

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Board Members

Johanna Schiavoni

Chair

Catherine Blakespear

Gil Cabrera

Mary Casillas Salas

Robert T. Lloyd

Paul McNamara

Paul Robinson

Nora E. Vargas

Marni von Wilpert

Ex-Officio Board Members

Gustavo Dallarda

Col. Charles B. Dockery

Gayle Miller

President / CEO

Kimberly J. Becker

Revised 3/29/2021

BOARD MEETING **AGENDA**

Thursday, April 1, 2021
9:00 A.M.

San Diego International Airport
SDCRAA Administration Building
3225 N. Harbor Drive
San Diego, California 92101

This meeting of the Board of the San Diego County Regional Airport Authority Board will be conducted pursuant to the provisions of California Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act. During the current State of Emergency and in the interest of public health, all Board members will be participating in the meeting electronically. In accordance with the Executive Order, there will be no members of the public in attendance at the Board Meeting. We are providing alternatives to in-person attendance for viewing and participating in the meeting. In lieu of in-person attendance, members of the public may submit their comments in the following manner.

Comment on Non-Agenda Items

Public comments on non-agenda items must be submitted to the Authority Clerk at clerk@san.org, no later than 4:00 p.m. the day prior to the posted meeting in order to be eligible to be read into the record. The Authority Clerk will read the first 30 comments received by 4:00 p.m. the day prior to the meeting into the record; each of these comments will be read for up to three minutes or for the time determined by the Chair. The maximum number of comments to be read into the record on a single issue will be 16. All other comments submitted, including those received after 4:00 p.m. the day prior and before 8:00 a.m. the day of the meeting, will be provided to the Authority Board and submitted into the written record for the meeting.

Comment on Agenda Items

Public comment on agenda items may be submitted to the Authority clerk at clerk@san.org. Comments received no later than 8:00 a.m. on the day of the meeting will be distributed to the Board and included in the record.

If you'd like to speak to the Board live during the meeting, please follow these steps to request to speak:

- **Step 1:** Fill out the online [Request to Speak Form](#) to speak during the meeting via teleconference. The form must be submitted by 4 p.m. the day before the meeting or by 4:00 p.m. the Friday before a Monday meeting. After completing the form, you'll get instructions on how to call in to the meeting.
- **Step 2:** Watch the meeting via the Webcast located at the following link, <https://www.san.org/Airport-Authority/Meetings-Agendas/Authority-Board?EntryId=13943>
- **Step 3:** When the Board begins to discuss the agenda item you want to comment on, call in to the conference line, you will be placed in a waiting area. ***Please do not call until the item you want to comment on is being discussed.***
- **Step 4:** When it is time for public comments on the item you want to comment on, Authority Clerk staff will invite you into the meeting and unmute your phone. Staff will then ask you to state your name and begin your comments.

How to Watch the Meeting

You may also view the meeting online at the following link: <https://www.san.org/Airport-Authority/Meetings-Agendas/Authority-Board?EntryId=13943>

REQUESTS FOR ACCESSIBILITY MODIFICATIONS OR ACCOMMODATIONS

As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Authority Clerk at (619) 400-2550 or <mailto:clerk@san.org>. The Authority is committed to resolving accessibility requests swiftly in order to maximize accessibility

This Agenda contains a brief general description of each item to be considered. The indication of a recommended action does not indicate what action (if any) may be taken. ***Please note that agenda items may be taken out of order.*** If comments are made to the Board without prior notice or are not listed on the Agenda, no specific answers or responses should be expected at this meeting pursuant to State law.

Staff Reports and documentation relating to each item of business on the Agenda are on file in Board Services and are available for public inspection.

NOTE: Pursuant to Authority Code Section 2.15, all Lobbyists shall register as an Authority Lobbyist with the Authority Clerk within ten (10) days of qualifying as a lobbyist. A qualifying lobbyist is any individual who receives \$100 or more in any calendar month to lobby any Board Member or employee of the Authority for the purpose of influencing any action of the Authority. To obtain Lobbyist Registration Statement Forms, contact the Board Services/Authority Clerk Department.

CALL TO ORDER:

ROLL CALL:

PRESENTATIONS:

REPORTS FROM BOARD COMMITTEES, AD HOC COMMITTEES, AND CITIZEN COMMITTEES AND LIAISONS:

- **AUDIT COMMITTEE:**
Committee Members: Blakespear, Casillas Salas, Lloyd, Vann (Chair), Van Sambeek, Vargas, Wong Nickerson
- **CAPITAL IMPROVEMENT PROGRAM OVERSIGHT COMMITTEE:**
Committee Members: Blakespear, Cabrera, McNamara (Chair), Schiavoni, von Wilpert
- **EXECUTIVE PERSONNEL AND COMPENSATION COMMITTEE:**
Committee Members: McNamara, Robinson (Chair), Schiavoni, Vargas
- **FINANCE COMMITTEE:**
Committee Members: Cabrera, Casillas Salas, Lloyd (Chair), Vargas, von Wilpert

ADVISORY COMMITTEES

- **AUTHORITY ADVISORY COMMITTEE:**
Liaison: Casillas Salas (Primary), Robinson
- **ARTS ADVISORY COMMITTEE:**
Committee Member: Robert H. Gleason

LIAISONS

- **CALTRANS:**
Liaison: Dallarda
- **INTER-GOVERNMENTAL AFFAIRS:**
Liaison: Cabrera
- **MILITARY AFFAIRS:**
Liaison: Dockery
- **PORT:**
Liaisons: Robinson, Schiavoni (Primary), Vargas
- **WORLD TRADE CENTER:**
Representatives: Robert H. Gleason

BOARD REPRESENTATIVES (EXTERNAL)

- **SANDAG BOARD OF DIRECTORS:**
Representative: Robinson, Schiavoni (Primary)
- **SANDAG TRANSPORTATION COMMITTEE:**
Representatives: Cabrera (Primary), Lloyd

CHAIR'S REPORT:

PRESIDENT/CEO'S REPORT:

NON-AGENDA PUBLIC COMMENT:

Non-Agenda Public Comment is reserved for members of the public wishing to address the Board on matters for which another opportunity to speak **is not provided on the Agenda**, and which is within the jurisdiction of the Board. Please submit a completed speaker slip to the Authority Clerk. ***Each individual speaker is limited to three (3) minutes. Applicants, groups and jurisdictions referring items to the Board for action are limited to five (5) minutes.***

Note: Persons wishing to speak on specific items should reserve their comments until the specific item is taken up by the Board.

CONSENT AGENDA (Items 1- 11):

The consent agenda contains items that are routine in nature and non-controversial. Some items may be referred by a standing Board Committee or approved as part of the budget process. The matters listed under 'Consent Agenda' may be approved by one motion. Any Board Member may remove an item for separate consideration. Items so removed will be heard before the scheduled New Business Items, unless otherwise directed by the Chair.

1. APPROVAL OF MINUTES:

RECOMMENDATION: Approve the minutes of the February 22, 2021 special and March 4, 2021 regular Board meetings.

2. ACCEPTANCE OF BOARD AND COMMITTEE MEMBERS WRITTEN REPORTS ON THEIR ATTENDANCE AT APPROVED MEETINGS AND PRE-APPROVAL OF ATTENDANCE AT OTHER MEETINGS NOT COVERED BY THE CURRENT RESOLUTION:

RECOMMENDATION: Accept the reports and pre-approve Board Member attendance at other meetings, trainings and events not covered by the current resolution.

(Board Services: Tony R. Russell, Director/Authority Clerk)

- 3. AWARDED CONTRACTS, APPROVED CHANGE ORDERS FROM FEBRUARY 8, 2021 THROUGH MARCH 7, 2021 AND REAL PROPERTY AGREEMENTS GRANTED AND ACCEPTED FROM FEBRUARY 8, 2021 THROUGH MARCH 7, 2021:**
RECOMMENDATION: Receive the report.
(Procurement: Jana Vargas, Director)
- 4. APRIL 2021 LEGISLATIVE REPORT:**
RECOMMENDATION: Adopt Resolution No. 2021-0027, approving the April 2021 Legislative Report.
(Government Relations: Matt Harris, Director)
- 5. APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO EXTEND THE RENT FORBEARANCE AND ABATEMENT PROGRAM TO PROVIDE RENT ABATEMENT TO QUALIFYING NON-AIRLINE TENANTS FOR AN ADDITIONAL TEMPORARY PERIOD NOT TO EXCEED THREE MONTHS, AS A RESULT OF THE CONTINUED IMPACT OF THE COVID-19 PANDEMIC:**
RECOMMENDATION: Adopt Resolution No. 2021-0028, approving and authorizing the President/CEO to execute the required agreements to extend the Authority's temporary rent forbearance and abatement program to temporarily reduce rental obligations of qualifying non-airline tenants at the Airport, by providing abatement of monthly minimum annual guarantee (MAG), certain fixed-rent, and a portion of cost recovery payments for a period not to exceed three (3) months beginning April 1, 2021 and ending June 30, 2021, in response to the continued impact of the COVID-19 pandemic crisis.
(Revenue Generation & Partnership Development: Jim DeCock, Acting Director)

CLAIMS

COMMITTEE RECOMMENDATIONS

CONTRACTS AND AGREEMENTS

- 6. AUTHORIZE THE PRESIDENT/CEO TO EXECUTE A "POWER YOUR DRIVE FOR FLEETS " PROGRAM PARTICIPATION AGREEMENT WITH SAN DIEGO GAS & ELECTRIC:**
RECOMMENDATION: Adopt Resolution No. 2021-0029, authorizing the President/CEO to execute a "Power Your Drive for Fleets" Program Participation Agreement with San Diego Gas & Electric.
(Airport Planning & Environmental: Brendan Reed, Director)

- 7. AWARD A CONTRACT TO S&L SPECIALTY CONSTRUCTION, INC. FOR QUIETER HOME PROGRAM PHASE 10, GROUP 12, PROJECT NO. 381012, FOURTEEN (14) SINGLE-FAMILY AND MULTI-FAMILY UNITS ON TWELVE (12) HISTORIC RESIDENTIAL PROPERTIES LOCATED EAST AND WEST OF THE SAN DIEGO INTERNATIONAL AIRPORT:**
RECOMMENDATION: Adopt Resolution No. 2021-0030, awarding a contract to S&L Specialty Construction, Inc. in the amount of \$1,093,339.28 for Phase 10, Group 12, Project No. 381012, of the San Diego County Regional Airport Authority's Quieter Home Program.
(Airport Planning & Environmental: Brendan Reed, Director)
- 8. REVISE RESOLUTION NUMBERS 2021-0010, 2021-0011, 2021-0012, 2021-0013, 2021-0014, AND 2021-0015 TO CORRECT THE ENTITY NAMES FOR CONTRACTS WITH ARTISTS COMMISSIONED TO DESIGN, FABRICATE, TRANSPORT, DELIVER AND CONSULT DURING INSTALLATION OF INTEGRATED ARTWORKS FOR THE AIRPORT TERMINAL AND ROADWAYS PROJECT:**
RECOMMENDATION: Adopt Resolution No. 2021-0031, revising Resolution Numbers 2021-0010, 2021-0011, 2021-0012, 2021-0013, 2021-0014 and 2021-0015 to correct the name of the Artists to whom a contract was awarded.
(Customer Experience & Innovation: Chris Chalupsky, Senior Manager, Arts Program)
- 9. APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO EXECUTE A FIFTH AMENDMENT TO THE AGREEMENT WITH DEVANEY PATE MORRIS & CAMERON LLP:**
RECOMMENDATION: Adopt Resolution No. 2021-0032, approving and authorizing the President/CEO to execute a Fifth Amendment to the Agreement with Devaney Pate Morris & Cameron LLP for professional legal services extending the term for one year.
(Legal: Amy Gonzalez, General Counsel)

CONTRACTS AND AGREEMENTS AND/OR AMENDMENTS TO CONTRACTS AND AGREEMENTS EXCEEDING \$1 MILLION

10. APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO EXECUTE TWO ON-CALL ARCHITECTURAL CONSULTING SERVICES AGREEMENTS AT SAN DIEGO INTERNATIONAL AIRPORT:

RECOMMENDATION: Adopt Resolution No. 2021-0033, approving and authorizing the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with Corgan Associates for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Adopt Resolution No. 2021-0034, approving and authorizing the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with PGAL, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount of not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

(Airport Design and Construction: Bob Bolton, Director)

11. APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO EXECUTE TWO ON-CALL ENGINEERING CONSULTING SERVICES AGREEMENTS AT SAN DIEGO INTERNATIONAL AIRPORT:

RECOMMENDATION: Adopt Resolution No. 2021-0035, approving and authorizing the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with C&S Engineers, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Adopt Resolution No. 2021-0036, approving and authorizing the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with HNTB Corporation, for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

(Airport Design and Construction: Bob Bolton, Director)

PUBLIC HEARINGS:

12. ADOPT AN ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT FOR THE AIRPORT DEVELOPMENT PROGRAM FOR SAN DIEGO INTERNATIONAL AIRPORT:

RECOMMENDATION:

Adopt Resolution No. 2021-0037, adopting an Addendum to the Environmental Impact Report for the Airport Development Program for San Diego International Airport.

(Airport Planning & Environmental: Brendan Reed, Director)

OLD BUSINESS:

NEW BUSINESS:

13. AUTHORIZE THE PRESIDENT/CEO TO ENTER INTO TIDELAND USE PERMITS WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR PARCELS LOCATED ON HARBOR ISLAND TO ACCOMMODATE TERMINAL DEVELOPMENT EFFORTS:

RECOMMENDATION: Adopt Resolution No. 2021-0038, authorizing the President/CEO to enter into a Tideland Use and Occupancy Permit with the San Diego Unified Port District for a term of 5 years with 2 separate one-year options to renew for approximately 135,521 square feet of land area located at 3032 North Harbor Drive in the City of San Diego, California.

Adopt Resolution No. 2021-0039, authorizing the President/CEO to enter into a Tideland Use and Occupancy Permit with the San Diego Unified Port District for a term of 5 years for approximately 60,958 square feet of land area on the east side of Harbor Island Drive near North Harbor Drive and 261,130 square feet of land area located north-easterly of the neck of Harbor Island Drive and adjacent easterly to 1380 Harbor Island Drive in the City of San Diego, California.

Adopt Resolution No. 2021-0040, authorizing the President/CEO to enter into Tideland Use and Occupancy Permit(s) with the San Diego Unified Port District and/or subleases with Hertz Corporation and/or Avis Rent A Car for approximately 160,000 square feet of land area located on Harbor Island for a term to expire no later than the expiration of the neighboring Authority leasehold interest at 3032 North Harbor Drive in the City of San Diego, California.

(Marketing, Innovation, and Revenue: Hampton Brown, Vice President)

- 14. AUTHORIZE THE PRESIDENT/CEO TO ENTER INTO A 20 YEAR LEASE WITH THE SAN DIEGO UNIFIED PORT DISTRICT TO ACCOMMODATE GROUND TRANSPORTATION SHUTTLE BUS OPERATIONS:**
RECOMMENDATION: Adopt Resolution No. 2021-0041, authorizing the President/CEO to enter into a 20-year lease with the San Diego Unified Port District for approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California.
(Marketing, Innovation, and Revenue: Hampton Brown, Vice President)
- 15. APPROVE CREATION OF AN AD HOC COMMITTEE ON DIVERSITY, EQUITY, AND INCLUSION:**
RECOMMENDATION: The Board Chair recommends that the Board create an ad hoc committee on diversity, equity, and inclusion.

CLOSED SESSION:

- 16. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Future DB International, Inc. v. San Diego County Regional Airport Authority, et al.
San Diego Superior Court Case No. 37-2018-00001531-CU-CR-CTL
- 17. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Park Assist LLC v. San Diego County Regional Airport Authority, et al.
United States District Court Case No. 18 CV2068 LAB MDD
- 18. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Quiet Skies San Diego v. San Diego County Regional Airport Authority
San Diego Superior Court Case No. 37-2020-00007998-CU-TT-CTL
- 19. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: In re Hertz Global Holdings, Inc., Case No. 20-11219-MFW
- 20. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: City of Coronado v. San Diego County Regional Airport Authority, et al.
San Diego Superior Court Case No. 37-2020-00039394-CU-TT-CTL
- 21. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of case: In re Advantage Holdco, Inc., et al., Case No. 20-11259-JTD

- 22. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Cal. Gov. Code §54956.9)
Number of cases: 2
- 23. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Investigative Order No. R9-2012-0009 by the California Regional Water Quality Control Board pertaining to an investigation of bay sediments at the Downtown Anchorage Area in San Diego.
Number of potential cases: 1
- 24. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Number of potential cases: 1
- 25. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Order No. WQ 2019-0005-DWQ by the State Water Resources Control Board pertaining to PFAS
Number of potential cases: 1
- 26. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:**
(Government Code §54956.8)
Property: 2554-2610 California Street, San Diego CA 92101
Agency negotiator: Hampton Brown, Eric Podnieks
Negotiating parties: Ryan King, Voit Estate Services
Under negotiation: Price and terms of payment
- 27. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:**
(Government Code §54956.8)
Property: Approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California; approximately 135,521 square feet of land area located at 3032 North Harbor Drive in the City of San Diego; approximately 60,958 square feet of land area on the east side of Harbor Island Drive near North Harbor Drive; and 261,130 square feet of land area located north-easterly of the neck of Harbor Island Drive and adjacent easterly to 1380 Harbor Island Drive in the City of San Diego, California
Agency negotiator: Hampton Brown, Eric Podnieks
Negotiating parties: Taylor Stack, Asset Manager, Real Estate-San Diego Unified Port District, Anette Dahl, Department Manager, Real Estate-San Diego Unified Port District
Under negotiation: Price and terms of payment

28. CONFERENCE WITH LABOR NEGOTIATORS:

Cal. Gov. Code section 54957.6

Agency designated representatives: Angela Shafer-Payne, Monty Bell, Lola Barnes, Greg Halsey, Rod Betts

Employee organization: California Teamsters Local 911

29. THREAT TO PUBLIC SERVICES OR FACILITIES:

Consultation with: General Counsel and President/CEO

REPORT ON CLOSED SESSION:

GENERAL COUNSEL REPORT:

BUSINESS AND TRAVEL EXPENSE REIMBURSEMENT REPORTS FOR BOARD MEMBERS, PRESIDENT/CEO, CHIEF AUDITOR AND GENERAL COUNSEL WHEN ATTENDING CONFERENCES, MEETINGS, AND TRAINING AT THE EXPENSE OF THE AUTHORITY:

BOARD COMMENT:

ADJOURNMENT:

Policy for Public Participation in Board, Airport Land Use Commission (ALUC), and Committee Meetings (Public Comment)

- 1) Persons wishing to address the Board, ALUC, and Committees shall submit an email to the Clerk at clerk@san.org prior to the initiation of the portion of the agenda containing the item to be addressed (e.g., Public Comment and General Items). Failure to submit an email shall not preclude testimony, if permission to address the Board is granted by the Chair.
- 2) The Public Comment Section at the beginning of the agenda is reserved for persons wishing to address the Board, ALUC, and Committees on any matter for which another opportunity to speak is not provided on the Agenda, and on matters that are within the jurisdiction of the Board.
- 3) Persons wishing to speak on specific items listed on the agenda will be afforded an opportunity to speak during the presentation of individual items. Persons wishing to speak on specific items should reserve their comments until the specific item is taken up by the Board, ALUC and Committees.
- 4) If many persons have indicated a desire to address the Board, ALUC and Committees on the same issue, then the Chair may suggest that these persons consolidate their respective testimonies. Testimony by members of the public on any item shall be limited to **three (3) minutes per individual speaker and five (5) minutes for applicants, groups and referring jurisdictions.**
- 5) Pursuant to Authority Policy 1.33 (8), recognized groups must register with the Authority Clerk prior to the meeting.
- 6) After a public hearing or the public comment portion of the meeting has been closed, no person shall address the Board, ALUC, and Committees without first obtaining permission to do so.

Additional Meeting Information

NOTE: This information is available in alternative formats upon request. To request an Agenda in an alternative format, or to request a sign language or oral interpreter, or an Assistive Listening Device (ALD) for the meeting, please telephone the Authority Clerk's Office at (619) 400-2400 at least three (3) working days prior to the meeting to ensure availability.

For your convenience, the agenda is also available to you on our website at www.san.org.

For those planning to attend the Board meeting, parking is available in the public parking lot located directly in front of the Administration Building. Bring your ticket to the third floor receptionist for validation.

You may also reach the SDCRAA Building by using public transit via the San Diego MTS System, Route 992. For route and fare information, please call the San Diego MTS at (619) 233-3004 or 511.

DRAFT
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
SPECIAL BOARD
AND EXECUTIVE-FINANCE COMMITTEE MEETING MINUTES
MONDAY, FEBRUARY 22, 2021
BOARD ROOM

CALL TO ORDER: Chair Schiavoni called the special Board and regular Executive and Finance Committee meeting to order at 9:01 a.m., on Monday, February 22, 2021, electronically and via teleconference pursuant to Executive Order N-29-20, at the San Diego International Airport, Administration Building, 3225 N. Harbor Drive, San Diego, CA 92101.

Chair Schiavoni acknowledged the passing of Committee Member Larry Barza and spoke regarding his service on the Art Advisory Committee and within the community of San Diego.

ROLL CALL:

Board

Present: Blakespear, Cabrera, Casillas Salas, Lloyd, McNamara, Robinson, Schiavoni (Chair), von Wilpert

Absent: Dallarda (Ex Officio), Dockery (Ex Officio), Miller (Ex Officio), Robinson, Vargas

Executive Committee

Present: Committee Members: Lloyd, Schiavoni (Chair)

Absent: Committee Members: Robinson

Finance Committee

Present: Committee Members: Cabrera, Casillas Salas, Lloyd (Chair), von Wilpert

Absent: Committee Members: Vargas

Also Present: Kim Becker, President/CEO; Amy Gonzalez, General Counsel; Tony R. Russell, Director, Board Services/Authority Clerk; Dustin Heick, Assistant Authority Clerk I

NON-AGENDA PUBLIC COMMENT: None

BOARD NEW BUSINESS:

1. APPROVE AND AUTHORIZE THE AIR SERVICE INCENTIVE PROGRAM (ASIP21) AT SAN DIEGO INTERNATIONAL AIRPORT:

Hampton Brown, Interim Vice President, Marketing & Air Service Development, and Robyn Platt, Air Service Program Manager, Marketing & Air Service Development, provided a presentation on the SAN Air Service Incentive Program that included The Importance of New Air Service, Why Air Service Incentive Programs are Critical, Regional Partners Support New Air Service Efforts, SAN Has Successfully Attracted New Air Service With Incentives, Current Program, Current Program Is Insufficient, Review of Peer ASIPs, Current Program Less Competitive Than Peers, Proposed Program Objectives, Proposed Program Components: New Service, Return To Service and Proposed Program Positions SAN In Mid-Pack of Peers

RECOMMENDATION: Adopt Resolution 2021-0020, approving and authorizing a new Air Service Incentive Program (ASIP21) at San Diego International Airport to promote new air service and the return to service for COVID-19 impacted services, terminating, and replacing all existing air service incentive programs, including those authorized by resolutions 2007-0115, 2009-0118R, 2011-0034, 2012-0011, and 2016-0026.

ACTION: Moved by Board Member Casillas Salas and seconded by Board Member Cabrera to approve staff's recommendation. Motion carried by the following votes: YES – Blakespear, Cabrera, Casillas Salas, Lloyd, Schiavoni, von Wilpert; NO – None; ABSENT – McNamara, Robinson, Vargas (Weighted Vote Points: YES – 72; NO – 0; ABSENT – 28)

FINANCE COMMITTEE NEW BUSINESS:

2. REVIEW OF THE UNAUDITED FINANCIAL STATEMENTS FOR THE SEVEN MONTHS ENDED JANUARY 31, 2021:

Scott Brickner, Vice President/CFO, provided a presentation on the Review of the Unaudited Financial Statements for the Six Months Ended December 31, 2020 that included Enplanements, Gross Landing Weight Units, Operating Revenues, Operating Expenses, Net Operating Income Summary, Nonoperating Revenues & Expenses, Statements of Net Position and Budget – Timeline of Key Dates.

Board Member von Wilpert requested that an overview be provided at the Board Retreat detailing how CARES Act funds were utilized by the Authority.

3. REVIEW OF THE AUTHORITY'S INVESTMENT REPORT AS OF JANUARY 31, 2021:

Geoff Bryant, Manager, Airport Finance, provided a presentation on the Investment Report that included Portfolio Characteristics, Sector Distribution, Quality and Maturity Distribution, Investment Performance and Bond Proceeds.

EXECUTIVE COMMITTEE NEW BUSINESS:

4. APPROVAL OF MINUTES:

RECOMMENDATION: Approve the minutes of the January 25, 2021 regular meeting.

ACTION: Moved by Chair Schiavoni and seconded by Board Member Lloyd to approve staff's recommendation. Motion carried unanimously, noting Board Member Robinson as ABSENT.

5. PRE-APPROVAL OF TRAVEL REQUESTS AND APPROVAL OF BUSINESS AND TRAVEL EXPENSE REIMBURSEMENT REQUESTS FOR BOARD MEMBERS, THE PRESIDENT/CEO, THE CHIEF AUDITOR AND GENERAL COUNSEL:

RECOMMENDATION: Pre-approve travel requests and approve business and travel expense reimbursement requests.

ACTION: Moved by Board Member Lloyd and seconded by Chair Schiavoni to approve staff's recommendation. Motion carried unanimously, noting Board Member Robinson as ABSENT.

REVIEW OF FUTURE AGENDAS:

6. REVIEW OF THE DRAFT AGENDA FOR THE MARCH 4, 2021 BOARD MEETING:

Kimberly J. Becker, President/CEO, provided an overview of the March 4, 2021 draft Board Agenda.

7. REVIEW OF THE DRAFT AGENDA FOR THE MARCH 4, 2021 AIRPORT LAND USE COMMISSION MEETING:

Kimberly J. Becker, President/CEO, provided an overview of the March 4, 2021 draft Airport Land Use Commission meeting agenda.

COMMITTEE MEMBER COMMENTS: None.

ADJOURNMENT: The meeting adjourned at 10:11 a.m.

APPROVED BY A MOTION OF THE SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY BOARD THIS 1ST DAY OF APRIL, 2021.

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

DRAFT
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY BOARD
MINUTES
THURSDAY, MARCH 4, 2021
SAN DIEGO INTERNATIONAL AIRPORT
BOARD ROOM

CALL TO ORDER: Chair Schiavoni called the meeting of the San Diego County Regional Airport Authority Board to order at 9:01 a.m. on Thursday, March 4, 2021, electronically and via teleconference pursuant to Executive Order N-29-20 at the San Diego International Airport, Administration Building, 3225 North Harbor Drive, San Diego, CA 92101.

ROLL CALL:

PRESENT: Board Members: Blakespear, Cabrera, Casillas Salas, Dallarda (Ex-Officio), Lloyd, McNamara, Robinson, Schiavoni, Vargas, von Wilpert

ABSENT: Board Members: Dockery (Ex-Officio), Miller (Ex-Officio)

ALSO PRESENT: Kimberly J. Becker, President/CEO; Amy Gonzalez, General Counsel; Tony R. Russell, Director, Board Services/Authority Clerk; Dustin Heick, Assistant Authority Clerk I

Robert Gleason, Chair of the Authority Arts Advisory Committee, acknowledged the passing of Committee Member Larry Baza and recognized his contribution to the Authority and the San Diego community.

PRESENTATIONS:

A. DISCUSSION REGARDING THE PARAMETERS FOR FISCAL YEAR 2022 AND FISCAL YEAR 2023 OPERATING BUDGETS:

Kimberly J. Becker, President/CEO, Scott Brickner, Vice President/CFO, John Dillon, Director, Financial Planning & Budget and Maya Dayan, Manager, Airport Finance provided a presentation on the Parameters for the FY 2022 and FY 2023 Operating Budgets that included Strategic Plan Future State Description, Strategic Goals, Focus Areas, Top Three Priorities, Airport Development Program (ADP) Action Items, Optimizing Ongoing Business (OOB) Action Items, Transforming Customer Experience (TCE) Action Items, Enplanements, Total Operating Revenue, Revenue Budget Parameters, Total Operating Expenses & Equipment Outlay, Expense Budget Parameters, Budget – Timeline of Key Dates.

Board Member Blakespear requested that if the Airport decides to not move towards 100% renewable power that it be brought back to the Board for discussion.

REPORTS FROM BOARD COMMITTEES, AD HOC COMMITTEES, AND CITIZEN COMMITTEES AND LIAISONS:

- **AUDIT COMMITTEE:** Committee Member Vann reported that the Committee met on February 8th and the meeting included the Fiscal Year 2021 Second Quarter Report from the Office of the Chief Auditor and a Revision to the Fiscal Year 2021 Audit Plan of the Office of the Chief Auditor. She also reported that the Audit Committee is accepting applications to fill an upcoming public member vacancy on the Audit Committee.
- **CAPITAL IMPROVEMENT PROGRAM OVERSIGHT COMMITTEE:** None.
- **EXECUTIVE PERSONNEL AND COMPENSATION COMMITTEE:** None.
- **FINANCE COMMITTEE:** Board Member Lloyd reported that the Committee met on February 22nd to review the Unaudited Financial Statements for the Seven Months Ended January 31, 2021 as well as the Investment Report as of January 31, 2021.

ADVISORY COMMITTEES

- **AUTHORITY ADVISORY COMMITTEE:** None.
- **ART ADVISORY COMMITTEE:** Chris Chalupsky, Senior Manager, Arts Program, reported that the call for submissions for the Airport's new artist mentorship program called "Under the Wing" closed on March 4th. He also reported on the loss of Larry Baza from our Arts Advisory Committee and that the committee will discuss ways the Authority can memorialize the late Committee Member at an upcoming meeting.

LIAISONS

- **CALTRANS:** Board Member Dallarda reported that the Torrey Meadows Bridge opened on February 13th. He also reported that on February 18th the Gilman Bridge was illuminated. He announced the upcoming March 6th "Tarp Your Load" event and the March 30th Disadvantage Business Enterprise Summit and that the United States Department of Transportation released a Notice of Availability for Infrastructure for Rebuilding America (INFRA) Grants and that applications are due on March 19th. He also reported that CALTRANS has released the California Transportation Plan (CTP) 2050.
- **INTER-GOVERNMENTAL AFFAIRS:** Board Member Cabrera reported that the House of Representatives approved the Pandemic Relief Package and that it has progressed to the Senate and that this legislation includes \$6.5 billion for commercial airports and \$800 million for concessionaires. He also reported that the Government Relations team is working with local government agency partners, federal consultants, and trade associations to deliver Letters in Support for additional relief to San Diego Congressional Delegation and made personal contact with key Congressional Staff to advocate for the inclusion of the airport industry in the final Bill. He reported that President Biden is expected to release

details of the Infrastructure Proposal and that, in response, the Authority has developed a list of Capital Improvement Projects that are shovel ready and will help the regional economy recover and that this will be included in the Authority's advocacy efforts. He also reported that the Governor and Legislature continue to address the impact of the COVID-19 pandemic and prepare the state for recovery and that on February 23rd the Golden State Stimulus Plan was signed. He reported that the San Diego City Council voted to create a temporary COVID-19 Response and Recovery Committee and it will be co-chaired by Board Member von Wilpert and Jennifer Campbell, Council President. He also reported that the Government Relations Team continues to deliver briefings to local elected officials and their staff on the impacts of COVID-19, the Airport Development Program and additional topics of importance and interest.

- **MILITARY AFFAIRS:** None.
- **PORT:** None.
- **WORLD TRADE CENTER:** None.

BOARD REPRESENTATIVES (EXTERNAL)

- **SANDAG BOARD OF DIRECTORS:** Chair Schiavoni reported that the Board met on February 12th where the Board approved additional bond refinancing and short-term debt refunding, adopted SANDAG's Commitment to Equity statement and received a presentation on the Initial Performance Results, Key Planning Assumptions and Upcoming Milestones for the development of the 2021 Regional Plan. She also reported that at the February 26th meeting the Board received presentations on SANDAG's Disadvantage Business Enterprise and Workforce Utilization Program, received a report on the Equal Opportunity Program and Internal Employment Program, a Regional Economic update and that the Board approved an amendment to the SANDAG budget for the current Fiscal Year.
- **SANDAG TRANSPORTATION COMMITTEE:** Board Member Cabrera reported that the Committee heard a report on the Proposed 2021 Bond Issuance Refunding and New Debt and heard additional updates on the Regional Transportation Improvement Program, the Otay Mesa East Port of Entry and an Update on the Next Generation Transit Fare System and Possible Fare Changes.

Board Member Lloyd reported that the Committee also heard updates on the North County Trolley System.

Board Member Blakespear reported on SANDAG's Litter Abatement Subcommittee's efforts to reduce litter on San Diego highways and on the Committee's support of the CALTRAN's "Tarp Your Load" program in reducing litter by unsecured loads.

CHAIR'S REPORT: Chair Schiavoni congratulated Board Member Vargas on her appointment as the Chair of SANDAG's Transportation Committee. She also reported that the Airport Innovation Lab has launched its fifth cohort and that the cohort will focus on health and safety in the terminals. She also reported that the Facilities Management Department and the Airport Design and Construction teams worked together to save the Authority more than \$300,000 by trading two sweeper trucks for two new machines powered by clean diesel which will further reduce emissions. She also reported that the Airport Authority has received the Distinguished Budget Presentation Award from the Government Finance Officers Association for its annual budget for the fiscal year beginning July 1, 2019 and that this marks the 16th consecutive year that the Authority has earned this award. She also reported that the Design-Build Institute of America has presented the airport with two "2020 Design-Build for Transportation/Aviation Leadership" awards for Terminal 2 Parking Plaza and the International Arrivals facility projects.

PRESIDENT/CEO'S REPORT: Kim Becker, President/CEO, reported that Japan Airlines resumed its nonstop service to Tokyo on March 3rd and that this is the first overseas route that SAN has been able to regain. She also reported that Alaska Airlines has announced that they will offer seasonal nonstop service from SAN to Kalispell and Bozeman, Montana starting May 20th, and, in two weeks, will begin nonstop service to Missoula, Montana. She reported that Allegiant announced it would offer seasonal nonstop service to Kalispell and Bozeman, Montana, Pasco, Washington, Des Moines, Iowa, and Mesa, Arizona as early as the end of May. She also reported that the Valentine's/President's Day weekend provided a slight bump to passenger traffic and that the Authority ended February down 70% over last year. She also provided an update on the federal mask mandate, which requires that individuals who do not wear a mask to be removed from the premises, and that guidance has been provided on what constitutes an appropriate facial covering to travelers. She reported that individuals who are not in compliance will be offered disposable masks and that the Authority continues to provide education to passengers through a variety of means, including the website, in-terminal signage, and social media posts. She reported that on February 11th, researchers from the Harvard T.H. Chan School of Public Health released an independent report under their Aviation Public Health Initiative that examines the strategies implemented by airports to reduce the transmission of COVID-19. She reported that this report found that a multi-layered approach to health and safety significantly contributed to risk reduction of COVID-19 transmission and it also made it clear that passengers have a role to play in preventing the spread of COVID-19 by wearing masks, physically distancing, and practicing hand hygiene and that SAN continues to evaluate and modify health and safety mitigation strategies based on the best available science. She also reported that the Authority published the 2019-2020 Sustainability Report at the end of 2020 and that a one-page summary sheet has been created which can be downloaded at sustain.san.org.

NON-AGENDA PUBLIC COMMENT: None.

CONSENT AGENDA (Items 1-10):

ACTION: Moved by Board Member Robinson and seconded by Board Member Cabrera to approve the Consent Agenda. Motion carried by the following votes: YES – Blakespear, Cabrera, Casillas Salas, Lloyd, McNamara, Robinson, Schiavoni, Vargas, von Wilpert; NO – None; ABSENT – None; (Weighted Vote Points: YES – 100; NO – 0; ABSENT – 0)

1. APPROVAL OF MINUTES:

RECOMMENDATION: Approve the minutes of the January 25, 2021 Special and the February 4, 2021 regular Board meetings.

2. ACCEPTANCE OF BOARD AND COMMITTEE MEMBERS WRITTEN REPORTS ON THEIR ATTENDANCE AT APPROVED MEETINGS AND PRE-APPROVAL OF ATTENDANCE AT OTHER MEETINGS NOT COVERED BY THE CURRENT RESOLUTION:

RECOMMENDATION: Accept the reports and pre-approve Board Member attendance at other meetings, trainings and events not covered by the current resolution.

3. AWARDED CONTRACTS, APPROVED CHANGE ORDERS FROM JANUARY 11, 2021 THROUGH FEBRUARY 7, 2021 AND REAL PROPERTY AGREEMENTS GRANTED AND ACCEPTED FROM JANUARY 11, 2021 THROUGH FEBRUARY 7, 2021:

RECOMMENDATION: Receive the report.

4. MARCH 2021 LEGISLATIVE REPORT:

RECOMMENDATION: Adopt Resolution No. 2021-0021, approving the March 2021 Legislative Report.

5. CONTINUE THE DECLARATION OF THE EXISTENCE OF A LOCAL EMERGENCY IN RESPONSE TO THE SERIOUS AND IMMINENT THREAT OF THE NOVEL CORONAVIRUS (COVID-19):

RECOMMENDATION: Adopt Resolution No. 2021-0022, confirming the need to continue the Declaration of a Local Emergency in response to COVID-19.

6. APPOINTMENT OF AUTHORITY ADVISORY COMMITTEE MEMBERS:

RECOMMENDATION: Adopt Resolution No. 2021-0023, appointing members to the Authority Advisory Committee.

CLAIMS

COMMITTEE RECOMMENDATIONS

7. **FISCAL YEAR 2021 SECOND QUARTER REPORT FROM THE OFFICE OF THE CHIEF AUDITOR:**
RECOMMENDATION: The Audit Committee recommends that the Board accept the report.
8. **REVISION TO THE FISCAL YEAR 2021 AUDIT PLAN OF THE OFFICE OF THE CHIEF AUDITOR:**
RECOMMENDATION: The Audit Committee recommends that the Board Adopt Resolution No. 2021-0024, approving the revision to the Fiscal Year 2021 Audit Plan of the Office of the Chief Auditor.

CONTRACTS AND AGREEMENTS

9. **APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO EXECUTE A SECOND AMENDMENT TO THE ON-CALL INDUSTRIAL HYGIENE SERVICES AGREEMENT WITH TETRA TECH EM INC.:**
RECOMMENDATION: Adopt Resolution No. 2021-0025, approving and authorizing the President/CEO to execute a Second Amendment to the On-call Industrial Hygiene Services Agreement with Tetra Tech EM Inc., increasing the amount payable by \$775,000 for a total not-to-exceed compensation amount of \$1,475,000.
10. **APPROVE AND AUTHORIZE THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE AN AMENDMENT TO A REIMBURSABLE AGREEMENT BETWEEN THE FEDERAL AVIATION ADMINISTRATION (FAA) FOR THE RELOCATION OF TWO COMPONENTS OF AN FAA SYSTEM THAT CONFLICT WITH ADP PACKAGE 1: TERMINAL AND ROADWAYS:**
RECOMMENDATION: Adopt Resolution No. 2021-0026, approving and authorizing the President/CEO to negotiate and execute an Amendment to a Reimbursable Agreement between the Federal Aviation Administration (FAA) and the San Diego County Regional Airport Authority for the relocation of two components of an FAA system.

CONTRACTS AND AGREEMENTS AND/OR AMENDMENTS TO CONTRACTS AND AGREEMENTS EXCEEDING \$1 MILLION

PUBLIC HEARINGS:

OLD BUSINESS:

NEW BUSINESS:

The Board recessed at 10:40 a.m. and reconvened at 10:43 a.m.

CLOSED SESSION: The Board recessed into Closed Session at 10:44 a.m. to discuss Items 13 and 23.

