



## AGENDA STAFF REPORT

ASR Control 22-000151

**MEETING DATE:** 03/22/22  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 5  
**SUBMITTING AGENCY/DEPARTMENT:** John Wayne Airport (Pending)  
**DEPARTMENT CONTACT PERSON(S):** Rick Francis 949-252-5166  
 Evanna Barbic 949-252-5232

**SUBJECT:** Approve Air Traffic Control Tower Lease with the Federal Aviation Administration

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD	
Pending Review	Pending Review	Discussion	4/5 Vote
<b>Budgeted:</b> N/A	<b>Current Year Cost:</b> N/A	<b>Annual Cost:</b>	N/A
<b>Staffing Impact:</b> No	<b># of Positions:</b>	<b>Sole Source:</b>	No
<b>Current Fiscal Year Revenue:</b> N/A	<b>County Audit in last 3 years:</b> No		
<b>Funding Source:</b> N/A			
<b>Prior Board Action:</b>	07/20/2000 #23		

### RECOMMENDED ACTION(S):

1. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA), Class 1 (Existing Facilities) pursuant to CEQA Guidelines Section 15301.
2. Approve and execute the Air Traffic Control Tower Lease with the Federal Aviation Administration effective May 1, 2022, through September 30, 2041.
3. Authorize the Airport Director or designee to sign all documents related to the Lease and perform all activities specified under the terms of the Lease and to execute subsequent documents and amendments that make non-monetary and/or monetary changes that do not increase County costs by more than \$50,000 per year, as approved by County Counsel.

### SUMMARY:

Approval of the Air Traffic Control Tower Lease between the County of Orange and the Federal Aviation Administration will allow for the continued operation and maintenance of the Air Traffic Control Tower at John Wayne Airport.

## **BACKGROUND INFORMATION:**

On July 20, 2000, the Board of Supervisors (Board) approved a Lease with the Federal Aviation Administration (FAA) for the continued operation and maintenance of the Air Traffic Control Tower (ATCT) at John Wayne Airport (JWA) for a term of 20 years.

On September 22, 2020, pursuant to Resolution 20-025, dated March 26, 2020, and due to the COVID-19 pandemic, the County and FAA entered into an Amendment to allow the Lease to continue on a month to month basis until terminated or replaced by a new lease.

JWA now seeks Board approval of the ATCT Lease (Lease) with the FAA for a term beginning on May 1, 2022, and expiring on September 30, 2041. The ATCT directs ground movement and air traffic within a five-mile perimeter of JWA. In addition to deterring collisions, the ATCT provides information and assistance to pilots.

The FAA will pay no monetary consideration in the form of rent. Consideration for the Lease will be the rights and responsibilities assumed by the FAA in its establishment, operation and maintenance of the facilities upon the Leased Premises.

This Lease does not contain insurance requirements or an indemnity provision. The FAA is a federal agency that does not carry insurance nor indemnify other parties. This policy is standard practice with federal agencies and based on the Federal Claims Tort Act. CEO/Risk Management has reviewed and approved these non-standard terms. The approved Risk Assessment is included as Attachment B.

## **Legal Requirements**

A four-fifths vote by the Board is required to approve this Lease in accordance with Government Code section 25536.

**Compliance with CEQA:** The proposed project is Categorical Exempt (Class 1) from the provisions of CEQA pursuant to Section 15301 because it includes approval of a lease for operation and maintenance of existing public structures involving negligible or no expansion of existing use.

## **FINANCIAL IMPACT:**

This is a non-financial Lease.

## **STAFFING IMPACT:**

N/A

## **ATTACHMENT(S):**

Attachment A – Air Traffic Control Tower Lease with the Federal Aviation Administration

Attachment B – Risk Assessment Form

Attachment C – Government Code Section 25536

**JOHN WAYNE AIRPORT  
ORANGE COUNTY**



**AIR TRAFFIC CONTROL TOWER LEASE**

**Dated** \_\_\_\_\_

**Between**

**County of Orange**

**and**

**United States of America  
Department of Transportation  
Federal Aviation Administration  
LEASE No.: 690EG4-20-L-00038**



**JOHN WAYNE AIRPORT  
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**LIST OF EXHIBITS**

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EXHIBIT B MAP OF LEASED PREMISES



**JOHN WAYNE AIRPORT  
AIR TRAFFIC CONTROL TOWER LEASE**

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THIS AIR TRAFFIC CONTROL TOWER LEASE ("LEASE") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and UNITED STATES OF AMERICA, acting through the FEDERAL AVIATION ADMINISTRATION, hereinafter referred to as "FAA" or "GOVERNMENT."

**RECITALS**

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

WHEREAS, this LEASE succeeds LEASE No. DTFA08-00-L-20435 and all previous agreements between the parties for the Leased Premises described herein; and

WHEREAS, COUNTY and FAA mutually desire to enter into this LEASE in order to provide for the operation and maintenance of the Air Traffic Control Tower ("ATCT"); and

WHEREAS, COUNTY has the right to permit the use of its property at the Airport and to grant the use of the Airport to FAA for the operation and maintenance of the ATCT as provided by this LEASE; and

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" shall mean the Director of JWA or his or her duly authorized designee.

