordinated with LESSEE so as to cause the least interference with LESSEE's use of the Leased Premises. All installation and maintenance costs will be paid by COUNTY.

COUNTY also reserves the right to grant easements to provide utilities to serve the navigational aids. All utility costs for the operation of navigational aids shall be the responsibility of COUNTY.



JOHN WAYNE AIRPORT FBO LEASE

SECTION 12.12 ACCESS TO LEASED PREMISES

The COUNTY has exclusive access and control over the perimeter gates to the airfield. LESSEE shall not unlock, tamper or open any Airport perimeter gate on the Leased Premises unless specifically authorized by the COUNTY in writing. In order to meet reasonable requirements for Airport operation and traffic safety and control, COUNTY, at COUNTY's sole discretion, shall determine and may from time to time change the location of ingress and egress connecting the Leased Premises to public road right-of-way or Airport on-site roads and taxiways. Access locations to the Leased Premises from public road right-of-ways shall be limited to a single location unless an additional access point is approved by COUNTY. Should it be necessary for COUNTY to change the location of said access point LESSEE shall be given sixty (60) days prior written notice.

SECTION 12.13 AIRPORT MAINTENANCE AND CONSTRUCTION BY COUNTY

COUNTY may, from time to time, need to perform construction, maintenance, repairs or installations on, near or under the Leased Premises. Such work may include, but is not limited to, construction and maintenance of Airport aprons, taxiways and access roads; repair or installation of utilities; and improvement or repair of Airport drainage. Should such work by COUNTY adversely affect LESSEE's operations within or from the Leased Premises, LESSEE shall only be entitled to a reduction in rent payable to COUNTY during the period of interference which shall be reduced in proportion to the interference with LESSEE's use of the Leased Premises. LESSEE shall not be entitled to any other form of compensation, payment or damages.

SECTION 12.14 AMERICANS WITH DISABILITIES ACT

LESSEE shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, LESSEE's furnishings, trade fixtures and equipment; (b) removing physical barriers; (c) providing auxiliary aids and services for use of the LESSEE's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. LESSEE shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. LESSEE shall deliver to the COUNTY, upon the COUNTY's request, a copy of each report and work plan. The COUNTY's approval of or acceptance of any aspect of the LESSEE's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. LESSEE agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by the COUNTY with respect to the LESSEE's failure to comply with the ADA.



JOHN WAYNE AIRPORT FBO LEASE

ARTICLE XIII - MISCELLANEOUS PROVISIONS

SECTION 13.01 TIME

Time is of the essence in this Lease.

SECTION 13.02 LEASE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this Lease into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

SECTION 13.03 AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 13.04 SIGNS

LESSEE agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director. Unapproved signs, banners, flags, etc., may be removed by Airport Director without prior notice to LESSEE.

SECTION 13.05 PERMITS AND LICENSES

LESSEE shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Leased Premises as set forth herein. No permit approval or consent given hereunder by COUNTY in its governmental capacity shall affect or limit LESSEE's obligations hereunder, nor shall any approvals or consents given by COUNTY as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

LESSEE's obligation under this section includes the responsibility to pay any and all fees associated with permitting, including any development fees due to the Transportation Corridor Agency which may be assessed at the time of permitting.

SECTION 13.06 TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to possessory interest tax, personal property taxes, and taxes and fees associated with permitting, including without limitation any development fees due to the Transportation Corridor Agency) which become due and payable upon the Leased Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of LESSEE, and LESSEE shall cause said taxes and assessments to be paid promptly.



JOHN WAYNE AIRPORT FBO LEASE

SECTION 13.07 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse LESSEE from the prompt payment of any rental or other charge required of LESSEE except as may be expressly provided elsewhere in this Lease.

SECTION 13.08 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 13.09 WAIVER OF RIGHTS

The failure of COUNTY or LESSEE to insist upon strict performance of any of the terms, covenants or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or LESSEE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 13.10 RESERVATIONS TO COUNTY

The Leased Premises are accepted "as is" by LESSEE subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder or to impair the security of any secured creditor of LESSEE.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by



JOHN WAYNE AIRPORT FBO LEASE

LESSEE, LESSEE shall only be entitled to a reduction in the rent payable to COUNTY during the period of interference, which shall be reduced in proportion to the interference with LESSEE's use of the Leased Premises. LESSEE shall not be entitled to any other form of compensation.