- 11. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Future DB International, Inc. v. San Diego County Regional Airport Authority, et al.
San Diego Superior Court Case No. 37-2018-00001531-CU-CR-CTL
- 12. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Park Assist LLC v. San Diego County Regional Airport Authority, et al.
United States District Court Case No. 18 CV2068 LAB MDD
- 13. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: Quiet Skies San Diego v. San Diego County Regional Airport Authority
San Diego Superior Court Case No. 37-2020-00007998-CU-TT-CTL
- 14. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: In re Hertz Global Holdings, Inc., Case No. 20-11219-MFW
- 15. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: Elizabeth Stillwagon v. San Diego County Regional Airport Authority
San Diego Superior Court Case No. 37-2020-00015509-CU-OE-CTL
- 16. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of Case: City of Coronado v. San Diego County Regional Airport Authority, et al.
San Diego Superior Court Case No. 37-2020-00039394-CU-TT-CTL
- 17. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:**
(Paragraph (1) of subdivision (d) of Cal. Gov. Code §54956.9)
Name of case: In re Advantage Holdco, Inc., et al., Case No. 20-11259-JTD
- 18. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Cal. Gov. Code §54956.9)
Number of cases: 2

- 19. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Investigative Order No. R9-2012-0009 by the California Regional Water Quality Control Board pertaining to an investigation of bay sediments at the Downtown Anchorage Area in San Diego.
Number of potential cases: 1
- 20. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Number of potential cases: 1
- 21. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:**
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Cal. Gov. Code §54956.9)
Order No. WQ 2019-0005-DWQ by the State Water Resources Control Board pertaining to PFAS
Number of potential cases: 1
- 22. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:**
(Government Code §54956.8)
Property: 2554-2610 California Street, San Diego CA 92101
Agency negotiator: Hampton Brown, Eric Podnieks
Negotiating parties: Ryan King, Voit Estate Services
Under negotiation: Price and terms of payment
- 23. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:**
(Government Code §54956.8)
Property: Approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California; approximately 135,521 square feet of land area located at 3032 North Harbor Drive in the City of San Diego; approximately 60,958 square feet of land area on the east side of Harbor Island Drive near North Harbor Drive; and 261,130 square feet of land area located north-easterly of the neck of Harbor Island Drive and adjacent easterly to 1380 Harbor Island Drive in the City of San Diego, California
Agency negotiator: Hampton Brown, Eric Podnieks
Negotiating parties: Taylor Stack, Asset Manager, Real Estate-San Diego Unified Port District, Anette Dahl, Department Manager, Real Estate-San Diego Unified Port District
Under negotiation: Price and terms of payment
- 24. THREAT TO PUBLIC SERVICES OR FACILITIES:**
Consultation with: General Counsel and President/CEO

REPORT ON CLOSED SESSION: The Board adjourned out of Closed Session at 11:40 a.m.

GENERAL COUNSEL REPORT: None.

BUSINESS AND TRAVEL EXPENSE REIMBURSEMENT REPORTS FOR BOARD MEMBERS, PRESIDENT/CEO, CHIEF AUDITOR AND GENERAL COUNSEL WHEN ATTENDING CONFERENCES, MEETINGS, AND TRAINING AT THE EXPENSE OF THE AUTHORITY: None.

BOARD COMMENT: None.

ADJOURNMENT: The meeting adjourned at 11:40 a.m.

APPROVED BY A MOTION OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY BOARD THIS 1ST DAY OF APRIL, 2021.

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Item No.
2

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Acceptance of Board and Committee Members Written Reports on Their Attendance at Approved Meetings and Pre-Approval of Attendance at Other Meetings Not Covered by the Current Resolution

Recommendation:

Accept the reports and pre-approve Board Member attendance at other meetings, trainings and events not covered by the current resolution.

Background/Justification:

Authority Policy 1.10 defines a “day of service” for Board Member compensation and outlines the requirements for Board Member attendance at meetings.

Pursuant to Authority Policy 1.10, Board Members are required to deliver to the Board a written report regarding their participation in meetings for which they are compensated. Their report is to be delivered at the next Board meeting following the specific meeting and/or training attended. The reports (Attachment A) were reviewed pursuant to Authority Policy 1.10 Section 5 (g), which defines a “day of service”. The reports were also reviewed pursuant to Board Resolution No. 2019-0074, which granted approval of Board Member representation for attending events and meetings.

The attached reports are being presented to comply with the requirements of Policy 1.10 and the Authority Act.

Fiscal Impact:

Board and Committee Member Compensation is included in the FY 2021 Budget

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. Section 15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code Section 21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act, Pub. Res. Code Section 30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES/AUTHORITY CLERK

BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

Directions: This Form permits Board Members to report their attendance at meetings, events, and training that qualifies for “day of service” compensation pursuant to Cal. Pub. Util. Code §170017, Board Policy 1.10 and Board Resolution 2019-0074. Unless attending a meeting held pursuant to the Brown Act, attendance must be pre-approved by the Board prior to attendance and a written report delivered at the next Board meeting. After completing this Form, please forward it to Board Services, Authority Clerk Staff.

Period Covered:	March 2021	
Board Member Name:	Catherine Blakespear	
Date:	3/22/21	
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/04/2021 9:00 a.m. - noon Microsoft Teams	Board/ALUC Meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/12/21 1:00 - 5:00 p.m. Microsoft Teams	Board Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/13/21 9:00 a.m.-1:00 p.m. Microsoft Teams	Board Retreat
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: Catherine Blakespear Digitally signed by Catherine Blakespear
Date: 2021.03.22 16:51:11 -0700'

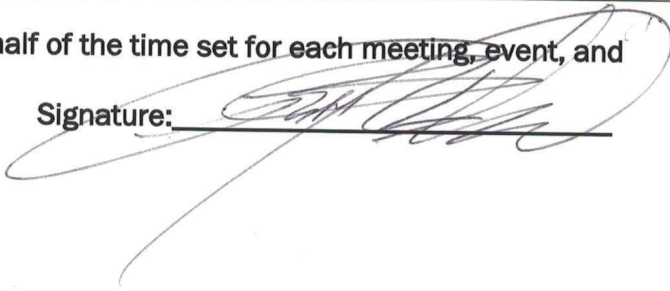
BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

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Period Covered:		March 2021
Board Member Name:		Bob Lloyd
Date:		3/23/21
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/04/2021 9:00 AM Virtual	Board / ALUC
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/12/2021 1:00 PM Virtual	Board Retreat
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	03/13/2021 9:00 AM Virtual	Board Retreat
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/22/2021 9:00 AM Virtual	Executive Finance Committee
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: _____





BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

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Period Covered: March 2021		
Board Member Name: Paul McNamara		
Date: 3/25/21		
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/4/2021/090/Zoom/Board Meeting	Monthly Board Meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/11/2021/1300/Zoom/Annual Retreat	Annual Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/12/2021/0900/Zoom/Annual Retreat	Annual Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/25/2021/0900/Zoom/ExComp	Executive Personnel and Compensation Committee Meeting
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: Paul McNamara Digitally signed by Paul McNamara
Date: 2021.03.24 14:08:24 -07'00'

BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

Directions: This Form permits Board Members to report their attendance at meetings, events, and training that qualifies for "day of service" compensation pursuant to Cal. Pub. Util. Code §170017, Board Policy 1.10 and Board Resolution 2019-0074 Unless attending a meeting held pursuant to the Brown Act, attendance must be pre-approved by the Board prior to attendance and a written report delivered at the next Board meeting. After completing this Form, please forward it to Board Services, Authority Clerk Staff.

Period Covered:		
Board Member Name: Robinson		
Date: 3/1/21		
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/4 9:00 a.m.	SDCRAA Board ALVC Mtgs.
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Microsoft 3/12 1:00 p.m.	SDCRAA Bd Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Microsoft 3/13 9:00 a.m.	SDCRAA Bd Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Microsoft 3/25	ECPC
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Microsoft	
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
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<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: PE Robinson

March 22, 2021

Board Services

SAN DIEGO
COUNTY
REGIONAL
AIRPORT
AUTHORITY

BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

Directions: This Form permits Board Members to report their attendance at meetings, events, and training that qualifies for "day of service" compensation pursuant to Cal. Pub. Util. Code §170017, Board Policy 1.10 and Board Resolution 2019-0074. Unless attending a meeting held pursuant to the Brown Act, attendance must be pre-approved by the Board prior to attendance and a written report delivered at the next Board meeting. After completing this Form, please forward it to Board Services, Authority Clerk Staff.

Period Covered:	March 2021	
Board Member Name:	Mary H. Salas	
Date:	3/22/21	
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Th. March 4, 2021 9am-12noon Virtual	SD Airport Authority Board/ALUC
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Fri. March 12, 2021 1-5pm Virtual	SD Airport Authority Board Retreat
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Sat. March 13, 2021 9am-1pm Virtual	SD Airport Authority Board Retreat
<input type="checkbox"/> Brown Act <input checked="" type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Th. March 18, 2021 10am-12pm Airport Authority Administrative Offices	Airport On-Site Tour
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Mon. March 22, 2021 9-11am Virtual	SDCRAA Special Board Meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	Tues. March 30, 2021 11am-1pm	Roundtable Discussion on SD Airport's Plans to Replace Terminal 1
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: _____

Mary Constance Salas

March 26, 2021

Board Services

SAN DIEGO
COUNTY
REGIONAL
AIRPORT
AUTHORITY

BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

Directions: This Form permits Board Members to report their attendance at meetings, events, and training that qualifies for "day of service" compensation pursuant to Cal. Pub. Util. Code §170017, Board Policy 1.10 and Board Resolution 2019-0074. Unless attending a meeting held pursuant to the Brown Act, attendance must be pre-approved by the Board prior to attendance and a written report delivered at the next Board meeting. After completing this Form, please forward it to Board Services, Authority Clerk Staff.

Period Covered:	2/27/2021-3/26/2021	
Board Member Name:	Johanna S. Schiavoni	
Date:	3/26/21	
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/1/2021, 2:00pm, Teleconference	Meet with CEO K. Becker
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/4/2021, 9:00am, Video conference	SDCRAA Board meeting
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/5/2021, 2:30pm, Video conference	Meet with Chair Cal. Coastal Commission Steve Padilla
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/12/2021, 9:00am, Video conference 3/12/2021, 1:00pm, Video conference	SANDAG Board Meeting SDCRAA Board Retreat/Special Board Meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/13/2021, 9:00am, Video conference	SDCRAA Board Retreat/Special Board Meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/22/2021, 9:00am, Video conference	SDCRAA Executive/Finance Committee
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/25/2021, 9:00am, Video conference	SDCRAA Executive Personnel & Compensation Committee
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074	3/26/2021, 9:00am, Video conference	SANDAG Board meeting

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: 



BOARD MEMBER EVENT/MEETING/TRAINING REPORT SUMMARY

Directions: This Form permits Board Members to report their attendance at meetings, events, and training that qualifies for "day of service" compensation pursuant to Cal. Pub. Util. Code §170017, Board Policy 1.10 and Board Resolution 2019-0074 Unless attending a meeting held pursuant to the Brown Act, attendance must be pre-approved by the Board prior to attendance and a written report delivered at the next Board meeting. After completing this Form, please forward it to Board Services, Authority Clerk Staff.

Period Covered:	January - March 2021	
Board Member Name:	Nora Vargas	
Date:	3/24/21	
Type of Meeting	Date/Time/Location of Event/Meeting/Training	Summary and Description of the Event/Meeting/Training
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	1/7/21, 9am, MS Teams Board/Airport Land Use Commission (ALUC)	BOARD meeting
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	1/14/21, 11am, MS Teams Capitol Improvement Program Oversight Committee (CIPOC)	CIP Update, ADP Update, Capital Proj. Finance Update, External Relations Update
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	2/4/21, 9am, MS Teams BOARD/ALUC	Review Financials, Noise Compatability Study Update, Committee Reports, Contracts & Agreements, Feb. Legislative Report Approval, Closed Session.
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/4/21, 9am, MS Teams BOARD ALUC	Committee Reports, Approval of Contracts & CO's, Legislative Report, Emergency Declaration COVID, Fiscal Report, Contracts & Agreements, Closed Session
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/12/21, 1pm, MS Teams Board Retreat	State of Aviation, State of SDIA, ADP Update, Review ADP Financing Plan, COVID Operations Recovery
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/13/21, 9am, MS Teams Board Retreat	Airport Finance, Review Airport Concessions Models, Update on Strategic Plan
<input checked="" type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input checked="" type="checkbox"/> Res. 2019-0074	3/22/21, 9am, MS Teams Special Board/Exec. Finance Committee	Staff Report on Financials, Investments and Debt Issuance Process, Review April Draft Agendas, Closed Session
<input type="checkbox"/> Brown Act <input type="checkbox"/> Pre-approved <input type="checkbox"/> Res. 2019-0074		

I certify that I was present for at least half of the time set for each meeting, event, and training listed herein.

Signature: Nora E. Vargas

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Awarded Contracts, Approved Change Orders from February 8, 2021 through March 7, 2021 and Real Property Agreements Granted and Accepted from February 8, 2021 through March 7, 2021

Recommendation:

Receive the Report.

Background/Justification:

Policy Section Nos. 5.01, Procurement of Services, Consulting, Materials, and Equipment, 5.02, Procurement of Contracts for Public Works, and 6.01, Leasing Policy, require staff to provide a list of contracts, change orders, and real property agreements that were awarded and approved by the President/CEO or her designee. Staff has compiled a list of all contracts, change orders (Attachment A) and real property agreements (Attachment B) that were awarded, granted, accepted, or approved by the President/CEO or her designee since the previous Board meeting.

Fiscal Impact:

The fiscal impact of these contracts and change orders are reflected in the individual program budget for the execution year and on the next fiscal year budget submission. Amount to vary depending upon the following factors:

1. Contracts issued on a multi-year basis; and
2. Contracts issued on a Not-to-Exceed basis.
3. General fiscal impact of lease agreements reflects market conditions.

The fiscal impact of each reported real property agreement is identified for consideration on Attachment B.

Authority Strategies/Focus Areas:

This item supports one or more of the following:

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Inclusionary Policy requirements were included during the solicitation process prior to the contract award.

Prepared by:

JANA VARGAS
DIRECTOR, PROCUREMENT

Attachment "A"

AWARDED CONTRACTS AND CHANGE ORDERS SIGNED BETWEEN February 8, 2021 to March 7, 2021

New Contracts

Date Signed	CIP #	Company	Description	Solicitation Method	Owner	Contract Value	End Date
2/11/2021		McGriff Insurance Services	The Contractor will provide Health and Wellness Broker Services for the San Diego County Regional Airport Authority.	RFP	Talent, Culture & Capability	\$550,500.00	2/29/2024
2/23/2021		Verizon Wireles	The Contractor will provide wireless services for the San Diego County Regional Airport Authority.	RFB	Information & Technoly Services	\$950,000.00	2/3/2024
2/26/2021		Cultura	The Contractor is the certified local authorized dealer for Haworth Inc. providing office furniture to the San Diego County Regional Airport Authority.	RFP	Airport Planning & Environmental Affairs	\$800,000.00	12/31/2024

Attachment "A"

AWARDED CONTRACTS AND CHANGE ORDERS SIGNED BETWEEN February 8, 2021 to March 7, 2021

New Contracts Approved by the Board

Date Signed	CIP #	Company	Description	Solicitation Method	Owner	Contract Value	End Date
			NO AWARDED NEW CONTRACTS APPROVED BY THE BOARD				

Attachment "A"

AWARDED CONTRACTS AND CHANGE ORDERS SIGNED BETWEEN February 8, 2021 to March 7, 2021

Amendments and Change Orders

Date Signed	CIP #	Company	Description of Change	Owner	Previous Contract Amount	Change Order Value (+ / -)	Change Order Value (%) (+ / -)	New Contract Value	New End Date
2/8/2021		OpenText	The 1st Amendment corrects the number of concurrent users for AXC Business Intelligence Perpetual License. There is no change in total compensation. The Contractor provides e-Discovery Software and License for the San Diego County Regional Airport Authority.	General Counsel	\$153,750.00	\$0.00	0%	\$153,750.00	1/3/2022
2/8/2021		HC West LLC dba A&D Fire	The Acknowledgment and Consent Assignment transfers rights, duties and obligations under the current Service and Consulting Agreement to HC West LLC dba A&D Fire from A&D Fire Sprinklers, Inc. The Contractor provides Fire Sprinklers Maintenance Services at the San Diego International Airport. There is no increase in compensation.	Facilities Management	\$980,000.00	\$0.00	0%	\$980,000.00	7/31/2022
2/10/2021		EMS Bruel & Kjaer, Inc. dba Envirosuite, Inc.	The 1st Amendment reflects the Contractor's legal name from Bruel & Kjaer to EMS Bruel & Kjaer, Inc. dba Envirosuite, Inc. There is no change in total compensation. The Contractor provides Noise Operation Monitoring System and Support Services for the San Diego County Regional Airport Authority.	Quieter Home Program	\$1,200,000.00	\$1.00	0%	\$1,200,000.00	4/30/2021
2/26/2021		Willis Tower Watson Midwest, Inc.	The 1st Amendment reflects the Contractor's legal name from Willis of Illinois , Inc., to "Willis Towers Watson Midwest, Inc. for Broker Services .There is no change in total compensation. The Contractor provides Broker services for the San Diego County Regional Airport Authority.	Finance & Risk Management	\$153,750.00	\$0.00	0%	\$153,750.00	1/3/2022

Attachment "A"

AWARDED CONTRACTS AND CHANGE ORDERS SIGNED BETWEEN February 8, 2021 to March 7, 2021

Amendments and Change Orders

Date Signed	CIP #	Company	Description of Change	Owner	Previous Contract Amount	Change Order Value (+ / -)	Change Order Value (%) (+ / -)	New Contract Value	New End Date
3/4/2021		Hyoco Distribution	The 1st Amendment extends the term of the contract by one year (1). There is no change in total compensation. The Contractor provides Dynamic Signage Repair and Maintenance services for the San Diego County Regional Airport Authority.	Airside & Terminal Operations	\$24,999.00	\$0.00	0%	\$24,999.00	4/30/2022
3/5/2021		Risk Solutions International, LLC	The Acknowledgment and Consent Assignment transfers rights, duties and obligations under the current Service and Consulting Agreement to Risk Solutions International, LLC from Ankura Consulting Group, LLC . There is no increase in compensation. The Contractor provides Business Continuity services for the San Diego County Regional Airport Authority.	Aviation Security & Public Safety	\$50,000.00	\$0.00	0%	\$50,000.00	11/1/2021

Attachment "A"

AWARDED CONTRACTS AND CHANGE ORDERS SIGNED BETWEEN February 8, 2021 to March 7, 2021

Amendments and Change Orders Approved by the Board

Date Signed	CIP #	Company	Description of Change	Owner	Previous Contract Amount	Change Order Value (+ / -)	Change Order Value (%) (+ / -)	New Contract Value	New End Date
			NO AWARDED AMENDMENTS APPROVED BY THE BOARD						

Attachment "B"

REAL PROPERTY AGREEMENTS EXECUTED FROM February 8, 2021 to March 7, 2021



Real Property Agreements

Begin/End Dates	Authority Doc. #	Tenant/Company	Agreement Type	Property Location	Use	Property Area (s.f)	Consideration	Comments
1/25/21 to 12/31/22	N/A	California Creative House 1, LLC (Landlord)	Assumption for Standard Industrial/Commercial Single-Tenant Lease-Net	2544-2610 California Street, San Diego, CA 92101	Office and Parking	approx.. 3,800 sq.. warehouse/office located on approximately 30,226 sq.. of land	\$9,561 per month (net); operating expenses and property taxes extra	The Airport is the Tenant of this privately owned property. The property rights were acquired through the assumption of the lease between Landlord and Tomatoes Extraordinaire, Inc.



Real Property Agreement Amendments and Assignments

Effective Date	Authority Doc. #	Tenant/Company	Agreement Type	Property Location	Use	Property Area (s.f)	Consideration	Comments
1/1/2021	LE-0660	New Zoom	Temporary Rent Forbearance & Abatement Extension 2 Amendment	All Terminals	Operation of a Retail Concession	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
1/1/2021	LE-0758	Sixt Rent a Car	Temporary Rent Forbearance & Abatement Extension 2 Amendment	Rental Car Center	Non-Exclusive On-Airport Rental Car Concession	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
1/1/2021	LE-0759	Sixt Rent a Car	Temporary Rent Forbearance & Abatement Extension 2 Amendment	Rental Car Center	Rental Car Center Lease Agreement	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
1/1/2021	LE-0908	SFS Beauty	Temporary Rent Forbearance & Abatement Agreement Ext. 2	Terminal 2 West	Retail Concession	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
1/1/2021	LE-0950	SFS Duty Free	Temporary Rent Forbearance & Abatement Agreement Ext 2	Terminals 2 West	Retail Concession	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period



Real Property Agreement Amendments and Assignments Continued

Effective Date	Authority Doc. #	Tenant/Company	Agreement Type	Property Location	Use	Property Area (s.f)	Consideration	Comments
2/1/2021	LE-0907	MEX/Ace Rent a Car	Amendment - Term	Off-Site Rental Car Company	Non-Exclusive Off-Airport Rental Car Concession	N/A	N/A	Extends expiration date to 3/12/2021 for collection of updated Letter of Credit
2/18/2021	LE-0657	Host International, Inc.	Temporary Rent Forebearance & Abatement Extension 2 Amendment	Terminals 1 & 2	Food/Beverage Operations	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
2/18/2021	LE-0658	Host International, Inc.	Temporary Rent Forebearance & Abatement Extension 2 Amendment	Terminals 1 & 2	Food/Beverage Operations	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
2/22/2021	LE-0667	SSP America, Inc.	Temporary Rent Forebearance & Abatement Extension 2 Amendment	Terminals 1 & 2	Food/Beverage Operations	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
2/22/2021	LE-0668	SSP America, Inc.	Temporary Rent Forebearance & Abatement Extension 2 Amendment	Terminals 1 & 2	Food/Beverage Operations	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period
2/22/2021	LE-0669	SSP America, Inc.	Temporary Rent Forebearance & Abatement Extension 2 Amendment	Terminals 1 & 2	Food/Beverage Operations	N/A	N/A	Extends special program in response to COVID 19 Pandemic for Jan - Mar 2021 period

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

April 2021 Legislative Report

Recommendation:

Adopt Resolution No. 2021-0027, approving the April 2021 Legislative Report.

Background/Justification:

The Authority's Legislative Advocacy Program Policy requires that staff present the Board with monthly reports concerning the status of legislation with potential impact to the Authority. The Authority Board provides direction to staff on legislative issues by adoption of a monthly Legislative Report (Attachment A). The April 2021 Legislative Report updates Board members on legislative activities that have taken place since the previous Board meeting. In directing staff, the Authority Board may take a position on pending or proposed legislation that has been determined to have a potential impact on the Authority's operations and functions.

Federal Legislative Action

Staff recommends that the Board adopt a SUPPORT position on each of the following bills: S. 479 (Wicker) and H.R. 1813 (DeFazio).

S. 479 would provide the Airport Authority with additional flexibility to refinance existing debt and potentially achieve significant interest savings by amending the U.S. Tax Code to restore advance funding and make capital available for use by states and local government entities.

H.R. 1813 (DeFazio) would repeal a requirement that diverts one-third of the revenue collected from airline passenger security fees away from aviation security to be deposited in the Treasury general fund. The bill would also give the Transportation Security Administration (TSA) access to September 11 Security Fee revenue in the event of a lapse in appropriations. This means that, in the event of another government shutdown, TSA would be able to continue paying its officers.

Staff recommends that the Board adopt a WATCH position on the following bill: H.R. 741 (Brownley). This bill would establish a national goal for the U.S. aviation sector to achieve a net thirty-five percent (35%) reduction in Greenhouse Gas emissions by 2035 and net zero emissions by 2050. The bill authorizes \$1 billion over five years in competitive grants and cost sharing agreements to carry out projects in the U.S. to produce, transport, blend or store sustainable aviation fuel (SAF).

In March, President Biden signed into law the \$1.9 trillion American Rescue Plan Act. The new law provides a total of \$8 billion in additional emergency relief for airports, which includes \$6.5 billion in direct relief to commercial airports and \$800 million in relief for concessionaires. The total funding for San Diego International Airport is expected to be approximately \$80-85 million. The Federal Aviation Administration (FAA) is expected to release the funds in the coming months.

It is widely expected that negotiations on an infrastructure package between Congress and the Biden Administration will continue in April. The Airport Authority's Government Relations staff and Federal legislative consultants continue to be in regular contact with Federal elected officials and their staff, federal agencies, industry associations and other aviation stakeholders to advocate for an infrastructure package that includes funding for San Diego International Airport capital projects.

State Legislative Action

In cases where legislation requires an immediate response prior to a Board meeting, Policy 1.60(5)(c) authorizes Authority staff, in consultation with the Board Chair, to advocate a position provided that staff has determined that action to be consistent with the Board's legislative agenda. In accordance with this policy, staff consulted with the Board Chair to adopt a SUPPORT position on SB 285 (McGuire) on March 16, 2021 and on AB 302 (Ward) on March 18, 2021.

SB 285 would require the California Travel and Tourism Commission to, upon a determination by the Department of Public Health that it is safe to resume travel in California, implement a strategic media and jobs recovery campaign known as the "Calling All Californians" program for the purpose of reversing the impact of the COVID-19 pandemic on the travel and tourism industry in California.

AB 302 (Ward) would expand to any city within the County of San Diego the authority of the board to enter into contracts to license or regulate for-hire vehicle services and to regulate vehicle safety and driver qualifications for passenger jitney service.

Staff recommends that the Board adopt a WATCH position on the following bill: AB 426 (Bauer-Kahan). This bill would authorize local air pollution control districts and air quality management districts to adopt and implement regulations to require data regarding air pollution within the district's jurisdiction from area wide stationary sources of air pollution, including mobile sources drawn by those stationary sources, to enable the calculation of health risks from toxic air contaminants.

In March, the California Department of Public Health announced that public transit workers, including commercial airport employees, were eligible to receive the COVID-19 vaccine in Phase 1C, which began on March 15, 2021.

The announcement comes after months of advocacy by the Airport Authority Government Relations Staff, the Authority's state legislative consultants, and the California Airports Council (CAC) with the Governor's Office, the Government Operations Agency (GovOps), and the California State Transportation Agency (CalSTA).

Over the past month, staff have continued outreach to the region's elected officials., providing briefings to: Assemblymembers Lorena Gonzalez, and Chris Ward; staff from the office of Assemblymember Brian Maienschein; staff from the office of Senator Ben Hueso; Carlsbad Mayor Matt Hall; Chula Vista Councilmember and California Coastal Commission Chair Steve Padilla; National City Mayor Alejandra Sotelo-Solis; San Diego Councilmembers Chris Cate and Stephen Whitburn; San Marcos Mayor Rebecca Jones; staff from the office of U.S. Representative Sara Jacobs; and staff from the office of U.S. Representative Scott Peters.

Fiscal Impact:

Not applicable.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

MATT HARRIS
DIRECTOR, GOVERNMENT RELATIONS

RESOLUTION NO. 2021-0027

A RESOLUTION OF THE BOARD OF THE SAN
DIEGO COUNTY REGIONAL AIRPORT AUTHORITY,
APPROVING THE APRIL 2021 LEGISLATIVE
REPORT

WHEREAS, the San Diego County Regional Airport Authority (“Authority”) operates San Diego International Airport and plans for necessary improvements to the regional air transportation system in San Diego County, including serving as the responsible agency for airport land use planning within the County; and

WHEREAS, the Authority has a responsibility to promote public policies consistent with the Authority’s mandates and objectives; and

WHEREAS, Authority staff works locally and coordinates with legislative advocates in Sacramento and Washington, D.C. to identify and pursue legislative opportunities in defense and support of initiatives and programs of interest to the Authority; and

WHEREAS, under the Authority’s Legislative Advocacy Program Policy, the Authority Board provides direction to Authority staff on pending legislation; and

WHEREAS, the Authority Board, in directing staff, may adopt positions on legislation that has been determined to have a potential impact on the Authority’s operations and functions.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the April 2021 Legislative Report (“Attachment A”); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

April 2021 Legislative Report

State Legislation

New Assembly Bills

Legislation/Topic

AB 426 (Bauer-Kahan) Toxic air contaminants.

Background/Summary

Existing law authorizes local air pollution control districts and air quality management districts, in carrying out their responsibilities with respect to the attainment of state ambient air quality standards, to adopt and implement regulations that accomplish certain objectives.

This bill would additionally authorize the districts to adopt and implement regulations to require data regarding air pollution within the district's jurisdiction from area wide stationary sources of air pollution, including mobile sources drawn by those stationary sources, to enable the calculation of health risks from toxic air contaminants. This bill would additionally authorize the districts to adopt and implement regulations to accomplish these objectives in carrying out their responsibilities with respect to the reduction of health risks from toxic air contaminants.

Anticipated Impact/Discussion

The Airport Authority's legislative team will work with the California Airports Council (CAC) to determine an industry-wide position and will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 3/15/21 – This bill was amended and referred to the Assembly Local Government Committee.

Position: Watch (3/4/21)

*Shaded text represents new or updated legislative information

Assembly Bills from Previous Report

Legislation/Topic

AB 55 (Boerner Horvath) Employment: telecommuting.

Background/Summary

AB 55 is a placeholder (spot bill) This bill would declare the intent of the Legislature to enact future legislation to ensure certain rights and benefits for telecommuting employees.

Anticipated Impact/Discussion

The Authority's legislative team will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 12/7/20 – Introduced.

Position: Watch (1/7/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

AB 72 (Petrie-Norris) Environmental protection: Natural Resources Agency: coastal adaptation projects: sea level rise: regulator permitting: report.

Background/Summary

Existing law establishes the Natural Resources Agency. Existing law requires the agency, by July 1, 2017, and every 3 years thereafter, to update the state's climate adaptation strategy to identify vulnerabilities to climate change by sectors and priority actions needed to reduce the risks in those sectors. This bill would enact the Coastal Adaptation Permitting Act of 2021 and would require the agency to explore, and authorize it to implement, options within the agency's jurisdiction to establish a more coordinated and efficient regulatory review and permitting process for coastal adaptation projects, as defined. The bill would require the agency to submit, by July 1, 2023, a report to the Legislature with suggestions and recommendations for improving and expediting the regulatory review and permitting process for coastal adaptation projects.

Anticipated Impact/Discussion

If enacted, the Airport Authority's legislative team would work with the California Airports Council to identify any potential opportunities to engage with the agency on actions and recommendations that could impact California airports.

Status: 1/11/21 – This bill is in the Assembly Natural Resources Committee.

Position: Watch (1/7/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

AB 302 (Ward) San Diego Metropolitan Transit Development Board: regulation of transportation and passenger jitney services.

Background/Summary

AB 302 would expand to any city within the County of San Diego the authority of the board to enter into contracts to license or regulate transportation services and to regulate vehicle safety and driver qualifications for passenger jitney service.

On March 15, 2021, the bill was amended to replace “transportation service” to “for-hire vehicle services” and defines that term to mean vehicles, other than public transportation vehicles, transporting passengers over public streets for compensation.

Anticipated Impact/Discussion

By expanding the jurisdictions with which the Metropolitan Transit System (MTS) can contract to provide such regulatory services beyond MTS’s service area, this bill creates the potential for a centralized licensing and enforcement mechanism to regulate these services. This would create consistency and efficiency in the regulation practices and potentially reduce the number of regulatory agencies and costs operators experience to acquire operational permits. As currently drafted, this bill has no direct impact on San Diego International Airport or the Airport Authority and allows the Authority to continue to regulate on-airport commercial vehicles in the same way it does at present. The Authority’s legislative team will closely monitor the development of this bill language for any impact on SDIA and the Airport Authority.

Status: 3/15/21 – This bill was amended and referred to the Assembly Local Government Committee.

Position: Support (3/18/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

AB 513 (Bigelow) Employment: telecommuting employees.

Background/Summary

AB 513 would authorize an employee working from home to receive legally required notices and postings electronically and sign certain documents electronically. The bill would also require that a working from home employee's wages due at the time of separation of employment be deemed to have been paid on the date that the wages are mailed to the employee.

Anticipated Impact/Discussion

The Authority's legislative team will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 2/18/21 – This bill was referred to the Assembly Labor and Employment Committee.

Position: Watch (3/4/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

AB 538 (Muratsuchi) California Aerospace Commission: establishment.

Background/Summary

AB 538 would establish, within the office, the California Aerospace Commission consisting of 15 members, as specified, to serve as a central point of contact for businesses engaged in the aerospace industry and to support the health and competitiveness of this industry in California. The bill would require the commission to make recommendations on legislative and administrative action that may be necessary or helpful to maintain or improve the state's aerospace industry and would authorize the commission to engage in various other activities in undertaking its mission and responsibilities, as specified.

Anticipated Impact/Discussion

Although this legislation is not expected to have any significant impact on the Airport Authority or San Diego International Airport (SDIA), if the bill were enacted, the Airport Authority's legislative team would work with the California Airports Council to identify any potential opportunities to engage with the Commission on actions that could impact California airports.

Status: 2/18/21 – This bill was referred to the Assembly Jobs, Economic Development, and the Economy Committee.

Position: Watch (3/4/21)

*Shaded text represents new or updated legislative information

New Senate Bills

Legislation/Topic

SB 285 (McGuire) California Tourism Recovery Act.

Background/Summary

SB 285 would require the California Travel and Tourism Commission to, upon a determination by the Department of Public Health that it is safe to resume travel in California, implement a strategic media and jobs recovery campaign known as the “Calling All Californians” program for the purpose of reversing the impact of the COVID-19 pandemic on the travel and tourism industry in California, as specified. The bill would require the commission to report to the Legislature, on or before January 1, 2024, regarding the cost of the program and the impact of the program on the tourism industry in California. The bill would require, only upon appropriation by the Legislature, the Controller to transfer \$45,000,000 to the commission for the purpose of implementing the “Calling all Californians” program.

Anticipated Impact/Discussion

California’s travel industry is one of the largest economic drivers for the state. Domestic and international travelers spend an estimated \$145 billion annually at California businesses, generating \$12.3 billion in state and local tax revenues. International travelers spent \$28.1 billion in California in 2019, making travel the state’s largest export. This bill would provide necessary funding to promote the State and the San Diego region to in-state and out-of-state travelers, benefiting operations at San Diego International Airport (SDIA) and the regional economy.

Status: 3/12/21 – This bill is set for a hearing in the Assembly Appropriations Committee on March 22, 2021.

Position: Support (3/16/21)

*Shaded text represents new or updated legislative information

Senate Bills from Previous Report

Legislation/Topic

SB 1 (Atkins) Coastal resources: sea level rise.

Background/Summary

This bill would also include, as part of the procedures that the California Coastal Commission is required to adopt, recommendations and guidelines for the identification, assessment, minimization, and mitigation of sea level rise within each local coastal program, as provided. The bill would delete the timeframe specified above by which the commission is required to adopt these procedures. The bill would require the commission to take into account the effects of sea level rise in coastal resource planning and management policies and activities, as provided. In addition, the bill would require state and regional agencies to identify, assess, and, to the extent feasible and consistent with their statutory authorities, minimize and mitigate the impacts of sea level rise. To the extent that a regional agency is a local public agency, this bill would impose a state-mandated local program.

This bill would create within state government the California Sea Level Rise State and Regional Support Collaborative and would require the collaborative to provide state and regional information to the public and support to local, regional, and other state agencies for the identification, assessment, and, where feasible, the mitigation of sea level rise. The bill would require, upon appropriation in the annual Budget Act, the collaborative to expend no more than \$100,000,000 annually from appropriate bond funds and other sources for the purpose of making grants to local governments to update local and regional land use plans to take into account sea level rise and for directly related investments to implement those plans, as provided. Existing law authorizes the Secretary for Environmental Protection to expend up to \$1,500,000 per year for the Environmental Justice Small Grant Program. This bill would instead authorize the secretary to expend up to \$2,000,000 per year for purposes of the grant program and would require up to \$500,000 of that money to be expended by the secretary for grants to organizations working to address and mitigate the effects of sea level rise in disadvantaged communities, as defined, impacted by sea level rise.

Anticipated Impact/Discussion

If enacted, bonds and other sources of funding for the purposes of making grants to local governments could be used to help implement the Authority's goals and efforts to implement the Climate Resilience Plan and airport development plan mitigation efforts. The Authority's legislative team will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 3/16/21 – This bill passed the Senate Natural Resources and Water Committee on a 7-2 vote.

Position: Watch (1/7/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

SB 37 (Cortese) Contaminated sites: the Hazardous Waste Site Cleanup and Safety Act.

Background/Summary

Existing law requires the Department of Toxic Substances Control to compile a list of specified information, including, but not limited to, hazardous waste facilities where the department took, or contracted for the taking of, corrective action to remedy or prevent, for example, an imminent substantial danger to public health. Existing law requires the State Department of Health Care Services to compile a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis by local health officers.

This bill would enact the Dominic Cortese “Cortese List” Act of 2021 and would recodify the above-described provisions with certain revisions. The bill would require the Department of Toxic Substances Control to also list hazardous waste facilities where the department issued an order for corrective action after determining that there is or has been a release of hazardous waste or constituents into the environment from a facility. The bill would require the State Water Resources Control Board, instead of the State Department of Health Care Services, to compile and update a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis by local health officers. The bill would require the Secretary for Environmental Protection to post the information on the California Environmental Protection Agency’s internet website.

On March 11, 2021, SB 37 was amended to replace “Dominic Cortese “Cortese List” Act of 2021” to “Hazardous Waste Site Cleanup and Safety Act.”

Anticipated Impact/Discussion

SB 37 could have an impact on San Diego International Airport (SDIA) as airports are federally mandated to store certain chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) for firefighting purposes. The Airport Authority’s legislative team will work with the California Airports Council (CAC) to determine an industry wide position, if applicable, and will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 3/11/21 – This bill has been referred to the Senate Environmental Quality Committee.

Position: Watch (1/7/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

SB 46 (Stern) American Rescue Plan Act funds: federal recovery funds: funded projects.

Background/Summary

This bill would state the intent of the Legislature to enact legislation that would require an employer to develop and implement contact tracing and safety policies for its employees, including requiring notice to the employer when an employee receives a positive COVID-19 test.

On March 10, 2021, this bill was amended to require a state agency that receives and disburses American Rescue Plan funds or other federal recovery funds, to the extent authorized by federal law, to consider projects' potential impact on specified goals, including, among other things, restoring frontline communities and rapidly accelerating achievement of environmental justice and climate goals, including, but not limited to, climate, environmental, and biodiversity protection and stimulating growth.

Anticipated Impact/Discussion

Although this legislation in its newly amended form is not expected to have a direct impact on the Airport Authority or San Diego International Airport (SDIA), the Airport Authority's legislative team will continue to monitor as it moves through the legislative process.

Status: 3/10/21 – Amended.

Position: Watch (1/7/21)

*Shaded text represents new or updated legislative information

Federal Legislation

New House Bills

Legislation/Topic

H.R. 741 (Brownley) Sustainable Aviation Fuel Act.

Background/Summary

This bill would establish a national goal for the U.S. aviation sector to achieve a net 35% reduction in GHG emissions by 2035 and net zero emissions by 2050. The bill authorizes \$1 billion over five years, in competitive grants and costing sharing agreements to carry out projects in the U.S. to produce, transport, blend or store sustainable aviation fuel (SAF). The bill also requires EPA to establish an aviation-only Low Carbon Fuel Standard (LCFS) that regulates aviation fuel producers and importers.

Anticipated Impact/Discussion

San Diego International Airport has partnered with airports, airlines, sustainable aviation fuel producers and other stakeholders to find ways to reduce greenhouse gas emissions in the aviation sector. The Authority's legislative team will closely monitor the development of this bill language for any impact on San Diego International Airport (SDIA) and the Airport Authority.

Status: 2/4/21 – Introduced.

Position: Watch (4/1/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

H.R. 1813 (DeFazio) Funding for Aviation Screeners and Threat Elimination Restoration (FASTER) Act.