**SECTION 1.03 AUDITOR-CONTROLLER**

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.





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**SECTION 1.04 BOARD OF SUPERVISORS**

“Board of Supervisors” shall mean the COUNTY’s governing body.

**SECTION 1.05 COUNTY**

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

**SECTION 1.06 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 Substances, 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. Parts 173 and 175; (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 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 Substances 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 Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.



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**SECTION 1.07      FAA**

“FAA” shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958.

**SECTION 1.08      HAZARDOUS SUBSTANCES**

“Hazardous Substances” 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 Substances” 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.

**SECTION 1.09      LEASED PREMISES**

“Leased Premises” shall mean the areas of the Airport which COUNTY has granted FAA the right to use on an exclusive use basis. FAA’s Leased Premises is described in Exhibit A and shown on Exhibit B.

**SECTION 1.10      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;



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- 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.

**ARTICLE II - TERM OF LEASE AND CONSIDERATION**

**SECTION 2.01      TERM OF LEASE**

The term of this LEASE shall be nineteen (19) years five (5) months, commencing on May 1, 2022 and ending September 30, 2041 provided that adequate appropriations are available from year to year for the consideration herein.

**SECTION 2.02      HOLDING OVER**

In the event the FAA 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 governed by the conditions and covenants contained in this LEASE.

**SECTION 2.03      TERMINATION FOR CONVENIENCE**

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days' written notice.

**SECTION 2.04      SUCCEEDING LEASE**

This Lease succeeds FAA Lease No. DTFA08-00-L-20435 and all other previous agreements between the parties for the Leased Premises described in the Lease.

**SECTION 2.05      CONSIDERATION**

The FAA shall pay the Airport no monetary consideration in the form of rent. It is mutually agreed that the rights extended to the FAA herein are in consideration of the obligations assumed by the FAA in its establishment, operation and maintenance of facilities upon Leased Premises.



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**ARTICLE III - LEASED PREMISES**

**SECTION 3.01 LEASED PREMISES**

COUNTY hereby leases to the FAA the following described property, hereinafter referred to as “Leased Premises” described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. FAA accepts the Leased Premises in its “as is, where is, and with all faults” condition and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended.

- A. Together with a right-of-way for ingress to and egress from the premises for FAA employees, their agents and assigns; a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the COUNTY, and unless herein described otherwise, shall be reasonably determined by the Airport Director as the most convenient route.
- B. And the right of grading, conditioning, installing drainage facilities, seeding the soil of the premises, and the removal of all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of FAA facilities.
- C. And the right to make alterations, attach fixtures, erect additions, structures, or signs, in or upon the Leased Premises. All alterations and additions are and will remain the property of the FAA, and may be removed upon the date of expiration or termination of this LEASE, or within ninety (90) days thereafter, by or on behalf of the FAA, or its grantees or purchasers of said alterations, fixtures, additions, structures or signs.

FAA 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 FAA’s use thereon or for any other purpose. The taking of possession of the Leased Premises by FAA shall conclusively establish that the Leased Premises is acceptable to FAA and in satisfactory condition for FAA’s use at such time. FAA further, by taking possession of the Leased Premises, expressly acknowledges and represents to COUNTY that FAA is accepting FAA’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. FAA 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 FAA has satisfied itself with the condition of the Leased Premises and the suitability of the Leased Premises for FAA’s intended use; and that FAA has made all such investigations as FAA deems necessary with reference to



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the Leased Premises and assumes all responsibility therefor as the same relates to FAA's occupancy thereof. The foregoing acceptance of "as-is" "where-is" conditions of the Leased Premises shall not apply to the on-site well that FAA has no property interest in.

**SECTION 3.02      INSTALLATION OR STORAGE OF EQUIPMENT OUTSIDE THE  
LEASED PREMISES**

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

**SECTION 3.03      SUBORDINATION, NONDISTURBANCE AND ATTORNMEN**

- A. The FAA agrees, in consideration of the warranties and conditions set forth in this clause, that this LEASE is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this LEASE. Based on a written demand received by the RECO, the FAA will review and, if acceptable, execute such instruments as COUNTY -may reasonably request to evidence further the subordination of this LEASE to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by COUNTY if such easement does not interfere with the full enjoyment of any right granted the FAA under this LEASE.
- B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the FAA under this LEASE so long as the FAA is not in default under this LEASE. COUNTY will include in any future mortgage, deed of trust or other security instrument to which this LEASE becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. COUNTY warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.
- C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the FAA will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the COUNTY under this LEASE, so as to establish direct privity of estate and contract between FAA and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the LEASE had initially been entered into between such purchasers or transferees and the FAA; provided, further, that the RECO and such





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purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this LEASE, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the FAA's rights as a sovereign.