SECTION 13.11 AUTHORITY OF LESSEE

If LESSEE is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

LESSEE has had access to legal advice from an attorney with respect to the advisability of entering into this Lease. COUNTY has made no statement or representation to LESSEE regarding any fact relied upon in entering into this Lease; and LESSEE did not rely upon any statement, representation, or promise of COUNTY in executing this Lease. LESSEE has made its own independent investigation of all facts pertaining to this Lease and the Lease Premises, and of all the matters pertaining thereto, as LESSEE deemed necessary. LESSEE expressly acknowledges it has read and understood the terms and conditions set forth in this Lease and has authority to execute this Lease.

SECTION 13.12 COUNTY REPRESENTATIVE

The Board of Supervisors hereby designates the Airport Director to be its designated representative for purposes of contact between the COUNTY and LESSEE in connection with this Lease, including, without limitation, the giving of consents and approvals in a timely manner and in accordance with the terms hereof. The Board of Supervisors may at any time, by notice given to LESSEE, remove the Director as the COUNTY's representative and appoint another individual to act as the County's representative.

SECTION 13.13 PUBLIC RECORDS

LESSEE understands that written information submitted to and/or obtained by COUNTY from LESSEE related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, may be open to inspection by the public as required by the California Public Records Act (Government Code § 6250, *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof.

SECTION 13.14 NATIONAL SECURITY

LESSEE agrees to follow all laws, rules, regulations, and/or executive orders of the United States promulgated to protect national security, including, without limitation, the following: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. § 1, *et seq.*, as amended; (2) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, *et seq.*, as amended; (3) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405W, as amended; (4)



JOHN WAYNE AIRPORT FBO LEASE

Executive Order No. 13224 on Terrorist Financing (effective, September 24, 2001, as may be amended or supplemented); (5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756, as amended); and (6) the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including the prohibitions against doing business with persons or entities named on the list of “Specially Designated Nationals and Blocked Persons,” as modified from time to time).

SECTION 13.15 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of COUNTY and LESSEE, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of LESSEE in the conduct of LESSEE's business or otherwise, or a joint venturer with LESSEE; and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained. This Lease is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 13.16 ATTORNEYS' FEES

In any action or proceeding to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorneys' fees, costs and expenses.

SECTION 13.17 PORT OF ENTRY DESIGNATION

LESSEE acknowledges the Airport's desire to be granted USCBP Port of Entry status by the federal government, and will support Airport in any efforts to that end. LESSEE shall refrain from undertaking any action to diminish the likelihood of the Airport receiving a Port of Entry designation.

SECTION 13.18 TRAINING AND CUSTOMER SERVICE PLANS

LESSEE will implement a customer service plan and training plan as provided for in Training and Customer Service Plan, Exhibit I, attached hereto, which plans may be amended, updated, or superseded from time to time, with the concurrence of the Airport Director.

SECTION 13.19 LESSEE'S SERVICE OF ALCOHOL

LESSEE shall comply with all applicable federal, State, and local laws and regulations for the service of alcohol. LESSEE agrees to adhere to the guidelines of 14 CFR Part 91.17 in serving alcohol to aircraft crewmembers. LESSEE shall maintain appropriate insurance coverage for the service of alcohol.



JOHN WAYNE AIRPORT FBO LEASE

SECTION 13.20 NOTICES

All notices pursuant to this Lease shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing. Notwithstanding the above, COUNTY may also provide notices to LESSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: LESSEE

Bradford W. Wright
Chief Financial Officer
Clay Lacy Aviation, Inc.
7435 Valjean Avenue
Van Nuys, CA 91406

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

[Signature Page Follows.]

Corporate Resolution of Signing Authority

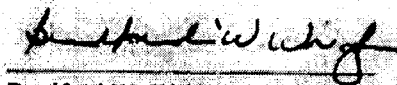
WHEREAS, the Corporation is determined to grant signing and authority to certain person(s) described hereunder.

RESOLVED, that the Board of Directors is hereby authorized and approved to authorize and empower the individuals identified on Exhibit A to make, execute, endorse and deliver in the name of and on behalf of the corporation, but shall not be limited to, any and all written instruments, agreements, documents, execution of deeds, powers of attorney, transfers, assignments, contracts, obligations, certificates and other instruments of whatever nature entered into by this Corporation.

The undersigned certifies that he is the properly elected and qualified Secretary of the books, records and seal of Clay Lacy Aviation, Inc., a corporation duly conformed pursuant to the laws of the state of California, and that said meeting was held in accordance with state law and with the Bylaws of the above-named corporation.

This resolution has been approved by the Board of Directors of Clay Lacy Aviation, Inc. on November 1, 2019.

I, as authorized by the Company, hereby certify and attest that all the information above is true and correct.



Bradford W. Wright
Secretary
Clay Lacy Aviation, Inc.





**JOHN WAYNE AIRPORT
FBO LEASE**

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

LESSEE, Clay Lacy Aviation, Inc.