Background/Summary

In 2013, Congress began diverting one-third of the revenue collected from airline passenger security fees to be deposited into the general fund of the U.S. Treasury. This diversion has caused the Transportation Security Administration (TSA) to forgo an estimated \$19 billion in these fees. H.R. 1813 would repeal the requirement to divert funds and ensure that passenger security fees are used for aviation security purposes. H.R. 1813 would also provide TSA access to September 11 Security Fee revenue in the event of a lapse in appropriations. This means that, in the event of another government shutdown, TSA would be able to continue paying its officers.

Anticipated Impact/Discussion

Providing TSA access to the full amount of airline passenger security fee revenue would allow TSA to invest in new equipment as well as hire additional staff to better serve passengers, airlines, and airports, including San Diego International Airport (SDIA). This bill would also help minimize the impact of another government shutdown on SDIA by ensuring that there would be no disruption in TSA operations due to a lack of appropriations.

Status: 3/11/21 – Introduced.

Position: Support (4/1/21)

*Shaded text represents new or updated legislative information

New Senate Bills

Legislation/Topic

S. 479 (Wicker) Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act

Background/Summary

States and local governments issue debt as municipal bonds, specifically to fund and support infrastructure and other capital improvement projects. Bonds are usually federally tax-exempt and when interest rates drop, states and local governments oftentimes opt to refinance bonds at a lower rate and therefore allow them to save money. Advance refunding is a mechanism that allows states and local governments to save a substantial amount of capital but was repealed in the 2017 Tax Cuts and Jobs Act.

Specifically, S. 479 amends Section 149(d) of the Tax Code to restore advance funding and make capital available for use by states and local governments. As a result of this legislation, states and local governments would be able to access advance funding and refinance municipal bonds in a way that allows for more favorable rates, similar to refinancing one's mortgage at a lower interest rate. Statistics show that advance refunding has allowed states and local governments to save billions, but the mechanism has not been available to them since January 2018.

Anticipated Impact/Discussion

S. 479 would provide the Airport Authority additional flexibility to refinance existing debt and potentially achieve significant interest savings if an advance refunding is executed due to the ability to refund with tax-exempt rather than taxable debt.

Status: 2/25/21 – Introduced.

Position: Support (4/1/21)

*Shaded text represents new or updated legislative information

Legislation/Topic

S. 303 (Blumenthal) Essential Transportation Employee Safety Act of 2021.

Background/Summary

This bill would require the Secretary of Transportation to work with the Centers for Disease Control and Prevention (CDC) and the Federal Emergency Management Agency (FEMA) to support the efforts of state and local governments to provide for priority testing of transportation workers. The bill would also implement personal protective equipment and cleaning, disinfection, and sanitization requirements for owners and operators of equipment or facilities used by certain transportation employers, including airports. The bill would also codify the mask mandate Executive Order requiring face mask usage in airports, on airplanes, as well as on other forms of public transportation for the duration of the pandemic.

Anticipated Impact/Discussion

As critical infrastructure to the San Diego Region, airport employees have continuously served travelers throughout the COVID-19 pandemic. This bill would ensure basic health safety measures, such as mask wearing, would continue through the duration of the pandemic.

Status: 2/8/21 – Introduced.

Position: Watch (3/4/21)

*Shaded text represents new or updated legislative information

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Approve and Authorize the President/CEO to Extend the Rent Forbearance and Abatement Program to Provide Rent Abatement to Qualifying Non-Airline Tenants for an Additional Temporary Period Not To Exceed Three Months, as a Result of the Continued Impact of the COVID-19 Pandemic

Recommendations:

Adopt Resolution No. 2021-0028, approving and authorizing the President/CEO to execute the required agreements to extend the Authority's temporary rent forbearance and abatement program to temporarily reduce rental obligations of qualifying non-airline tenants at the Airport, by providing abatement of monthly minimum annual guarantee (MAG), certain fixed-rent, and a portion of cost recovery payments for a period not to exceed three (3) months beginning April 1, 2021 and ending June 30, 2021, in response to the continued impact of the COVID-19 pandemic crisis.

Background/Justification:

On May 7, 2020, the Board adopted Resolution No. 2020-0057, authorizing staff to execute the required documents to provide abatement of certain rents and fees to qualifying non-airline tenants for a period beginning April 1, 2020 and ending September 30, 2020. Following the Board action, staff drafted a program application form and Temporary Rent Forbearance and Abatement Amendment ("Amendment") which addressed all requirements of the May 7, 2020 Board action. As a result, qualifying tenants who executed the Amendment with the San Diego County Regional Airport Authority ("Authority") and were or became current on payments which remained due to the Authority, benefitted from waiver of applicable rents and fees for the original six-month abatement period.

On October 26, 2020, the Board adopted Resolution No. 2020-0099, authorizing staff to execute the required documents to provide an abatement extension of certain rents and fees to qualifying non-airline tenants for a period beginning October 1, 2020 and ending December 31, 2020. Following the Board action, staff drafted a Temporary Rent Forbearance and Abatement Amendment Extension 1 ("Amendment 1") which addressed all requirements of the October 26, 2020 Board action. As a result, qualifying tenants who executed the Amendment 1 with the Authority and were or became current on payments which remain due to the Authority, benefitted from waiver of applicable rents and fees for the first abatement extension period.

On January 7, 2021, the Board adopted Resolution No. 2021-0002, authorizing staff to execute the required documents to provide an abatement extension of certain rents and fees to qualifying non-airline tenants for a period beginning January 1, 2021 and ending March 31, 2021. Following the Board action, staff drafted a Temporary Rent Forbearance and Abatement Amendment Extension 2 ("Amendment 2") which

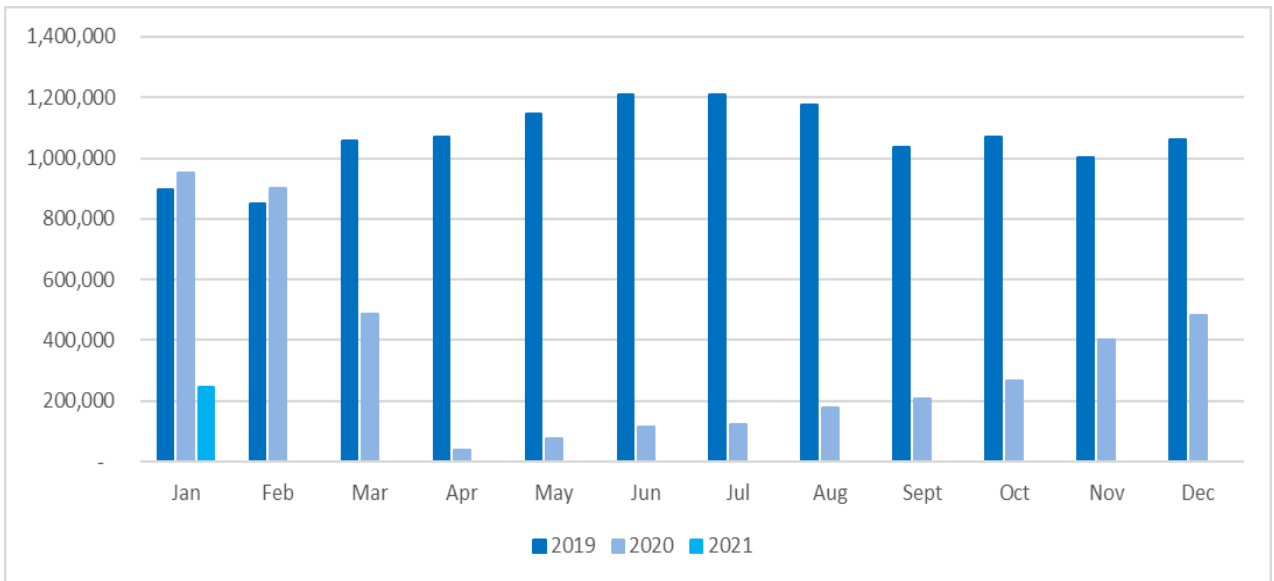
addressed all requirements of the January 7, 2021 Board action. As a result, qualifying tenants who have executed the Amendment 2 with the Authority and are current on payments which remain due to the Authority, will benefit from waiver of applicable rents and fees for the second abatement extension period.

Since the January 7, 2021 Board action, tenants continue to suffer significant financial hardship due to the impacts of the novel coronavirus ("COVID-19"), which has resulted in severe and prolonged disruption to domestic and international air travel, including air travel to and from San Diego International Airport ("Airport"). The State of Emergency proclaimed by Governor Newsom on March 4, 2020, has persisted, and all individuals in the State of California continue to be under an Executive Order (most recently, EO N-84-20, December 14, 2020), and Public Health Orders by the California Department of Public Health (updated December 6, 2020), and San Diego County (updated December 9, 2020), requiring individuals to stay at home except for permitted work, local shopping, and other authorized activities. Within the State of California's four-stage framework to gradually re-open businesses and spaces, as of December 8, 2020, San Diego County is classified as "Tier 1 – Widespread", which permits, for example, retail business to be open at 20% capacity, and does not allow any indoor seating at restaurants. On December 3, 2020, Governor Newsom divided the state into 5 regions with San Diego County being included in the Southern California region and announced a regional stay-at-home order if the region's ICU capacity falls to 15% and would be in effect for three weeks. Due to ICU capacities in the Southern California region, on December 6, 2020, a regional stay-at-home order went into effect. This stay-at-home order forced closure of many business and prohibited gatherings of people from different households. On January 25, 2021, the regional stay at home order was lifted but San Diego remained in the purple tier, which allowed resumption of outdoor dining, as well some services such as gyms, barber shops and nail salons. On March 16, 2021, San Diego moved into the less restrictive red tier but significant limitations on commercial and social activities remain in place.

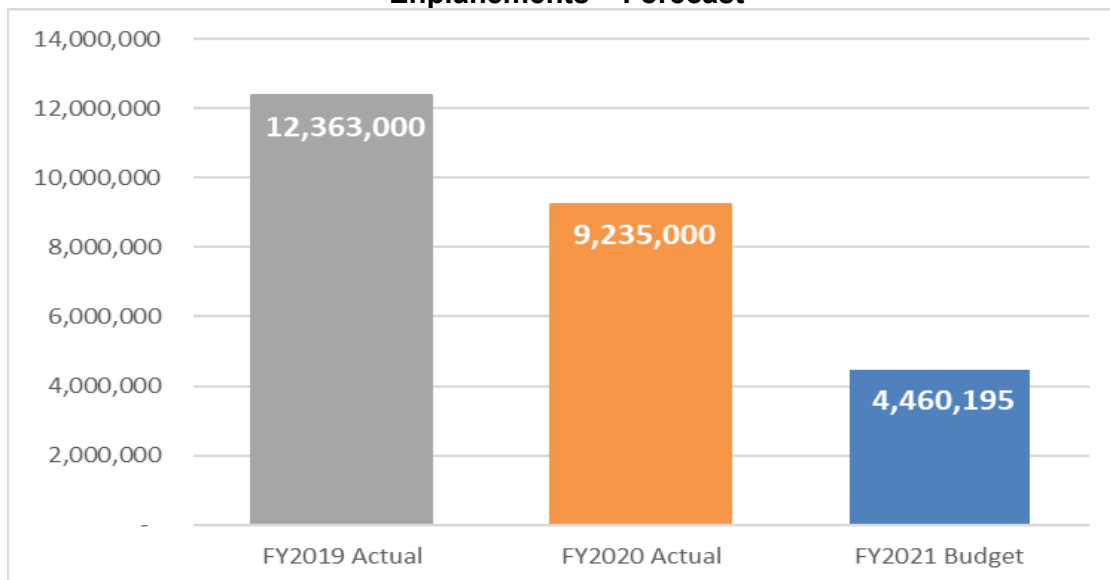
Although the Airport is identified as an Essential Critical Infrastructure under the Transportation System Sector, and the Airport remains open, passenger levels continue to demonstrate significant downward trending year-over-year, and remain at record lows. This unprecedented severe and prolonged decline in passenger traffic has nearly eliminated the ability of non-airline tenants to produce revenues which support and enable payment of rental obligations to the Authority. This severe reduction of revenue is consistent across all non-airline tenants, including retail and food & beverage concessions, passenger service concessions, on-Airport rental car operators, and inflight services (collectively, "Non-Airline Tenants").

Following a sharp decline beginning in March and April 2020, passenger traffic levels have improved each month; however, current enplanement levels (February 2021) remain approximately 70% lower when compared to the same time period in 2020. Looking ahead, enplanements are expected to slowly recover as the U.S. economy reopens, however, not to the levels demonstrated prior to the pandemic. Projected enplanements for the April 2021 through June 2021 timeframe are anticipated to trend well below previous years, and total enplanements for fiscal year 2021 are expected to be well below those of fiscal year 2019.

Enplanements: January 2019 to January 2021



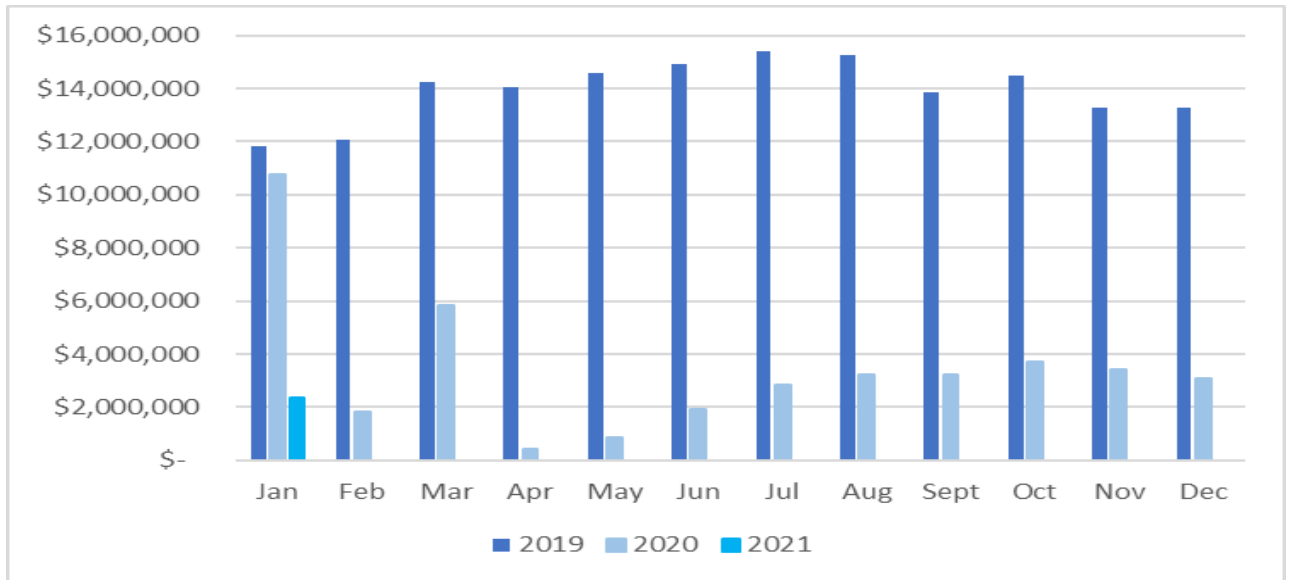
Enplanements – Forecast



Source: TSA and SDCRAA Finance & Risk Management Department

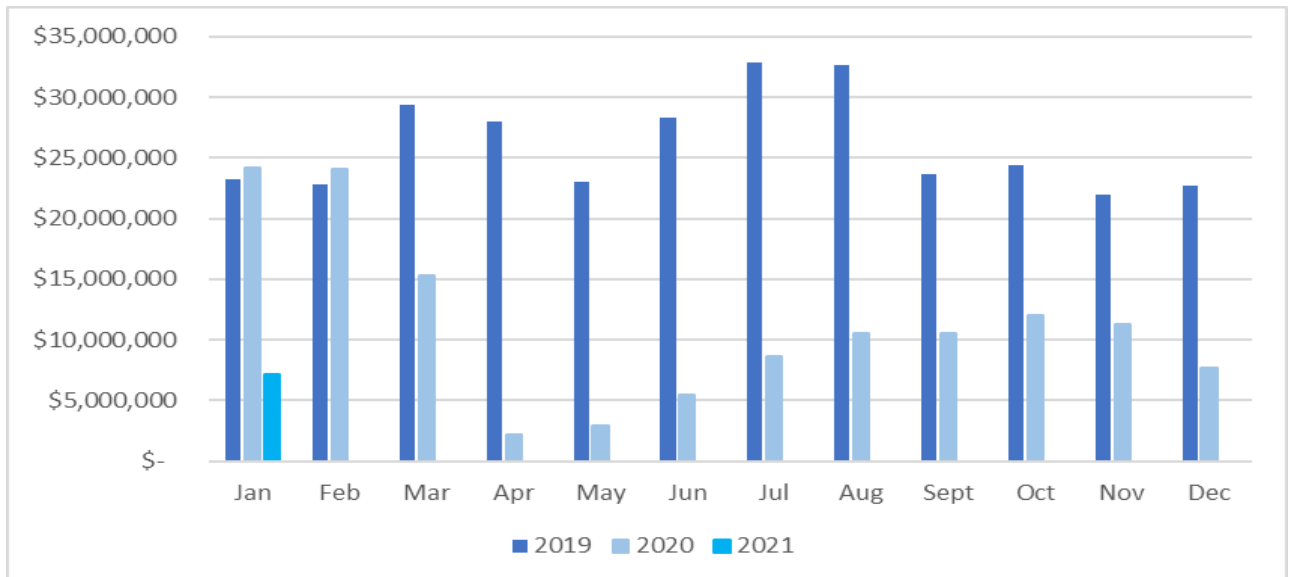
The profound decline in enplanements continues to be met with a commensurate decline in sales for all Non-Airline Tenants. Heading into the second quarter of calendar year 2021, many of the Airport’s Non-Airline Tenants continue to operate under reduced hours of operation; some locations remain temporarily closed (40 of 85 concessions are closed); layoffs and furloughs continue; and many tenants continue to submit requests to the Authority for additional financial relief.

SAN Monthly Concessions Sales: January 3, 2020 to January 2021



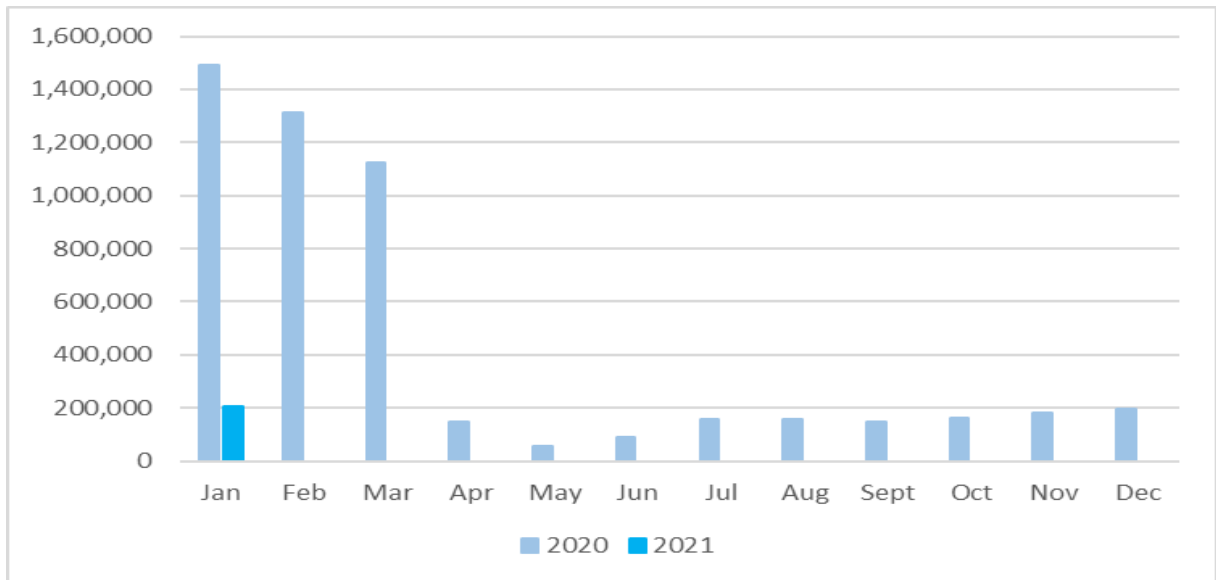
Source: SDCRAA, Finance & Risk Management Department

SAN Rental Car Monthly Gross Revenue: January 2020 to January 2021



Source: SDCRAA, Finance & Risk Management Department
 Note: Includes On-Airport and Off-Airport RACs

SAN Inflight Services Gross Revenue: January 2020 to January 2021



Source: SDCRAA, Finance & Risk Management Department

Proposed Rent Abatement

To address the continued impact of COVID-19, staff is proposing a financial relief offering for a three-month period beginning April 1, 2021 and ending June 30, 2021 (*"Rent Abatement Period – Extension 3"*). Extension of the program (*"Rent Forbearance and Abatement Program Extension 3"*) provides significant relief of rents and fees, while continuing collection of certain cost recovery items for those tenants who are open and operating, and who are using services provided by the Authority. The proposed offering is the same as previously approved for the three-month period of January 1, 2021 and ending March 31, 2021.

For most Non-Airline Tenants, rent is one of the largest operating expenses, along with cost of goods sold, and salaries and benefits. Due to the continued significant reduction in passenger traffic, Non-Airline Tenants with fixed minimum monthly obligations will not have the level of revenues necessary to support sustained payment of these minimum rental payments to the Authority for the foreseeable future, until air travel returns to pre-COVID-19 levels. Without the *Rent Forbearance and Abatement Program Extension 3*, it is unlikely that many Non-Airline Tenants will be able to resume normal operations once passenger traffic levels resume to typical levels prior to the COVID-19 pandemic. Staff believes it is in the best interests of the Authority and the travelling public who rely upon these goods and services to offer a *Rent Forbearance and Abatement Program Extension 3* for the proposed *Rent Abatement Period – Extension 3*, to provide additional yet temporary financial relief to its Non-Airline Tenants so that they may remain financially resilient and stay open where possible. This will best position the Airport to resume normal operations as passenger levels increase, protect the Authority's future revenues, and ensure the needs of the travelling public are met and the passenger experience at SAN does not suffer.

Furthermore, the Authority's proposed *Rent Forbearance and Abatement Program Extension 3* will help ensure that the Authority remains competitive for solicitation of these essential services in the future.

FAA Guidance on COVID-19 Accommodations

Guidance issued by the Federal Aviation Administration ("FAA") on April 4, 2020, provided the context for offering the original Rent Forbearance and Abatement Program to Authority tenants whose business has temporarily declined or have been materially altered due to COVID-19. The Authority's desire to offer the Rent Abatement Program for the initial six-month period approved by the Board on May 7, 2020, the subsequent extensions approved on October 26, 2020 and January 7, 2021, and the additional three-month period being contemplated in this staff report, are intended to counteract the unforeseen dramatic enplanement declines brought on by COVID-19, recognizing that sales revenues to support such rents simply cannot be generated in this dire circumstance. In preparation for the May 7, 2020 Board meeting, and in accordance with FAA guidance, Authority Staff reviewed Grant Assurance 22, which pertains to economic nondiscrimination, and Grant Assurance 24, which states that a fee and rental structure must be maintained for airport facilities and services such that the airport will be as self-sustaining as possible. The FAA updated its guidance for airports on May 29, 2020 and in December 2020, but did not materially change the provisions applicable to the proposed program. Staff believes that the proposed *Rent Forbearance and Abatement Program Extension 3* complies with both grant assurances and that the Authority has otherwise complied with the FAA guidance cited above.

In-Terminal Concessions

Within the Airport terminals, tenants in the retail, food and beverage, passenger service, and in-terminal advertising categories operate under a non-exclusive concession lease ("Concession Lease"). Under the Concession Lease, concessionaires are required to pay the greater of a MAG or a certain percentage of gross receipts. The amount of the MAG is adjusted annually on July 1st to an amount equal to the greater of 90% of revenue paid to the Authority in the prior fiscal year, or 103% of the previous years' MAG. There are also a select few passenger service tenants that pay fixed-fee rents. Most concessionaires also pay for their pro rata share of variable concessionaire charges, for services including but not limited to janitorial services, trash collection, pest control, and fees for use of the Authority's receiving and distribution center ("RDC"). In addition, many concessionaires pay rent for support space.

For in-terminal concessions, Authority Staff recommends the following¹ as part of the *Rent Forbearance and Abatement Program Extension 3*, where applicable to each tenant, for the *Rent Abatement Period – Extension 3*: (1) forbearance and possible waiver of the amount that is the difference between the monthly MAG payment and

¹ As with the original abatement amendments, the Authority is proposing to place the specific amounts indicated into conditional forbearance until the end of the Rent Abatement Period – Extension 3. Waiver of the amounts in forbearance would be conditioned upon the tenant's compliance with the terms and conditions of the applicable agreement and all amendments during the entire term of the Rent Abatement Period – Extension 3. Failure to comply with said terms and conditions would result in a full reinstatement of the amounts owed.

percentage rent; (2) for tenants without a MAG, forbearance and possible waiver of fixed-rent monthly payments; (3) forbearance and possible waiver of a portion of cost recovery payments (RDC, janitorial and CAM charges); and, (4) forbearance and possible waiver of concession marketing fund fees. Tenants will be required to continue to pay percentage rent per their original agreements; full monthly rent for occupied support space; a portion of cost recovery charges (RDC, janitorial and CAM charges); full Shared Tenants Services fees; and full pest control charges. For cost recovery charges (RDC, janitorial and CAM), the Authority will reduce regular fees commensurate with reduced sales activity.

These actions are necessary to maintain the long-term viability of in-terminal concessions, which are vital to operations and financial sustainability of the Airport. Exhibit A provides a list of all entities eligible to be considered under this portion of the *Rent Forbearance and Abatement Program Extension 3*.

On-Airport Rental Car Companies

Operators at the Authority's rental car center ("RCC") have entered into two contracts with the Authority: the "Rental Car Center Lease", and the "Non-Exclusive Rental Car Concession Agreement" (collectively, "RCC Agreements"). Under the RCC Agreements, each rental car concessionaire is required to pay the following fees: 1) the greater of a MAG, or a certain percentage of gross receipts; 2) land rent for use of the RCC facility and property; 3) for those rental car companies defined as "Small Operators" only, small operator improvement rent, a cost recovery rent for use of the Small Operator areas of the RCC; and, 4) pro rata share of cost recovery items, including electricity, 12kV maintenance, and insurance. The amount of the MAG is adjusted annually on July 1st to an amount equal to the greater of 85% of revenue paid to the Authority in the prior fiscal year, or the previous years' MAG. Under the RCC concession agreement, in the event of extraordinary circumstance outside of the operators' control which affects the rental car industry as a whole by reducing gross revenues to a level that inhibits operators' ability to meet the MAG requirement, operators are to be granted an opportunity to meet with the Authority Board to seek an adjustment of the MAG; however any adjustment is at the sole and absolute discretion of the Board. The Land Rent is adjusted annually on July 1st by the change in "Consumer Price Index" over the prior year (although the rental amount does not ever decrease).

For on-Airport rental car companies, Authority Staff recommends the following² as part of the *Rent Forbearance and Abatement Program Extension 3*, for the *Rent Abatement Period – Extension 3*: (1) forbearance and possible waiver of the amount that is the difference between the monthly MAG payment and percentage fees; and (2) forbearance and possible waiver of a portion of cost recovery payments, including small operator improvement rent. Tenants will be required to continue to pay percentage fees and land rent, as well as to collect and remit "Customer Facility Charges" to the Authority, per their original agreements. For cost recovery charges, the Authority will reduce regular fees commensurate with reduced sales activity.

These actions are necessary to maintain the long-term viability of on-Airport rental car companies, which are vital to operations and financial sustainability of the Airport, and a

² See comment 1 above. The same conditions would apply to the possible waiver of these amounts.

vital service to the San Diego community. Exhibit A provides a list of all entities eligible to be considered under this portion of the *Rent Forbearance and Abatement Program Extension 3*.

Inflight Services

An inflight service company, Gate Gourmet, Inc. (“Gate Gourmet”), has entered into a non-exclusive license agreement (“License Agreement”) with the Authority to provide inflight catering beverages and meals to the airlines. Under the License Agreement, Gate Gourmet is required to pay the following monthly fees: 1) the greater of a monthly License Fee³, or eight percent of monthly gross receipts.

Similar to the Airport’s concession and rental car companies, Gate Gourmet has experienced a dramatic reduction in revenues as a direct result of reduced passenger traffic during the COVID-19 pandemic. As with concessions and rental car companies, Gate Gourmet continues to experience reduced revenues that do not support minimum payments to the Airport, in recent months.

For Gate Gourmet, Authority Staff recommends the following⁴ for the *Rent Abatement Period* and the *Rent Abatement Period – Extension 3*: (1) waive the amount that is the difference between the monthly License Fee payment and percentage fees. Gate Gourmet will be required to continue to pay percentage fees per its original agreement.

These actions are necessary to maintain the long-term viability of inflight services, which are vital to operations and financial sustainability of the Airport. Exhibit A provides a list of all entities eligible to be considered under this portion of the *Rent Forbearance and Abatement Program – Extension 3*.

Terms and Conditions

To be eligible for participation in the *Rent Forbearance and Abatement Program Extension 3*, eligible Non-Airline Tenants will be bound by the similar terms and conditions of the executed Amendment which enabled participation in the initial six-month abatement period, and subsequent extensions. If a Non-Airline Tenant was not eligible or chose not to participate in the original Rent Forbearance and Abatement Program, the tenant may submit an application for the *Rent Forbearance and Abatement Program Extension 3*. Furthermore, for continued relief, a subsequent amending agreement applicable to the *Rent Abatement Period – Extension 3* must be executed between all qualifying Non-Airline Tenants and the Authority. Terms and conditions of this forthcoming amendment will include but are not limited to the following conditions:

1. The *Rent Abatement Period – Extension 3*, shall be effective April 1, 2021 to June 30, 2021;
2. All terms and conditions of the original Temporary Rent Forbearance and Abatement Amendment, Amendment 1, and Amendment 2 shall remain in full

³ The monthly License Fee required under the Gate Gourmet license agreement is the same payment type as a monthly MAG.

⁴ See comment 1 above. The same conditions would apply to the possible waiver of these amounts.

- force and effect, except where a term or condition is specifically deleted or changed under the subsequent amendment which enables the rent abatement program to be extended;
3. Tenants, or their assignee, who previously qualified for the Rent Forbearance and Abatement Program approved by the Board on May 7, 2020, will automatically qualify for the extension of the program, unless the Tenant has been terminated or placed into default under the terms and conditions of the original Amendment, Amendment 1, Amendment 2, or any of its other agreements with the Authority;
 4. All other terms, conditions, and requirements of the tenant's lease agreement(s) with the Authority shall remain in full force and effect;
 5. Status of accounts receivable must be current and remain current for all amounts due that have not been waived;
 6. Letter of Credit must be fully-funded and up to date and must not have an expiration date that is a minimum of three (3) months after the *Rent Abatement Period – Extension 3* ends;
 7. The Authority encourages the tenant to continue to seek grants and relief available at the present time, or in the future, through other programs offered by local, state, and federal governments, as well as business interruption insurance benefits. Should funding become available to the tenant to be administered by the Authority, Tenant will cooperate with Authority to apply for and obtain funding, when requested;
 8. The President/CEO may add any such other requirements and conditions as she deems in the best interests of the Authority; and
 9. The President/CEO may amend the amount of rent abatement provided to the tenant in an amount up to but not greater than the other relief actually received by the tenant; including any amounts provided directly or indirectly to the tenant, either through the Authority or other another entity, to relieve tenants' obligation to pay rents and fees.

Fiscal Impact:

The fiscal impact in Fiscal Year 2021 for the *Rent Forbearance and Abatement Program Extension 3* is a reduction in revenue of approximately \$3.5 million for Terminal Concessions, approximately \$2.1 million for the Rental Car Companies and for Inflight Services, \$121 thousand. The Authority intends to use funds from the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to reimburse certain operating expenses and debt service in order to offset these impacts and ensure financial metrics sufficiently adhere to board policy and debt covenants.

Additionally, through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) the Authority will receive \$2,709,020 to provide relief from rent and minimum annual guarantees to airport concessions. The Grant has been applied for and the Authority is waiting on notification of its award.

The Authority also anticipates receiving grant funds specifically for concession relief from the American Rescue Plan Act of 2021. At this time, the amount of the grant related to concession relief is unknown.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Not Applicable.

Prepared by:

Hampton Brown
Vice President, Marketing & Innovation

Exhibit A**In-Terminal Concessions**

Concession	Package/Category	Lease #
Paradies-San Diego, LLC	Retail Package #1	LE-0647
HG-CV-Epicure-Martinez San Diego JV (Hudson)	Retail Package #2	LE-0670
PGC-PCI San Diego, LLC	Retail Package #3	LE-0665
Stellar Partners, Inc	Retail Package #4	LE-0648
Spa Didacus, Inc	Retail Package #5	LE-0659
HG-CV-Epicure-Martinez San Diego JV (Hudson)	Retail Package #7	LE-0671
Project Horizon, Inc (InMotion)	Retail Package #8	LE-0656
SFS Beauty CA, LLC (MAC)	Retail Package	LE-0908
SFS Investors JV (Duty Free)	Retail Package	LE-0950
Host International, Inc	Food & Beverage Package #1	LE-0657
Host International, Inc	Food & Beverage Package #2	LE-0658
SSP America, Inc	Food & Beverage Package #3	LE-0667
Mission Yogurt, Inc	Food & Beverage Package #4	LE-0651
SSP America, Inc	Food & Beverage Package #5	LE-0668
SSP America, Inc	Food & Beverage Package #6	LE-0669
High Flying Foods San Diego Partnership	Food & Beverage Package #7	LE-0649
High Flying Foods San Diego Partnership	Food & Beverage Package #8	LE-0650
G&P Partners dba BCB CO. (Rental Car Center Concession)	Food & Beverage	LE-0875
Swissport Lounge (Airspace Lounge)	Food & Beverage	LE-0726
Certified Folder Display Service, Inc.	Passenger Service	LE-0880
The Classic Shine Company	Passenger Service	LE-0933
Smarte Carte, Inc.	Passenger Service	LE-0782
AC Holdings, Inc. (CNN Airport Network)	Passenger Service	LE-0799
Travel Content, LLC dba ReachTV	Passenger Service	LE-0799
In-Ter-Space Services, Inc. dba Clear Channel Airports	Passenger Service – Advertising	LE-0966

On-Airport Rental Car Companies

Rental Car Company	Lease #
Avis Budget Car Rental, LLC	LE-0744, LE-0745, LE-0760, LE-0761
Enterprise Rent-A-Car Company of Los Angeles, LLC	LE-0752, LE-0753
The Hertz Corporation	LE-0756, LE-0757
Fox Rent A Car, Inc.	LE-0750, LE-0751
Nevada Lease and Rentals, Inc. dba Payless Car Rental System	LE-0746, LE-0747
Sixt Rent A Car, LLC	LE-0758, LE-0759

Inflight Services Companies

Inflight Services Company	Lease #
Gate Gourmet, Inc.	LE-0776

RESOLUTION NO. 2021-0028

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE THE REQUIRED AGREEMENTS TO EXTEND THE AUTHORITY'S TEMPORARY RENT FORBEARANCE AND ABATEMENT PROGRAM TO TEMPORARILY REDUCE RENTAL OBLIGATIONS OF QUALIFYING NON-AIRLINE TENANTS AT THE AIRPORT, BY PROVIDING ABATEMENT OF MONTHLY MINIMUM ANNUAL GUARANTEE (MAG), CERTAIN FIXED-RENT, AND A PORTION OF COST RECOVERY PAYMENTS FOR A PERIOD NOT TO EXCEED THREE (3) MONTHS BEGINNING APRIL 1, 2021 AND ENDING JUNE 30, 2021, IN RESPONSE TO THE CONTINUED IMPACT OF THE COVID-19 PANDEMIC CRISIS.