**SECTION 3.04      NOTIFICATION OF CHANGE IN OWNERSHIP OR CONTROL  
OF LAND**

If the COUNTY sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the FAA shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the COUNTY or COUNTY's heirs, representatives, assignees, or trustees shall provide the FAA copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

**ARTICLE IV - USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

**SECTION 4.01      USE**

FAA's use of the Leased Premises shall be limited to the operation and maintenance of an Air Traffic Control Tower.

FAA agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity within or from the Leased Premises. FAA further agrees not to conduct or permit to be conducted any public or private nuisance in, on or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

**SECTION 4.02      UTILITY LINES AND CONSUMPTION**

The Airport agrees to maintain the necessary water and sanitary sewer, steam and high temperature lines to the facility and to install necessary meters to the FAA's lines without cost to the FAA. The FAA shall pay for all of its utility consumption at no more than prevailing rates charged the general public for such similar utility services.

The FAA shall pay for its own telecommunications services. However, should the FAA use the telecommunication services provided by the Airport's Shared Tenant Services System, the FAA shall be responsible for any charges due for such use.

**SECTION 4.03      RULES AND REGULATIONS**

The FAA, its employees, invitees and vendors shall observe and obey all COUNTY rules and regulations and shall further abide by all applicable laws, statutes, ordinances, rules, orders, and



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regulations of all governing bodies which are now in effect or which may hereafter be put into effect. Notwithstanding the foregoing, the FAA and all persons operating under the rights granted herein shall not be bound by any laws, statutes, ordinances, rules, orders or regulations for which the FAA has not waived sovereign immunity or which are inconsistent with any Federal laws, rules or regulations. Nothing in this LEASE shall be construed as a waiver of sovereign immunity.

**SECTION 4.04      LIMITATION OF THE LEASEHOLD**

This LEASE and the rights and privileges granted the FAA herein are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this LEASE or in any document related hereto shall be construed to imply the conveyance to the FAA of any rights in the Leased Premises which exceed those of the COUNTY. The FAA acknowledges that the FAA has conducted a complete and adequate investigation of the Leased Premises and that the FAA has accepted the Leased Premises in the as is condition. The COUNTY warrants that the premises were built to code and all utilities were in good working order at the time of occupancy.

**SECTION 4.05      MAINTENANCE OBLIGATIONS OF FAA**

The FAA shall keep and maintain its equipment and fixtures in good condition and in substantial repair. It shall be the FAA's responsibility to take all steps necessary to maintain such a standard of condition and repair. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, on or about the exclusive use area, is forbidden. The COUNTY shall have the right, with reasonable notice, to enter upon and inspect the exclusive use area at any time for safety.

If the FAA fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the FAA in writing of said failure. Should the FAA fail to correct the failure within the time specified in the notice, the Airport Director may make the necessary correction 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 the FAA. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the FAA within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at the Director's option, choose other remedies available herein, or as provided by law.

The FAA shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation.

**SECTION 4.06      PROHIBITION ON CONTRACTING FOR CERTAIN  
TELECOMMUNICATIONS AND VIDEO SURVEILLANCE  
SERVICES OR EQUIPMENT**

(a) Definitions. As used in this clause--

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone



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network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately





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delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A 16.e.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.16.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.



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(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

**SECTION 4.07 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES – REPRESENTATIONS**

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” has the meaning per the clause 6.9.5 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment”.

(b) *Procedures.* The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) *Representations.*

(1) The offeror represents that it **does not provide** covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.



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- (2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it **does not use** covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

**SECTION 4.08 REPRESENTATION REGARDING CERTAIN  
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NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in provision 6.9.5-1 Covered Telecommunications Equipment or Services – Representation (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in provision 6.9.5-1 Covered Telecommunications Equipment or Services – Representation (c)(2).

**PROVISION/CLAUSE:**

(a) Definitions. As used in this provision--

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in this prohibition will be construed to—

(i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13,



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2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does  does not  USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision- If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;



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(2) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable; or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded "does" to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

## ARTICLE V - CONSTRUCTION AND IMPROVEMENTS

### SECTION 5.01 FUTURE CONSTRUCTION AND/OR ALTERATION BY FAA

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

- A. Consent. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the Airport Director, which consent may not be unreasonably withheld or conditioned, and shall be





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exercised in the Airport Director's good faith discretion. Alterations and improvements proposed for the Leased Premises, shall be subject to written consent of the Airport Director.

Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the Airport Director in Airport Director's good faith discretion, as a condition to granting such consent, shall be conditions hereof as though originally stated herein. The COUNTY may at any time stop work that creates a hazardous condition or is unsafe. The FAA may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by the FAA.

- B. Compliance with Plans and Construction Standards. All improvements constructed by the FAA within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules and regulations. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The FAA shall be responsible for filing with the FAA, Form 7460 for height of construction equipment, if required.
- C. Insurance Requirements. See Article IX, Section 9.01.
- D. Noninterference. The FAA warrants that it or its contractor shall in no way delay, or cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport.
- E. Trailers and Modular Structures. All improvements constructed by the FAA shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises except as approved in writing by the Airport Director.

