THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: **June 10, 2009** REPORT NO: **09-092**

ATTENTION: Committee on Land Use and Housing
Agenda of **June 17, 2009**

SUBJECT: Exclusive Negotiation Agreement with DPC-Brown Field for Development at Brown Field Airport

REFERENCE: Report to the City Council 07-107
Report to the City Council 08-002
Report to the City Council 08-129

REQUESTED ACTION:
Recommend that staff enter into an Exclusive Negotiation Agreement (ENA) for a proposed development on Brown Field Airport with Distinctive Projects Company, Inc. (DPC-Brown Field).

STAFF RECOMMENDATION:
Staff recommends that the City enter into an ENA with DPC-Brown Field.

COMMUNITY PLANNING GROUP RECOMMENDATIONS:
Staff attended meetings regarding the Brown Field Development project on the following dates:

- *May 03, 2007 - Airports Advisory Subcommittee*
- *May 08, 2007 - Airports Advisory Committee @ Experimental Aircraft Association*
- *May 16, 2007 - Otay Mesa Planning Group*
- *May 23, 2007 - Airports Advisory Subcommittee*
- *May 25, 2007 - Airports Advisory Subcommittee*
- *May 26, 2007 - Experimental Aircraft Association Forum*
- *May 31, 2007 - Airports Advisory Subcommittee*
- *June 05, 2007 - Airports Advisory Committee*
- *July 11, 2007 - Land Use and Housing Committee*
- *July 18, 2007 - Otay Mesa Planning Group*
- *July 26, 2007 - Otay Mesa Chamber of Commerce*
- *Aug 15, 2007 - Otay Mesa Planning Group*
- *Aug 18, 2007 - Experimental Aircraft Association Forum*
- *Sept 19, 2007 - South County Economic Development Council*
- *Sept 23, 2007 - Ocean View Hills Founders' Day Community Fair*
- *Oct 17, 2007 - Otay Mesa Planning Group*

- *Nov 20, 2007 - Airports Advisory Committee*
- *Jan 23, 2008 - Land Use and Housing Committee*
- *March 6, 2008 - San Diego County Regional Airport Authority*
- *July 16, 2008 - Otay Mesa Chamber of Commerce & South County EDC*
- *August 19, 2008 - Federal Aviation Administration ("FAA") Airports District Office*
- *Sept 4, 2008 - San Diego Regional Chamber of Commerce Infrastructure & Special Projects Committee*
- *Sept 17, 2008 - Land Use and Housing Committee*
- *Dec 9, 2008 - San Diego Regional Chamber of Commerce Transportation Committee*
- *Jan 20, 2009 - San Diego Regional Chamber of Commerce Public Policy Committee*
- *Feb 17, 2009 – FAA Airports District Office*

SUMMARY:

In December 2006, a Request for Qualifications (RFQ) was issued soliciting qualifications to develop and operate a Fixed Base Operator (FBO) or other aviation-related business at Brown Field Airport. The City was seeking one or more highly qualified and experienced developer(s) to submit evidence of qualifications and experience of their their ability to develop and operate a FBO facility and/or other aviation uses on Brown Field Airport to satisfy future aviation demand. It was anticipated that once the aviation demand was met, non-aviation uses would be considered on the airport. The developers were requested to demonstrate their ability to support the airport's mission of developing, operating, maintaining and promoting Brown Field for the benefit of the public, airport users, and the communities it serves. These actions were taken with the knowledge that development of compatible, aeronautical real estate projects at the airport would support the City's mission and public policy objectives.

The objective of the RFQ process was to obtain information regarding interested developers who had the ability to develop and implement a signature aviation project that will provide new jobs and development at Brown Field Airport. The RFQ also clearly established that non-aviation development would be considered only if the aviation demand had been satisfied and that development at the airport must conform to the City's objectives and Federal Aviation Administration (FAA) requirements.

Qualified development teams were expected to have substantial experience in developing and operating airport FBO facilities and/or major aviation facilities. It was critical that the team include an experienced, aviation-related developer and operator with experience in designing large-scale aviation facilities. Strong emphasis was also placed on financial capability.

The initial development site (Site) offered was located between the east end of the existing ramp and the beginning of Runway 26R, approximately 65 acres, on the Airport. However, conceptual proposals which include additional land and or locations, including larger scale proposals were specifically invited in the RFQ.

The vacant land included in the Site has been minimally developed and currently has three helipads that have deteriorated over time and are seldom used. Staff considered this an excellent location for a FBO due to its central location and proximity to the aircraft traffic that uses the U.S. Customs area. FBO's typically offer services which primarily include aircraft refueling and a combination of the following: airframe and power plant maintenance, flight training, aircraft rental, aircraft charter, avionics sales and service, and aircraft storage/hangar rentals.