WHEREAS, on March 13, 2020, President Trump issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease ("COVID-19") Outbreak, which established March 1, 2020 as the beginning of the national emergency; and

WHEREAS, on March 19, 2020, California Governor Newsom issued an Executive Order (EO N-33-20) requiring individuals living in the State of California to stay home except as needed to maintain the continuity of operations of the federal infrastructure sectors; and

WHEREAS, on May 4, 2020, California Governor Newsom issued an Executive Order (EO N-60-20) informing local health jurisdictions and industry sectors that they may gradually reopen under new modifications and guidance provided by the State of California; and

WHEREAS, on September 23, 2020, California Governor Newsom issued an Executive Order (EO N-80-20), and on December 14, 2020 issued an Executive Order (EO N-84-20) to address a variety of issues in response to the pandemic; and

WHEREAS, on December 3, 2020, California Governor Newsom divided the state into 5 regions with San Diego County in the Southern California region and announced a regional stay at home order if ICU capacity falls to 15%; and

WHEREAS, on December 6, 2020, due to ICU capacities in the Southern Californian region falling below 15%, a regional stay at home order was issued for three weeks; and

WHEREAS, on January 25, 2021 the regional stay at home order was lifted but San Diego remained in the purple tier, which allowed resumption of outdoor dining, as well as certain services at gyms, barber shops and nail salons; and

WHEREAS, on March 16, 2021 San Diego moved into the next-less restrictive red tier but, significant limitations on commercial and social activities remain in place; and

WHEREAS, the COVID-19 pandemic has caused a financial and economic crisis and has resulted in significant disruptions to domestic and international air travel, including air travel to and from the San Diego International Airport ("Airport"); and

WHEREAS, the Airport is identified as Essential Critical Infrastructure under the Transportation System Sector and remains open and operational; and

WHEREAS, as a result of the COVID-19 pandemic, passenger throughput at the Airport began a sharp decline in March 2020, leveling off at an approximate 96% decline year-over-year in April 2020, and passenger throughput has gradually improved since March, with an approximate 70% decline year-over-year in February 2021; and

WHEREAS, retail and food & beverage concessionaires, passenger service concessionaires, on-Airport rental car operators, and inflight services companies (collectively, "Non-Airline Tenants") of the San Diego County Regional Airport Authority ("Authority") have continued to experience a decline in revenue commensurate with the unprecedented decline in passenger throughput, and have taken measures to reduce operating costs, including reduced hours of operation, temporary closure of many concession locations, staff layoffs and furloughs, and submitting urgent requests for additional financial relief; and

WHEREAS, due to the effects of COVID-19, and the significant decline in passenger traffic and Non-Airline Tenant business, Non-Airline Tenants are not able to generate the sales revenues necessary to support sustained payments of monthly rental obligations to the Authority; and

WHEREAS, on May 7, 2020, the Board adopted Resolution No. 2020-0057, authorizing staff to execute the required agreements to provide abatement of certain rents and fees to qualifying Non-Airline Tenants for a period beginning April 1, 2020 and ending September 30, 2020 ("*Rent Abatement Period*"); and

WHEREAS, on October 26, 2020, the Board adopted Resolution No. 2020-0099, authorizing staff to execute the required agreements to provide abatement of certain rents and fees to qualifying Non-Airline Tenants for a period beginning October 1, 2020 and ending December 31, 2020 (*"Rent Abatement Period – Extension 1"*); and

WHEREAS, on January 7, 2021, the Board adopted Resolution No. 2021-0002, authorizing staff to execute the required agreements to provide abatement of certain rents and fees to qualifying Non-Airline Tenants for a period beginning January 1, 2021 and ending March 31, 2021 (*"Rent Abatement Period – Extension 2"*); and

WHEREAS, the Authority has executed a Temporary Rent Forbearance and Abatement Amendment with several Non-Airline Tenants for the *Rent Abatement Period*, the *Rent Abatement Period – Extension 1* and the *Rent Abatement Period-Extension 2*; and

WHEREAS, the unforeseen pandemic and dramatic enplanement declines brought on by COVID-19 were not contemplated at the time of RFP responses or the lease negotiations with Non-Airline Tenants, when rental structures were established; and

WHEREAS, Non-Airline Tenants continue to experience financial hardship due to severe declines in sales commensurate with enplanement declines brought on by COVID-19, and this trend is expected to continue; and

WHEREAS, it is in the best interest of the Authority and the public to extend temporary financial relief to qualifying Non-Airline Tenants so that they may remain financially resilient and stay open where possible during the COVID-19 pandemic; and

WHEREAS, it is in the best interest of the Authority and the public to provide immediate additional temporary financial relief to qualifying Non-Airline Tenants so that the Airport may resume normal operations as passenger levels increase, protect the Authority's future revenues, and to ensure the needs of the travelling public are met and the passenger experience at the Airport does not suffer; and

WHEREAS, the Authority desires to provide additional temporary financial relief to qualifying Non-Airline Tenants by implementing abatement of certain rental obligations for a three (3) month period (the *"Rent Forbearance and Abatement Program Extension 3"*), beginning on April 1, 2021 and ending on June 30, 2021 (*"Rent Abatement Period – Extension 3"*); and

WHEREAS, the Authority believes that the *Rent Forbearance and Abatement Program Extension 3* complies with the guidance issued by the Federal Aviation Administration (“FAA”) on April 4, 2020 and updated on May 29, 2020 and December 2020, related to airports’ consideration of COVID-19 restrictions and accommodations; and

WHEREAS, the Authority believes that the *Rent Forbearance and Abatement Program Extension 3* complies with Grant Assurance 22, which pertains to economic nondiscrimination, and Grant Assurance 24, which states that a fee and rental structure must be maintained for airport facilities and services such that the airport will be as self-sustaining as possible; and

WHEREAS, the Authority believes instituting the *Rent Forbearance and Abatement Program Extension 3* will help ensure that the Authority remains competitive for solicitation of operators and services in the future; and

WHEREAS, the Authority is party to multiple agreements with in-terminal retail, food and beverage, passenger service, and advertising tenants (“Concessionaires”), operating under individual non-exclusive concession leases (“Concession Lease”), and under the Concession Leases, Concessionaires are required to make monthly rental payments to the Authority, including where applicable: (1) a monthly payment in an amount that is one-twelfth the Minimum Annual Guarantee (“MAG”) or a certain percentage of gross receipts, whichever is greater; (2) fixed-fees including monthly fixed-rent; (3) additional rent including variable cost recovery fees; (4) monthly support space rent; and, (5) contribution to a concession marketing fund; and

WHEREAS, as part of the *Rent Forbearance and Abatement Program Extension 3*, the Authority desires to provide rent forbearance and possible abatement to qualifying Concessionaires for the *Rent Abatement Period – Extension 3* for the following payment obligations only: (1) the amount that is the difference between the monthly MAG payment and percentage rent, (2) a portion of monthly cost recovery charges (RDC, janitorial, CAM), and (3) monthly concession marketing fund fees; and

WHEREAS, the Authority will place the specific amounts indicated into conditional forbearance until the end of the *Rent Abatement Period – Extension 3*; and waiver of the amounts in forbearance would be conditioned upon the Concessionaire’s compliance with the terms and conditions of the applicable agreement and all amendments during the entire term of the *Rent Abatement Period – Extension 3*; and

WHEREAS, failure of a Concessionaire to comply with said terms and conditions will result in a full reinstatement of the amounts owed during the *Rent Abatement Period – Extension 3*; and

WHEREAS, the Authority is party to multiple agreements with on-airport rental car companies (“RACs”) operating at the Authority’s consolidated rental car facility (“RCC”) under a rental car center lease, and a non-exclusive rental car concession agreement (collectively, “RCC Agreements”), and under the RCC Agreements RACs are required to make monthly rental payments to the Authority, including where applicable: (1) a monthly payment in an amount that is one-twelfth the MAG or a certain percentage of gross receipts, whichever is greater; 2) land rent for use of the RCC facility and property; 3) for those rental car companies defined as “Small Operators” only, small operator improvement rent, a cost recovery rent for use of the Small Operator areas of the RCC; and, 4) pro rata share of cost recovery items, including electricity, 12kV maintenance, and insurance; and

WHEREAS, as part of the *Rent Forbearance and Abatement Program Extension 3*, the Authority desires to provide rent forbearance and possible abatement to qualifying RACs for the *Rent Abatement Period – Extension 3* for the following payment obligations only: (1) the amount that is the difference between the monthly MAG and percentage fees, and (2) a portion of monthly cost recovery charges, including Small Operator improvement rent; and

WHEREAS, the Authority will place the specific amounts indicated into conditional forbearance until the end of the *Rent Abatement Period – Extension 3*; and waiver of the amounts in forbearance would be conditioned upon the RAC’s compliance with the terms and conditions of the applicable agreement and all amendments during the entire term of the *Rent Abatement Period – Extension 3*; and

WHEREAS, failure of a RAC to comply with said terms and conditions will result in a full reinstatement of the amounts owed during the *Rent Abatement Period – Extension 3*; and

WHEREAS, the Authority is party to an agreement with an inflight services company (“Gate Gourmet”) operating under a non-exclusive license agreement (“License Agreement”), and under the License Agreement, Gate Gourmet is required to make monthly rental payments to the Authority, including a monthly License Fee payment or eight percent of gross receipts, whichever is greater; and

WHEREAS, as part of the *Rent Forbearance and Abatement Program Extension 3*, the Authority desires to provide rent forbearance and possible abatement to Gate Gourmet, subject to meeting the requirements for participation in the program, for the *Rent Abatement Period – Extension 3* for the following payment obligations only: the amount that is the difference between the monthly License Fee payment and percentage fees; and

WHEREAS, failure of Gate Gourmet to comply with said terms and conditions will result in a full reinstatement of the amounts owed during the *Rent Abatement Period – Extension 3*; and

WHEREAS, should any additional inflight services provider enter into agreements with the Authority during the relevant program extension period, it would be considered a Non-Airline Tenant eligible for participation in the abatement program; and

WHEREAS, the Authority, acting through its President/CEO, reserves the right to determine which Non-Airline Tenants will qualify for the *Rent Forbearance and Abatement Program Extension 3*; and

WHEREAS, to qualify for the *Rent Forbearance and Abatement Program Extension 3*, Non-Airline Tenants must: (1) enter into a written rent abatement agreement with the Authority; (2) abide by all terms and conditions of the original Temporary Rent Forbearance and Abatement Amendment, and subsequent abatement amendments; (3) be and remain current on all accounts payable to the Authority and agree to make the required payments for rents and fees that are not subject to abatement; (3) have on-file with the Authority a fully-funded and current security deposit or Letter of Credit; (4) agree to such other terms and conditions as determined by the President/CEO to be in the best interest of the Authority; and, (5) provide information requested by the Authority concerning application for any local, state, or federal funding that is available now or in the future, to the Authority or to the Tenant to offset any rents and fees abated by the Authority for the benefit of the tenant.

NOW THEREFORE BE IT RESOLVED that the Board hereby finds that instituting the *Rent Forbearance and Abatement Program Extension 3* will help ensure the Airport remains financially self-sufficient and remains competitive for future solicitations and revenue opportunities; and

BE IT FURTHER RESOLVED that the Board finds that, it is in the best interest of the Authority and the public to provide immediate extension of temporary financial relief in the form of the *Rent Forbearance and Abatement Program Extension 3* to qualifying Non-Airline Tenants so that they may remain financially resilient and stay open where possible during the COVID-19 pandemic; and so that the Airport can resume normal operations as passenger levels increase, protect the Authority's future revenues, and to ensure the needs of the travelling public continue to be met and the passenger experience at the Airport does not suffer; and

BE IT FURTHER RESOLVED that the Board finds that instituting the *Rent Forbearance and Abatement Program Extension 3* is in the best interest of the Authority and the travelling public; and

BE IT FURTHER RESOLVED that the Board finds that similar rent forbearance and abatement programs have been implemented at airports across the United States; and

BE IT FURTHER RESOLVED that the Board finds that the *Rent Forbearance and Abatement Program Extension 3* complies with Grant Assurance 22 and Grant Assurance 24; and

BE IT FURTHER RESOLVED that the Board hereby approves and authorizes the President/CEO to execute the required agreements for the *Rent Forbearance and Abatement Program Extension 3* to reduce rental obligations of qualifying Non-Airline Tenants at the Airport, by providing abatement of MAG (or License Fees), certain fixed-rent, a portion of cost recovery payments and other such requirements as she deems in the best interest of the Airport Authority, for a period not to exceed three (3) months beginning April 1, 2021 and ending June 30, 2021, in response to the COVID-19 pandemic crisis; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Authorize the President/CEO to Execute a “Power Your Drive for Fleets ” Program Participation Agreement with San Diego Gas & Electric

Recommendation:

Adopt Resolution No. 2021-0029, authorizing the President/CEO to execute a “Power Your Drive for Fleets” Program Participation Agreement with San Diego Gas & Electric.

Background/Justification:

In support of the State of California’s goal to reach at least 5 million zero-emission vehicles by 2030, San Diego Gas & Electric (SDG&E) has initiated a pilot program, as approved by the California Public Utilities Commission, to own, install, operate, and maintain Electric Vehicle Charging Make-Ready (Make-Ready) Infrastructure at qualifying locations operating Medium-Duty/Heavy-Duty Electric Vehicles under the Power Your Drive (PYD) for Fleets Make-Ready Infrastructure Program (Program). SDG&E has identified San Diego International Airport (SAN) and its shuttle fleet as eligible under the Program.

The implementation of clean transportation initiatives that reduce greenhouse gas (GHG) emissions airside and landside is a community strategy and is a top priority for the San Diego County Regional Airport Authority (Authority). The electrification of Authority-operated shuttles is specifically called out in the Authority’s Clean Transportation Plan as a way to reduce the environmental impact generated from ground transportation operations, which represent the largest source of GHG emissions associated with SAN outside of aircraft. In addition, the operation of Authority vehicles and equipment represent 28 percent of GHG emissions, over which the Authority has direct operational control.

As part of mitigation associated with the Airport Development Plan (ADP) Environmental Impact Report, the Authority has committed to full electrification of its shuttle fleet by 2028. In addition, the California Air Resources Board now requires all fixed-route airport shuttles serving the State’s 13 largest airports, such as SAN, to transition to 100 percent zero-emission vehicles by 2035. The Authority’s shuttle fleet currently provides the following functions on fixed-routes: transportation of passengers to and from the Rental Car Center, transportation of passengers between airport terminals, and transportation of employees to and from the employee parking lot located along Admiral Boland Way. These shuttles are currently stored at various locations on airport property, but will be displaced from these locations once construction of the Airport Development Program begins.

The Authority is considering the lease of property located north of the Airport that may be used to consolidate the storage and charging of the Authority’s shuttle fleet into one location. If approved, the property will be able to accommodate up to 60 shuttles, with 33 electric vehicle charging stations (EVCS). The lot may also be outfitted with

infrastructure to easily increase the number of EVCS in the future. As a result, the electrification of the shuttle storage lot will enable the full conversion of the Authority's shuttle fleet and help the Authority meet its ADP EIR mitigation requirements.

The SDG&E PYD Program will be used to offset the costs associated with providing electrical infrastructure to the shuttle storage lot. Specifically, the Program provides no-cost design, installation, and operation of the Utility-Side Make-Ready Infrastructure. Utility-Side Make-Ready Infrastructure includes all necessary infrastructure up to the utility meter. The Program also provides a rebate of up to 80% for the cost to design and install the Customer-Side Make-Ready Infrastructure, which includes all infrastructure post-utility meter. The remaining 20% of Customer-Side Make-Ready Infrastructure costs would be covered through the Authority's existing shuttle operations agreement with Ace Parking and the Board-approved Airport Development Plan capital budget.

Program Participation Agreement

The Program Participation Agreement (Agreement) includes a ten-year period. During the term, the Authority must agree, among other things, to the following:

- procure, install, operate, and maintain EVCS in good working order; and
- provide EVCS usage data for a minimum period of five (5) years.

The Authority has already procured 33 EVCS that it anticipates will be installed in the shuttle storage lot once the necessary improvements have been completed. Each EVCS will be equipped with the technology needed to remotely provide usage data.

Additionally, the Agreement requires the Authority to agree to, in part, the following:

- Waive any compensation of any kind for any duties or requirements provided for participation in any way as part of the Program, including any other inconvenience or loss (Section 8);
- Provide SDG&E with the right to terminate or suspend the Program at its sole discretion for any reason, with or without cause (Section 21);
- Waive any liability and claims against SDG&E with respect to the Customer-Side Make-Ready Infrastructure, to the extent SDG&E's activities are not performed by SDG&E negligently or with intentional misconduct (Addendum 1, Section 3.b.); and
- Indemnify, defend, and hold harmless SDG&E for any claims arising out of the Authority's design, construction, installation, or use of the Customer-Side Make-Ready Infrastructure except if a claim is based on SDG&E's negligence or intentional wrongdoing (Addendum 1, Section 3.c.).

Following the execution of the Agreement, SDG&E will move forward with its design and ultimately enter into the construction phases of providing the necessary electrical infrastructure to the shuttle storage lot.

Fiscal Impact:

As mentioned, the SDG&E PYD for Fleets Program will cover 100% and 80% of utility-side and customer-side EVCS make-ready costs, respectively. The remaining customer-side EVCS costs, including ongoing charger usage monitoring, will be supported through Board-adopted FY2021 and conceptual FY2022 Operating budgets in the maintenance and utility expense line items and FY2021 to FY2025 Capital budgets in project "104292 EV Chargers for Shuttle Lot." For years not yet adopted, costs will be included in future budget requests.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is a "project" subject to CEQA under Cal. Pub. Res. Code §21065; however, the proposed project qualifies for categorical exemptions under CEQA Sections §15301, 15302, and 15304. A notice of exemption has been prepared and will be filed with the County of San Diego, upon approval by the Authority Board.
- B. California Coastal Act Review: This Board action is a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106. Prior to any site preparation or construction associated with the electric vehicle charging stations, a Coastal Development Permit will be obtained in compliance with the California Coastal Act.
- C. NEPA: This Board action is part of a broader project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, formal review under the National Environmental Policy Act ("NEPA") is required. A categorical exclusion will be prepared and submitted to the Federal Aviation Administration for approval prior to any site preparation or construction associated with the electric vehicle charging stations.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

BRENDAN REED
DIRECTOR, PLANNING & ENVIRONMENTAL AFFAIRS

RESOLUTION NO. 2021-0029

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY, AUTHORIZING THE PRESIDENT/CEO
TO EXECUTE A “POWER YOUR DRIVE FOR
FLEETS” PROGRAM PARTICIPATION AGREEMENT
WITH SAN DIEGO GAS & ELECTRIC

WHEREAS, Power Your Drive for Fleets Program is an electrical vehicle charging station program (“PYD for Fleets Program”) administered by San Diego Gas & Electric (“SDG&E”), in which the SDG&E owns, installs, operates, and maintains electrical infrastructure at locations throughout San Diego County to allow for the charging of Medium-Duty/Heavy-Duty Electric Vehicles; and

WHEREAS, the conversion of the Authority-operated shuttle fleet will help to implement mitigation measures associated with the Airport Development Plan (“ADP”) Environmental Impact Report and to meet long-term zero emission airport shuttle regulations by the California Air Resources Board; and

WHEREAS, the Authority has applied to and was approved for participation in the SDG&E PYD for Fleets Program in order to facilitate the necessary electrical infrastructure to allow for the installation of 33 electric vehicle charging stations, with capacity to increase to 60 charging stations in the future; and

WHEREAS, in order to participate in the PYD for Fleets Program, the Authority must enter into a Program Participation Agreement with SDG&E for a 10-year term; and

WHEREAS, the Board finds it in the best interest of the Authority to participate in the PYD for Fleets Program; and

WHEREAS, the Board finds that participation in the PYD for Fleets Program reduces greenhouse gas emissions and supports the Authority’s Clean Transportation Plan.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to execute a “Power Your Drive for Fleets” Program Participation Agreement with SDG&E; and

BE IT FURTHER RESOLVED that this Board action is a “project” subject to CEQA under Cal. Pub. Res. Code §21065; however, the proposed project qualifies for categorical exemptions under CEQA Sections §15301, 15302, and 15304; and

BE IT FURTHER RESOLVED that this Board action is a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106 and that a Coastal Development Permit will be obtained in compliance with the California Coastal Act prior to any site preparation or construction associated with the electric vehicle charging stations; and

BE IT FURTHER RESOLVED that this Board action is part of a broader project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, formal review under the National Environmental Policy Act (“NEPA”) is required and a categorical exclusion will be submitted to the FAA for approval prior to any site preparation or construction associated with the electric vehicle charging stations.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Award a Contract to S&L Specialty Construction, Inc. for Quieter Home Program Phase 10, Group 12, Project No. 381012, Fourteen (14) Single-Family and Multi-Family Units on Twelve (12) Historic Residential Properties Located East and West of the San Diego International Airport

Recommendation:

Adopt Resolution No. 2021-0030, awarding a contract to S&L Specialty Construction, Inc. in the amount of \$1,093,339.28 for Phase 10, Group 12, Project No. 381012, of the San Diego County Regional Airport Authority's ("Authority") Quieter Home Program.

Background/Justification:

The Authority's Quieter Home Program ("Program") provides sound attenuation treatment to residences within the highest noise-impacted neighborhoods surrounding San Diego International Airport ("SDIA"). This contract for Phase 10, Group 12, Project number 381012 includes installation of new acoustical windows, doors, and ventilation improvements to reduce aircraft-related noise levels and provide sound attenuation to fourteen (14) single-family and multi-family units on twelve (12) historic residential properties located East and West of the San Diego International Airport (refer to Attachment A).

To date, the Program has completed 4,471 residences, of which 944 are historic and 3,527 are non-historic. 2,872 residences are located west of SDIA and 1,599 are located east of SDIA.

Project No. 381012 was advertised on January 8, 2021 and bids were opened on February 8, 2021. The following bids were received (refer to Attachment B):

Company	Total Bid
De La Fuente Construction, Inc.	\$878,381.28*
S&L Specialty Construction, Inc.	\$1,093,339.28
G&G Specialty Contractors, Inc.	\$1,162,950.28

*The low bid of \$878,381.28 from De La Fuente Construction, Inc was found to be non-responsive. The Authority reached out to De la Fuente Construction Inc. to provide a debrief, review their bid submission, and answer questions.

The Engineer's Estimate was advertised as \$881,299.85. After the bid was advertised, the Engineer was notified of additional costs due to COVID-19 impacts across the material manufacturers, especially for wood products. The Engineer revised their

original estimate based on these costs provided by the vendor. The revised Engineer's estimate is \$1,010,729.05.

The next lowest bid of \$1,093,339.28 is considered responsive and S&L Specialty Construction, Inc. is considered responsible. Award to S&L Specialty Construction, Inc. is, therefore, recommended in the amount of \$1,093,339.28.

Fiscal Impact:

Adequate funds for the contract with S&L Specialty Construction, Inc. are included in the adopted FY 2021 and conceptual FY 2022 Operating Expense Budgets within the Quieter Home Program budget line item. Sources of funding include federal Airport Improvement Program grants and Passenger Facility Charges.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA. This Board action is a "project" subject to the California Environmental Quality Act ("CEQA"), Pub. Res. Code §21065. The individual projects under the Quieter Home Program are part of a class of projects that are categorically exempt from CEQA: 14 Cal. Code Regs. §15301 – "Existing Facilities: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."
- B. California Coastal Act. This Board action is a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106. The individual projects under the Quieter Home Program will consist of treatments to single-family and multi-family dwellings. Improvements to single-family homes are exempt from coastal permit requirements under Cal. Pub. Res. Code §30610(a) and 14 Cal. Code Regs. §13250 – "Improvements to Single-Family Residences." The proposed improvements to multi-family residences are exempt from coastal permit requirements under Cal. Pub. Res. Code §30610(b) and 14 Cal. Code Regs. §13253 – "Improvements to Structures Other than Single-Family Residences and Public Works Facilities that Require Permits."

- C. NEPA: This Board action is a project that involves approvals or actions by the Federal Aviation Administration (“FAA”) and therefore, also requires review under the National Environmental Policy Act (“NEPA”) for its potential environmental impacts. The NEPA review is underway for a Categorical Exclusion for the 2021-2025 Program. A Categorical Exclusion will be obtained before the program construction is initiated for these Quieter Home Program projects.

Application of Inclusionary Policies:

The Authority has the following inclusionary programs/policies: a Disadvantaged Business Enterprise (DBE) Program, an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program, and Policy 5.12. These programs/policy are intended to promote the inclusion of small, local, service disabled/veteran owned small businesses, historically underrepresented businesses, and other business enterprises, on all contracts. Only one of the programs/policy named above can be used in any single contracting opportunity.

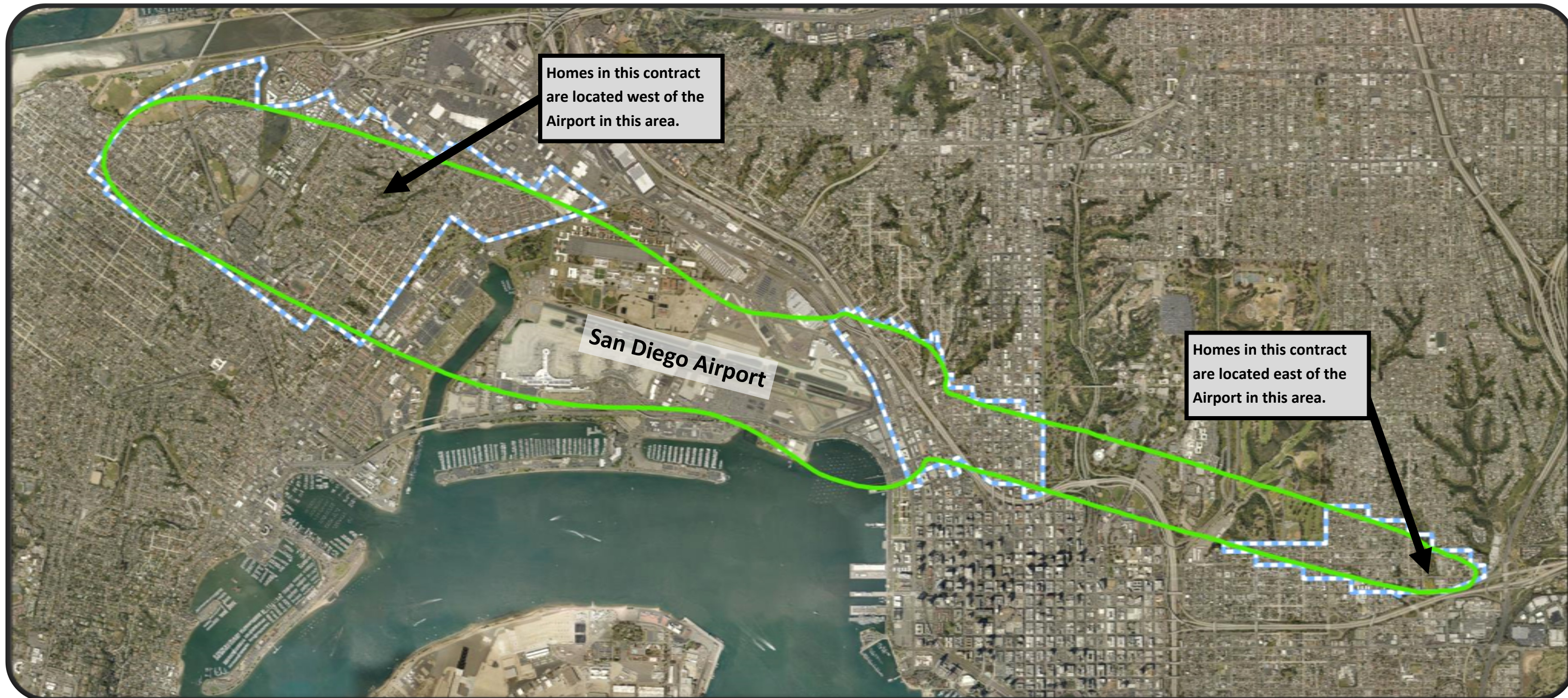
The Authority’s DBE Program, as required by the U.S. Department of Transportation, 49 Code of Federal Regulations (CFR) Part 26, calls for the Authority to submit a triennial overall goal for DBE participation on all federally-funded projects. When federal funds are utilized, the Authority is prohibited from using a program that provides a preference such as those used in Policy 5.12. Therefore, the Authority must utilize other means as provided in the DBE Plan to achieve participation.

This project utilizes federal funds; therefore, it will be applied toward the Authority’s overall DBE goal. S&L Specialty Construction, Inc. proposed 2.7% DBE participation on QHP Phase 10, Group 12.



Prepared by:

BRENDAN REED
DIRECTOR, PLANNING & ENVIRONMENTAL AFFAIRS

Attachment A



LEGEND

-  65 dB Boundary
-  65 dB CNEL Contour

San Diego County Regional Airport Authority
Quieter Home Program
Project 381012

TABULATION OF BIDS

ATTACHMENT B

TITLE: QUIETER HOME PROGRAM PROJECT NO. 381012
 BIDS OPENED: February 8, 2021 at 2:00 p.m.
 ENGINEER'S ESTIMATE: \$881,300.00

CONTRACTOR:				Engineer's Estimate				De La Fuente Construction, Inc.				S&L Specialty Construction, Inc.				G&G Specialty Contractors, Inc.			
ADDRESS:				22W 35th St. Suite 207 National City, CA 91950				315 S. Franklin Street, Syracuse, NY 13202				1221 N. Mondel Drive, Gilbert, AZ 85233							
GUARANTEE OF GOOD FAITH:				SureTec Insurance Company				Liberty Mutual Insurance Company				Hartford Casualty Insurance Company							
Res No.	Bid Item Number - Name/Address	Dwellin g Units	Unit of Measure	General Construction (In Figures)	Ventilation Construction (In Figures)	Electrical Construction (In Figures)	TOTAL (In Figures)	General Construction (In Figures)	Ventilation Construction (In Figures)	Electrical Construction (In Figures)	TOTAL (In Figures)	General Construction (In Figures)	Ventilation Construction (In Figures)	Electrical Construction (In Figures)	TOTAL (In Figures)	General Construction (In Figures)	Ventilation Construction (In Figures)	Electrical Construction (In Figures)	TOTAL (In Figures)
381005.13	REARDON 1437 29TH STREET	1	Lump Sum	\$71,209.43	\$0.00	\$0.00	\$71,209.43	\$81,669.00	\$0.00	\$0.00	\$81,669.00	\$101,000.00	\$0.00	\$0.00	\$101,000.00	\$96,158.00	\$0.00	\$0.00	\$96,158.00
381005.13	REARDON 1439 29TH STREET	1	Lump Sum	\$13,932.77	\$0.00	\$0.00	\$13,932.77	\$21,081.00	\$0.00	\$0.00	\$21,081.00	\$14,000.00	\$0.00	\$0.00	\$14,000.00	\$21,336.00	\$0.00	\$0.00	\$21,336.00
381012.02	DARLINGTON 1446 GROVE STREET	1	Lump Sum	\$65,327.82	\$0.00	\$0.00	\$65,327.82	\$52,793.00	\$0.00	\$0.00	\$52,793.00	\$67,000.00	\$0.00	\$0.00	\$67,000.00	\$68,312.00	\$0.00	\$0.00	\$68,312.00
381012.04	KELLY 1517 GRANADA AVENUE	1	Lump Sum	\$83,016.14	\$0.00	\$0.00	\$83,016.14	\$61,321.00	\$0.00	\$0.00	\$61,321.00	\$85,000.00	\$0.00	\$0.00	\$85,000.00	\$79,557.00	\$0.00	\$0.00	\$79,557.00
381012.05	MANISON 1325 GROVE STREET	1	Lump Sum	\$57,846.85	\$9,681.06	\$3,096.82	\$70,624.73	\$45,557.00	\$17,831.00	\$4,509.00	\$67,897.00	\$75,000.00	\$11,000.00	\$3,000.00	\$89,000.00	\$64,511.00	\$20,000.00	\$3,500.00	\$88,011.00
381012.06	MATHIS 1522 GRANADA AVENUE	1	Lump Sum	\$50,560.77	\$10,021.55	\$3,124.49	\$63,706.81	\$39,496.00	\$13,896.00	\$5,927.00	\$59,309.00	\$53,000.00	\$10,000.00	\$4,000.00	\$67,000.00	\$62,868.00	\$19,000.00	\$4,600.00	\$86,268.00
381012.07	MAURIELLO 1528 GRANADA	1	Lump Sum	\$96,718.67	\$19,529.87	\$4,398.55	\$120,647.09	\$89,108.00	\$25,838.00	\$10,436.00	\$125,382.00	\$128,000.00	\$23,000.00	\$7,000.00	\$158,000.00	\$137,535.00	\$33,500.00	\$8,100.00	\$179,135.00
381012.08	NOVAK 1339 FERN STREET	1	Lump Sum	\$35,541.21	\$0.00	\$0.00	\$35,541.21	\$31,625.00	\$0.00	\$0.00	\$31,625.00	\$39,000.00	\$0.00	\$0.00	\$39,000.00	\$38,659.00	\$0.00	\$0.00	\$38,659.00
381012.10	RINTOUL 4608 GREENE STREET	1	Lump Sum	\$24,772.24	\$9,566.71	\$5,748.95	\$40,087.90	\$24,798.00	\$12,629.00	\$11,712.00	\$49,139.00	\$30,000.00	\$11,000.00	\$5,000.00	\$46,000.00	\$37,106.00	\$19,000.00	\$9,000.00	\$65,106.00
381012.10	RINTOUL 4610 GREENE STREET	1	Lump Sum	\$33,442.86	\$9,683.94	\$3,688.85	\$46,815.65	\$30,759.00	\$13,423.00	\$3,865.00	\$48,047.00	\$37,000.00	\$12,000.00	\$6,000.00	\$55,000.00	\$40,754.00	\$19,000.00	\$3,000.00	\$62,754.00
381012.11	SCHABERG 2460 A STREET	1	Lump Sum	\$92,170.62	\$0.00	\$0.00	\$92,170.62	\$86,214.00	\$0.00	\$0.00	\$86,214.00	\$133,000.00	\$0.00	\$0.00	\$133,000.00	\$112,455.00	\$0.00	\$0.00	\$112,455.00
381012.12	JERJIS 1419 30TH STREET	1	Lump Sum	\$42,444.04	\$10,635.78	\$3,520.84	\$56,600.66	\$46,706.00	\$17,012.00	\$5,927.00	\$69,645.00	\$69,000.00	\$11,000.00	\$4,000.00	\$84,000.00	\$70,286.00	\$19,000.00	\$4,600.00	\$93,886.00
381012.13	VAUGHT/CELESTE-VAUG 1345 GROVE STREET	1	Lump Sum	\$46,638.05	\$11,845.08	\$4,124.87	\$62,608.00	\$44,760.00	\$20,104.00	\$7,590.00	\$72,454.00	\$70,000.00	\$12,000.00	\$4,000.00	\$86,000.00	\$69,534.00	\$20,500.00	\$5,800.00	\$95,834.00
381012.14	WESTBROOK 1420 GROVE STREET	1	Lump Sum	\$55,671.73	\$0.00	\$0.00	\$55,671.73	\$48,666.00	\$0.00	\$0.00	\$48,666.00	\$66,000.00	\$0.00	\$0.00	\$66,000.00	\$72,140.00	\$0.00	\$0.00	\$72,140.00
							Subtotal				Subtotal				Subtotal				Subtotal
							\$877,960.57				\$875,042.00				\$1,090,000.00				\$1,159,611.00
							Probable Cost for Permits:				Probable Cost for Permits:				Probable Cost for Permits:				Probable Cost for Permits:
							\$3,339.28				\$3,339.28				\$3,339.28				\$3,339.28
							TOTAL BID				TOTAL BID				TOTAL BID				TOTAL BID
							\$881,299.85				\$878,381.28				\$1,093,339.28				\$1,162,950.28

Addenda No. 1 & 2 noted

Addenda No. 1 & 2 noted

Addenda No. 1 & 2 noted

RESOLUTION NO. 2021-0030

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AWARDING A CONTRACT TO S&L SPECIALTY CONSTRUCTION, INC., IN THE AMOUNT OF \$1,093,339.28 FOR PHASE 10, GROUP 12, PROJECT NO. 381012, OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S QUIETER HOME PROGRAM

WHEREAS, the San Diego County Regional Airport Authority ("Authority") has established a residential sound insulation program, known as the Quieter Home Program ("Program"), to reduce aircraft noise levels in the homes of residents living within the highest noise-impacted neighborhoods surrounding San Diego International Airport ("Airport"); and

WHEREAS, Phase 10, Group 12, of the Program will include installation of new acoustical windows, doors, and ventilation improvements to reduce aircraft-related noise levels inside the homes; and

WHEREAS, Phase 10, Group 12, of the Program provides sound attenuation to fourteen (14) single-family and multi-family units on twelve (12) historic residential properties located east and west of the San Diego International Airport; and

WHEREAS, the Authority issued a Bid Solicitation Package for Phase 10, Group 12, on January 8, 2021 and

WHEREAS, on February 8, 2021, the Authority opened sealed bids received in response to the Bid Solicitation Package; and

WHEREAS, the apparent low bidder S&L Specialty Construction, Inc. submitted a bid of \$1,093,339.28 and the Authority's staff has duly considered the bid and has determined that S&L Specialty Construction, Inc. is responsible and its bid is responsive in all material respects; and

WHEREAS, the San Diego County Regional Airport Authority Board ("Board") believes that it is in the best interest of the Authority and the public that it serves to award S&L Specialty Construction, Inc., the contract for Phase 10, Group 12, upon the terms and conditions set forth in the Bid Solicitation Package.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards a contract to S&L Specialty Construction, Inc., in the amount of \$1,093,339.28 for Phase 10, Group 12, Project No. 381012, of the San Diego County Regional Airport Authority's Quieter Home Program; and

BE IT FURTHER RESOLVED that the Authority's President/CEO or designee is hereby authorized to execute and deliver such contract to S&L Specialty Construction, Inc.; and

BE IT FURTHER RESOLVED that the Authority and its officers, employees, and agents are hereby authorized, empowered, and directed to do and perform all such acts as may be necessary or appropriate in order to effectuate fully the foregoing; and

BE IT FURTHER RESOLVED that the Board of the San Diego County Regional Airport Authority finds that this is a "project" as defined by the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §21065; and is a "development," as defined by the California Coastal Act, Cal. Pub. Res. Code §30106 and that the individual Quieter Home Program projects are categorically exempt from the CEQA under Cal. Code Regs. §15301(f), "Existing Facilities," and are exempt from coastal permit requirements under Cal. Pub. Res. Code §§30610(a) and 30610(b) and 14 Cal. Code Regs. §§13250 and 13253; and

BE IT FURTHER RESOLVED that the Board of the San Diego County Regional Airport Authority finds this is a project that involves approvals or actions by the Federal Aviation Administration ("FAA") and therefore, also requires review under the National Environmental Policy Act ("NEPA") for its potential environmental impacts. The NEPA review is underway for a Categorical Exclusion for the 2021-2025 Program. A Categorical Exclusion will be obtained before the program construction is initiated for these Quieter Home Program projects.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Revise Resolution Numbers 2021-0010, 2021-0011, 2021- 0012, 2021-0013, 2021-0014, and 2021-0015 to Correct the Entity Names for Contracts with Artists Commissioned to Design, Fabricate, Transport, Deliver and Consult During Installation of Integrated Artworks for the Airport Terminal and Roadways Project.

Recommendation: Adopt Resolution No. 2021-0031, revising Resolution Numbers 2021-0010, 2021-0011, 2021-0012, 2021-0013, 2021-0014 and 2021-0015 correcting the name of the Artist to whom the contracts are awarded.

Background/Justification:

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Hood Design Studio to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Gateway Public Art Project in an amount not-to-exceed \$2,100,000 (Resolution No. 2021-0010). It was brought to staff's attention that the contract should be awarded to Hood Design Studio, Inc. Staff recommends adopting Resolution No. 2021-0010-R to correct the entity name from Hood Design Studio to Hood Design Studio, Inc.

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Nova Jiang to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Vertical Ticketing Public Art Project in an amount not-to-exceed \$640,000 (Resolution No. 2021-0011). It was brought to staff's attention that the contract should be awarded to Nova Jiang Studio, LLC. Staff recommends adopting Resolution No. 2021-0011-R to correct the entity name from Nova Jiang to Nova Jiang Studio, LLC.

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Matthew Mazzotta to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Outdoor Plaza Public Art Project in an amount not-to-exceed \$520,000 (Resolution No. 2021-0012). It was brought to staff's attention that the contract should be awarded to Social Space, LLC. Staff recommends adopting Resolution No. 2021-0012-R to correct the entity name from Matthew Mazzotta to Social Space, LLC.

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Amy Ellingson to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways - Recomposure Area Public Art Project in an amount not-to-exceed \$376,000 (Resolution No. 2021-0013). It was brought to staff's attention that the contract should be awarded to Amy Ellingson Studio, LLC. Staff recommends adopting Resolution No. 2021-0013-R to correct the entity name from Amy Ellingson to Amy Ellingson Studio, LLC.

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Erwin Redl to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Food Hall Interactive Public Art Project in an amount not-to-exceed \$580,000 (Resolution No. 2021-0014). It was brought to staff’s attention that the contract should be awarded to Paramedia, LLC. Staff recommends adopting Resolution No. 2021-0014-R to correct the entity name from Erwin Redl to Paramedia, LLC.

At the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Donald Lipski to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Family Play Area Public Art Project in an amount not-to-exceed \$385,000 (Resolution No. 2021-0015). It was brought to staff’s attention that the contract should be awarded to The Lipski Group, Inc. Staff recommends adopting Resolution No. 2021-0015-R to correct the entity name from Donald Lipski to The Lipski Group, Inc.

The effective date of these revised Resolutions would be February 4, 2021.

Fiscal Impact:

There is no fiscal impact as a result of this action.

Authority Strategies/Focus Areas:

This item supports one or more of the following:

Strategies

- Community Strategy
- Customer Strategy
- Employee Strategy
- Financial Strategy
- Operations Strategy

Focus Areas

- Advance the Airport Development Plan
- Transform the Customer Journey
- Optimize Ongoing Business

Environmental Review:

A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (“CEQA”), as amended. 14 Cal. Code Regs. §15378. This Board action is not a “project” subject to CEQA. Cal. Pub. Res. Code §21065.