**SECTION 5.02 CONSTRUCTION AND/OR ALTERATION BY THE COUNTY**

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

The COUNTY agrees that any and all COUNTY requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by COUNTY improvements or changes will be at the expense of the COUNTY. In the event that the COUNTY requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the COUNTY will immediately correct the interference issues at the COUNTY's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the COUNTY or the FAA,



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funding responsibility shall be determined by COUNTY and FAA jointly, and memorialized in a Supplemental lease agreement and/or amendment.

**SECTION 5.03      FAA's ASSURANCE OF CONSTRUCTION COMPLETION**

The FAA will be responsible for causing completion of any and all projects, subject to the availability of funds appropriated for said purpose.

**SECTION 5.04      DAMAGE TO OR DESTRUCTION OF LEASED PREMISES**

The FAA shall be liable for any damage caused by its equipment or employees to the extent provided by the Federal Tort Claims Act of 1948, as amended (28 USC 2671 et seq.) ("FTCA").

Repair, replacement or reconstruction or 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 the FAA's obligation under this paragraph.

**SECTION 5.05      TITLE TO IMPROVEMENTS**

All improvements permanently attached shall, at COUNTY's option, be COUNTY's property upon termination of LEASE. All improvements not permanently attached shall be FAA's personal property and may be removed by the FAA upon termination of LEASE.

**SECTION 5.06      RECORD DRAWINGS, AS-BUILT DOCUMENTS AND CONSTRUCTION COSTS**

Within sixty (60) days following completion of any improvement within the Leased Premises, the FAA 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:*

1. 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.
2. 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.



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3. 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.
4. 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:

1. 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 FAA with the thumb drives containing the "As-Built Documents" and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the [www.ocair.com](http://www.ocair.com) website or provided by the Airport upon request.

Furthermore, the FAA shall furnish the Airport Director with an itemized statement of the actual, direct construction costs of such improvement. 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 FAA or its responsible agent under penalty of perjury. The FAA 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.

## ARTICLE VI - TERMINATION AND DEFAULT

### SECTION 6.01 CONTRACT DISPUTES

All contract disputes arising under or related to this LEASE will be resolved through the FAA dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and will be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and





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will apply only to final agency decisions. A COUNTY may seek review of a final FAA decision only after its administrative remedies have been exhausted.

All contract disputes will be in writing and will be filed at the following address:  
Office of Dispute Resolution for Acquisition, AGC-70  
Federal Aviation Administration  
800 Independence Avenue, S.W., Room 323  
Washington, DC 20591  
Telephone: (202) 267-3290

A contract dispute against the FAA will be filed with the ODRA within two (2) years of the accrual of the LEASE claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.

**SECTION 6.02 RESTORATION**

FAA shall surrender possession of the Leased Premises upon the date of expiration or termination of this Lease. If the COUNTY provides written notice, prior to the date of expiration or termination, requesting restoration of the Leased Premises, FAA, at its option shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, either:

- A. Restore the Leased Premises to as good condition as that existing at the time of FAA's initial entry upon the Leased Premises under this Lease, (ordinary wear and tear, damage by natural elements and by circumstances over which FAA has no control excepted), or,
- B. Pay for the cost of such restoration of the Leased Premises. Should a mutually agreeable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effecting such agreement.

**SECTION 6.03 THE COUNTY'S RIGHT TO RE-ENTER**

The FAA agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination of this LEASE, whatsoever the reason for such termination.

**SECTION 6.04 TERMINATION FOR NON-USE**

COUNTY has entered into this LEASE for the express purpose of having the FAA provide and operate an Air Traffic Control Tower at the Airport. Should the above use of the Leased Premises be discontinued for 60 days or more, COUNTY may, at COUNTY's sole option, terminate this LEASE and all rights of the FAA shall end at the time of such termination.



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**ARTICLE VII - SECURITY**

**SECTION 7.01      RIGHT OF ENTRY AND ACCESS CONTROL**

The COUNTY may enter with reasonable notice, when possible, upon the Leased Premises at any time during the term of this LEASE for any purpose necessary, incidental to or connected with the performance of its obligations under this LEASE, in the exercise of its governmental functions, or in the event of any emergency.

The COUNTY agrees to permit ingress and egress to the Leased Premises regulated by the Airport's Access Control System for use by the FAA's employees, invitees, and vendors.

**SECTION 7.02      ACCESS TO LEASED PREMISES**

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, FAA shall be given thirty (30) days' prior written notice.

**SECTION 7.03      AIRPORT SECURITY**

The Leased Premises afford access onto the Airport aprons, taxiways, runways and other restricted areas. FAA shall, at FAA's expense, take whatever steps are necessary to prevent persons and vehicles from unauthorized access to the Airport from or over any portion of the Leased Premises or through any entryway controlled by FAA.