By: *Richard W. Wright*

By: _____

APPROVED AS TO FORM:

County Counsel

By: *Richard M. Walsh*

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____

Barry A. Rondinella
Airport Director

Signed and certified that a copy of this
document has been delivered to the Chair
of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY

COUNTY OF ORANGE

Robin Stieler
Clerk of the Board of Supervisors
County of Orange

Chairwoman, Board of Supervisors

Real Property Conveyance Questionnaire* for ASR

(*Applies to sale, lease, license, or easement of County or District owned assets)

Instructions:

- This questionnaire was developed with input from Auditor Controller, Internal Auditor and CEO Real Estate to assure County leadership is fully informed.
- Insert the complete answer after each question below.
- When completed, save and include as an Attachment to your ASR.
- In the body of the ASR focus on the considerations relevant to the decision.
- If you need assistance, please contact CEO Real Estate.

1. What property interest is being considered for conveyance (e.g. fee, lease, license, easement)?

The property interest being conveyed is a leasehold interest in County owned property at John Wayne Airport.

a) Why is this property being considered for lease, license, sale or other conveyance?

The lease is for a fixed base operator (FBO) who will lease the property and construct improvements to provide related services and amenities to the aviation community. Generally, this is not a service that is provided directly by the County, and it has historically been provided by a private lessee.

b) How and who identified this property as a potential conveyance?

John Wayne Airport (JWA) and CEO Real Estate staff based on how this type of service is generally handled within the FBO market.

c) What factors are key in recommending this property for conveyance?

These sorts of general aviation services are provided routinely at airports through a leasehold structure. In addition, they provide additional revenue for airport operation.

d) How does the proposed conveyance fit into the County's/District's strategic or general plan?

The lease and fixed base operations are consistent with the General Aviation Improvement Plan, which was approved by the Board of Supervisors (Board) on March 13, 2018. The GAIP approved the traditional land lease financial development model lease for the GAIP to allow JWA to develop a self-sustaining GA operation.

e) What are the short and long term anticipated uses of the property?

This property has historically been used for FBOs, and the GAIP anticipates the long-term use will remain the same.

f) Are there any limitations on the use of the property in the conveyance documents?

The leases require that the property be used for an FBO.

2. What analysis has been performed as to whether to convey the proposed real property interest?

N/A – this is a historical use that is supported by the GAIP.

3. How was the conveyance price, or lease/license rent, determined?

An appraisal was performed to set the rent.

a) Who performed the appraisal or market study and what certifications do they possess?

Pacific Real Estate Consultants: Licensed California Real Estate Broker and Certified General Real Estate Appraiser, State of California

b) How does the price/rent compare with comparable properties?

The lease rates in the leases are with the market for this sort of operation and lease.

c) Does the setting of the price/rent follow industry standards and best practices?

Yes.

d) What are the specific maintenance requirements and other costs within the agreement and who is responsible? Provide an estimate of the costs to the County/District if applicable.

All costs for construction and maintenance are borne by the lessee and not the County.

4. What additional post-conveyance remodeling or upgrade costs will be needed for the property to meet its intended use?

While the leasehold premises currently are improved for FBO purposes, the leases require the lessees to construct new improvements and facilities.

a) Will any of the upgrades be required to meet County, ADA, or other standards and requirements?

Yes, they are required to meet the terms of the lease and will also comply with applicable laws, such as the ADA.

b) Include estimates of the costs.

\$86,508,650 for ACI Jet
\$57,897,531 for Clay Lacy

c) What entity will be responsible for the costs?

The lessees are responsible for the costs.

5. Can the County terminate the sale/easement, lease/license?

Yes, the County can terminate the leases for cause in the event of default.

a) What would be necessary to terminate the agreement and when can it be terminated?

An uncured default pursuant to the terms of the lease.

b) Are there penalties to terminate the sale/easement, lease/license?

N/A

6. What entity will be responsible for the payment(s)?

The lessees are responsible for any and all payments under the lease.

- a) How will the funds received be used or applied?

Funds received will be used for the operation of JWA.

- b) What fund number will the funds from the conveyance ultimately be deposited into?

JWA Fund 280 – Operating Fund

- c) If restricted funds might be created or supplemented, check with the Auditor Controller's General Accounting Unit and Counsel if you have questions about whether restricted funds are involved.)

- d) If restricted funds might be created or supplemented, has County Counsel advised that the destination fund for the payment(s) is properly restricted?

7. Does the proposed sale/easement, lease/license agreement comply with the CEO Real Estate standard language?

Yes.

8. If this is a lease, is it a straight lease, an operating lease, a lease with an option to purchase, or a capital lease (see details below)?

Operating Lease