B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

CHRIS CHALUPSKY
SENIOR MANAGER, ARTS PROGRAM

RESOLUTION NO. 2021-0031

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, REVISING RESOLUTION NUMBERS 2021-0010, 2021-0011, 2021-0012, 2021-0013, 2021-0014 and 2021-0015 CORRECTING THE NAME OF THE ARTIST TO WHOM THE CONTRACTS ARE AWARDED

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval Public Art 2% of eligible construction costs from Eligible Projects to fund the Public Arts Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Hood Design Studio to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Gateway Public Art Project in an amount not-to-exceed \$2,100,000 (Resolution No. 2021-0010). It was brought to staff's attention that the contract should be awarded to Hood Design Studio, Inc. Staff recommends revising Resolution No. 2021-0010 to correct the entity name from Hood Design Studio to Hood Design Studio, Inc; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Nova Jiang to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Vertical Ticketing Public Art Project in an amount not-to-exceed \$640,000 (Resolution No. 2021-0011). It was brought to staff's attention that the contract should be awarded to Nova Jiang Studio, LLC. Staff recommends revising Resolution No. 2021-0011 to correct the entity name from Nova Jiang to Nova Jiang Studio, LLC; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Matthew Mazzotta to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Outdoor Plaza Public Art Project in an amount not-to-exceed \$520,000 (Resolution No. 2021-0012). It was brought to staff's attention that the contract should be awarded to Social Space, LLC. Staff recommends revising Resolution No. 2021-0012 to correct the entity name from Matthew Mazzotta to Social Space, LLC; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Amy Ellingson to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways - Recomposure Area Public Art Project in an amount not-to-exceed \$376,000 (Resolution No. 2021-0013). It was brought to staff's attention that the contract should be awarded to Amy Ellingson Studio, LLC. Staff recommends revising Resolution No. 2021-0013 to correct the entity name from Amy Ellingson to Amy Ellingson Studio, LLC; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Erwin Redl to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Food Hall Interactive Public Art Project in an amount not-to-exceed \$580,000 (Resolution No. 2021-0014). It was brought to staff's attention that the contract should be awarded to Paramedia, LLC. Staff recommends revising Resolution No. 2021-0014 to correct the entity name from Erwin Redl to Paramedia, LLC; and

WHEREAS, at the February 4, 2021 Authority Board Meeting, the Board awarded and authorized the President/CEO to execute a contract with Donald Lipski to design, fabricate, transport, deliver and consult during installation of an Integrated Artwork for the Airport Terminal and Roadways-Family Play Area Public Art Project in an amount not-to-exceed \$385,000 (Resolution No. 2021-0015). It was brought to staff's attention that the contract should be awarded to The Lipski Group, Inc. Staff recommends revising Resolution No. 2021-0015 to correct the entity name from Donald Lipski to The Lipski Group, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby revises Resolution Numbers 2021-0010, 2021-0011, 2021-0012, 2021-0013, 2021-0014 and 2021-0015 to reflect the correct name of the Artist to whom the contracts are awarded as set forth in the revised Resolutions attached hereto; and

BE IT FURTHER RESOLVED that the effective dates of the revised Resolutions shall be February 4, 2021; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0010-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH HOOD DESIGN STUDIO, INC. TO DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS GATEWAY PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$2,100,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval 2% of eligible construction costs from Eligible Projects to fund the Public Art Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the Artist Selection Panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed four finalist candidates; and

WHEREAS, the evaluation panel ('Panel') for the Airport Terminal and Roadways Gateway Public Art Opportunity recommended Hood Design Studio, Inc. be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2021, the Arts Advisory Committee voted in favor of the Panel's recommendation and voted to forward the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with Hood Design Studio,

Inc. to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$2,100,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$84,000 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0011-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH NOVA JIANG STUDIO, LLC TO DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS VERTICAL TICKETING PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$640,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval 2% of eligible construction costs from Eligible Projects to fund the Public Art Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the artist selection panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed three finalist candidates; and

WHEREAS, the evaluation panel ('Panel') for the Airport Terminal and Roadways Vertical Ticketing Public Art Opportunity recommended Nova Jiang Studio, LLC be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2021, the Arts Advisory Committee voted in favor of the Panel's recommendation and voted to forward the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with Nova Jiang Studio,

LLC to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$640,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$25,600 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0012-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH SOCIAL SPACE, LLC MATTHEW MAZZOTTA ~~TO~~ DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS OUTDOOR PLAZA PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$520,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval 2% of eligible construction costs from Eligible Projects to fund the Public Art Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the artist selection panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed four finalist candidates; and

WHEREAS, the evaluation panel ('Panel') for the Airport Terminal and Roadways Outdoor Plaza Public Art Opportunity recommended Social Space, LLC Matthew Mazzotta be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2021, the Arts Advisory Committee voted in favor of the Panel's recommendation and voted to forward the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with Social Space, LLC

Matthew Mazzetta be to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$520,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$10,400 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0013-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH AMY ELLINGSON STUDIO, LLC TO DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS RECOMPOSURE AREA PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$376,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval 2% of eligible construction costs from Eligible Projects to fund the Public Art Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, On November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the Artist Selection Panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed three finalist candidates; and

WHEREAS, the evaluation panel ('Panel') for the Airport Terminal and Roadways Recomposure Area Public Art Opportunity recommended Amy Ellingson Studio, LLC be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2021, the Arts Advisory Committee voted in favor of the Panel's recommendation and voted to forward the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with Amy Ellingson Studio,

LLC to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$376,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$15,200 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0014-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH PARAMEDIA, LLC ERWIN REDL TO DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS FOOD HALL INTERACTIVE PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$580,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval 2% of eligible construction costs from Eligible Projects to fund the Public Art Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the Artist Selection Panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed three finalist candidates; and

WHEREAS, the evaluation panel ('Panel') for the Airport Terminal and Roadways Food Hall Interactive Public Art Opportunity recommended Paramedia, LLC Erwin Redl be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2012, the Arts Advisory Committee voted in favor of and the Panel's recommendation and voted to forwarded the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with Paramedia, LLC Erwin

~~Redd~~ to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$580,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$23,000 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0015-R

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AWARDING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A CONTRACT WITH THE LIPSKI GROUP, INC. DONALD LIPSKI TO DESIGN, FABRICATE, TRANSPORT AND DELIVER, AND CONSULT DURING INSTALLATION OF AN ARTWORK FOR THE AIRPORT TERMINAL AND ROADWAYS FAMILY PLAY AREA PUBLIC ART OPPORTUNITY IN AN AMOUNT NOT TO EXCEED \$385,000

WHEREAS, the Airport Arts Master Plan calls for artwork to be site-specific and integrated into the Airport; and

WHEREAS, Authority Policy 8.50 allocates for Board approval Public Art 2% of eligible construction costs from Eligible Projects to fund the Public Arts Program which includes terminals, landside and other specified construction; and

WHEREAS, the Airport Arts Master Plan, approved by the Board on March 14, 2019, calls for the integration of public art projects and Arts Program infrastructure within the Airport Development Program (ADP); and

WHEREAS, on November 6, 2020, the Authority issued a Request for Qualifications for the Airport Terminal and Roadways Public Art; and

WHEREAS, ninety-nine responses were received and the Artist Selection Panel established by the Arts Advisory Committee comprised of art and design professionals, reviewed ninety-one responsive submissions and interviewed three finalist candidates; and

WHEREAS, the Artist Selection Panel ('Panel') for the Airport Terminal and Roadways Family Play Area Public Art Opportunity recommended The Lipski Group, Inc. Donald Lipski be awarded an agreement to design, fabricate, transport and deliver, and consult during the installation of public art; and

WHEREAS, on January 19, 2021, the Arts Advisory Committee voted in favor of the Panel's recommendation and voted to forward the recommendation to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby awards and authorizes the President/CEO to execute a contract with The Lipski Group, Inc.

~~Donald Lipski~~ to design, fabricate, transport and deliver, and consult during the installation of public art in an amount not-to-exceed \$385,000; and

BE IT FURTHER RESOLVED that funding for the preliminary phases of this contract, with expenditures totaling \$7,700 in Fiscal Year 2021 (FY21), is included within the ADP-related expenditures previously identified for FY21; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of February, 2021 by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

TONY R. RUSSELL

DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Approve and Authorize the President/CEO to execute a Fifth Amendment to the Agreement with Devaney Pate Morris & Cameron LLP

Recommendation:

Adopt Resolution No. 2021-0032, approving and authorizing the President/CEO to execute a Fifth Amendment to the Agreement with Devaney Pate Morris & Cameron LLP for professional legal services extending the term for one year.

Background/Justification:

On September 6, 2013, the Authority released a Request for Proposals (“RFP”) to obtain the legal services of one or more qualified firms to assist the General Counsel with general legal issues. Seven law firms submitted timely proposals in response to the RFP. An evaluation panel, comprised of four attorneys from the Office of the General Counsel, reviewed the proposals submitted and selected a short list of six firms for interviews. On February 4 and 5, 2014, the evaluation panel, with a representative from the Procurement Department in attendance to facilitate the interviews, reviewed the written proposals and documents submitted and interviewed representatives from the six firms. The lawyers from the law firm of Stutz Artiano Shinoff & Holtz APC (“Stutz”) that participated in the interview included Leslie Devaney, William Pate, Jeffrey Morris and Christina Cameron. The decision of the evaluation panel to recommend award to the Stutz firm was based upon the resumes and response to interview questions provided by these attorneys. At the conclusion of the interviews, the evaluation panel ranked the firms and concluded that the best and most responsive proposer was the Stutz firm and recommended an award for general legal services to Stutz Artiano Shinoff & Holtz APC.

On April 3, 2014, the Board awarded an Agreement for Legal Services to Stutz Artiano Shinoff & Holtz APC for a term of three years with two one-year options to renew at the discretion of the General Counsel and the President/CEO with a maximum compensation amount of \$300,000.

On May 1, 2014, the Authority entered into a Legal Services Agreement with the Stutz Firm which lists attorneys Devaney, Pate, Morris and Cameron as individuals approved to provide legal services. On April 1, 2016, Devaney, Pate, Morris and Cameron formed a new law firm. On April 21, 2016, the Board authorized the assignment of the Legal Services Agreement to Devaney Pate Morris & Cameron LLP (“Devaney Pate”) [Resolution No. 2016-0031]. Devaney Pate is handling the pending litigation entitled *Future DB International, Inc. v. San Diego County Regional Airport Authority, et al.*

[San Diego Superior Court Case No. 37-2018-00001531-CU-CR-CTL, hereinafter the "Litigation"]. On February 17, 2017, the President/CEO exercised the first option to extend the term. On July 11, 2018, the parties entered into a Second Amendment extending the term by one additional year and increasing the not-to-exceed amount of compensation by \$200,000 for a total not-to-exceed amount of \$500,000. [Resolution No. 2018-0045]. The parties entered into a Third Amendment increasing the term by one year resulting in a termination date of April 30, 2020 to allow Devaney Pate to continue to represent the Authority in the Litigation. The parties entered into a Fourth Amendment increasing the term by one year resulting in a termination date of April 30, 2021 to allow Devaney Pate to continue representing the Authority in the Litigation. [Resolution No. 2020-0030]. The General Counsel recommends that the legal services contract be amended to increase the term by one year to allow Devaney Pate to continue representing the Authority in the ongoing Litigation.

Fiscal Impact:

Adequate funding for the Devaney Pate Morris & Cameron LLP agreement is included in the adopted FY 2022 and conceptually approved FY 2023 Operating Expense Budgets within the Contractual Services line item.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0032

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE A FIFTH AMENDMENT TO THE AGREEMENT WITH DEVANEY PATE MORRIS AND CAMERON LLP FOR PROFESSIONAL LEGAL SERVICES EXTENDING THE TERM FOR ONE YEAR

WHEREAS, the Authority and Devaney Pate Morris & Cameron LLP (“Law Firm”) are parties to a Legal Services Agreement; and

WHEREAS, Law Firm is representing the Authority in the litigation entitled Future DB International, Inc. v. San Diego County Regional Airport Authority, et al. [San Diego Superior Court Case No. 37-2018-00001531-CU-CR-CTL]; and

WHEREAS, the General Counsel recommends that the Legal Services Agreement be amended to increase the term by one year to allow Law Firm to continue representing the Authority in this ongoing litigation; and

WHEREAS, due to the Law Firm’s knowledge of and involvement in the litigation, the General Counsel believes it is in the best interest of the Authority to continue to retain Law Firm to handle this matter.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to execute a fifth amendment to the Legal Services Agreement with Devaney Pate Morris & Cameron LLP extending the term by one year; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code § 21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code § 30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Approve and Authorize the President/CEO to Execute Two On-Call Architectural Consulting Services Agreements at San Diego International Airport

Recommendation:

Adopt Resolution No. 2021-0033, approving and authorizing the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with Corgan Associates for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Adopt Resolution No. 2021-0034, approving and authorizing the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with PGAL, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount of not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Background/Justification:

The San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through the Airport Development Program and the Capital Improvement Program. Authority staff (“staff”) utilizes architecture firms to provide on-call planning, design, and construction administration support for these programs. Tasks typically include the design of terminal and building facilities, conveyances, fire suppression systems, baggage screening systems, passenger boarding bridges, structural systems, security screening systems, renewable energy systems, electrical and plumbing systems, aircraft gates, lighting systems, access control systems, and wayfinding and signage.

In 2017, the Authority procured two on-call architectural consulting firms to provide architectural services. The firms were issued two contracts, each worth up to \$10,000,000. Staff, however, were authorized to spend up to \$10,000,000 in the aggregate between the two firms.

In the middle of 2020, staff determined that the \$10,000,000 authorized would likely be expended by the middle of 2021. At that time, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQs”) from qualified firms to provide On-Call Architectural Consulting Services for the Authority.

The RFQ evaluated the following key criteria:

1. Project Team Qualifications and Organization;
2. Project Management;
3. Key Personnel;
4. Work Plan and Approach/Methodology; and
5. Inclusionary Approach and Outreach.

The RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms. In addition, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract.

The Authority also established an Evaluation Panel ("Panel") for the RFQ. The Panel included key representatives from the Revenue Generation & Partnership Development, Airside & Terminal Operations, and Airport Design & Construction departments.

The RFQ was issued on November 20, 2020 and the Authority received six SOQs from prospective consulting firms ("Respondents") on December 29, 2020. The Panel conducted a thorough review of the SOQs and invited the four (4) highest-ranked Respondents, listed in alphabetical order below, to interview.

1. Corgan Associates ("Corgan")
2. Fentress Architects ("Fentress")
3. PGAL, Inc. ("PGAL")
4. Stantec Architecture, Inc. ("Stantec")

The Respondents were interviewed on February 22, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ. The Panel then ranked and scored the short-listed Respondents. The Panel's final ranking and scoring are presented below:

Rankings	Panelist 1	Panelist 2	Panelist 3	Panelist 4	Panelist 5	Total	Rank
Corgan	1	1	1	1	2	6	1
Fentress	4	4	4	4	4	20	4
PGAL	2	2	2	2	1	9	2
Stantec	3	3	3	3	3	15	3

Combined Scores	Project Team Qualifications & Organization	Project Management Qualifications	Key Personnel Qualifications	Work Plan & Approach/ Methodology	Inclusionary Approach & Outreach	Total
Corgan	559	1320	1058	1100	100	4137
Fentress	453	810	736	725	100	2824
PGAL	519	1260	966	1075	100	3920
Stantec	532	960	874	875	100	3341

The top ranked firms were Corgan and PGAL.

Corgan has over 60 years of experience in aviation design across the nation and around the world. Their experience ranges from the design of new terminals to expansion and renovation projects, cargo facilities, administrative buildings, and other airport facilities. Their project manager and deputy project manager have over 60 years of aviation experience combined and their subconsultant team brings a depth of aviation knowledge, experience delivering on-call services contracts, and proximity to San Diego.

PGAL, Inc., is a nationally ranked aviation architectural firm that has worked at 20 different airports over the past decade. Through their San Diego office, they have been successfully delivering SDIA projects for the past four years under the existing on-call agreement with the Authority. PGAL's subconsultant team has a national level of aviation experience and a successful track record at SDIA and in working with PGAL. The PGAL team has worked on over 30 on-call contracts with a total construction value exceeding \$12.9 billion.

Next Steps:

Staff recommends that the Board authorize the President/CEO to negotiate and execute agreements with the two top-ranked firms, Corgan Associates and PGAL, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 for each agreement. The total aggregate spending authorization between the two agreements will be capped at a maximum of \$10,000,000.

As part of the negotiations with each of the top ranked firms, staff will negotiate appropriate billing rates for the firms and their proposed subconsultants. Additional subconsultants may be added during the term of the agreement as additional consulting needs are identified.

Fiscal Impact:

Funds for the On-Call Architectural Consulting Services Agreement are included within the approved FY2021-FY2025 Capital Program Budget and the adopted FY2021 Operating Budget, on an as-needed basis. Capital sources of funding will include Passenger Facility Charges, Airport Revenue Bonds, Airport Improvement Program Grants, and Airport Cash, depending on the individual project.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Focus Areas

- Advance the Airport Development Plan
 Transform the Customer Journey
 Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

The Authority has the following inclusionary programs/policy: a Disadvantaged Business Enterprise (DBE) Program, an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program and Policy 5.12. These programs/policies are intended to promote the inclusion of small, local, service disabled/ veteran owned small businesses, historically underrepresented businesses and other business enterprises, on all contracts. Only one of the programs/policies named above can be used in any single contracting opportunity.

This contract utilizes federal funds; therefore, DBE participation will go towards the Authority's overall DBE goal. No preferences were applied to the award of the On-Call Architectural Consulting Services Agreements with Corgan Associates and PGAL, Inc. However, both Corgan Associates and PGAL, Inc submitted an Inclusionary Outreach Plan and have committed to cultivating partnerships and maximizing opportunities for small, local, and veteran owned small businesses.

Prepared by:

BOB BOLTON
DIRECTOR: AIRPORT DESIGN & CONSTRUCTION

RESOLUTION NO. 2021-0033

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE AN ON-CALL ARCHITECTURAL CONSULTING SERVICES AGREEMENT WITH CORGAN ASSOCIATES FOR A TERM OF THREE YEARS, WITH THE OPTION FOR TWO ONE-YEAR EXTENSIONS AT THE SOLE DISCRETION OF THE PRESIDENT/CEO, IN AN AMOUNT NOT-TO-EXCEED \$10,000,000, IN SUPPORT OF THE AIRPORT DEVELOPMENT AND CAPITAL IMPROVEMENT PROGRAMS AT SAN DIEGO INTERNATIONAL AIRPORT

WHEREAS, the San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through the Airport Development and Capital Improvement Programs; and

WHEREAS, Authority staff (“Staff”) utilizes architecture firms to provide on-call planning, design, and construction administration support for these programs; and

WHEREAS, in 2017, the Authority procured two on-call architectural consulting firms to provide architectural services; and

WHEREAS, the firms were issued two contracts, each worth up to \$10,000,000; and

WHEREAS, Staff, however, were authorized to spend up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, in the middle of 2020, staff determined that the \$10,000,000 authorized would likely be expended by the middle of 2021; and

WHEREAS, at that time, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQs”) from qualified firms to provide On-Call Architectural Consulting Services for the Authority; and

WHEREAS, the RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract; and

WHEREAS, the RFQ evaluated the Consultant's project team qualifications and organization, project management, key personnel, work plan and approach/methodology, and inclusionary approach and outreach; and

WHEREAS, the Authority established an RFQ Evaluation Panel ("Panel") that included key representatives from the Revenue Generation & Partnership Development, Airside & Terminal Operations, and Airport Design & Construction departments; and

WHEREAS, the RFQ was issued on November 20, 2020 and the Authority received six SOQs from prospective consulting firms ("Respondents") on December 29, 2020; and

WHEREAS, the Panel conducted a thorough review of the SOQs and invited the four (4) highest-ranked Respondents; and

WHEREAS, the Respondents were interviewed on February 22, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ; and

WHEREAS, the Panel then ranked and scored the short-listed Respondents; and

WHEREAS, the Panel determined the two most qualified firms to perform the requested architectural services were Corgan Associates and PGAL, Inc.; and

WHEREAS, the Panel recommends that the Authority proceed with negotiating and executing agreements with both Corgan Associates and PGAL, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with Corgan Associates, for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport; and

BE IT FURTHER RESOLVED that the total aggregate spending between the agreements with Corgan Associates and PGAL, Inc., will be capped at a maximum of \$10,000,000; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0034

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE AN ON-CALL ARCHITECTURAL CONSULTING SERVICES AGREEMENT WITH PGAL, INC. FOR A TERM OF THREE YEARS, WITH THE OPTION FOR TWO ONE-YEAR EXTENSIONS AT THE SOLE DISCRETION OF THE PRESIDENT/CEO, IN AN AMOUNT NOT-TO-EXCEED \$10,000,000, IN SUPPORT OF THE AIRPORT DEVELOPMENT AND CAPITAL IMPROVEMENT PROGRAMS AT SAN DIEGO INTERNATIONAL AIRPORT

WHEREAS, the San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through the Airport Development and Capital Improvement Programs; and

WHEREAS, Authority staff (“Staff”) utilizes architecture firms to provide on-call planning, design, and construction administration support for these programs; and

WHEREAS, in 2017, the Authority procured two on-call architectural consulting firms to provide architectural services; and

WHEREAS, the firms were issued two contracts, each worth up to \$10,000,000; and

WHEREAS, Staff, were authorized to spend up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, in the middle of 2020, staff determined that the \$10,000,000 authorized would likely be expended by the middle of 2021; and

WHEREAS, at that time, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQs”) from qualified firms to provide On-Call Architectural Consulting Services for the Authority; and

WHEREAS, the RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract; and

WHEREAS, the RFQ evaluated the Consultant's project team qualifications and organization, project management, key personnel, work plan and approach/methodology, and inclusionary approach and outreach; and

WHEREAS, the Authority established an RFQ Evaluation Panel ("Panel") that included key representatives from the Revenue Generation & Partnership Development, Airside & Terminal Operations, and Airport Design & Construction departments; and

WHEREAS, the RFQ was issued on November 20, 2020 and the Authority received six SOQs from prospective consulting firms ("Respondents") on December 29, 2020; and

WHEREAS, the Panel conducted a thorough review of the SOQs and invited the four (4) highest-ranked Respondents; and

WHEREAS, the Respondents were interviewed on February 22, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ; and

WHEREAS, the Panel then ranked and scored the short-listed Respondents; and

WHEREAS, the Panel determined the two most qualified firms to perform the requested architectural services were Corgan Associates and PGAL, Inc.; and

WHEREAS, the Panel recommends that the Authority proceed with negotiating and executing agreements with both Corgan Associates and PGAL, Inc.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to negotiate and execute an On-Call Architectural Consulting Services Agreement with PGAL, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport; and

BE IT FURTHER RESOLVED that the total aggregate spending between the agreements with PGAL, Inc., and Corgan Associates will be capped at a maximum of \$10,000,000; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Approve and Authorize the President/CEO to Execute two On-Call Engineering Consulting Services Agreements at San Diego International Airport

Recommendation:

Adopt Resolution No. 2021-0035, approving and authorizing the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with C&S Engineers, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Adopt Resolution No. 2021-0036, approving and authorizing the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with HNTB Corporation, for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 in support of the Airport Development and Capital Improvement Programs at San Diego International Airport.

Background/Justification:

The San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through its Airport Development Program (“ADP”) and Capital Improvement Program. Authority staff (“staff”) utilizes on-call engineering consulting services to provide planning, design, and construction administration support for these programs. Tasks typically include the design of airside aprons, taxiways, runway areas, landside roads, parking lots, storm water systems, security and blast walls, and utilities.

In the middle of 2020, staff determined that the existing on-call engineering consulting services agreements, procured in 2017, did not provide all of the appropriate engineering disciplines required for upcoming projects and that new agreements were required. At that time, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQ”) from qualified firms to provide On-Call Engineering Consulting Services for the Authority.

The RFQ evaluated the following key criteria:

1. Project Team Qualifications and Organization;
2. Project Management;
3. Key Personnel;
4. Work Plan and Approach/Methodology; and
5. Inclusionary Approach and Outreach.

The RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms. In addition, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract.

The Authority also established an Evaluation Panel (“Panel”) for the RFQ. The Panel included key representatives from the Authority’s Airport Design & Construction and Facilities Management departments.

The RFQ was issued on January 15, 2021 and the Authority received three SOQs from prospective consulting firms (“Respondents”) on February 12, 2021. The Panel conducted a thorough review of the SOQs and invited all three of the Respondents, listed in alphabetical order below, to interview.

1. C&S Engineers, Inc. (“C&S”)
2. HNTB Corporation (“HNTB”)
3. Stantec (“Stantec”)

The Respondents were interviewed on March 2, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ. The Panel then ranked and scored the short-listed Respondents. The Panel’s final ranking and scoring are presented below:

Rankings	Panelist 1	Panelist 2	Panelist 3	Panelist 4	Panelist 5	Total	Rank
C&S	1	1	2	1	2	7	1
HNTB	2	2	1	2	3	10	2
Stantec	3	3	3	3	1	13	3

Combined Scores	Project Team Quals & Org.	Project Management	Key Personnel	Work Plan & Approach/ Method.	Inclusionary Approach/ Outreach	Total
C&S	1075	1075	860	1075	200	4285
HNTB	1100	1025	900	1075	175	4275
Stantec	975	975	780	950	135	3815

The top ranked firms were C&S and HNTB.

The C&S team has worked on projects at SDIA for 23 years and combines local staff with national subject matter experts to deliver on each project. C&S recently provided design and construction administration services for the Hydrant Fueling Infrastructure project, completed design documents on the West Refueler Loading Facility and Solid and Liquid Waste Disposal Facility projects, provided construction support, record drawings, and project closeout on the Airport Support Facilities Project, and is on the design team completing the ADP Airfield Improvements design documents.

HNTB is comprised of over 5,000 staff with significant aviation project experience within California including projects at SDIA, Los Angeles International (LAX), San Francisco International (SFO), Long Beach (LGB), Van Nuys (VNY), Oakland International (OAK), San Jose International (SJC), Brown Field (SDM) and McCarran International (LAS) Airports. The majority of HNTB's key delivery and project management staff is based in downtown San Diego and is supported by a national team of aviation design experts. The HNTB team has also coordinated with, and designed projects for, many of the public agencies in the region, including the City of San Diego, the San Diego Metropolitan Transit System, the San Diego Association of Governments, the North County Transit District, and the California Department of Transportation.

Next Steps:

Staff recommends that the Board authorize the President/CEO to negotiate and execute agreements with the two top-ranked firms, C&S Engineers, Inc. and HNTB Corporation, for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000 for each agreement. The total aggregate spending authorization between the two agreements will be capped at a maximum of \$10,000,000.

As part of the negotiations with each of the top ranked firms, staff will negotiate appropriate billing rates for the firms and their proposed subconsultants. Additional subconsultants may be added during the term of the agreement as additional consulting needs are identified.

Fiscal Impact:

Funds for the On-Call Engineering Consulting Services Agreement are included within the approved FY2021-FY2025 Capital Program Budget and the adopted FY2021 Operating Budget, on an as-needed basis. Capital sources of funding will include Passenger Facility Charges, Airport Revenue Bonds, Airport Improvement Program Grants, and Airport Cash, depending on the individual project.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

The Authority has the following inclusionary programs/policy: a Disadvantaged Business Enterprise (DBE) Program, an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program and Policy 5.12. These programs/policies are intended to promote the inclusion of small, local, service disabled/ veteran owned small businesses, historically underrepresented businesses and other business enterprises, on all contracts. Only one of the programs/policies named above can be used in any single contracting opportunity.

This contract utilizes federal funds; therefore, DBE participation will go towards the Authority's overall DBE goal. No preferences were applied to the award of the On-Call Engineering Consulting Services Agreements with C&S Engineers, Inc. and HNTB Corporation. However, both C&S Engineers, Inc., and HNTB Corporation submitted an Inclusionary Outreach Plan that delineates on their commitment and methods to maximize opportunities for small, disadvantaged, local, and veteran owned small businesses.

Prepared by:

BOB BOLTON
DIRECTOR: AIRPORT DESIGN & CONSTRUCTION

RESOLUTION NO. 2021-0035

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE AN ON-CALL ENGINEERING CONSULTING SERVICES AGREEMENT WITH C&S ENGINEERS, INC., FOR A TERM OF THREE YEARS, WITH THE OPTION FOR TWO ONE-YEAR EXTENSIONS AT THE SOLE DISCRETION OF THE PRESIDENT/CEO, IN AN AMOUNT NOT-TO-EXCEED \$10,000,000, IN SUPPORT OF THE AIRPORT DEVELOPMENT AND CAPITAL IMPROVEMENT PROGRAMS AT SAN DIEGO INTERNATIONAL AIRPORT

WHEREAS, the San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through the Airport Development and Capital Improvement Programs; and

WHEREAS, Authority staff (“Staff”) utilizes on-call engineering consulting firms to provide planning, design, and construction administration support for these programs; and

WHEREAS, in the middle of 2020, staff determined that the existing on-call engineering consulting services agreements, procured in 2017, did not provide all of the appropriate engineering disciplines required for upcoming projects and that new agreements were required; and

WHEREAS, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQ”) from qualified firms to provide On-Call Engineering Consulting Services for the Authority; and

WHEREAS, the RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract; and

WHEREAS, the RFQ evaluated the Consultant's project team qualifications and organization, project management, key personnel, work plan and approach/methodology, and inclusionary approach and outreach; and

WHEREAS, the Authority established an RFQ Evaluation Panel ("Panel") that included key representatives from the Authority's Airport Design & Construction and Facilities Management departments; and

WHEREAS, the RFQ was issued on January 15, 2021 and the Authority received three SOQs from prospective consulting firms ("Respondents") on February 12, 2020; and

WHEREAS, the Panel conducted a thorough review of the SOQs and invited all three (3) of the Respondents to interview; and

WHEREAS, the Respondents were interviewed on March 2, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ; and

WHEREAS, the Panel then ranked and scored the Respondents; and

WHEREAS, the Panel determined the two most qualified firms to perform the requested engineering services were C&S Engineers, Inc., and HNTB Corporation; and

WHEREAS, the Panel recommends that the Authority proceed with negotiating and executing agreements with both C&S Engineers, Inc., and HNTB Corporation.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with C&S Engineers, Inc., for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport; and

BE IT FURTHER RESOLVED that the total aggregate spending between the agreements with C&S Engineers, Inc., and HNTB Corporation will be capped at a maximum of \$10,000,000; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0036

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE AN ON-CALL ENGINEERING CONSULTING SERVICES AGREEMENT WITH HNTB CORPORATION FOR A TERM OF THREE YEARS, WITH THE OPTION FOR TWO ONE-YEAR EXTENSIONS AT THE SOLE DISCRETION OF THE PRESIDENT/CEO, IN AN AMOUNT NOT-TO-EXCEED \$10,000,000, IN SUPPORT OF THE AIRPORT DEVELOPMENT AND CAPITAL IMPROVEMENT PROGRAMS AT SAN DIEGO INTERNATIONAL AIRPORT

WHEREAS, the San Diego County Regional Airport Authority (“Authority”) maintains and improves facilities and infrastructure at San Diego International Airport (“SDIA”) through the Airport Development and Capital Improvement Programs; and

WHEREAS, Authority staff (“Staff”) utilizes on-call engineering consulting firms to provide planning, design, and construction administration support for these programs; and

WHEREAS, in the middle of 2020, staff determined that the existing on-call engineering consulting services agreements, procured in 2017, did not provide all of the appropriate engineering disciplines required for upcoming projects and that new agreements were required; and

WHEREAS, staff proceeded with the preparation of a Request for Qualifications (“RFQ”) to obtain Statements of Qualifications (“SOQ”) from qualified firms to provide On-Call Engineering Consulting Services for the Authority; and

WHEREAS, the RFQ anticipated that two firms would be contracted for a duration of three years with two one-year extensions with each contract valued at an amount not to exceed \$10,000,000 and a total authorization of up to \$10,000,000 in the aggregate between the two firms; and

WHEREAS, the RFQ anticipated that detailed scopes of services will be negotiated with the consultant and task authorizations will be issued to the consultants throughout the duration of the contract; and

WHEREAS, the RFQ evaluated the Consultant's project team qualifications and organization, project management, key personnel, work plan and approach/methodology, and inclusionary approach and outreach; and

WHEREAS, the Authority established an RFQ Evaluation Panel ("Panel") that included key representatives from the Authority's Airport Design & Construction and Facilities Management departments; and

WHEREAS, the RFQ was issued on January 15, 2021 and the Authority received three SOQs from prospective consulting firms ("Respondents") on February 12, 2020; and

WHEREAS, the Panel conducted a thorough review of the SOQs and invited all three (3) of the Respondents to interview; and

WHEREAS, the Respondents were interviewed on March 2, 2021 and were asked to provide responses to a specific list of questions which targeted the evaluation criteria presented in the RFQ; and

WHEREAS, the Panel then ranked and scored the Respondents; and

WHEREAS, the Panel determined the two most qualified firms to perform the requested engineering services were C&S Engineers, Inc., and HNTB Corporation; and

WHEREAS, the Panel recommends that the Authority proceed with negotiating and executing agreements with both C&S Engineers, Inc., and HNTB Corporation.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to negotiate and execute an On-Call Engineering Consulting Services Agreement with HNTB Corporation, for a term of three years, with the option for two one-year extensions at the sole discretion of the President/CEO, in an amount not-to-exceed \$10,000,000, in support of the Airport Development and Capital Improvement Programs at San Diego International Airport; and

BE IT FURTHER RESOLVED that the total aggregate spending between the agreements with C&S Engineers, Inc., and HNTB Corporation will be capped at a maximum of \$10,000,000; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “project” as defined by the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21065); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a “development” as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Adopt an Addendum to the Environmental Impact Report for the Airport Development Program for San Diego International Airport

Recommendation:

Adopt Resolution No. 2021-0037, adopting an Addendum to the Environmental Impact Report for the Airport Development Program for San Diego International Airport.

Background/Justification:

In January 2020, the Airport Authority Board certified the Final Environmental Impact Report (EIR) for the Airport Development Plan (now referred to as the "Airport Development Program"), which identified the facilities needed at the San Diego International Airport to meet the San Diego region's air travel demand through 2035 (Resolution #2020-0001). The EIR identified the potential direct and indirect environmental effects associated with implementing the Airport Development Program, as required under the California Environmental Quality Act (CEQA).

The EIR assumed that temporary construction offices, meeting spaces, and worker parking would occur solely on Airport property. Since the EIR's certification, the Airport Authority has identified the need for expanded temporary construction facilities, which will occur off-site on Harbor Island. Specifically, temporary construction offices, comprising approximately 75,000 square feet total in two single-story modular buildings, would be located in proximity to the construction site on a parcel located at the intersection of North Harbor Drive and Liberator Way, which is on State tidelands managed by the Port of San Diego. No grading or other ground disturbance would occur on the site, which is currently vacant, and the existing asphalt would remain.

Vehicle parking for construction staff would be located at existing paved surface parking lots on Harbor Island, located at the intersection of Harbor Island Drive directly east of the entrance to the Sheraton Hotel and near the intersection of Liberator Way and North Harbor Drive, which are also on State tidelands managed by the Port of San Diego. The vehicle parking would occupy up to approximately 1,500 parked vehicles total at three designated parking areas and no physical changes would be made to the site. Traffic demand management strategies, such as shuttle bus service to transport construction workers to the temporary construction offices and the on-airport construction site, would be implemented to reduce construction traffic impacts, set forth in accordance with Mitigation Measure MM-TR-Con-1 in the Final EIR.

Per State CEQA Guidelines, an Addendum to the Airport Development Program EIR has been prepared to determine if there are any substantial changes in circumstances or new information indicating that there would be new significant impacts or a substantial increase in the severity of any previously-disclosed significant impacts, which would require major revisions to the previously-certified Final EIR. As such, it has been

Page 2 of 2

determined that implementation of the proposed temporary construction offices and vehicle parking is adequately addressed by the Final EIR, and none of the conditions warranting preparation of a supplemental or subsequent EIR exist.

The Addendum to the Airport Development Program Final EIR was posted on the San Diego International Airport's website on March 22, 2021 and is accessible at www.san.org/plan.

Fiscal Impact:

There is no fiscal impact from the Airport Authority Board's adoption of the Addendum for the Airport Development Program EIR.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: This Board action involves adopting an Addendum for the Final Environmental Impact Report for the Airport Development Program (State Clearinghouse #2017011053), in accordance with the California Environmental Quality Act ("CEQA") Cal. Pub. Res. Code §15164.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

BRENDAN REED
DIRECTOR, PLANNING & ENVIRONMENTAL AFFAIRS

RESOLUTION NO. 2021-0037

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY, ADOPTING AN ADDENDUM TO THE
ENVIRONMENTAL IMPACT REPORT FOR THE
AIRPORT DEVELOPMENT PROGRAM FOR SAN
DIEGO INTERNATIONAL AIRPORT

WHEREAS, the Airport Authority Board certified the Final Environmental Impact Report (EIR) for the Airport Development Plan (now referred to as the “Airport Development Program”) in January 2020, which identified the facilities needed at the San Diego International Airport to meet the San Diego region’s air travel demand through 2035 (Resolution #2020-0001); and

WHEREAS, the EIR identified the potential direct and indirect environmental effects associated with implementing the Airport Development Program, as required under the California Environmental Quality Act (CEQA); and

WHEREAS, since the EIR’s certification, the Airport Authority has identified the need for expanded temporary construction facilities, which will occur off-site on Harbor Island; and

WHEREAS, the proposed facilities will include temporary construction offices at the intersection of North Harbor Drive and Liberator Way, comprising approximately 75,000 square feet total in two single-story modular buildings, and vehicle parking at the intersection of Harbor Island Drive directly east of the entrance to the Sheraton Hotel and near the intersection of Liberator Way and North Harbor Drive, comprising up to approximately 1,500 parked vehicles total at three designated parking areas; and

WHEREAS, the above-mentioned parcels are on State tidelands managed by the Port of San Diego and are currently vacant and paved; and

WHEREAS, an Addendum to the Airport Development Program EIR has been prepared to determine if there are any substantial changes in circumstances or new information indicating that there would be new significant impacts or a substantial increase in the severity of any previously-disclosed significant impacts, which would require major revisions to the previously-certified Final EIR; and

WHEREAS, it has been determined that implementation of the proposed temporary construction offices and vehicle parking is adequately addressed by the Final EIR, and none of the conditions warranting preparation of a supplemental or subsequent EIR exist.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts an Addendum to the Environmental Impact Report for the Airport Development Program for San Diego International Airport; and

BE IT FURTHER RESOLVED that the Board finds that this action is in accordance with the California Environmental Quality Act ("CEQA") Cal. Pub. Res. Code §15164; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106); and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Authorize The President/CEO To Enter Into Tideland Use Permits With The San Diego Unified Port District For Parcels Located On Harbor Island To Accommodate Terminal Development Efforts

Recommendation:

Adopt Resolution 2021-0038, authorizing the President/CEO to enter into a Tideland Use and Occupancy Permit with the San Diego Unified Port District for a term of 5 years with 2 separate one-year options to renew for approximately 135,521 square feet of land area located at 3032 North Harbor Drive in the City of San Diego, California.

Adopt Resolution 2021-0039, authorizing the President/CEO to enter into a Tideland Use and Occupancy Permit with the San Diego Unified Port District for a term of 5 years for approximately 60,958 square feet of land area on the east side of Harbor Island Drive near North Harbor Drive and 261,130 square feet of land area located north-easterly of the neck of Harbor Island Drive and adjacent easterly to 1380 Harbor Island Drive in the City of San Diego, California.

Adopt Resolution 2021-0040, authorizing the President/CEO to enter into Tideland Use and Occupancy Permit(s) with the San Diego Unified Port District and/or subleases with Hertz Corporation and/or Avis Rent A Car for approximately 160,000 square feet of land area located on Harbor Island for a term to expire no later than the expiration of the neighboring Authority leasehold interest at 3032 North Harbor Drive in the City of San Diego, California.