FAA shall be responsible for the security of that portion of the Airport perimeter fence that is located on the Leased Premises.

FAA shall exercise control over any person or vehicle on the Leased Premises, escorted by FAA onto other areas of the Airport, or issued an access badge by or at the request of FAA, and ensure the person or vehicle shall comply with all Airport security regulations.

**ARTICLE VIII - ENVIRONMENTAL COMPLIANCE**

**SECTION 8.01      ENVIRONMENTAL COMPLIANCE**

FAA shall comply with all applicable Environmental Laws, including laws regulating Hazardous Substances, and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, FAA shall comply with such regulations regarding the storage, distribution, processing, handling, release, removal, and/or disposal, including the storm water discharge requirements, of



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Hazardous Substances 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. In conducting a clean-up of a Hazardous Substance release under this LEASE, FAA shall comply with all applicable Environmental Laws. FAA shall not use the COUNTY hazardous waste generator ID for waste disposal.

The FAA agrees to remediate, at its sole cost, all Hazardous Substance contamination on the Leased Premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's facilities covered by this LEASE. The COUNTY agrees to remediate or have remediated at its sole cost, any and all other Hazardous Substance contamination found on the Leased Premises that is found to have occurred as a direct result of the activities of the COUNTY. In the event of claims by third parties or Hazardous Substance contamination caused by third parties, the rights and liabilities of the parties shall be determined in accordance with Federal law.

**ARTICLE IX - INSURANCE**

**SECTION 9.01 INSURANCE**

The FAA is a self-insured agency of the Federal Government. The FAA shall ensure that all contractors and subcontractors performing work at JWA provide the same insurance protection to the COUNTY as provided to the FAA. The FAA will include the COUNTY in the indemnity provision and on all endorsement requirements in contracts for work to be performed at JWA. A Certificate of Insurance naming the COUNTY and the required endorsements shall be provided upon request.

**SECTION 9.02 FEDERAL TORT CLAIMS ACT**

In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 USC 2671 et seq.) ("FTCA"), the FAA shall be liable to persons damaged by any personal injury, death, or injury to or loss of property, which is caused by negligent or wrongful act or omission of any employee of the FAA while acting within the scope of his office or employment under circumstance where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the FAA's liability beyond that existing under the FTCA at the time of such act or omission, or to preclude the FAA from using any defense available at law or equity.

**ARTICLE X - ASSIGNMENT AND SUBLEASE**

**SECTION 10.01 ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED**

Any transfer or assignment of the FAA's interest in the Leased Premises, or any part or portion thereof is prohibited. Any such transfers shall be null and void and shall confer no right, title, or



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interest in or to this LEASE.

**SECTION 10.02      SUCCESSORS IN INTEREST**

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

**ARTICLE XI - MISCELLANEOUS PROVISIONS**

**SECTION 11.01      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 11.02      INTERFERENCE WITH FAA OPERATIONS**

COUNTY agrees not to erect or allow to be erected any structure or obstruction of any kind or nature within the Airport's boundaries that the FAA determines may interfere with the proper operation of the facilities installed by the FAA under the terms and conditions of this LEASE, unless consent hereto is secured from FAA in writing.

**SECTION 11.03      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 the FAA from the prompt payment of any rental or other charge required of the FAA except as may be expressly provided elsewhere in this LEASE.

**SECTION 11.04      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 11.05      WAIVER OF RIGHTS**

The failure of the COUNTY or the FAA 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 the COUNTY or the FAA 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



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AIR TRAFFIC CONTROL TOWER LEASE**

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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 11.06 ANTI-KICKBACK**

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

**SECTION 11.07 ASSIGNMENT OF CLAIMS**

Pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305 the COUNTY may assign its rights to be paid under this Lease.

**SECTION 11.08 COVENANT AGAINST CONTINGENT FEES**

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

**SECTION 11.09 OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Lease, or to any benefit arising from it.

**SECTION 11.10 EXAMINATION OF RECORDS**

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

**SECTION 11.11 PUBLIC RECORDS**

FAA understands that written information submitted to and/or obtained by COUNTY from FAA related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the California Public Records Act (California



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Government Code § 6250 *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

**SECTION 11.12 QUIET ENJOYMENT**

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

**SECTION 11.13 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 11.14 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 attorney's fees, costs and expenses.

**SECTION 11.15 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, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, the COUNTY may also provide notices to the FAA 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 the date of deposit in the United States Mail, respectively.