Background/Justification:

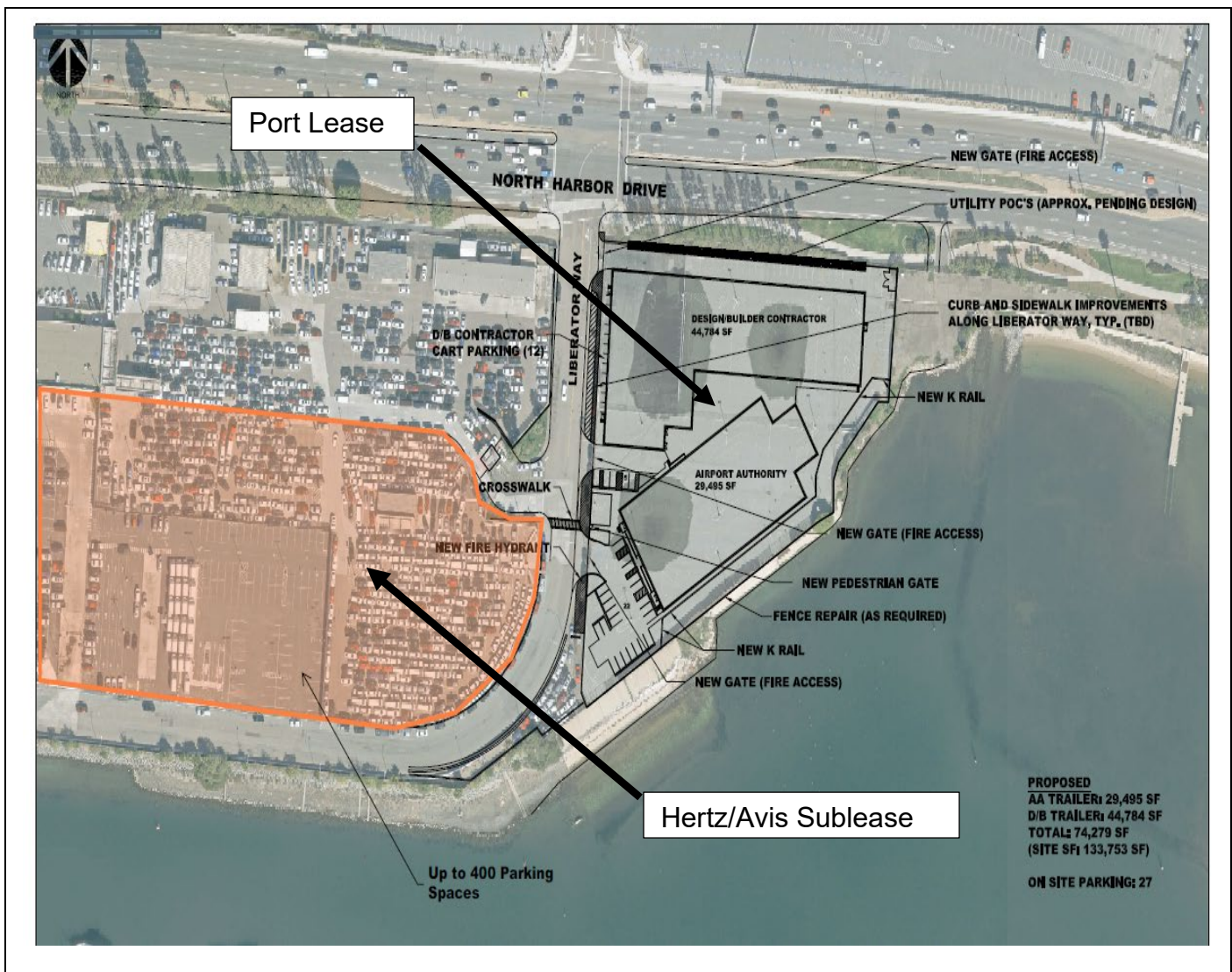
The Airport Development Plan is a very large undertaking and requires significant areas to accommodate the program related oversite and management facilities as well as the many contractors and workers whose efforts will support the project. The general programmatic requirements for the Temporary Construction Offices and Vehicle Parking for the Airport Development Plan-Package 1 Terminal and Roadways are as follows:

Temporary Construction Offices - 75,000 square feet
Vehicle Parking - 1,500 parking spaces

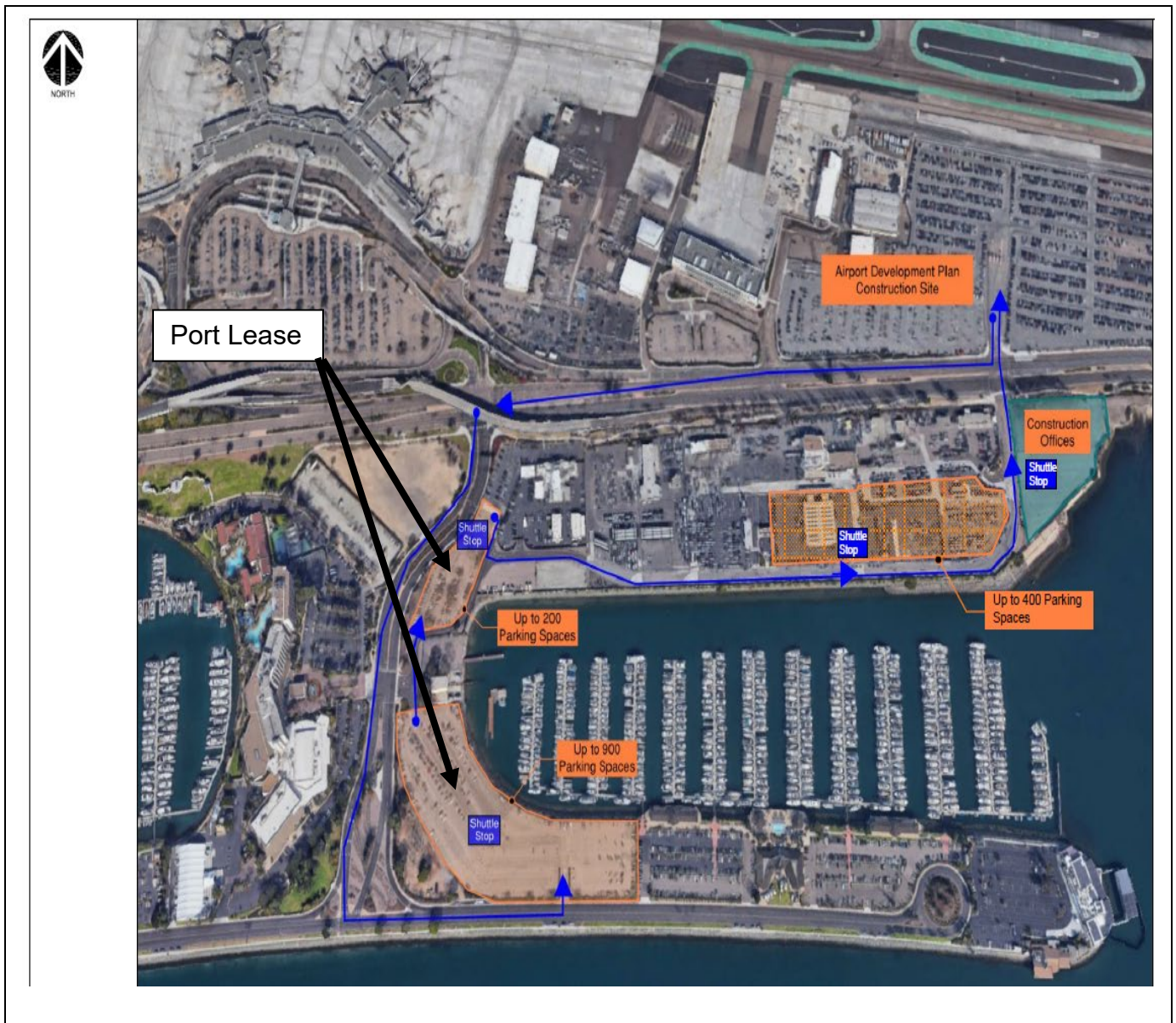
Working with the Turner-Flatiron Joint Venture in collaboration with Authority Staff and consultants, an alternative location for Temporary Construction Offices and Vehicle Parking was identified.

The optimal off-airport site would be located as close to the job site as possible to reduce transportation expenses and time required to travel to and from the job site. Staff reached out to our partners at the San Diego Unified Port District (“Port”), Hertz Corporation and Avis Rental Car Rental to determine their interest in creating space for the Airport Authority’s needs on the adjacent Harbor Island property. Through collaboration, a viable solution has been identified that allows the Airport Authority to lease areas to accommodate the temporary construction office and parking needs. The below diagrams reflect the optimal solution developed.

Temporary Construction Offices and Related Vehicle Parking:



Contractor Vehicle Parking:



To advance this effort, staff is before the Board today seeking approval from the Board to authorize the President/CEO to enter into and execute Temporary Use and Occupancy Permits (TUOPs) with the San Diego Unified Port District ("Port") and subleases with Hertz/ for use of the described properties on Harbor Island.

The key business terms of each of the agreements are as follows:

	Temporary Construction Office Site	Construction Office Parking*	Contractor Parking Site
Term	5 years	Subleases with Hertz/Avis anticipated start date of June 1, 2021 with a termination date of May 31, 2023. TUOP with Port begins June 1, 2023 and runs conterminous with the Temporary Construction Office Site TUOP	5 years
Option to Extend	2 one-year options to extend at Authority's discretion	Coterminous with Temporary Construction Office Site	None
Premises	135,521 sq.ft.	160,000 sq.ft.* Parking for up to 400 vehicles	322,088 sq.ft.
Rent	\$33,880/month (\$406,563/year) Fixed Rent Through Term	\$42,667/month** (\$512,000/year) Fixed Rent Through Term	\$80,522/month (\$966,264/year) Fixed Rent Through Term
Early Termination Rights	Port and Authority each have the right to terminate upon six (6) months' notice	Subleases with Hertz and Avis are subordinate to the leases between Hertz and the Port and Avis and Port which allows Port to terminate upon 18 months notice. TUOP between Port and Authority would likely include a right to terminate upon 30 days' notice	Port and Authority each have the right to terminate upon thirty (30) days' notice

Maintenance Expenses	Airport Authority is responsible for all operating and maintenance expenses associated with the property.	Airport Authority is responsible for all operating and maintenance expenses associated with the property.	Airport Authority is responsible for all operating and maintenance expenses associated with the property.
Hold Harmless	Except for claims arising from the sole negligence or sole willful misconduct of the Port, the Authority shall defend, indemnify and hold harmless the Port for all claims arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with the TUOP; (b) the possession, use, occupancy or development of the premises by the Authority or its representatives or agents; (c) the approval of the TUOP; (d) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to CEQA and NEPA for this TUOP	Subleases with Hertz and Avis: no indemnity requirement. TUOP with Port: Except for claims arising from the sole negligence or sole willful misconduct of the Port, the Authority shall defend, indemnify and hold harmless the Port for all claims arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with the TUOP; (b) the possession, use, occupancy or development of the premises by the Authority or its representatives or agents; (c) the approval of the TUOP; (d) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to CEQA and NEPA for this TUOP	Except for claims arising from the sole negligence or sole willful misconduct of the Port, the Authority shall defend, indemnify and hold harmless the Port for all claims arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with the TUOP; (b) the possession, use, occupancy or development of the premises by the Authority or its representatives or agents; (c) the approval of the TUOP; (d) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to CEQA and NEPA for this TUOP

<p>Hazardous Materials</p>	<p>Authority is liable and responsible for contaminants arising out of the occupancy or use of the Premises by the Authority. Such liability and responsibility shall include but not be limited to: (1) remediation and/or removal from the premises of any such contaminants; (2) remediation and/or removal from any area outside the Premises any such contaminants generated as part of the operations on the Premises, including but not limited to surface and groundwater; (3) fines imposed by any governmental agency.</p>	<p>Subleases with Avis and Hertz: Authority shall, at its own cost and expense, maintain the subleased premises in good repair and shall have the responsibility for performing all Remedial Actions which are necessary for addressing any Releases of Hazardous Materials on the subleased premises occurring from and after the commencement date. All Remedial Actions conducted by the Authority shall be performed in accordance with the requirements of applicable environmental laws.</p>	<p>Authority is liable and responsible for contaminants arising out of the occupancy or use of the Premises by the Authority. Such liability and responsibility shall include but not be limited to: (1) remediation and/or removal from the premises of any such contaminants; (2) remediation and/or removal from any area outside the Premises any such contaminants generated as part of the operations on the Premises, including but not limited to surface and groundwater; (3) fines imposed by any governmental agency.</p>
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		<p>TUOP with the Port: Authority is liable and responsible for contaminants arising out of the occupancy or use of the Premises by the Authority. Such liability and responsibility shall include but not be limited to: (1) remediation and/or removal from the premises of any such contaminants; (2) remediation and/or removal from any area outside the Premises of any such contaminants generated as part of the operations on the Premises, including but not limited to surface and groundwater; (3) fines imposed by any governmental agency.</p>	
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Notes: *Detailed site plan and dimensions of the sublease site from Hertz/Avis still under review and may change; however, site use will not exceed 400 parking stalls. ** Specific Rental amount will be determined to match the specific finalized site premises size and rental rate.

Fiscal Impact:

The rental payments under the leases are budgeted as follows (presumes a 6/1/21 commencement date):

	Construction Office Site	Construction Office Parking	Contractor Parking Site
FY21	\$ 33,880	\$ 42,667	\$ 80,522
FY22	\$ 406,563	\$ 512,000	\$ 966,264
FY23	\$ 406,563	\$ 512,000	\$ 966,264
FY24	\$ 406,563	\$ 512,000	\$ 966,264
FY25	\$ 406,563	\$ 512,000	\$ 966,264
FY26*	\$ 406,563	\$ 512,000	\$ 161,044
FY27*	\$ 406,563	\$ 512,000	
FY28*	\$ 372,683	\$ 469,333	

Note: *presumes the Authority exercises its option to extend beyond the initial 5/31/2026 expiration date

The lease payments and the ongoing operating and maintenance expenses for the leased properties fall within the Board Adopted Airport Development Program budget.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Focus Areas

- Advance the Airport Development Plan Transform the Customer Journey Optimize Ongoing Business

Environmental Review:

- A. CEQA: An Addendum to the Airport Development Plan Final Environmental Impact Report (EIR) was prepared for this Board action in conformance with the California Environmental Quality Act (“CEQA”), as amended, and available for review and posted on the Authority website ten days prior to the scheduled Board action.
- B. California Coastal Act Review: The proposed project is subject to review consistent with the California Coastal Act. As the proposed project is located on Port tidelands and consistent with the adopted Port Master Plan, the Port of San Diego will review and is anticipated to issue a non-appealable coastal development permit prior to construction of the project.
- C. NEPA: This Board action is not a project that involves additional approvals or actions by the Federal Aviation Administration (“FAA”) and, therefore, no formal review under the National Environmental Policy Act (“NEPA”) is required.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

ERIC PODNIEKS
PROGRAM MANAGER, STRATEGY AND NEW BUSINESS

RESOLUTION NO. 2021-0038

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AUTHORIZING THE PRESIDENT/CEO TO ENTER INTO A TIDELAND USE AND OCCUPANCY PERMIT WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR A TERM OF 5 YEARS WITH 2 SEPARATE ONE-YEAR OPTIONS TO RENEW FOR APPROXIMATELY 135,521 SQUARE FEET OF LAND AREA LOCATED AT 3032 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO, CALIFORNIA

WHEREAS, the Airport Authority is advancing the Airport Development Plan (ADP); and

WHEREAS, in support of the ADP, areas are needed that can accommodate Temporary Construction Offices and Vehicle Parking; and

WHEREAS, the Authority, along with the Turner-Flatiron Joint Venture reviewed several different areas that can accommodate these uses; and

WHEREAS, it was determined that an optimal area for placement of Temporary Construction Offices is approximately 135,521 square feet of land area located at 3032 North Harbor Drive in San Diego.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to enter into a Tideland Use and Occupancy Permit (TUOP) with the San Diego Unified Port District for a term of 5 years with 2 separate one-year options to renew for approximately 135,521 square feet of land area located at 3032 North Harbor Drive in the City of San Diego, California on terms and conditions consistent in all material respects with the provisions described in the accompanying Staff Report; and

BE IT FURTHER RESOLVED that the Board authorizes the President/CEO to take all related actions to finalize and execute the Tideland Use and Occupancy Permit for Temporary Construction Offices to support the ADP; and

BE IT FURTHER RESOLVED that the Board finds an Addendum to the San Diego International Airport Development Plan Final Environmental Impact Report was prepared for this action in conformance with the California Environmental Quality Act ("CEQA") and available for review and posted on the Authority website ten days prior to the scheduled Board action; and

BE IT FURTHER RESOLVED that the Board finds that this action is a project subject to review consistent with the California Coastal Act and as the proposed project is located on Port tidelands and consistent with the adopted Port Master Plan, the Port of San Diego will review and is anticipated to issue a non-appealable coastal development permit prior to construction of the project; and;

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0039

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AUTHORIZING THE PRESIDENT/CEO TO ENTER INTO A TIDELAND USE AND OCCUPANCY PERMIT WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR A TERM OF 5 YEARS FOR APPROXIMATELY 60,958 SQUARE FEET OF LAND AREA ON THE EAST SIDE OF HARBOR ISLAND DRIVE NEAR NORTH HARBOR DRIVE AND 261,130 SQUARE FEET OF LAND AREA LOCATED NORTH-EASTERLY OF THE NECK OF HARBOR ISLAND DRIVE AND ADJACENT EASTERLY TO 1380 HARBOR ISLAND DRIVE IN THE CITY OF SAN DIEGO, CALIFORNIA

WHEREAS, the Airport Authority is advancing the Airport Development Plan (ADP); and

WHEREAS, in support of the ADP, areas are needed that can accommodate Temporary Construction Offices and Vehicle Parking; and

WHEREAS, the Authority, along with the Turner-Flatiron Joint Venture reviewed several different areas that can accommodate these uses; and

WHEREAS, it was determined that an optimal area for these uses is on neighboring Harbor Island; and

WHEREAS, the contemplated use of the land is for contractor parking to support the ADP.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to enter into a Tideland Use and Occupancy Permit with the San Diego Unified Port District for a term of 5 years for approximately 60,958 square feet of land area on the east side of Harbor Island Drive near North Harbor Drive and 261,130 square feet of land area located north-easterly of the neck of Harbor Island Drive and adjacent easterly to 1380 Harbor Island Drive in the City of San Diego, California on terms and conditions consistent in all material respects with the provisions described in the accompanying Staff Report; and

BE IT FURTHER RESOLVED that the Board authorizes the President/CEO to take all related actions to finalize and execute the Tideland Use and Occupancy Permit for the Tideland Use and Occupancy Permit for contractor parking related to the terminal development program; and

BE IT FURTHER RESOLVED that the Board finds an Addendum to the San Diego International Airport Development Plan Final Environmental Impact Report was prepared for this action in conformance with the California Environmental Quality Act ("CEQA") and available for review and posted on the Authority website ten days prior to the scheduled Board action; and

BE IT FURTHER RESOLVED that this action is subject to review consistent with the California Coastal Act. As the proposed project is located on Port tidelands and consistent with the adopted Port Master Plan, the Port of San Diego will review and is anticipated to issue a non-appealable coastal development permit prior to construction of the project; and

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

RESOLUTION NO. 2021-0040

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AUTHORIZING THE PRESIDENT/CEO TO ENTER INTO TIDELAND USE AND OCCUPANCY PERMIT(S) WITH THE SAN DIEGO UNIFIED PORT DISTRICT AND/OR SUBLEASES WITH HERTZ CORPORATION AND/OR AVIS RENT A CAR FOR APPROXIMATELY 160,000 SQUARE FEET OF LAND AREA LOCATED ON HARBOR ISLAND FOR A TERM TO EXPIRE NO LATER THAN THE EXPIRATION OF THE NEIGHBORING AUTHORITY LEASEHOLD INTEREST AT 3032 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO, CALIFORNIA

WHEREAS, the Airport Authority is advancing the Airport Development Plan (ADP); and

WHEREAS, in support of the ADP, areas are needed that can accommodate Vehicle Parking associated with the contractors, trades, and construction management staff; and

WHEREAS, the Authority, along with the Turner-Flatiron Joint Venture reviewed several different areas that can accommodate these uses; and

WHEREAS, it was determined that an optimal area for placement of Vehicle Parking is located on neighboring Harbor Island; and

WHEREAS, the optimal area is currently subject to leases between the San Diego Unified Port District ("Port") and Hertz Corporation ("Hertz") and the Port and Avis Rental a Car ("Avis") (the "Leases"); and

WHEREAS, the Leases expire on May 31, 2023; and

WHEREAS, Hertz and Avis have agreed to sublease certain areas covered by the Leases to the Authority for Vehicle Parking for a term ending on June 1, 2023; and

WHEREAS, thereafter, the Authority contemplates entering into a Temporary Use and Occupancy Permit (TUOP) with the Port to continue using the land for Vehicle Parking, if the land is available.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to enter into subleases with Hertz and Avis for approximately 160,000 square feet of land area located on Harbor Island for a term to expire no later than June 1, 2023 and on terms and conditions consistent in all material respects with the provisions described in the accompanying Staff Report; and

BE IT FURTHER RESOLVED that the Board hereby authorizes the President/CEO to enter into a TUOP with the Port on or after June 1, 2023 for approximately 160,000 square feet of land area located on Harbor Island for a term to expire no later than the term identified in Resolution No. 2021-0038 for approximately 135,521 square feet of land located at 3032 North Harbor Drive in the City of San Diego, California on terms and conditions consistent in all material respects with the provisions described in the accompanying Staff Report; and

BE IT FURTHER RESOLVED that the Board authorizes the President/CEO to take all related actions to finalize and execute subleases with Hertz and Avis and a Tideland Use and Occupancy Permit with the Port for use as contractor parking related to the ADP; and

BE IT FURTHER RESOLVED that the Board finds an Addendum to the San Diego International Airport Development Plan Final Environmental Impact Report was prepared for this action in conformance with the California Environmental Quality Act ("CEQA") and available for review and posted on the Authority website ten days prior to the scheduled Board action; and

BE IT FURTHER RESOLVED that the Board finds that this action is a project subject to review consistent with the California Coastal Act and as the proposed project is located on Port tidelands and consistent with the adopted Port Master Plan, the Port of San Diego will review and is anticipated to issue a non-appealable coastal development permit prior to construction of the project; and;

BE IT FURTHER RESOLVED that the Board finds that this action is not a project that involves additional approvals or actions by the Federal Aviation Administration ("FAA") and, therefore, no formal review under the National Environmental Policy Act ("NEPA") is required.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

STAFF REPORT

Meeting Date: **APRIL 1, 2021**

Subject:

Authorize the President/CEO to Enter Into a 20 year Lease with the San Diego Unified Port District to Accommodate Ground Transportation Shuttle Bus Operations

Recommendation:

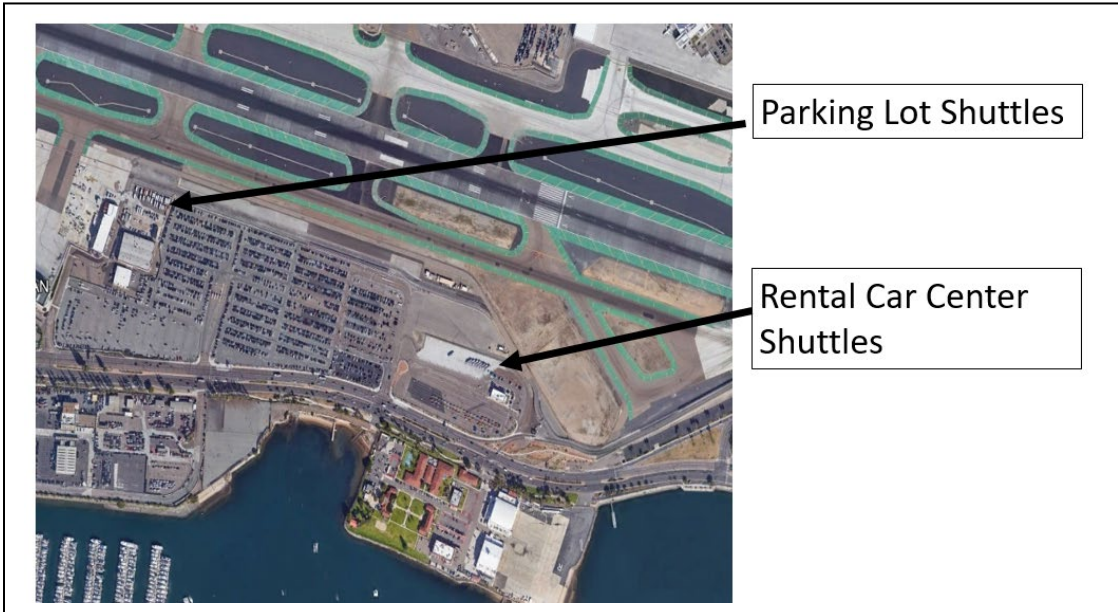
Adopt Resolution 2021-0041, authorizing the President/CEO to enter into a 20 year lease with the San Diego Unified Port District for approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California

Background/Justification:

The Airport Authority seeks to relocate two existing airport shuttle bus dispatch/storage lots (one for parking shuttle buses and another for rental car center buses) and consolidate to a single bus operations center with electric vehicle recharging infrastructure ("Airport Shuttle Bus Operations Center" or "Proposed Project"). The proposed Airport Shuttle Bus Operations Center would be consolidated at a location that is presently covered with asphalt pavement and a small warehouse with a concrete foundation. The Proposed Project site consists of a parcel of 104,830 square feet on State Tidelands. The proposed Airport Shuttle Bus Operations Center will consolidate all parking for 60 airport shuttle buses and 85 employee parking spaces. The site would be repaved as a part of the Proposed Project. The Airport Shuttle Bus Operations Center will provide electric charging infrastructure for up to 60 shuttle bus parking spaces to support the conversion of the Airport's bus shuttle fleet to electric shuttle buses that transport airport passengers and employees between remote parking lots, the rental car center, and the terminals.

Below is an image that shows the location of the existing shuttle bus operation center.

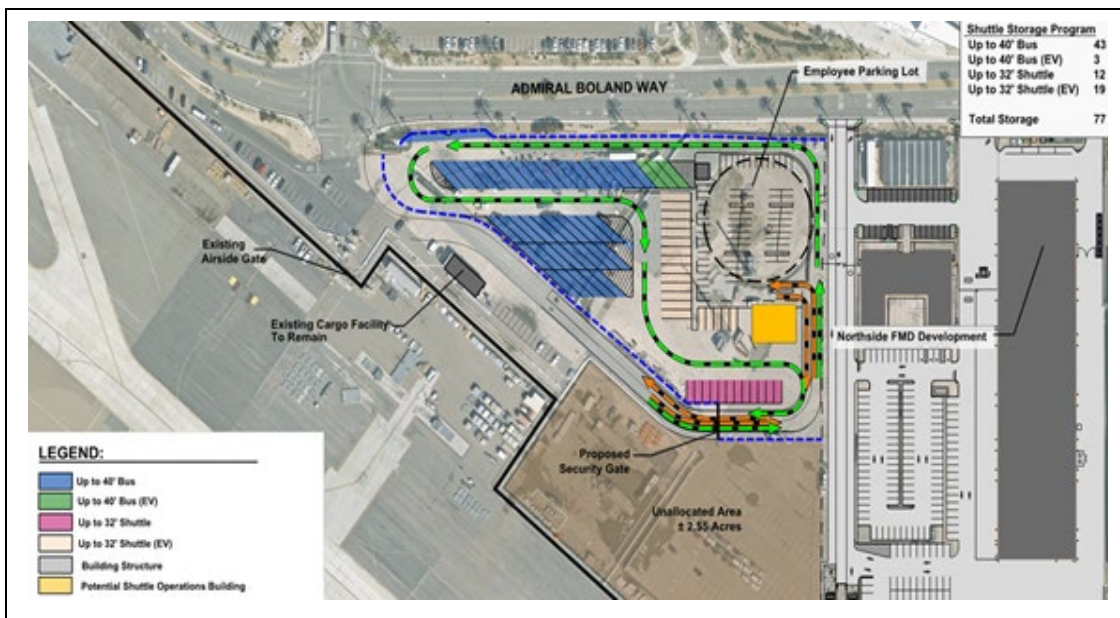
The Airport Shuttle Bus Operations Center general program requirements for a new site area are: 60 shuttle bus parking stalls, 85 employee parking spaces; and construction of up to 4,000 square feet of office space for management, dispatch, shuttle bus driver



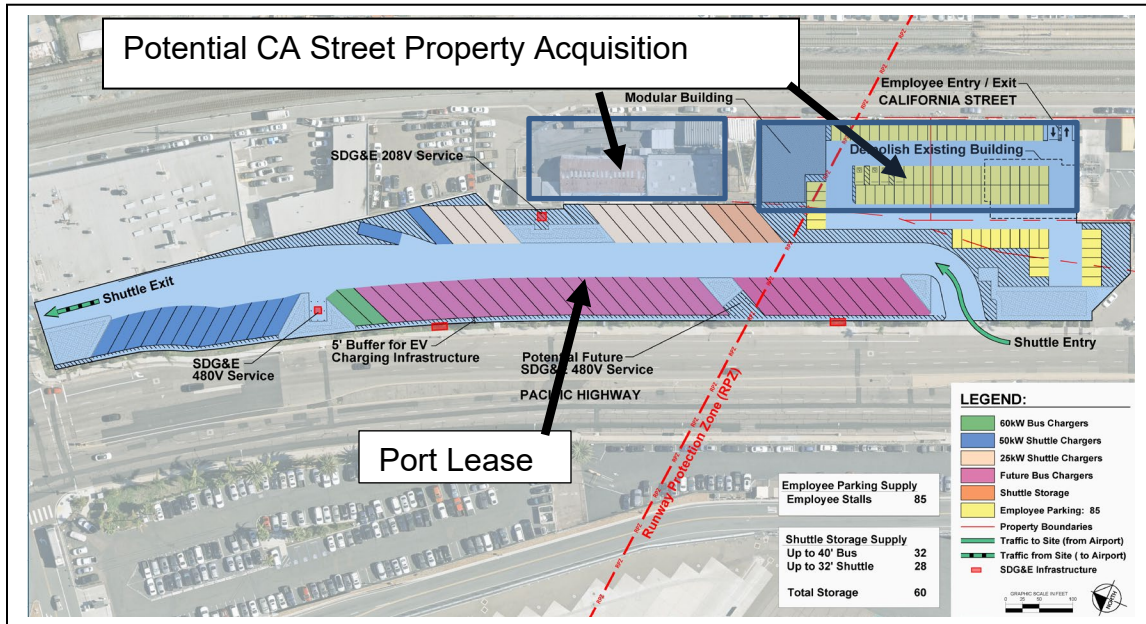
break rooms and related uses.

Authority staff evaluated options to locate the Airport Shuttle Bus Operations Center on Airport property as well as an option to secure an off-airport site. The two sites evaluated are:

On-Airport Option:



Off-Airport Option:



The Off-Airport option requires the Airport Authority to lease property from the San Diego Unified Port District (“Port”) as well as acquire, via purchase or lease, a neighboring property from a private owner (“CA Street Property”). Based on evaluation of the options, securing the off-airport site was determined optimal. The below table summarizes several of the key determining factors supporting a finding that the off-airport site is the preferred site.

	On-Airport Option	Off-Airport Option
Initial Capital Cost Estimate:	\$20.8 Million	\$10.7 Million (includes related CA Street Property acquisition)
New Lease Payments to Port	N/A as an on-airport parcel	\$314K annually subject to future CPI
Site Area	3.24 acres	3.13 acres (includes Port lease and neighboring CA Street Property acquisition)
Opportunity Costs	3.24 acres of airfield adjacent land remain available for aviation use	
On-Going Operating Costs	Similar among options	Similar among options
Estimated Net Present Value Cost to the Airport Authority (using a 5% discount rate over a 20 year period)	\$20.8 Million (presumes the available land generates \$0 revenue over the 20 year period to the Airport Authority)	Approximately \$15 Million (presumes the related CA Street Property has \$0 residual value at the end of the 20 year period)

To advance this effort, staff is before the Board today seeking authorization to finalize on-going negotiations with the San Diego Unified Port District ("Port") and execute a 20-year lease. The key business terms of the lease are as follows:

Term	20 years
Premises	104,830 sq.ft.
Rent	\$3.00/sq.ft./yr. (\$26,207.50/month) CPI rent adjustments: January 1, 2026, 2031, 2036 (min.10% max. 20%)
Early Termination Rights	Airport Authority may terminate upon 6 months notice in the event the Shuttle Bus Operations Center is no longer needed and the buses are replaced by a different people mover system.
Maintenance Expenses	The lease is considered a Net Lease. Airport Authority is responsible for all operating and maintenance expenses associated with the property.

The following are excerpts of additional terms in the proposed lease that impose obligations on and present risk to the Authority. The proposed lease is attached to this Staff Report as Exhibit A and contains the below-cited provisions in full:

- Indemnity (§19.1): Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its obligations under this Lease, (ii) the construction of any Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, and (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

- Clean Up Obligations (§21.2): If Tenant Hazardous Materials Activity has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay or any soil, subsoil media, surface water, or groundwater, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove or remediate such Tenant Hazardous Materials in compliance with all Environmental Laws and in a manner and with results satisfactory to Landlord in Landlord's good faith discretion ("Environmental Cleanup"). For purposes of the definition of "Environmental Cleanup" in this Lease, Landlord agrees not to impose numeric Hazardous Material cleanup levels for the Premises that are more stringent than numeric cleanup levels for the Premises that are prescribed by the San Diego Regional Water Quality Control Board or other regulatory agency acting within its jurisdiction, but Landlord maintains discretion regarding the means and methods of any removal or remediation of Tenant Hazardous Materials. Tenant shall provide notice to Landlord prior to performing any Environmental Cleanup. In the event that an Environmental Cleanup conducted by or required of Tenant interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure.

- Hazardous Material Indemnification (§21.2): Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including waters, sediment, and/or natural resources), including any loss of or damage to Landlord's real or personal property, and claims for cost recovery and contribution), which occur or arise during or after the Term resulting from, or to the extent relating to, any Tenant Hazardous Materials Activity, Tenant Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local governmental agency because of Tenant Hazardous Materials present in the air, soil, subsoil media, surface water, sediments or ground water above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. This indemnification and Environmental Cleanup requirements under Article 21 includes, but is not necessarily limited to:
 - Losses attributable to diminution in the value of the Premises;
 - Losses of rental or other income from the Premises;
 - Loss of or damage to natural resources;
 - Loss or restriction of use of rentable space(s) in the Premises;
 - Adverse effect on the marketing of any space(s) in the Premises;
 - All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses); and
 - All Related Costs (including, without limitation, reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.
 - In the event of a conflict between the application of Articles 19.1 and 21.2, this Article 21.2 shall control.

- Covenant not to Sue, Release of Landlord and Waiver (§§21.5.3 and 22.4): Tenant hereby releases the Landlord Parties from, covenants not to sue the Landlord Parties for and assumes for itself all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21, With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

- The lease contains the following exception to the covenant not to sue, release and waiver: Notwithstanding any other provision of this Lease, including Articles 21.5.3 and 22, Tenant's covenants not to sue, releases, and waivers of Landlord do not prohibit Tenant from asserting a claim against Landlord for Pre-Existing Hazardous Material but solely to the extent of and in response to (1) a Landlord initiated claim against Tenant for Pre-Existing Hazardous Material; (2) a regulatory order directed to Tenant requiring investigation or remediation of Pre-Existing Hazardous Material; or (3) a third-party lawsuit (including lawsuit brought by regulatory agency) against Tenant for Pre-Existing Hazardous Material. Tenant may not assert a claim against Landlord for Pre-Existing Hazardous Material other than in response to an event described in 1, 2 or 3 of this Article 22.4.3(c) (collectively, an "Excepted Event"). Notwithstanding any other provision of this Lease, Tenant is not required to indemnify or defend Landlord for Tenant's claims against Landlord in response to an Excepted Event.

The Authority hired Tetra Tech to conduct a detailed environmental site assessment ("ESA") to perform investigation and physical sampling of the Premises. . The Authority's ESA proposal was provided to the Port on February 5, 2021 for review and comment. The Port provided comments to the ESA which were incorporated into the ESA. The purpose of the ESA of the Premises is (i) to establish the condition of the Premises prior to the Lease such that the Authority shall have no responsibility for Pre-Existing Hazardous Materials; and (ii) to help the Authority establish, at its option, the Bona Fide Prospective Purchaser ("BFPP") defense under Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(40), §9607(r)(1). The ESA will be completed prior to the commencement date of the lease.

Staff is currently undergoing the due diligence processes for the related CA Street Property purchase and/or lease and anticipates returning to the Board at a later meeting with a final recommendation. The Authority currently has a short term lease through December 31, 2022 for a portion of the contemplated the CA Street Properties. The action today enables staff to finalize and execute a Lease with the Port.

Fiscal Impact:

The rental payments to the Port under the lease are anticipated to be as follows (presuming a June 1, 2021 targeted commencement date):

CY21:	\$183,453 (prorated for June - December)
CY22-25:	\$314,490 annually
CY26-30:	\$338,077 annually (presumes 15% CPI adjustment)
CY31-35:	\$363,433 annually (presumes 15% CPI adjustment)
CY35-40:	\$390,690 annually (presumes 15% CPI adjustment)
CY41:	\$150,288 (prorated for January - May)

The lease payments for the proposed Airport Shuttle Bus Operations Center lot were not included in the Board Adopted Fiscal Year 2021 or the conceptually approved Fiscal Year 2022 Operating Budgets. The prorated amount for Fiscal 2021 is approximately \$26,208 (presuming a June 1 commencement date). There are sufficient savings in this year's budget to cover this additional cost. For future budget years not yet adopted the costs for the lease payment will be included. These expenses are part of the Revenue Generation and Partnership Development Department Operating Budget. The rental car Customer Facility Charges (CFCs) may be used as a source of funds for the Rental Car Center portion of the Airport Shuttle Bus Operations Center.

Authority Strategies/Focus Areas:

This item supports one or more of the following (*select at least one under each area*):

Strategies

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Focus Areas

- Advance the Airport Development Plan
 Transform the Customer Journey
 Optimize Ongoing Business

Environmental Review:

A. CEQA: A Notice of Exemption was prepared that determined the bus operations center is a categorical exemption under CEQA Sections 15301 – Existing Facilities – Class 1; 15302 – Replacement or Reconstruction – Class 2 and 15304 Minor Alternations to Land – Class 4 and the project would not have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended, 14 Cal. Code Regs. Section 15378.

B. California Coastal Act Review: The Port of San Diego will prepare a coastal determination for the bus operations center on the Port tidelands parcel that is consistent with the adopted Port Master Plan designation. The private parcel which will be purchased by the Airport is located within the City of San Diego. The City of San Diego will conduct a coastal review determination consistent with the City of San Diego's adopted Local Coastal Program.

C. NEPA: A Categorical Exclusion for the bus operations center has been prepared and submitted to the Federal Aviation Administration ("FAA") for their review and approval prior to project implementation.

Application of Inclusionary Policies:

Not applicable.

Prepared by:

ERIC PODNIEKS
PROGRAM MANAGER, STRATEGY AND NEW BUSINESS

RESOLUTION NO. 2021-0041

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AUTHORIZING THE PRESIDENT/CEO TO ENTER INTO A 20 YEAR LEASE WITH THE SAN DIEGO UNIFIED PORT DISTRICT FOR APPROXIMATELY 104,830 SQUARE FEET OF LAND AREA LOCATED AT 2535 PACIFIC HIGHWAY IN THE CITY OF SAN DIEGO, CALIFORNIA

WHEREAS, the Airport Authority seeks to relocate two existing airport shuttle bus dispatch/storage lots (one for parking shuttle buses and another for rental car center buses) and consolidate to a single bus operations center with electric vehicle recharging infrastructure ("Airport Shuttle Bus Operations Center" or "Proposed Project"); and

WHEREAS, the Proposed Project site consists of a parcel of 104,830 square feet on State Tidelands (the "Premises") and will consolidate all parking for 60 airport shuttle buses and 85 employee parking spaces; and

WHEREAS, the Airport Shuttle Bus Operations Center will provide electric charging infrastructure for up to 60 shuttle bus parking spaces to support the conversion of the Airport's bus shuttle fleet to electric shuttle buses that transport airport passengers and employees between remote parking lots, the rental car center, and the terminals; and

WHEREAS, Authority staff evaluated options to locate the Airport Shuttle Bus Operations Center on Airport property as well as an option to secure an off-airport site; and

WHEREAS, the review of alternatives resulted in a determination that the optimal to place the relocated shuttle bus operations center is an off-airport on a site that can be leased from the San Diego Unified Port District ("Port"); and

WHEREAS, a draft of the proposed lease with the Port is attached hereto as Exhibit A; and

WHEREAS, the Authority hired Tetra Tech to conduct a detailed environmental site assessment ("ESA") to perform investigation and physical sampling of the Premises; and

WHEREAS, the Authority's ESA proposal was provided to the Port on February 5, 2021 for review and comment and the Port provided comments to the ESA which were incorporated into the ESA. The purpose of the ESA of the Premises is (i) to establish the condition of the Premises prior to the Lease such that the Authority shall have no responsibility for Pre-Existing Hazardous Materials; and (ii) to help the Authority establish, at its option, the Bona Fide Prospective Purchaser ("BFPP") defense under Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(40), §9607(r)(1); and

WHEREAS, the ESA will be completed prior to the commencement date of the Lease.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the President/CEO to enter into a 20 year lease with the San Diego Unified Port District for approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California; and

BE IT FURTHER RESOLVED that the Board authorizes the President/CEO to take all related actions to finalize negotiation and execute the Lease in substantially the same form as Exhibit A attached hereto and to advance any other permitting necessary to properly activate the Lease for use as the relocated shuttle bus operations center; and

BE IT FURTHER RESOLVED that the Lease shall not commence until the ESA is completed; and

BE IT FURTHER RESOLVED a Notice of Exemption was prepared that determined the project is a categorical exemption under CEQA Sections 15301 – Existing Facilities – Class 1; 15302 – Replacement or Reconstruction – Class 2 and 15304 Minor Alternations to Land – Class 4 and the project would not have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended, 14 Cal. Code Regs. Section 15378; and

BE IT FURTHER RESOLVED that the Port of San Diego will prepare a coastal determination for the bus operations center on Port tidelands that is consistent with the adopted Port Master Plan designation; and the private parcel to be acquired by the Airport is located within the City of San Diego that will conduct the coastal review consistent with the adopted Local Coastal Program; and

BE IT FURTHER RESOLVED a Categorical Exclusion for the bus operations center has been prepared and submitted to the Federal Aviation Administration ("FAA") for their review and approval prior to project implementation.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 1st day of April, 2021, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, BOARD SERVICES /
AUTHORITY CLERK

APPROVED AS TO FORM:

AMY GONZALEZ
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

OF PROPERTY LOCATED AT

2535 PACIFIC HIGHWAY

SAN DIEGO, CALIFORNIA

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EXHIBIT H	FORM OF LANDLORD'S ESTOPPEL STATEMENT

The Premises consist of the real property more particularly described in Exhibit "A" attached hereto and depicted in Exhibit "B" consisting of approximately 104,830 square feet of land area located at 2535 Pacific Highway in the City of San Diego, California, attached hereto. The Existing Improvements (if any) consist of: an asphalt surface parking lot, lighting fixtures, perimeter fence with electronic sliding gate system off of Palm Street, and landscaping beds between the perimeter fencing and public sidewalk.

1.3 Permitted Use (See Article 4):

The Premises shall only be used as follows and for no other purpose (the "Permitted Use"): (i) ground transportation, bus, and other Tenant vehicle staging (the "Primary Use"), (ii) all uses which are normally and customarily ancillary or incidental to the Primary Use, (iii) EV charging stations for Tenants use in connection with vehicle staging for airport operations, and (iv) parking spaces for Tenant staff serving the foregoing uses, and (v) any other use of the Premises approved by the Landlord in writing provided such use is not restricted by the CDP, any Laws or the certified Port Master Plan ("PMP").

1.4 Rent Commencement Date (See Section 5.1):

The Rent Commencement Date shall be TBD.

1.5 Fixed Rent (See Article 5): The Fixed Rent shall be as follows:

First (1st) Lease Year through Fifth (5th) Lease Year: \$26,207.50 per month.

Each subsequent five (5) Lease Year period will be subject to a Fixed Rent CPI Adjustment pursuant to Article 1.5.1 and 5.1.1.

Rent is payable in advance on or before the first (1st) day of each and every month during the Term of this Lease.

If the Rent Commencement Date is other than the first day of the month and therefore includes an initial partial calendar month, the Fixed Rent for such initial partial month shall be equal to the product of the Fixed Rent multiplied by a fraction, the numerator of which is the number of days in such initial partial month, and the denominator of which is thirty-one (31).

1.5.1 Fixed Rent CPI Adjustment Dates (See Section 5.4.2):

January 1, 2026

January 1, 2031

January 1, 2036

1.6 Insurance (See Article 18):

1.6.1 Commercial General Liability:

Not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be not less than Ten Million Dollars (\$10,000,000) unless a Five Million Dollars (\$5,000,000) per location aggregate limit is provided by separate endorsement.

1.7 Security Deposit (See Article 29):

\$0

1.8 Notice Addresses (See Article 28):

To Tenant:
San Diego County Regional Airport Authority
Post Office Box 82776
San Diego, CA 92138-2776

To Landlord:
Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

2. GENERAL DEFINITIONS

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

3. TERM

3.1 Term.

The "Term" of this Lease shall be the period commencing on the Commencement Date and ending on the Expiration Date as described in Section 1.1, unless sooner terminated or extended as provided in this Lease. The Term is set forth in Section 1.1.

3.2 Prior Agreements.

Any and all existing entry agreements, permits, licenses, leases, or rental agreements between Landlord and Tenant relating to the Premises which have not already expired or terminated, are hereby terminated as of the date of this Lease. Notwithstanding the foregoing, any obligations of Tenant under such agreements accruing or arising on or prior to such termination, or which are otherwise required to be performed in connection with such termination or surrender of the Premises, or which by their terms survive such termination, shall remain enforceable by Landlord.

4. USE

4.1 Permitted Use.

Tenant agrees that the Premises shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever. This restriction on use of the Premises absolutely prohibits a change in use. Tenant acknowledges that the only parking it has a right to utilize in connection with the Permitted Use is the parking located on the Premises, unless otherwise specifically authorized by the District. Tenant acknowledges and agrees that with respect to any public parking located adjacent or proximate to the Premises, Tenant has only the rights of a member of the public notwithstanding any regular or long standing use of such parking by Tenant and/or its employees, visitors and patrons.

4.2 Compliance with Laws.

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of Improvements or the

making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereby by Tenant. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.8 and Article 17 below, (iv) any Coastal Development Permit ("CDP") (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("CEQA")) or any other California Coastal Commission ("CCC") regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof, and (v) any other development permits or approvals required by Landlord.

In addition, Tenant shall comply with and abide by such guidelines and requirements established by Landlord from time to time pursuant to the terms of the Lease upon written notice by Landlord to Tenant. Without limitation of the foregoing, any failure of Tenant to fully satisfy and fulfill the requirements and conditions under any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof shall constitute a default under this Lease.

4.3 Green/Sustainable Leasing

Among other things, when Tenant is replacing equipment, Tenant shall replace it, if feasible, with the most energy efficient equipment that is California Energy Star rated or the environmental equivalent.

4.4 Waste or Nuisance.

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

4.5 Reservations.

Landlord reserves the right and power to grant easements and licenses on, over, under and across the Premises to others, and the right and power for Landlord or the grantee to enter the Premises, for purposes such as constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises. Should Landlord so request, Tenant shall promptly join with Landlord in the execution of such documents as may be requested by Landlord to create or accommodate such grant. Landlord agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Tenant's business. Further, Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

Tenant acknowledges that a portion of the Premises is subject to an easement granted to San Diego Gas & Electric Company ("SDG&E") for utility purposes associated with infrastructure and facilities for electric vehicle charging stations to be used by Tenant pursuant to this Lease. This easement is on file with the District Clerk bearing Document No. _____, filed on _____ (the "Easement"). Tenant has reviewed and understands the Easement and

shall provide access to SDG&E to fulfill SDG&E's rights and obligations under the Easement. Tenant further agrees to be bound by Easement Sections 7(b), 9, and 10, to indemnify, defend, and hold harmless the Landlord Parties from and any all claims associated with Tenant's use of the electric vehicle charging stations and other SDG&E Facilities as defined in the Easement, and to pay all cost and expense of relocation of the SDG&E Facilities if their relocation is requested by Tenant. Tenant further agrees that in the event that SDG&E does not remove the SDG&E Facilities at the end of the Term, such SDG&E Facilities shall be considered a Tenant Improvement for the purposes of Section 7 and Landlord may direct Tenant to remove the SDG&E Facilities at Tenant's sole cost and expense.

5. RENT

Tenant agrees to pay to Landlord Fixed Rent and Additional Rent as applicable (collectively "Rent") in accordance with this Article 5. All payments of Rent and other sums due Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items to which such payments should be credited.

All payments of Rent shall be delivered to Landlord's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to the San Diego Unified Port District, Finance Department, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. Landlord may change the designated place of payment or filing at any time upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

5.1 Fixed Rent.

Fixed Rent for the First (1st) Lease Year through Fifth (5th) Lease Year is as described in Section 1.5. Thereafter, Fixed Rent shall be adjusted every five years (the "Fixed Rent CPI Adjustments" described in Section 5.1.1) on the "Fixed Rent CPI Adjustment Dates" described in Section 1.5.1.

5.1.1 Fixed Rent CPI Adjustments.

(a) *CPI Calculations.* Commencing on the first Fixed Rent CPI Adjustment Date and on each Fixed Rent CPI Adjustment Date thereafter, the Fixed Rent payable immediately prior to the relevant Fixed Rent CPI Adjustment Date shall be adjusted by the increase, if any, in the CPI as follows.

The Fixed Rent shall be adjusted on each Fixed Rent CPI Adjustment Date. The increase in Fixed Rent shall be determined by applying the CPI increase over the five-year period between the Fixed Rent CPI Adjustment Date and the preceding Fixed Rent CPI Adjustment Date (or Lease Commencement Date if the first Fixed Rent CPI Adjustment Date). The five-year CPI increase shall be calculated by summing the CPI annual percentage increase (Five-Year CPI

Percentage) and applying them to then existing Fixed Rent. Notwithstanding the published CPI, the CPI annual percentage increase, used to calculate the Five-Year CPI Percentage, shall never be less than two percent (2%) or more than four percent (4%). Because the Fixed Rent CPI Adjustment Dates occur every five years, the total five-year percentage increase shall not be less than ten percent (10%) or more than twenty percent (20%).

For purposes of example only, the new Fixed Rent shall be calculated as follows:

Five-Year CPI Percentage = Year 1 CPI + Year 2 CPI + Year 3 CPI + Year 4 CPI + Year 5 CPI

New Fixed Rent = (Five-Year CPI Percentage + 1) x A

"A" is the Fixed Rent payable immediately prior to the relevant Fixed Rent CPI Adjustment Date.

(b) *Substitution of Index.* In the event the CPI is no longer published, the index for the Fixed Rent CPI Adjustment Date shall be the one reported in the U. S. Department of Labor's comprehensive official index determined by Landlord to be the one most nearly corresponding to the CPI. If the Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by Landlord in the exercise of Landlord's good faith discretion.

(c) *Retroactive Adjustment.* Notwithstanding the publication dates of the CPI, the Fixed Rent shall be adjusted to be effective on the Fixed Rent CPI Adjustment Dates. Until said Fixed Rent adjustment can be reasonably determined by CPI publication, payments of Rent due shall be calculated utilizing the Fixed Rent payable immediately prior to such Fixed Rent CPI Adjustment Date. Within ten (10) days following calculation of the CPI adjustment, any underpayments of Rent by reason of the delay in the availability of the CPI information shall be paid to the Landlord.

5.2 Late Charges.

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in remitting the Rent due on the date due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the Rent due. If Rent is still unpaid at the end of ten (10) days after the date due, Tenant shall pay an additional five percent (5%) (collectively, "Late Charges"). The parties hereby agree that said Late Charges are Additional Rent and are not interest and that the Late Charges apply whether or not Tenant receives notice of its failure to pay Rent, and that said Late Charges are appropriate to compensate Landlord for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late submittal of an accounting of Rent due and/or late payment of Rent be less than One Hundred Dollars (\$100). Acceptance of such Late Charges and any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. In addition to the application of a Late Charge, if Tenant fails to pay any Rent when due, the unpaid amount shall accrue interest at the Default Rate from the date due until paid and such interest shall itself be Additional Rent.

5.3 Net Lease.

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements or the Project or any Project Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location.

5.4 Reimbursement.

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "Reimbursement Procedure" then Tenant shall reimburse Landlord for the subject amount within fifteen (15) days of Tenant's receipt of an invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, Landlord. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

6. CONSTRUCTION AND ALTERATION OF PROJECT IMPROVEMENTS

6.1 Project Improvements.

Following the Commencement Date, Tenant shall commence the construction of and diligently proceed to Completion and Complete the Project Improvements, if any. The Project Improvements shall be constructed in accordance, in all material respects, with the plans and specifications, including but not limited to working drawings, described in Exhibit C attached hereto (the "Plans"). The Plans shall be approved in writing by Landlord prior to the commencement of construction. Changes to the Plans must be approved by Landlord in writing, in Landlord's sole discretion, and, once approved, shall be considered a part of the "Plans". Said Plans are by this reference made a part hereof. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

In constructing the Project Improvements, Tenant shall also comply with all Construction Requirements and all Laws, including, without limitation, the PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the Project, including any CDPs applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or Project changes pursuant to any environmental review under CEQA. In addition, in connection with the construction or Alteration of the Project Improvements, Tenant shall comply with Section 6.7 regarding prevailing wage requirements.

6.2 Alterations.

6.2.1 Major Alterations.

The term "**Major Alterations**" means all Alterations other than Minor Alterations (as such term is defined in Section 6.2.2 below). Tenant shall comply with all Laws, at its sole cost and expense, including without limitation, obtaining any governmental permits and approvals required

for the Major Alterations. Tenant may not make any Major Alterations without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved in writing by Landlord prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans are subject to Landlord's approval, in Landlord's sole discretion. Provided Landlord approves the Alteration Plans, if Tenant elects to proceed with the Major Alterations, Tenant must construct and complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence.

6.2.2 Minor Alterations.

The term "**Minor Alterations**" means Alterations that satisfy all of the following requirements: (i) they are made solely to the interior of the Project Improvements; (ii) no discretionary permit or approval is required from any government agency to perform the Alteration and no CEQA review is needed in connection with the permits that are to be issued in connection with the Alteration; (iii) they do not require or involve structural modifications or affect in any material way the building systems within the Improvements or the portions of the Improvements generally accessible to the public such as the lobby area of a hotel; (iv) they do not trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs; (v) they are consistent with the Permitted Use; and (vi) following the Completion of the Alterations, the Premises and Improvements have a fair market value, quality and utility that is not less than the fair market value, quality and utility of the Premises and Improvements immediately prior to the commencement of the Alterations. Tenant may make Minor Alterations without Landlord's written consent provided that Tenant gives Landlord at least thirty (30) days' prior written notice of the Minor Alterations, which notice describes the Minor Alterations in sufficient detail in order for Landlord to confirm that such Minor Alterations satisfy the requirements of this Section 6.2.2 and within such thirty (30) day period Landlord does not object to Tenant's determination that the subject Alterations are Minor Alterations.

6.2.3 Diligent Construction; Continuous Operations.

Once construction of any Alteration is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. Tenant shall continue to operate the Premises and Improvements for the Permitted Use during the course of construction of the Major Alterations to the greatest extent feasible.

6.2.4 Construction Requirements.

In constructing any Alterations, Tenant shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the Project, including any CDP applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

6.3 Signs and Flags.

All signs visible from outside the Project Improvements must be expressly approved by Landlord prior to installation. All signage in the Landlord's jurisdiction is subject to San Diego Unified Port District Code Section No. 8.30, BPC Policy No. 770 and Tenant Signage Guidelines. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall also comply with such ordinance or policy subject to any grandfathering terms thereof. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without Landlord's prior written consent. Landlord acknowledges that the comprehensive sign program depicted in Exhibit F attached hereto have been approved by landlord.

6.4 Prevailing Wage.

6.4.1 Tenant acknowledges and agrees that:

(a) Landlord makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. ("PWL"). To the extent Tenant intends to perform any construction, alteration, demolition, installation or repair work ("**Construction**") on the Premises, Tenant warrants and acknowledges that: (1) Landlord is not paying for or subsidizing, in whole or in part, any such Construction; and (2) Tenant shall make its own determination regarding the applicability of any PWL to such Construction. Landlord is not responsible for Tenant's failure to comply with any applicable provisions of the PWL. Tenant assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Tenant.

(b) Tenant's violations of PWL shall constitute a default under this Lease.

6.5 Historical Designation.

Neither Tenant nor Landlord shall designate, cause anyone to designate, submit or support any application to designate, the Premises or any Improvements on the Premises as a federal, state or local historical landmark or as a historical resource. The terms of this Section 6.5 shall survive the expiration or earlier termination of this Lease.

7. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS

7.1 Title.

All Improvements which may be installed or placed in, on, over or under the Premises, from time to time by Tenant as permitted by the terms of this Lease or with Landlord's prior written consent, (i) shall be so installed or constructed at the sole cost of Tenant, (ii) shall remain Tenant's property during the Term, and (iii) at the expiration or earlier termination of the Term, those Improvements which are to remain on the Premises pursuant to Section 7.2. shall automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings and moveable equipment shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the Expiration Date or earlier termination of this Lease, Tenant covenants and agrees to execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 24 to confirm Landlord's ownership of the Improvements which are to remain on the Premises pursuant to Section 7.2, which covenant shall survive the expiration or earlier termination of this Lease.

7.2 Removal of Improvements.

At any time during the Term of this Lease, Landlord may notify Tenant in writing of what Improvements Landlord requires (in its sole discretion) to be removed from the Premises at the end of the Term (such election is referred to herein as the "Landlord End of Term Election"). If Landlord has not provided the Landlord End of Term Election by three hundred and sixty five (365) days prior to the end of the Term, the same shall be deemed to be an election by Landlord for all Improvements to remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in Landlord as described in Section 7.1 and Article 24 (but Tenant shall remain responsible for any remedial work that may be required by Section 21.3). If Landlord shall elect to have Tenant remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, (i) the Term of this Lease shall be extended as provided in Section 7.5, (ii) to the greatest extent possible, Tenant shall obtain all permits required to perform such work in advance of the end of the Term and, if not possible, as promptly as possible after the end of the Term (meaning prior to extension pursuant to Section 7.5), and (iii) subject to terms of Section 7.5 requiring such work to commence sooner, as promptly as possible after the end of the Term (meaning prior to extension of the Term pursuant to Section 7.5), remove such Improvements and perform and complete any remedial work that may be required by Section 21.3. Tenant acknowledges that demolition of the Improvements and razing the Premises and/or the remediation work pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by such removal, and, unless such requirement is waived by Landlord, Tenant shall surrender the portion of the Premises to be demolished to Landlord in a razed and buildable condition. For this purpose, a "buildable condition" means the removal of any subsurface Improvements (including foundations and pilings and public and private utilities unless otherwise agreed to by Landlord), removal of any Tenant Hazardous Materials pursuant to Section 21.3, demolition of the Improvements and removal of any debris resulting from demolition and leaving the areas affected by the demolition in a smooth graded condition with soils compacted pursuant to specifications and in compliance with a stormwater site stabilization plan acceptable to Landlord in its sole discretion so that such areas are suitable for subsequent construction of improvements thereon. In addition, and without limitation of Landlord's other remedies, if any Improvements are not in full compliance with Article 6 or Article 15, Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 6 and Article 15 as determined by Landlord. If Tenant fails to complete such removal and remediation and/or to repair any damage caused by the removal of any Improvements or to perform modifications required pursuant to the preceding sentence within the period allowed under Section 7.5, Landlord may do so and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of twenty percent (20%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's obligations under Section 21.3.

7.3 Removal of Personal Property.

Except as provided below, all of Tenant's personal property including machines, appliances and equipment and trade fixtures (even though not personal property), located at or on the Premises shall be removed by Tenant by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, unless Landlord expressly elects within the same time periods to require Tenant to remove the same, any artworks that constitute personal property that were provided to comply with Law or Landlord's own requirements but which are not governed by a separate agreement between Tenant and the artist relating to the removal of the artwork as the

end of the Lease Term, shall not be removed and remain located on the Premises. If requested by Landlord, Tenant shall deliver to Landlord Tenant's signed bill of sale in a form reasonably acceptable to Landlord for such left in place personal property. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such bill of sale in the name and on behalf of Tenant if Tenant shall fail to do so after Landlord's request. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by the removal of such personal property. If such personal property required to be removed is not removed by Tenant in accordance with this Section 7.3, the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by their removal, all at the expense of Tenant pursuant to the Reimbursement Procedure.

7.4 Security for Cost of Demolition and Remediation Work.

7.4.1 Demolition and Remediation Report.

Within one hundred and eighty (180) days of the receipt of the Landlord End of Term Election, but no sooner than six (6) years before the end of Lease Term, Tenant, at its own cost and expense, shall obtain and deliver to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period for completion of the removal and demolition work as if then required by Section 7.2 and any remedial work that may be required by Section 21.3 ("**Demolition and Remediation Report**"). The contractor licensed in the State of California with expertise in demolition and remediation selected by Tenant is referred to herein as the "**Demolition and Remediation Contractor**" and the time period for completion of the removal and demolition work as if then required by Section 7.2 and any remedial work that may be required by Section 21.3 is referred to herein as the "**Removal Period**".

7.5 Removal Extension.

If the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then subject to the terms of this Section 7.5, solely for the purpose of completing such work and during such extension, the Term of the Lease shall be extended until the earlier of (i) six (6) months, and (ii) the completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. The period of such extension is referred to herein as the "Removal Extension". During the Removal Extension, the Premises and Improvements shall not be used by Tenant for any purpose other than the performance of the demolition and/or remediation work unless permitted by Landlord in writing in its sole discretion. During the Removal Extension, Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease. If Tenant's removal and remediation work is not completed within the Removal Extension, the terms of Article 27 regarding Rent payable during holdover shall apply. Without relieving Tenant from its obligations under this Lease respecting the condition of the Premises at the end of the Term, all of the Tenant's obligations under this Lease (including Tenant's indemnification and insurance obligations but excluding any obligation to be open or operate) and Tenant's right to enter onto the Premises and perform the demolition and remediation work shall continue in full force and effect during the Removal Extension. Notwithstanding the foregoing, if the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to

Section 21.3 and the Demolition and Remediation Report indicates that the Removal Period is estimated to be greater than six (6) months, then Tenant shall commence such work sufficiently prior to the end of the Term (prior to extension as provided in this Section) so that such work is anticipated to be completed no later than six (6) months after the end of the Term (prior to the Removal Extension) (e.g., if the estimated Removal Period is ten (10) months, Tenant shall commence such work at least four (4) months prior to the end of the Term (prior to extension pursuant to this Section 7.5).

7.6 Survival.

The terms of this Article 7 shall survive the expiration or termination of this Lease.

8. ENTITLEMENTS

8.1 Entitlement Costs.

If any discretionary approval, including without limitation environmental analysis under CEQA, the PMP, a Port Master Plan Amendment ("PMPA"), a CDP and/or a Coastal Act exclusion, are necessary in Landlord's sole and absolute determination in connection with any Project Improvements, Alterations, demolition or remediation work or other projects undertaken by Tenant on or at the Premises (collectively, the "Discretionary Project"), Tenant agrees to enter into agreements with the third party consultants preparing the reports and other materials required to process the Discretionary Project making Tenant directly responsible for the costs of such services and to reimburse Landlord pursuant to the Reimbursement Procedure for all costs and expenses incurred by Landlord in obtaining the necessary approval for the Discretionary Project, including but not limited to, the preparation and certification of any required CEQA document by the Landlord, the preparation and approval of the PMPA by the Landlord and the CCC, the preparation and approval or issuance of a CDP by the Landlord or, if appealed, the CCC, or the Coastal Act exclusion by the Landlord and any other costs and expenses arising out of the entitlement process in Landlord's sole and absolute determination. If Tenant fails to reimburse Landlord for such costs pursuant to the Reimbursement Procedure, in addition to any other remedies Landlord may have, Landlord may thereafter discontinue the processing of the Discretionary Project and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be a default of Tenant. Nothing herein shall obligate Landlord to seek, process or obtain any approvals or entitlements for the benefit of Tenant and Landlord makes no warranty or representation to Tenant that Tenant will obtain the entitlements and approvals required for Tenant's Discretionary Project.

8.2 Entitlements Indemnity.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees at its sole cost and expense and with counsel approved by Landlord in Landlord's sole discretion to indemnify, defend and hold harmless the Landlord Parties from any claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval(s) of the Discretionary Project including without limitation any third party challenges to the approval of the Discretionary Project and any CEQA review, CCC review for a PMPA or appealable CDP or Coastal Act exclusion. The Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action, suits and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord, including, without limitation reimbursement for attorneys' fees, experts' fees and other costs. The Landlord's participation shall not relieve the Tenant of any of its obligations under this Paragraph. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease.

8.3 Reservation of Discretion.

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord reserves its discretion to approve or disapprove all actions, which require by Law the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which Landlord cannot lawfully be committed to by contract (collectively, "Discretionary Action") and that nothing in this Lease will be construed as circumventing or limiting Landlord's discretion with respect to environmental review required by CEQA, approval of a PMPA, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Law. Tenant acknowledges and agrees that any and all Discretionary Actions may be approved or denied by the Landlord, in its sole and absolute determination, and accepts the risk that the Landlord will deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, suits against the Landlord for said denial.

9. LIENS

9.1 No Right to Bind Landlord.

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

9.2 Notice of Non-Responsibility.

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any Improvements or Alterations or other work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than fifteen (15) days prior to the commencement of any work on the Premises.

9.3 Mechanic's Liens.

Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for or at the Premises. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for or at the Premises and all Related Costs.

9.4 Contest of Lien.

If Tenant in good faith wishes to contest any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond sufficient to release the lien.

9.5 Landlord's Right to Pay.

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond as required under Section 9.4 above, Landlord may, but shall not be so obliged to, pay said lien claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately

due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord together with interest on the full amount thereof at the Default Rate from the dates of Landlord's payments until paid.

9.6 Notice of Liens.

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

9.7 Right of Entry/ Notices of Non-Responsibility.

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanic's or other lien. Without limiting Tenant's responsibilities under Section 9.2 above, Landlord and the Landlord Parties shall have the right to enter upon and inspect the Premises at all times, with reasonable notice to Tenant if possible, and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give Landlord written notice of its intention to commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give Landlord adequate opportunity to post and record such notices.

10. LEASE ENCUMBRANCE

10.1 Restrictions on Encumbrance.

10.1.1 Landlord's Consent.

Tenant shall not encumber or hypothecate this Lease, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein (such encumbrance or hypothecation being referred to herein as a "**Financing Transaction**"), without Landlord's prior written consent to the Financing Transaction in each instance, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed financing. Landlord shall provide its response to Tenant's request for approval of the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information requested by Landlord from Tenant. As a condition of approval, Tenant shall provide to Landlord a copy of the final loan documents for the Financing Transaction which conform to the terms set forth in the loan application or commitment delivered pursuant to Section 10.1.2(e) below, when such documents are available.. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all Landlord's costs and expenses associated with its review of the Financing Transaction. Said costs shall include, without limitation, Landlord's legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any such Financing Transaction, regardless of whether such Financing Transaction is consummated or approved, and Landlord's transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

10.1.2 Conditions.

Landlord's consent to any Financing Transaction may be conditioned upon, among other things, the following conditions and/or requirements, all of which Tenant acknowledges are reasonable given the context and terms and conditions of this Lease:

- (a) the lender shall be a Financial Institution;
- (b) a Lease amendment shall be executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices, and policies.
- (c) the maximum loan proceeds secured by the encumbrance shall not be in excess of the greater of (i) seventy five percent (75%) of the then fair market value of the Improvements (or the as-completed value if the subject loan is being used to finance the cost of an Alteration) as determined by a third party appraisal approved by Landlord (which may be the Permitted Lender's appraisal if so approved by Landlord), or (ii) the amount required to repay the outstanding principal balance of the existing financing that encumbers the leasehold under a Permitted Encumbrance previously consented to by Landlord;
- (d) the loan secured by the encumbrance shall have a payment term that provides for the full repayment of the loan prior to the Expiration Date of the then current Term of this Lease; and
- (e) Tenant shall have provided to Landlord pursuant to Section 10.1.1: (i) the Financing Transaction term sheet, application or commitment, (ii) a recent appraisal supporting the Financing Transaction, (iii) financial statements of Tenant for not less than the past two (2) years, (iv) the draft and final loan documents and (v) such other documents, information and materials relating to the Financing Transaction as Landlord may request.

10.2 Definition of "Permitted Lender" and "Permitted Encumbrance".

The term "Permitted Lender" as hereinafter used in this Lease means the lender under the Financing Transaction holding a mortgage, deed of trust or other similar security interest constituting a first lien on Tenant's interest in this Lease which has been consented to in writing by Landlord as provided above ("Permitted Encumbrance").

10.3 Rights of Permitted Lender.

10.3.1 Voluntary Lease Surrender.

If Tenant owes the Permitted Lender any amounts under the Permitted Encumbrance, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires unless the Permitted Lender provides prior written consent. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of Tenant's default or by reason of Landlord's other rights to terminate as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable.

10.3.2 Right to Cure/New Lease.

(a) *Notice of Default.* So long as the loan secured by the Permitted Encumbrance remains unsatisfied, Landlord hereby agrees to give the Permitted Lender a copy of any written notice of any default which Landlord has given to Tenant, whereupon the Permitted Lender shall have the right, but not the obligation, to prevent any termination of this Lease by Landlord as a result of such default by curing such default within (i) twenty (20) days of receipt of such notice for any default in the payment of Rent, or (ii) subject to the terms of this

Section 10.3.2, within forty-five (45) days of receipt of such notice for any other default under this Lease.

(b) *Possession Required.* If such default as specified in part (ii) of Section 10.3.2(a) cannot be cured until the Permitted Lender has obtained possession of the Premises through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the forty-five (45) day cure period specified above Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use commercially reasonable efforts to cure such default with due diligence upon obtaining possession of the Premises through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed 180 days from the date of obtaining possession of the Premises) as is reasonably necessary to cure such default; provided, however, that the Permitted Lender: (a) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within forty-five (45) days from receipt of written notice of the occurrence of any event which constitutes, or which would constitute, upon the expiration of an applicable cure period, a default under this Lease; (b) prosecutes said foreclosure with due diligence; and (c) cures, during said period, all monetary events of default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises to cure any non-monetary default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"), and such Incurable Default shall be deemed to be waived following the Permitted Lender's taking possession of the Premises and provided that Permitted Lender has timely cured all monetary defaults and, following taking possession all other non-monetary defaults that are of a continuing nature. In no event shall Tenant's waste or failure to maintain be an Incurable Default.

(c) *No Termination by Landlord.* Landlord will not terminate this Lease by reason of a default by Tenant provided that the Permitted Lender (i) has cured and continues to cure all defaults under the Lease in the payment of Rent in a timely manner as provided in Section 10.3.2(a)(i) above, and (ii) has cured all other defaults in a timely manner as provided in Sections 10.3.2(a)(ii) and 10.3.2(b) above, other than any Incurable Default.

(d) *New Lease.* In the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant (subject to and in accordance with Section 10.3.1), or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to Permitted Lender that the Lease has been terminated. The notice shall include a statement of all amounts that would be due under this Lease but for the termination, and all other defaults then known to Landlord. The Permitted Lender shall then have the option, to be exercised within thirty (30) days following receipt of such notice of termination to enter into a new lease ("**New Lease**") with Landlord, on the following terms and conditions:

(i) The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants and conditions as this Lease (but excluding any right to extend the Term).

(ii) Upon execution of the New Lease, the Permitted Lender as tenant shall pay any and all sums that would at the time of execution thereof be due under this Lease, but for termination, and shall pay all expenses, costs, attorneys' fees, court costs, and

disbursements incurred by Landlord in connection with any default and termination, recovery of possession of the Premises, and the execution, preparation and delivery of the New Lease.

(iii) Upon execution of the New Lease, the Permitted Lender as tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice.

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to Permitted Lender. Upon execution and delivery of the New Lease, Permitted Lender may take any and all appropriate action as may be necessary to remove parties in possession from the Premises.

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to execute the New Lease or satisfy the requirements of (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to the Permitted Lender and the Permitted Lender shall have no further rights hereunder.

10.3.3 Loan Default.

If a Permitted Encumbrance is in default at any time, and the Permitted Lender is complying with the cure requirements described in Section 10.3.2 above, the Permitted Lender shall, as provided by law, have the right, without Landlord's prior consent, to:

- (a) Accept an Assignment of this Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its Permitted Encumbrance. Provided, however, no Assignment to the successful bidder (a "**Foreclosure Purchaser**") other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

10.3.4 Assume Lease Obligations.

Before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after it assigns the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

10.4 Landlord's Consent to Assignment or Transfer.

10.4.1 Landlord's Consent to Assignment.

Landlord's prior written consent pursuant to Article 11 shall be required for the following: (i) an Assignment of this Lease to a Foreclosure Purchaser other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender, or (ii) an Assignment of this Lease or Sublease of all or substantially all of the Premises by the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender should the Permitted Lender or such

designee become the tenant by reason of: (a) being the successful bidder upon said foreclosure, or (b) an Assignment in lieu of foreclosure, or (c) a New Lease entered into pursuant to Section 10.3.2(d) above.

10.4.2 Notice of Foreclosure Sale.

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4.1 for Landlord's consent to an Assignment upon said foreclosure.

10.4.3 Assignment of Security Interest.

(a) *Consent.* Neither Permitted Lender nor assignees or any subsequent holder of Permitted Lender's security interest in the Premises shall assign or transfer its security interest in the Premises in whole or in part without Landlord's prior written consent, in each instance. Such consent shall not be unreasonably withheld. Although such holder shall be required to obtain Landlord's express written consent, Landlord shall not withhold such consent (and such assignee or holder will for all purposes of this Lease be deemed to be a Permitted Lender) if the Assignment is to one of the following entities and a copy of the Assignment, in a form acceptable to Landlord, is furnished to Landlord:

(i) A Financial Institution in good legal standing under the laws of the its jurisdiction of incorporation having a tangible net worth exceeding One Billion Dollars (\$1,000,000,000) (which sum shall be adjusted to Constant Dollars at the beginning of each Rental Period); or

(ii) The United States of America or any state thereof, or any agency thereof; or

(iii) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

11. ASSIGNMENT/SUBLEASE

11.1 Consent Required.

Subject to the terms of Section 11.8, no Assignment, Sublease or Change in Entity (collectively, "Transfer") shall be made or permitted without in each instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is mutually agreed that Landlord is a government agency holding title to the Premises in trust for the citizens of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change in Entity is as relevant to Landlord as an Assignment of this Lease. For purposes of this Article 11, the term Sublease shall not include the rental of boat slips and dock lockers to tenants not operating a business on or from the Premises.

11.2 Request for Consent.

If a Transfer is proposed, Tenant shall notify Landlord in writing, which notice (the "Transfer Notice") shall include (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) with respect to a Sublease, a completed Sublease Questionnaire form [Form 317 or 320 depending on the term of the Sublease] including, among other information, a description of the portion of the Premises which is proposed to be Subleased, (iii) all of the terms of the proposed Transfer, the name and address of the proposed transferee with respect to an

Assignment or Sublease ("Transferee"), if the Transfer is a result of a Change in Entity, a complete description of the direct and indirect ownership and Control of Tenant just before and just after the Transfer and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, (iv) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee or persons or entities acquiring an interest resulting in a Change in Entity of Tenant or a Tenant Parent, (v) current financial statements of the proposed Transferee certified by a reputable, certified public accountant (which shall be audited if that is the customary practice of the Transferee), and (vi) such other information as Landlord may require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease upon written notice thereof to Tenant. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's legal and other fees incurred by Landlord pursuant to the Reimbursement Procedure, regardless of whether such transaction is consummated. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld or delayed its consent under this Article 11 or otherwise has breached or acted unreasonably under this Article 11, Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.3 Consent Factors.

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer of Tenant's interest in the Premises or portion thereof, upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord, provided that if there are any material changes to the financial condition of the Transferee or any other material changes to any proposed Transfer terms specified in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 11.

Without limitation of Landlord's right to withhold its consent for other reasonable reasons, the parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where Landlord determines in its reasonable discretion that one or more of the following apply (it being understood that for the purposes of this Section 11.3 and 11.5.1 in the case of a Change in Entity, references to "Transferee" shall mean Tenant following the Change in Entity):

11.3.1 Insufficient Experience.

The Transferee is not experienced in the ownership or management of similar projects or the proposed Transferee lacks sufficient business reputation and experience to operate a successful business of the type and quality contemplated under this Lease;

11.3.2 Inconsistent Use.

The Transferee's proposed use of the Premises following the proposed Transfer will not be for the Permitted Use or the quality of the use is not of the quality contemplated under this Lease;

11.3.3 Project Improvements Incomplete.

The Transfer is to occur prior to the date the Project Improvements are completed;

11.3.4 Reputation.

The Transferee (i) is not reputable (a reputation for dishonesty, criminal conduct or association with criminal elements), (ii) is of a character or reputation or engaged in a business which is not consistent with the quality or reputation of the Project, or may reflect adversely on the quality or reputation of the business conducted from the Premises or (iii) has a history of, or a reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

11.3.5 Financial Stability.

The Transferee is not a party of sufficient financial worth and financial stability in light of the Tenant obligations under this Lease;

11.3.6 Default.

At the time of request or Transfer, Tenant is in default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) of its lease with Landlord.

11.3.7 Other Grounds.

Any other reasonable grounds considering the unique nature and interests of the Landlord including the fact that Landlord holds the Premises in trust for the people of the State of California and Landlord's duty of care in administering a valuable public resource.

Tenant acknowledges and agrees that each of the grounds set forth in Section 11.3 above in the event of proposed Transfer is a reasonable restriction on Transfer for purposes of California Civil Code Section 1951.4. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

11.4 Effect of Transfer.

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Transfer, and any document evidencing a Transfer shall be in form acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under. Articles 21, 22 and Article 19 as it applies to Articles 21 and 22 of this Lease.

11.5 Conditions.

11.5.1 Transfer.

In the event Landlord consents to any Transfer (other than for a Sublease for less than twenty-five percent (25%) of the floor area of the Improvements computed in the aggregate for one or a series of transactions), then at Landlord's election said consent shall be conditioned

upon the following: (i) the Transferee (other than a Subtenant under a Sublease of less than all or substantially all of the Premises) shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Transfer), or in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises, such Subtenant shall execute a document acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; (ii) if requested by Landlord, a Lease amendment of the type described in Section 10.1.2(b) shall be executed; (iii) Transferee shall comply with other conditions and qualifications determined by the BPC; and (iv) in the case of a Sublease, the Subtenant shall execute an attornment agreement as provided in Section 11.6 below. Without limiting the generality of clause (i) above, the Transferee shall be obligated for the payment to Landlord of any underpayment of Rent determined to be due under Section 5.5.3(e) above, together with the cost of the audit if applicable, notwithstanding that such underpayment of Rent, and related audit, pertains to a period of time prior to the effective date of the Transfer.

11.6 Subtenant Attornment.

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (i) be liable for any act or omission or negligence of Tenant, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord), (iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform. Any Subtenant shall promptly execute and deliver any instrument Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases.

11.7 Sublease Rent Requirements.

Subject to the terms of any Permitted Encumbrance, each Sublease shall require the Subtenant thereunder to make all payments of Rent and other sums of money to Landlord during the existence of a default hereunder and following written notice of the same from Landlord, and Landlord shall apply said payments made to all Rent that is due and payable to Landlord pursuant to this Lease, and any remaining amounts will be held and applied to future Rent payable under this Lease.

11.8 Reporting of Sublease Information.

If Tenant has entered into any Subleases, then within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit G attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

11.9 Permitted Lender and Foreclosure Purchasers.

The foregoing provisions of this Article 11 shall not apply to the following Transfers, which are governed by Sections 10.3 and 10.4: (i) a Transfer to a Permitted Lender or a designee of the Permitted Lender who is Controlled by or is who is under common Control with the Permitted Lender pursuant to the foreclosure of the Permitted Encumbrance or an Assignment in lieu of foreclosure or (ii) a Transfer to a Foreclosure Purchaser.

12. DEFAULTS AND REMEDIES

12.1 Defaults.

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute a default by Tenant hereunder:

12.1.1 Failure to Pay

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, is where such failure continues for a period of five (5) days after the date due.

12.1.2 Failure to Perform.

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Section 12.1), should such failure continue for thirty (30) days after written notice thereof is given to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

12.1.3 Bankruptcy Event.

The occurrence of a Bankruptcy Event.

12.1.4 Specified Defaults.

The occurrence of any event expressly stated to constitute a default under the Lease.

12.1.5 Other Agreements.

Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) under any other agreement between Landlord and Tenant or such entity.