TO: COUNTY  
John Wayne Airport  
Business Development  
3160 Airway Avenue  
Costa Mesa, CA 92626

TO: FAA  
Federal Aviation Administration  
Real Estate and Utilities Group  
2200 S 216<sup>th</sup> Street  
Des Moines, WA 98198

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)*





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

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Real Estate Contracting Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: Vivian Luy A. Conte

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: 

Richard Francis

Interim 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

By: \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors  
Orange County, California

## EXHIBIT A LEASED PREMISES LEGAL DESCRIPTION

## FAA AIR TRAFFIC CONTROL TOWER

PARCEL 1121-0077-0028

That portion of Lot 135, Block 7 of the Irvine Subdivision, in the County of Orange, State of California, as shown on a map recorded in Book 117, Pages 5 to 9 inclusive of Records of Survey in the office of the County Recorder of said County, described as follows:

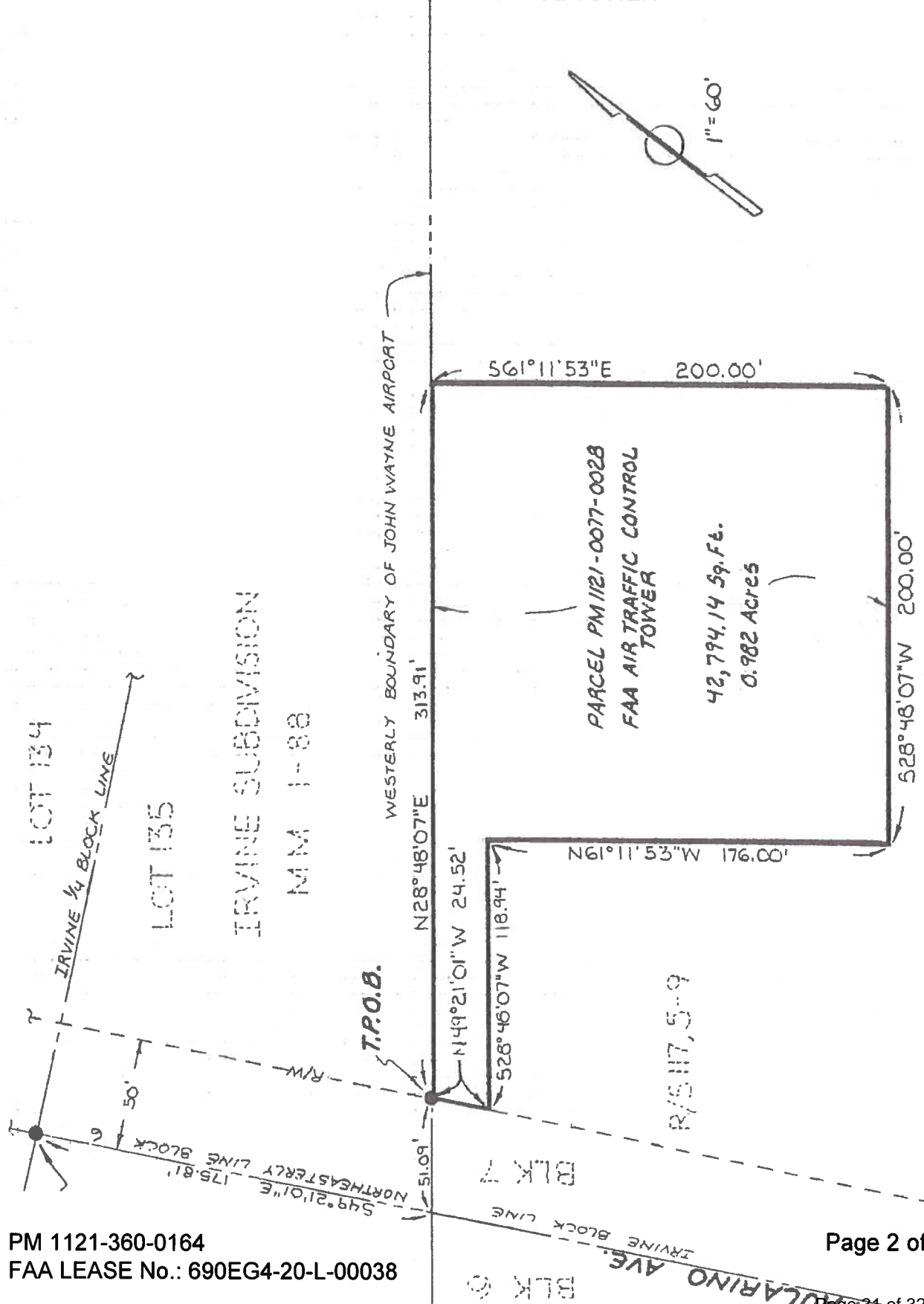
Commencing at the northwest corner of the northeast quarter corner of Block 6 of said Irvine Subdivision; thence S. 49 21'01"E., 175.81 feet coincident to the northeasterly line of said Block 6; thence N. 28 48'07"E., 51.09 feet coincident to the westerly boundary line of John Wayne Airport, as shown on said Record of Survey, to the northerly limit of Paularino Avenue, this point being the TRUE POINT OF BEGINNING; thence coincident to the westerly boundary of John Wayne Airport as shown on said Record of Survey N. 28 48'07"E., 313.91 feet; thence S. 61 11'53"E., 200.00 feet; thence S. 28 48'07"W., 200.00 feet; thence N. 61 11'53"W., 176.00 feet; thence S. 28 48'07"W., 118.94 feet to the projected northerly limit of Paularino Avenue; thence coincident to said northerly limit of Paularino Avenue N. 49 21'01"W., 24.52 feet to the TRUE POINT OF BEGINNING.