12.2 Remedies.

Upon any default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

12.2.1 Termination of Lease.

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(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 Rent loss Tenant 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 Rent loss that Tenant proves reasonably could be avoided; plus

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus

(e) At Landlord'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 IN SUBPARAGRAPHS (A) AND (B) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY ALLOWING INTEREST AT THE DEFAULT RATE. AS USED IN SUBPARAGRAPH (C) 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 ONE PERCENT (1%).

Failure by Landlord to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

12.2.2 Continue Lease in Effect.

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

12.2.3 Perform Acts on Behalf of Tenant.

Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

12.2.4 Increased Security Deposit.

Require Tenant to increase the Security Deposit with an additional amount equal to three (3) months of the Fixed Rent (which remedy may be exercised on more than one occasion with further increases in the Security Deposit on any subsequent default or any failure of Tenant to cure the default at issue within the time period set forth in Section 12.1.3).

12.2.5 Payment by Tenant.

Upon any default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses and staff time) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or any other occupant's property; (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (4) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default.

12.2.6 Assignment of Plans and Other Matters.

If this Lease is terminated or Landlord otherwise takes possession of the Premises by reason of Tenant's default, Tenant hereby agrees that, if Landlord so requests, (i) Tenant, at Tenant's sole cost and expense, shall assign and transfer to Landlord all of Tenant's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, free and clear of liens and claims by third parties, in connection with and (ii) Tenant shall execute and deliver to Landlord, within five (5) business days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises to Landlord. Tenant agrees to reasonably cooperate with Landlord at no cost or expense to Landlord in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to this Assignment which may be required for Landlord to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

13. BANKRUPTCY

13.1 Bankruptcy Event.

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

13.2 Assignment/Assumption.

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code 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 Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make

application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2. At any time during the Term, upon not less than five (5) days' prior written notice, Tenant shall provide Landlord with audited financial statements for Tenant for not less than the past two (2) years. Such statements are to be certified by an authorized representative of Tenant to be true, correct and complete, prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant.

13.3 Adequate Assurances.

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

14. EMINENT DOMAIN

14.1 Eminent Domain.

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "Condemnation") the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14 Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises.

14.2 Notice of Condemnation.

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

14.3 Representation of Interest.

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

14.4 Early Termination.

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by Landlord in its sole discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this section shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

14.5 Partial Condemnation.

If only a portion of the Premises is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Fixed Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

14.6 Temporary Condemnation.

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

14.7 Award.

14.7.1 Leasehold Award.

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises and any Existing Improvements. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for Improvements constructed by Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, the Leasehold Award shall be payable in trust to any Permitted Lender that is a Financial Institution, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining

portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. If there is no Permitted Lender that is a Financial Institution or if there is but the Permitted Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided above. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subparagraph (a) above, or used to place the Premises in the condition required for the surrender of same to Landlord, shall be divided between Landlord and Tenant, with Landlord to receive a sum computed by multiplying such excess funds awarded with respect to such Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at the time of such Condemnation, expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant, subject to the Permitted Lender's rights under subparagraph (c) below.

(c) Any portion of the Leasehold Award relating to Improvements and not used as described in subparagraph (a) and (b) and which is payable to Tenant pursuant to subparagraph (b) shall be paid to the Permitted Lender to be applied against its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements on the Premises located on the Premises, Landlord instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subparagraph (d).

14.7.2 Default.

Anything in this Article to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period Tenant is in default under this Lease or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of Tenant's default. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

15. MAINTENANCE AND REPAIR

15.1 Maintenance and Repair.

The Premises and all Improvements, both inside and outside, shall be put and kept free of deferred maintenance and in first-class appearance, good operating condition by Tenant at Tenant's sole cost and expense. Tenant, at its sole cost and expense, shall be fully responsible for all care, maintenance, and repair of the Premises and all Improvements as necessary to keep the Improvements free of deferred maintenance and in good operating condition except for reasonable wear and tear. Tenant acknowledges that over the Term of this Lease, that in order to adhere to these maintenance and repair standards, certain repairs and replacements will be required and that regular reinvestment should be anticipated. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be free of deferred maintenance and in good operating condition, satisfactory to Landlord in its sole discretion except for reasonable wear and tear which does not adversely affect the appearance and condition of the Premises or Improvements. Further, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("BMPs") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements generally accessible to the public such as the lobby area of a hotel, plans and specifications must first be submitted to Landlord and receive Landlord's written approval, pursuant to the procedures provided in Article 6 herein as if such repairs or replacements were Alterations.

Tenant waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

15.2 Condition in Compliance with Laws.

Tenant, at its sole cost and expense, shall keep the Premises and Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, installations and appurtenances) in full compliance with all applicable Laws and the requirements of any insurer providing insurance for the Premises or any part thereof.

15.2.1 Records and Audit.

Tenant shall maintain true, accurate, and complete records of all deposits to and disbursements from the [Improvement Upgrade Fund] [and] [Repair and Maintenance Capital Fund]. Such records shall include, but are not limited, to a general ledger, vendor invoices, cancelled checks, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Tenant perform any construction in-house (i.e., its own personnel), Tenant shall substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. The records shall be maintained and made available either at the Premises or another location in San Diego County, California. Further, Landlord shall have the right at any time to examine and audit said records without restriction for the purpose of

determining the accuracy thereof. In the event Tenant does not make available the original records at the Premises or within the limits of San Diego County, Tenant agrees to pay all expenses incurred by Landlord in conducting an audit at the location where said records are maintained.

15.3 Performance by Landlord.

15.3.1 Inspection and Correction.

Landlord always shall have the right but not the duty or obligation to enter, view, inspect, determine the condition of, and protect its interests in the Premises and Improvements. If Landlord determines that the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, upon ten (10) days prior written notice thereof Landlord may require Tenant to file and pay for a performance bond. The amount of said bond shall be adequate, in Landlord's opinion, to correct all unsatisfactory conditions.

15.3.2 Landlord Repair Rights.

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair and replacement work within ten (10) days of Landlord's written demand therefor and thereafter diligently prosecute such work to completion (except in the event of an emergency in which case no such notice shall be required), Landlord may, but need not, perform such maintenance, alteration, repair or replacement work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date incurred until paid and an administrative fee in the amount of twenty percent (20%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair and replacement work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section shall not create any obligations or increase any obligations of Landlord elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Tenant shall provide Landlord Parties access to the Premises for the purposes set forth in this Section 15.5.

15.4 Records.

Tenant shall, at all time during the Term, keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the

Premises shall be kept either at the Premises or at such other locations in San Diego County, California as are acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof.

16. TAXES AND PROPERTY EXPENSES

16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "Tax Expenses" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises;

(b) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by government agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

(c) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Improvements or the Rent payable hereunder, including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

16.2 Property Expenses.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay all Property Expenses. As used herein, "Property Expenses" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and

managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) the cost of any insurance carried or required to be carried by Tenant with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (iv) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by any government agency or otherwise required under this Lease.

17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC

17.1 Nondiscrimination.

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including without limitation the ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

17.2 Compliance with Employment and Labor Requirements.

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

17.3 OFAC Compliance.

Tenant represents and warrants that (i) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("Prohibited Persons") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "Prohibited Person") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that

the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

18. INSURANCE

18.1 Insurance.

Tenant shall maintain insurance acceptable to Landlord in full force and effect throughout the Term.

18.2 Forms of Coverage.

The policies for said insurance shall, as a minimum, provide the following:

18.2.1 Commercial General Liability.

"**Occurrence**" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.10. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

18.2.2 Automobile Liability.

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

18.2.3 UST Insurance Obligations.

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

18.3 General Requirements.

18.3.1 Certificates and Other Requirements.

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in a form acceptable to Landlord, issued by the insurer evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Article ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding

the forgoing, Landlord reserves the right to require complete, certified copies of all required policies at any time.

18.3.2 Additional Insureds and Other Requirements.

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended or voided, except after Landlord has been furnished with thirty (30) days' prior written notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must be satisfactory to Landlord.

18.3.3 Deductibles.

Any deductibles or self-insured retentions must be declared and acceptable to Landlord. If the deductibles or self-insured retentions are unacceptable to Landlord, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Landlord Parties; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

18.3.4 Updates.

Landlord shall retain the right at any time to review the coverage, form, amount and type of insurance required herein. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for the Landlord Parties and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form, amount and type to provide adequate protection. Landlord's requirements shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

18.3.5 New Certificates.

If Landlord changes the insurance requirements as provided in Section 18.3.4 above, Landlord shall notify Tenant in writing of such changes. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates with Landlord issued by the insurer evidencing acceptable insurance policies incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, this Lease shall be in default without further notice to or cure right by Tenant, and Landlord shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

18.3.6 Default.

If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, and such failure is not cured within ten (10) days following written notice thereof to Tenant, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies.

18.3.7 No Limit on Liability.

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

18.3.8 Compliance with Insurance Requirements.

Tenant agrees not to use the Premises in any manner that will result in the cancellation of any insurance Landlord may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjacent premises, notwithstanding that such use may be included within the Permitted Use. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises and represents to Landlord that Tenant will confirm that it is in compliance with such requirements at all times.

18.4 Waiver of Subrogation.

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

18.5 Subtenants to Maintain Insurance.

All Subtenants shall maintain insurance in the amounts required under Section 18.2, which shall comply with the requirements of Section 18.3. In addition, all Subleases shall provide that the Subtenant releases the Landlord Parties pursuant to the requirements of Section 18.4.

19. INDEMNITY

19.1 Indemnity.

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its

obligations under this Lease, (ii) the construction of any Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, and (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord (but subject to Section 18.4). Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to immediate payment once incurred. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

20. DAMAGE OR DESTRUCTION

20.1 Casualty.

In the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 18, Tenant shall promptly repair and restore such Improvements, in a manner approved in writing by Landlord, so that after such restoration and repair, the Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the Permitted Lender or other trustee selected pursuant to Section 18.2.3 disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, if required by the terms of the Permitted Encumbrance any remaining balance of any insurance proceeds shall be paid first to the Permitted Lender to the Permitted Encumbrance, and thereafter, if the Permitted Lender permits or requires by the terms of the Permitted Encumbrance, to Tenant. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanic's lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing or replacing the Improvements. To the extent that the insurance proceeds are insufficient to pay for the costs of repairing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to occur of (i) sixty (60) days from the date of such damage or destruction, or (ii) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant or the Permitted Lender fails to commence to repair, restore or replace the damaged Improvements (including without limitation, engaging architects and engineers to prepare plans and specifications for the restoration), or pursue any permits necessary to repair, restore or replace the damaged Improvements, within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice thereof from Landlord to Tenant and, in addition to any other remedies, Landlord shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Improvements. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used

their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

20.2 Casualty During the Last Part of Term.

Notwithstanding Section 20.1 to the contrary, if there is damage or destruction to the Improvements during the last five (5) years of the Term (including all exercised options) and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements as determined by the Demolition and Remediation Report, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("Notice of Election to Terminate"); and (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("Demolition Notice") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Landlord may designate in the Demolition Notice and, if applicable, remediate the Premises, and shall complete said demolition, removal and remediation and shall vacate the Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to the payment of the costs to raze and remove the Improvements as required above, second, to repayment of any outstanding Permitted Encumbrance, if required by the terms thereof; and third, to Landlord all remaining insurance proceeds.

20.3 No Rental Abatement.

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Improvements located on the Premises are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

20.4 Waiver of Statutory Provisions.

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Improvements as a result of a casualty event.

21. HAZARDOUS MATERIALS

21.1 Hazardous Materials.

21.1.1 Tenant Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements (collectively and individually, a "**Tenant Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party or any other Person unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Material Safety Data Sheets or Safety Data Sheets ("**MSDS**") or other information requested by Landlord regarding the Hazardous Material. Without obtaining pre-approval from the Landlord, Tenant may utilize the Premises for the routine parking and movement of vehicles and the normal use of products that may contain limited quantities of Hazardous Materials consistent with Section 1.3, Permitted Use. Approval by Landlord of any Tenant Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Tenant Hazardous Materials Activity and Tenant assumes all liability and obligations related thereto. All Tenant Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**") and shall comply at all times with all Environmental Laws.

21.1.2 Notice of Release or Investigation.

If Tenant becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Premises or (ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence of any Hazardous Material on, in, under, from or about the Premises (collectively "**Inquiry**"), Tenant shall immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, provide verbal notice of the same to Landlord, and give Landlord written notice of the release or Inquiry within twenty-four (24) hours after Tenant learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern the release or Inquiry. Tenant shall provide Landlord with advance written notice of meetings scheduled with any federal, state or local government agency (such as, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("**government agency**") that may be relevant to or potentially impact the Premises at least ten (10) full business days prior to such meeting or as soon as reasonably possible if the government agency schedules the meeting for less than ten (10) business days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. If the government agency brings up the Premises in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate.

21.1.3 Landlord Right to Inspect and Data.

If Tenant Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but is no way obligated to, enter upon the Premises and make any inspections, tests or measurements Landlord deems necessary or desirable to determine if a release or discharge of Tenant Hazardous Materials has occurred. Landlord shall furnish Tenant a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, unless, in Landlord's sole judgment, circumstances require otherwise. If Landlord suspects a possible release of Tenant Hazardous Materials or a use of Tenant Hazardous Materials in violation of Environmental Law, then Landlord, at Landlord's sole discretion, may require Tenant, at Tenant's sole expense, to have additional investigation for

such Tenant Hazardous Materials conducted on, under or about the Premises by an environmental consultant or engineering firm designated by Landlord. Such tests may include, without limitation, any area outside the Premises that may have been contaminated, including but not limited to soil, subsoil, media, surface water, sediments, and groundwater. Tenant shall provide Landlord, as soon as reasonable after they become available to Tenant, access to all information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises, including raw and verified lab data and consultant reports. Landlord shall be permitted to have representatives present during any sampling or testing on or at the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises. Access to any consultant reports issued by or on behalf of Tenant concerning the Premises shall be furnished to Landlord as soon as reasonable after the reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises or Tenant Hazardous Material Activities related thereto shall first be generated in draft form and furnished to Landlord for review and comment. No such report will be made final until Landlord has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 regarding the Premises, shall in no way relieve Tenant of any responsibility for a release of a Tenant Hazardous Material.

21.1.4 Clean-up Obligations.

If Tenant Hazardous Materials Activity has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay or any soil, subsoil media, surface water, or groundwater, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove or remediate such Tenant Hazardous Materials in compliance with all Environmental Laws and in a manner and with results satisfactory to Landlord in Landlord's good faith discretion ("**Environmental Cleanup**"). For purposes of the definition of "Environmental Cleanup" in this Lease, Landlord agrees not to impose numeric Hazardous Material cleanup levels for the Premises that are more stringent than numeric cleanup levels for the Premises that are prescribed by the San Diego Regional Water Quality Control Board or other regulatory agency acting within its jurisdiction, but Landlord maintains discretion regarding the means and methods of any removal or remediation of Tenant Hazardous Materials. Tenant shall provide notice to Landlord prior to performing any Environmental Cleanup. In the event that an Environmental Cleanup conducted by or required of Tenant interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2 and 19.1.

21.1.5 Clean-up Extending Beyond Lease Term.

Should any Environmental Cleanup of Tenant Hazardous Materials not be completed prior to the expiration or sooner termination of this Lease, then: (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of the Environmental Cleanup, and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is of such a nature as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been sufficiently completed to render the Premises in full compliance with all Environmental Laws and to make the Premises suitable, in Landlord's good faith determination, for lease to third parties. The estimated cost of the Environmental Cleanup shall require good faith approval of the Landlord. Landlord shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with Landlord's good faith approval. To the extent Landlord estimates in good faith, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Landlord may estimate at such time may be required to complete the Environmental Cleanup.

21.1.6 Financial Security.

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

21.2 Hazardous Materials Indemnification.

Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including waters, sediment, and/or natural resources), including any loss of or damage to Landlord's real or personal property, and claims for cost recovery and contribution), which occur or arise during or after the Term resulting from, or to the extent relating to, any Tenant Hazardous Materials Activity, Tenant Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local governmental agency because of Tenant Hazardous Materials present in the air, soil, subsoil media, surface water, sediments or ground water above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. Subject to paragraph 21.1.4, the obligations apply whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, Landlord shall have the right to assign said indemnity and Environmental Cleanup requirements under Article 21. This indemnification and Environmental Cleanup requirements under Article 21 includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises;
- (b) Losses of rental or other income from the Premises;
- (c) Loss of or damage to natural resources;
- (d) Loss or restriction of use of rentable space(s) in the Premises;
- (e) Adverse effect on the marketing of any space(s) in the Premises;
- (f) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses); and
- (g) All Related Costs (including, without limitation, reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.

In the event of a conflict between the application of Articles 19.1 and 21.2, this Article 21.2 shall control.

21.2.2

21.3 Termination of Lease.

Upon the expiration or earlier termination of the Term, Tenant shall: (i) cause all Tenant Hazardous Materials to be removed from the Premises and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used to store any Tenant Hazardous Material on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises which has become contaminated by any Tenant Hazardous Material to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Premises to Landlord free of any Tenant Hazardous Materials.

21.4 Storage Tanks.

21.4.1 Storage Tanks.

No underground storage tanks ("**USTs**") or aboveground storage tanks ("**ASTs**") shall be permitted to be installed on or under the Premises without the prior written consent of Landlord in its sole and absolute discretion. In the event Tenant obtains such approval to install a UST or a AST on or under the Premises, Tenant shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take sole responsibility for reporting unauthorized releases from UST to HMMD and Landlord within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of any Tenant Hazardous Material or any required Environmental Cleanup including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST or an AST. Tenant further agrees to be responsible for maintenance and repair of the USTs and ASTs; obtaining tank permits; filing

a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

21.4.2 Records.

Tenant agrees to keep complete and accurate records regarding USTs and ASTs on the Premises for at least the prior three (3) years period including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Tenant Hazardous Materials. Tenant also agrees to make such records available for Landlord or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any operator of USTs or ASTs.

21.4.3 Aboveground Storage Tanks.

In the event Tenant obtains such approval to install an AST, Tenant shall be responsible for complying with all Laws pertaining to such AST. Tenant shall, in accordance with this Lease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("SDRWQCB"), Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

21.5 Environmental Covenants.

21.5.1 Regulated Waste Removal.

Tenant hereby acknowledges that excavation of soils, including sediment, from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "**Regulated Waste Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.2 Residual Hazardous Materials.

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are protected from residual contaminants in 29 Code of Federal Regulations ("**CFR**"). Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and

transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

21.5.3 Covenant Not To Sue and Release of Landlord.

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for and ASSUMES FOR ITSELF all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21, With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

21.5.4 Dispute Resolution.

Except for (i) a dispute or disagreement as to the amount of rent that Tenant is to pay District or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

21.6 Survival.

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

22. "AS-IS" LEASE AND WAIVERS

22.1 Tenant's Acknowledgment.

Tenant acknowledges that prior to entering into this Lease, Landlord has provided the disclosure required under California Health and Safety Code section 25359.7, as set forth in the Environmental Disclosure Addendum to this Lease, which is incorporated herein by reference, and Landlord has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises; (2) the physical condition of the Premises, including, without limitation, the condition and value of any improvements and the soils, subsoil media, and ground

waters at or under the Premises; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (4) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Premises and local market conditions; (6) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (7) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including any Improvements, soils, groundwater and adjacent to San Diego Bay water and sediment; and (8) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Premises"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

22.2 Only Landlord's Express Written Agreements Binding.

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

22.3 As-Is Lease.

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

22.4 Waivers, Disclaimers and Indemnity.

22.4.1 Waiver and Disclaimer.

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

22.4.2 Landlord's Materials.

Tenant further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively the "Landlord's Materials") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Landlord Parties or any of the persons or entities who prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

22.4.3 Release and Waiver.

(a) *Release.* Except to the extent of Claims (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, each Tenant Party and their respective successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert or seek to have any third party or regulatory agency assert any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Tenant Party or any of Tenant's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, sediments, surface waters or ground waters at or under the Premises and any clean-up or abatement order effecting the Premises); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoils media, sediments, surface waters or ground waters at or under the Premises); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any improvements located on the Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance,

development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542.* With respect to all releases made by Tenant under or pursuant to **Article 21 and this Article 22**, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or the released party."

TENANT: _____

Notwithstanding any other provision of this Lease, including Articles 21.5.3 and 22, Tenant's covenants not to sue, releases, and waivers of Landlord do not prohibit Tenant from asserting a claim against Landlord for Pre-Existing Hazardous Material but solely to the extent of and in response to (1) a Landlord initiated claim against Tenant for Pre-Existing Hazardous Material; (2) a regulatory order directed to Tenant requiring investigation or remediation of Pre-Existing Hazardous Material; or (3) a third-party lawsuit (including lawsuit brought by regulatory agency) against Tenant for Pre-Existing Hazardous Material. Tenant may not assert a claim against Landlord for Pre-Existing Hazardous Material other than in response to an event described in 1, 2 or 3 of this Article 22.4.3(c) (collectively, an "Excepted Event"). Notwithstanding any other provision of this Lease, Tenant is not required to indemnify or defend Landlord for Tenant's claims against Landlord in response to an Excepted Event.

22.4.4 Survival.

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

23. EARLY TERMINATION RIGHTS

All or a portion of this Lease may be terminated by Tenant as a matter of right at any time upon the giving of six (6) months' notice in writing to Landlord in the event an Automated People Mover System in connection with Tenant's Airport Development Plan as adopted on January 9, 2020 is constructed and operational and replaces or significantly limits the need and use of the Leased Premises for ground transportation or bus and other vehicle staging as described in Article 1.3.

24. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Subject to the terms of this Article 24 and Article 7, upon the expiration or earlier termination of the Lease, all Improvements, excluding trade fixtures, installed or constructed on the Premises, shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanic's or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

25. PEACEABLE SURRENDER

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to Landlord in a broom clean condition with all refuse removed and in as good condition and repair as the Premises were at the Completion of the Project Improvements except for reasonable wear and tear and except for as the Premises may have been rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease. Notwithstanding the foregoing, Tenant shall leave or remove such Improvements as directed by Landlord pursuant to Section 7.2, and surrender the Premises in the condition required under Section 7.2. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises.

26. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

27. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without Landlord's written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Fixed Rent shall be 200% of the Fixed Rent in effect prior to the expiration or termination. If Tenant, with Landlord's consent, remains in possession of the Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event may the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

28. NOTICES

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.8 (as such address may have been changed by subsequent notice given to the other party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either party in writing to receive such

notice, (ii) delivered via reputable over-night courier service and electronic mail transmission, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served upon transmission or service except if served by certified mail, in which case service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

29. SECURITY DEPOSIT

29.1 Amount of Security Deposit.

30. Not Applicable. GENERAL PROVISIONS

30.1 Terms; Captions.

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

30.2 Binding Effect.

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

30.3 No Merger.

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following a default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

30.4 Recording.

Unless the parties agree otherwise in writing in advance, on or before the date of this Lease, Landlord and Tenant shall execute a Memorandum of Lease in the form of Exhibit E attached hereto (the "Memorandum of Lease"). At Tenant's option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

30.5 Transfer of Landlord's Interest.

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of

ownership and shall be released from further obligations upon any transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises, as the case may be, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

30.6 Time of Essence.

Time is of the essence with respect to this Lease and each of its provisions.

30.7 Partial Invalidity.

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

30.8 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

30.9 Joint and Several.

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

30.10 Tenant's Authority.

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

30.11 Financial and Other Information Supplied by Tenant.

Tenant represents and warrants that any financial or other information supplied by Tenant to Landlord regarding Tenant or any Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, or to Tenant's actual knowledge, regarding any Transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant.

30.12 Attorneys' Fees.

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Landlord under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

30.13 Transaction Costs.

To the extent Tenant requests any approval, consent or other action by Landlord (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse Landlord, upon written demand therefor, all of Landlord's attorneys' fees and other third party costs incurred by Landlord relating to Landlord's review, together with Landlord's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by Landlord. Landlord will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to Landlord whether or not Landlord grants such approval or consent, or undertakes the action requested by Tenant.

30.14 Governing Law.

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

30.15 Brokers.

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

30.16 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

30.17 Drafting Presumption; Review Standard.

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication

that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord may be given or withheld in Landlord's sole discretion.

30.18 Estoppel Statement.

At any time and from time to time upon not less than fifteen (15) business days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance requested by Landlord. At any time and from time to time upon not less than fifteen (15) business days' notice by Tenant or a Permitted Lender, Landlord shall execute, acknowledge and deliver to such Permitted Lender an estoppel statement in the Form of Landlord's Estoppel Statement attached hereto as Exhibit H.

30.19 Certified Access Specialist.

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("CASp").

Signature page follows.

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____

Assistant/Deputy

By: _____

Tony Gordon
Director, Real Estate

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY, a local
governmental entity of regional
government**

By: _____]

Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

SDUPD Docs No. _____

DRAFT

DEFINITIONS ADDENDUM

This Definitions Addendum constitutes a part of that certain Lease (the "Lease") entered into as of _____, 20____ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Landlord") and _____, a _____ ("Tenant") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

DEFINITIONS ADDENDUM

ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
ADDITIONAL RENT:	all sums of money other than Fixed Rent required to be paid by Tenant to Landlord under this Lease.
AFFILIATE:	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
ALTERATIONS:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Improvements thereon following the completion of the Project Improvements, including the alteration, addition, installation or removal of machines, equipment, appliances or fixtures.
ALTERATION PLANS:	defined in Section 6.3.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
ASTS:	defined in Section 21.4.1.
BANKRUPTCY CODE:	Title 11 of the United States Code, as amended.
BANKRUPTCY EVENT:	the occurrence with respect to Tenant, any Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or

DEFINITIONS ADDENDUM

the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws; (d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or Guarantor of its inability to pay debts as they become due.

BMPS:

defined in Section 15.1.

BPC:

Board of Port Commissioners of the San Diego Unified Port District.

**BUILDABLE
CONDITION:**

defined in Section 7.2

CASP:

defined in Section 29.19.

CCC:

defined in Section 4.6.

CDP:

defined in Section 4.6.

CEQA:

defined in Section 4.6.

CERTIFICATES:

defined in Section 18.3.1.

CFR:

defined in Section 21.5.2.

CHANGE IN ENTITY:

includes, whether through one transaction or a series of transactions:

(i)

with respect to a corporation whose stock is not publicly traded through a nationally recognized exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of the subject entity: (A) the withdrawal, admittance or change, voluntary, involuntary or by operation of law or otherwise, of one or more of the partners, members or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, hypothecation, pledge, encumbrance, transfer or sale, whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to

DEFINITIONS ADDENDUM

	immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity;
(ii)	with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of the all or substantially all of the assets or stock of the corporation to a third party. Any event or transaction that would constitute a Change in Entity of a Tenant Parent, also shall constitute a Change in Entity of Tenant.
CLAIMS:	defined in Section 22.4.3(a).
COMMENCEMENT DATE:	defined in Section 1.1.1
COMPLETION AND COMPLETE:	shall mean that Tenant has obtained and delivered to Landlord (i) a final certificate of occupancy, if such certificate of occupancy can be issued, for substantially all of the Project Improvements or Alterations , as applicable, from the appropriate governing authority, (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Project Improvements or Alterations, as applicable, have been completed in accordance, in all material respects, with the Plans, and (iii) a copy of final lien releases in statutory form from all of Tenant's contractors and all subcontractors.
CONDEMNATION:	defined in Section 14.2.
CONDITION OF THE PREMISES:	defined in Section 22.1.
CONSTANT DOLLARS:	shall mean that the referenced dollar amount shall be adjusted on each anniversary of the Rent Commencement Date by an amount equal to the percentage increase in the CPI from the Rent Commencement Date to the most recent anniversary of the Rent Commencement Date preceeding the date the Constant Dollar equivalent is to be calculated.
CONSTRUCTION REQUIREMENTS:	those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in Exhibit D attached to this Lease.
CONTROL, CONTROL,	shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the

DEFINITIONS ADDENDUM

CONTROLLED AND CONTROLLING: subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.

CPI: Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, as the same may be substituted pursuant to Section 5.4.1(a).

DEFAULT RATE: an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

DEMOLITION AND REMEDIATION CONTRACTOR: defined in Section 7.4.1.

DEMOLITION AND REMEDIATION REPORT: defined in Section 7.4.1.

DEMOLITION NOTICE: defined in Section 20.2.

DISCRETIONARY ACTION: defined in Section 8.3.

DISCRETIONARY PROJECT: defined in Section 8.1.

ENVIRONMENTAL CLEANUP: defined in Section 21.1.4.

ENVIRONMENTAL LAWS: defined in Section 21.1.1.

EXISTING IMPROVEMENTS: shall mean any improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) described in Section 1.2 that are in existence and located on, in, over or under the Premises as of the date of this Lease, whether constructed by Landlord, a prior tenant or another third party. Landlord and Tenant acknowledge that the

DEFINITIONS ADDENDUM

Existing Improvements (if any) are identified in the Basic Lease Provisions.

EXPIRATION DATE: defined in Section 1.1.

FINANCIAL INSTITUTION: shall mean (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured financing for commercial or industrial properties, or (vi) a combination of two or more of the preceding entities.

FINANCING TRANSACTION: defined in Section 10.1.1.

FORECLOSURE PURCHASER: defined in Section 10.3.3.

GOVERNMENT AGENCY: defined in Section 21.1.2.

HAZARDOUS MATERIAL: shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.

IMPROVEMENTS: those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements, if applicable) or hereafter (including Alterations) located on, in, over or under the Premises.

DEFINITIONS ADDENDUM

INCURABLE DEFAULT:	defined in Section 10.3.2(b)
INQUIRY:	defined in Section 21.1.2.
LANDLORD:	The San Diego Unified Port District, and where applicable the Landlord acting through the BPC.
LANDLORD END OF TERM ELECTION:	defined in Section 7.2
LANDLORD PARTIES:	Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.
LATE CHARGES:	defined in Section 5.6.
LAWS:	All present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
LEASE YEAR:	a period of twelve (12) consecutive months commencing on the Rent Commencement Date, and each successive twelve (12) month period thereafter during the Term; provided, however, that if the Rent Commencement Date is not the first day of a month, then the first Lease Year shall be from the Rent Commencement Date until the last day of the month in which the first anniversary of the Lease Commencement Date occurs and the second Lease Year shall commence on the first day of the month immediately following the first anniversary of the Rent Commencement Date.

DEFINITIONS ADDENDUM

LEASEHOLD AWARD:	defined in Section 14.7.1.
MAJOR ALTERATIONS:	defined in Section 6.3.1.
MEMORANDUM OF LEASE:	defined in Exhibit E.
FIXED RENT:	defined in Section 1.5 above, as adjusted pursuant to Section 5.1.
FIXED RENT CPI ADJUSTMENT DATE:	defined in Section 1.5.1
MINOR ALTERATIONS:	defined in Section 6.3.2.
MSDS:	defined in Section 21.1.1.
NEW LEASE:	defined in Section 10.3.2(d)
NOTICE OF ELECTION TO TERMINATE:	defined in Section 20.2.
OFAC:	defined in Section 17.3.
OUTSIDE AGREEMENT DATE:	defined in Section 5.4.3(b).
PERMITTED ENCUMBRANCE:	defined in Section 10.2.
PERMITTED LENDER:	defined in Section 10.2.
PERMITTED USE:	defined in Section 1.3.
PERSON:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PLANS:	defined in Section 6.1.
PMP:	defined in Section 1.3.
PMPA:	defined in Section 8.1.

DEFINITIONS ADDENDUM

PRE-EXISTING HAZARDOUS MATERIAL:	any Hazardous Material located on or under the Premises as of the Commencement Date, whether known or unknown.
PREMISES:	defined in Section 1.2.
PRIMARY USE:	defined in Section 1.3.
PROHIBITED PERSON:	defined in Section 17.3.
PROHIBITED PERSONS:	defined in Section 17.3.
PROJECT:	shall mean Tenant's development of the Project Improvements.
PROJECT IMPROVEMENTS:	shall mean the Improvements initially developed by Tenant and described by the Project Improvement Plans referred to in Exhibit C to this Lease (as opposed to both Existing Improvements existing as of the date of this Lease and subsequent Alterations to the Project Improvements).
PROPERTY EXPENSES:	defined in Section 16.2.
PWL:	defined in Section 6.8.1 (a)
REGULATED WASTE REMOVAL:	defined in Section 21.5.1.
REIMBURSEMENT PROCEDURE:	defined in Section 5.8.
RELATED COSTS:	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.
REMOVAL EXTENSION:	defined in Section 7.5.
REMOVAL PERIOD:	defined in Section 7.4.1.
RENT:	defined in Article 5.

DEFINITIONS ADDENDUM

RENT COMMENCEMENT DATE:	defined in Section 1.4.
RENTAL PERIODS:	defined in Section 1.4.
SUBLEASE:	any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, operating agreement, concession agreement or management agreement or other right to use applicable to this Lease or the Premises or any part thereof.
SUBTENANT:	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease.
TAX EXPENSES:	shall have the meaning as defined in Section 16.1.
TENANT:	defined in the Preamble of this Lease.
TENANT HAZARDOUS MATERIAL:	any Hazardous Material either (i) brought onto the Premises during the Term of this Lease by any Person, or (ii) brought onto the Premises or any other property by Tenant or Tenant Party, or (iii) generated, re-suspended, released, deposited, discharged, emitted, or exacerbated by any of the same. In (i), (ii) and (iii) hereof, Tenant Hazardous Material shall include such Hazardous Material to the extent it has come to be located on any other property. In (iii) hereof, Tenant Hazardous Material shall include Pre-Existing Hazardous Material to the extent generated, re-suspended, released, deposited, discharged, emitted, or exacerbated by Tenant or Tenant Party; otherwise, Pre-Existing Hazardous Material is excluded from Tenant Hazardous Materials.
TENANT HAZARDOUS MATERIALS ACTIVITY:	defined in Section 21.1.1.
TENANT PARENT:	a Person which Controls, directly or indirectly, Tenant.
TENANT PARTY:	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and its Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.

DEFINITIONS ADDENDUM

TENANT RELATED PARTY: (i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.

TERM: defined in Section 1.1.

TRANSFER: defined in Section 11.1.

TRANSFER NOTICE: defined in Section 11.2.

TRANSFeree: defined in Section 11.2 and 11.3.

USA Patriot Act: defined in Section 17.3.

USTs: defined in Section 21.4.1.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B

DEPICTION OF PREMISES

EXHIBIT C
PROJECT IMPROVEMENT PLANS

NOTE TO DRAFTER: INSERT THE FOLLOWING INFORMATION:

Preparer:

Project:

Job No.:

Approval Date:

Number of pages attached:

EXHIBIT D
CONSTRUCTION REQUIREMENTS

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D, THE CONDITIONS OF PROJECT APPROVAL SET FORTH IN EXHIBIT D-1, SUCH OTHER GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS LANDLORD MAY ADOPT OR REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK").

2. **Contractors.** Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations). All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.

4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all the Improvements (other than Minor Alterations). All such contracts shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Improvements at the Premises.

5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by Landlord.

6. **Dust and Trash Control.** Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.

7. **Performance and Payment Bonds.** Tenant shall furnish Landlord with the following separate corporate surety bonds not less than ten (10) days prior to the commencement of any Construction Work with a hard cost reasonably estimated by Tenant to be greater than _____ Dollars (\$ _____) (as such amount is increased on each anniversary of the Rent Commencement Date by the percentage increase in the CPI from the Rent Commencement Date):

7.1 [ISSUES: RATING OF ISSUER AND FORM OF BOND] A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected cost of such Construction Work. The Performance Bond and its issuer shall be in all material respects satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion by Tenant of such Construction Work.

7.2 A corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal and Landlord as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Construction Work or

for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments ("Payment Bond").

7.3 The Payment Bond and Performance Bond shall be in form and content satisfactory to Landlord.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), Tenant shall deliver to Landlord evidence reasonably demonstrating to Landlord that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work (other than Minor Alterations), deliver to Landlord a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by Landlord from time to time in its sole and absolute discretion:

- (i) Workers' compensation and employer's liability insurance:
 - (a) Workers' compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
 - (a) Required coverages:
 - (1) Premises and Operation;
 - (2) Products and Completed Operations;
 - (3) Contractual Liability;
 - (4) Broad Form Property Damage (including Completed Operations);
 - (5) Explosion, Collapse and Underground Hazards; and
 - (6) Personal Injury Liability.
 - (b) Minimum limits of liability:
 - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
 - (2) \$2,000,000 for Personal Injury Liability;
 - (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
 - (4) \$5,000,000 general aggregate applying separately to this Project.

(iii) **Automobile Liability Insurance:** Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) **Umbrella/Excess Liability Insurance:** The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) **Contractor's Pollution Liability Coverage:** If Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Tenant Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher.

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

11. **Notice of Completion.** Within ten (10) days after Completion of any Construction Work (other than Minor Alterations), Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to Landlord upon such recordation.

12. **Lien Releases.** Within sixty (60) days after Completion, Tenant shall deliver to Landlord unconditional final lien waivers from all contractors and materialmen.

13. **Copy of Record Set of Plans and Certificate of Completion.** At the conclusion of any Construction Work (other than Minor Alterations), deliver to Landlord (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency.

14. **Conflict.** In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.

EXHIBIT D-1
Conditions of Project Approval

To be attached prior to execution of Lease.

(PLACEHOLDER PAGE)

EXHIBIT E

MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

(Above Space for Recorder's Use Only)

MEMORANDUM OF LEASE

This Memorandum of Lease, hereinafter "Memorandum," is dated _____, 20__, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Landlord, and SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government, Tenant, concerning that certain real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference made a part hereof (the "Leased Premises").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "Lease"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, **and** subject to the terms of the Article 24 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is Twenty (20) years, beginning TBD, and ending TBD.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between the terms of this Memorandum and terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Tony Gordon
Director, Real Estate

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY, a local
governmental entity of regional
government**

a _____

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B TO MEMORANDUM OF LEASE

DEPICTION OF PREMISES

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

(FOR USE BY _____)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT F

SIGN PLANS

**** TENANT MUST MAINTAIN SIGNAGE IN CONFORMANCE WITH SECTION 8.30 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE, AS SUCH MAY BE AMENDED FROM TIME TO TIME, AND ANY OTHER POLICIES AND ORDINANCES ADOPTED BY LANDLORD RELATED TO SIGNAGE.**

****IF APPLICABLE, INSERT PROVISION IN THE EVENT THAT LANDLORD HAS TO RESTRICT ADVERTISING ON CERTAIN PORTIONS OF TENANT'S PROPERTY DUE TO OVERLAY DISTRICTS OR OTHER CONSIDERATIONS.**

EXHIBIT H
FORM OF LANDLORD'S ESTOPPEL STATEMENT

*Name
Address

Ladies and Gentlemen:

This Landlord Estoppel Statement ("Statement") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "Landlord"), as landlord under that certain lease dated _____, covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and _____ (hereinafter referred to as "Tenant"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. _____ (the "Lease").

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified in whole or in part [* , except as provided by that *(those) certain amendment(s)* described and dated as follows: * copies of which amendment(s)* is/are* on file in the Office of the Clerk of Landlord bearing Document No.(s)]*.
2. The Lease is for a term of * (*) years, commencing * and ending *.
3. As of the date of this Statement, Tenant is not, to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises *[except any security interest therein created in favor of * for a loan in the amount of * Dollars (\$*) as consented to by Landlord in an Administrative Approval or Resolution No. *, a copy of which is attached hereto and by reference incorporated herein]*. *[NOTE TO DRAFTER: Modify language if encumbrance has not yet been approved.]*
5. All rent, and any other charges payable by Tenant pursuant to the lease (referred to collectively hereinafter as "Rent") has been paid through and including *; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.

6. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by * (the "Recipient") and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of.

Executed this _____ day of _____, 20__.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Tony Gordon
Director, Real Estate

SDUPD Docs No. _____

ITEM 15

**APPROVE CREATION OF AN AD HOC
COMMITTEE ON DIVERSITY, EQUITY, AND
INCLUSION:**

**There are no materials for
this item**