Containing 42,794.14 square feet, 0.982 acres, more or less.



EXHIBIT A LEASED PREMISES LEGAL DESCRIPTION

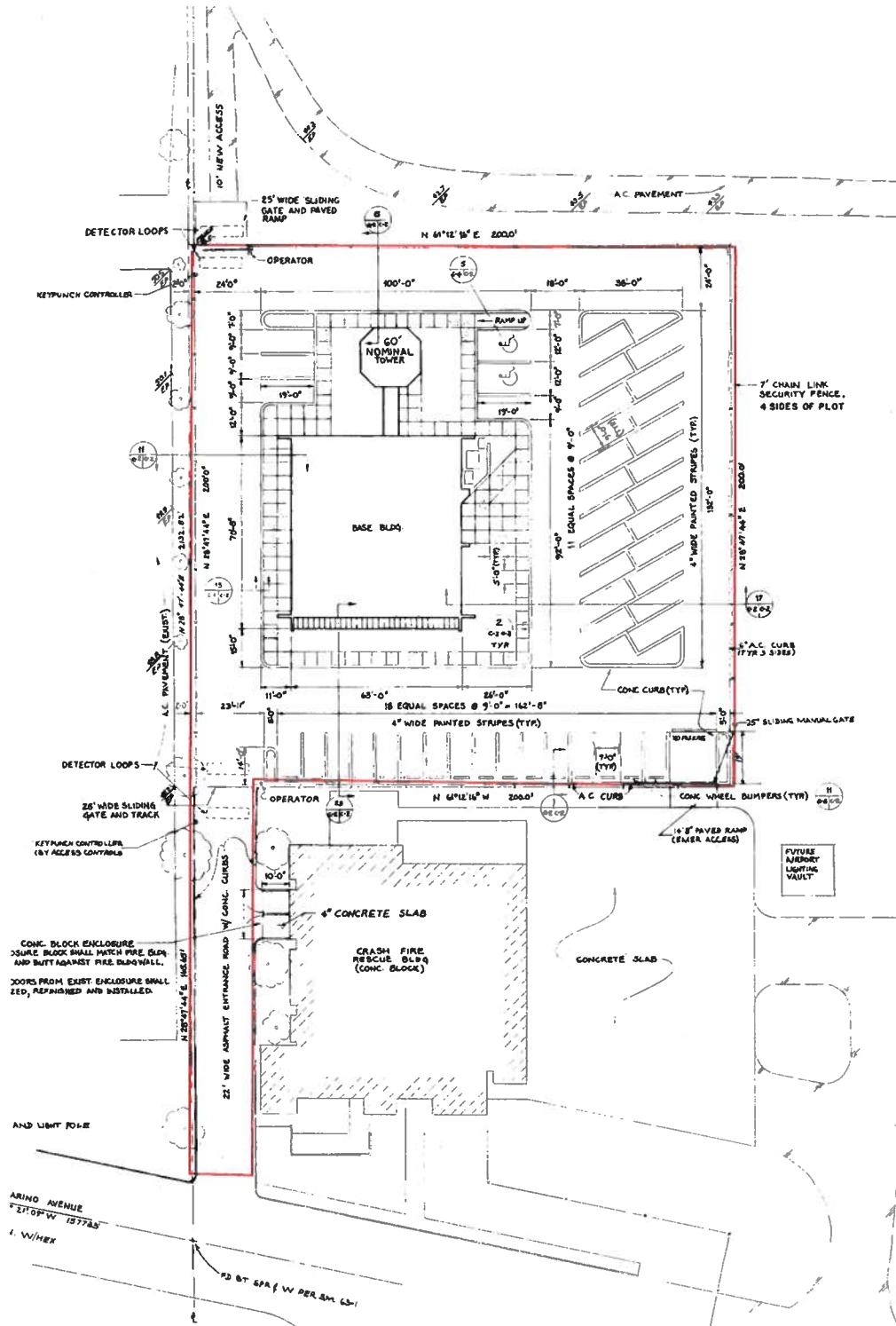
FAA AIR TRAFFIC CONTROL TOWER



PM 1121-360-0164  
FAA LEASE No.: 690EG4-20-L-00038

# EXHIBIT B MAP OF LEASED PREMISES

## FAA AIR TRAFFIC CONTROL TOWER



**RISK ASSESSMENT OR MODIFICATION OF INSURANCE TERMS**

Use this form to request a Risk Assessment and determine Proper Insurance Requirements when developing an Agreement. **\*\*Please attach Agreement and prior Risk Approval(s) if any\*\***

Date: 2/17/22

TO: [RiskMgmtInsurance@ocgov.com](mailto:RiskMgmtInsurance@ocgov.com)

FROM: Rhonda Marshall

JWA

County Employee (Contact for Questions)

County Department

Phone# (Including area code): 949-252-5234

**CONTRACT TYPE:**  Commodities  Public Works  Service  Lease/License

A & E  Other \_\_\_\_\_

Vendor Name: Federal Aviation Admin. (FAA)

Contract#/RFP#: ss

IFB: Yes  No

Contract Amount: \_\_\_\_\_

**Insurance Type to be Reviewed for Waiver or Modification of Terms**

Commercial General Liability (CGL)  Workers' Compensation (W/C)  Property Insurance  
 Commercial Auto Liability (AL)  Employer's Liability  Indemnification  
 Professional Liab. (Errors & Omissions)  Sexual Misconduct  Limitation of Liab.  
 Network Security & Privacy Liab.  Technology Error & Omissions  
 Other \_\_\_\_\_

**Request and Justification:** Request to waive all insurance requirements as the FAA is self-insured and the County's

(Add another page if necessary)

standard sole indemnification provision. The Federal Claims Tort Act of 1948 precludes the FAA from indemnifying other

parties. This is standard practice when working with a Federal Agency. The self-insurance language and the Federal Claims

Tort Act are stated on page 20 of the Air Traffic Control Lease and attached for your reference.

**To Be Completed By CEO/Risk Management**

Approved

Denied

Approved as Modified

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

*Calvin Wong*  
 Manager/CEO/Risk Management

02/17/2022

Date

**Note:** CEO Risk Mgmt. acts as an advisory to departments regarding Risk Assessment. Any changes to a contract requires formal modification.



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Hazardous Substances 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. In conducting a clean-up of a Hazardous Substance release under this LEASE, FAA shall comply with all applicable Environmental Laws. FAA shall not use the COUNTY hazardous waste generator ID for waste disposal.

The FAA agrees to remediate, at its sole cost, all Hazardous Substance contamination on the Leased Premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's facilities covered by this LEASE. The COUNTY agrees to remediate or have remediated at its sole cost, any and all other Hazardous Substance contamination found on the Leased Premises that is found to have occurred as a direct result of the activities of the COUNTY. In the event of claims by third parties or Hazardous Substance contamination caused by third parties, the rights and liabilities of the parties shall be determined in accordance with Federal law.

**ARTICLE IX - INSURANCE**

**SECTION 9.01 INSURANCE**

The FAA is a self-insured agency of the Federal Government. The FAA shall ensure that all contractors and subcontractors performing work at JWA provide the same insurance protection to the COUNTY as provided to the FAA. The FAA will include the COUNTY in the indemnity provision and on all endorsement requirements in contracts for work to be performed at JWA. A Certificate of Insurance naming the COUNTY and the required endorsements shall be provided upon request.

**SECTION 9.02 FEDERAL TORT CLAIMS ACT**

In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 USC 2671 et seq.) ("FTCA"), the FAA shall be liable to persons damaged by any personal injury, death, or injury to or loss of property, which is caused by negligent or wrongful act or omission of any employee of the FAA while acting within the scope of his office or employment under circumstance where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the FAA's liability beyond that existing under the FTCA at the time of such act or omission, or to preclude the FAA from using any defense available at law or equity.

**ARTICLE X - ASSIGNMENT AND SUBLEASE**

**SECTION 10.01 ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED**

Any transfer or assignment of the FAA's interest in the Leased Premises, or any part or portion thereof is prohibited. Any such transfers shall be null and void and shall confer no right, title, or



**State of California**

**GOVERNMENT CODE**

**Section 25536**

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25536. (a) Nothing in this article shall prevent the board of supervisors of a county from, and the board of supervisors of any county is empowered to make contracts, acquiring, leasing, or subleasing property pursuant to Section 1261 of the Military and Veterans Code, or, by a four-fifths vote of the board, entering into leases, or concession or managerial contracts involving leasing or subleasing all or any part of county-owned, leased, or managed property devoted to or held for ultimate use for airport, vehicle parking, fairground, beach, park, amusement, recreation, or employee cafeteria purposes, or industrial or commercial development incidental thereto or not inconsistent therewith without compliance with this article.

(b) In addition to the powers provided in subdivision (a), the County of Monterey may enter into a lease, concession, or managerial contract involving the leasing or subleasing of all or any part of a county-owned, leased, or managed property devoted to or held for ultimate use for juvenile placement.

(c) In addition to the powers provided in subdivisions (a) and (b), the board of supervisors of a county, by a four-fifths vote of the board, may sell or lease all or any part of county-owned property without compliance with this article if the county repurchases or leases back the property as part of the same transaction. By a four-fifths vote of the board of supervisors, the county may pledge specified revenues as security for the payment of obligations incurred in the repurchase or leaseback of the property.

(d) In addition to the powers provided in subdivision (a), the Board of Supervisors of the County of San Bernardino, by a four-fifths vote of the board may directly enter into a lease, involving all or any part of county-owned, leased, or managed property devoted for agricultural purposes.

(Amended by Stats. 1999, Ch. 643, Sec. 8.3. Effective January 1, 2000.)