There were six respondents to the RFQ, one of which was disqualified for failing to submit the required $25,000 deposit. A selection committee was formed to review the statements of qualifications, interview the respondents and determine the top qualified development teams.

Of the five respondents to the RFQ that were evaluated, two were selected to move forward to the next phase of responding to a Request for Proposals (RFP). The responses to the RFP were necessarily much more detailed and comprehensive than the statement of qualifications submitted in response to the RFQ. Based upon the responses from the two firms that responded to the RFP, the 11-member, Brown Field RFP Selection Committee recommended Distinctive Projects Company, Inc. (DPC-Brown Field) for exclusive negotiations with the City.

On January 23, 2008, the Land Use and Housing Committee voted unanamously to support City staff entering into an Exclusive Negotiating Agreement (ENA) with DPC. Since that time, the following tasks have been completed:

- Finalized Exclusive Negotiating Agreement
- Completed ALTA Survey of Project Site
- Completed Environmental Surveys of Project Site
- Prepared and submitted Preliminary Review Applications to DSD
- Completed retail absorption analysis
- Briefed the FAA Western-Pacific Region on the proposed development
- Completed Solar Design Analysis
- Submitted revised Airport Layout Plan for FAA approval
- Prepared Technical Studies for Environmental Impact Report (EIR) and Planned Development Permit
- Prepared Architectural Drawing for first development phase
- Submitted Master Plan Report with all attachments

The airport is unzoned, and land uses are governed by the Airport Master Plan and the Airport Layout Plan and are reviewed by the Airports Advisory Committee and Otay Mesa Planning Group. The Mayor and City Council have ultimate authority over all development proposals and/or leases at Brown Field.

PROPOSED ENA

The attached proposed ENA will allow DPC two years to complete the following tasks which are needed prior to finalizing a development agreement and EIR for City Council Consideration:

- Negotiate lease/development agreement
- Commence Environmental Review
- Submit Planned Development Permit
- Seek approval of Airport Layout Plan with associated Section 7 Biological Opinion from Fish and Wildlife Service concerning vernal pools and NEPA certification
- Perform water and sewer study
- Present project documents to City Council for approval

If DPC does not meet the measurable goals set forth in the proposed ENA, the City has the right to terminate the ENA without penalty. In consideration of City's agreement to negotiate exclusively, DPC shall pay a non-refundable sum of $100,000 for the two year term of the ENA. Additional consideration would be required for any extension of the ENA.

In addition to building a first class airport development, DPC intends to minimize the project's environmental "footprint" through the use of various green practices, including:

- Development and implementation of sustainability screening criteria, associated with aviation and non-aviation related design, to assure that natural resource and energy efficiency are maximized in all phases of the development (design, construction and operation).
- Implementation of an FAA and Airports Council International-North America conforming Environmental Management System, used to control and continually improve operations and practices.
- Designing and building to Leadership in Energy and Environmental Design (LEED) Silver standard.
- Incorporation of solar photovoltaic and other cost-effective, energy-saving features into building designs to optimize the use of renewable energy.
- Incorporation of best management practices for storm water management, including on site retention and re-use, where feasible.
- Incorporation of water efficient landscape design, utilizing gray and reclaimed water, where possible.
- Recycling, reduction and re-use of resources (e.g., demolition waste) during construction and operations.

As part of the proposed development, a new entrance to Brown Field is envisioned. Currently, the Experimental Aircraft Association's (EAA) leasehold is within the area proposed for the new entrance. Accordingly, EAA has agreed to adjust its leasehold boundaries by way of the attached Amendment. The adjustment of EAA's leasehold will benefit both the Airport and EAA even if the proposed development does not occur as it will allow for the future creation of a new airport entrance and it will make EAA's leasehold more developable.

BACKGROUND:

The City of San Diego owns and operates two general aviation airports, Montgomery Field and Brown Field. These two airports are part of the national air transportation system and are designated as reliever airports for the San Diego International Airport (Lindbergh Field). Reliever airports serve the general aviation community that would otherwise be forced to use the more congested air carrier airports.

Brown Field Airport (SDM) encompasses approximately 880 acres in Otay Mesa, immediately north of the United States – Mexico border. The airport recorded nearly 110,000 operations in 2008. With the exception of Lindbergh Field, Brown Field Airport possesses the longest civilian runway in San Diego County, allowing it to accommodate a wide variety of aircraft. Additionally, Brown Field is designated as one of a select few port of entries in the region.

Currently, corporate aircraft flying long-haul routes to Asia or South America cannot take off fully loaded from Carlsbad and must stop at Brown Field or Lindbergh Field in order to tack off with a full load of fuel.

Otay Mesa has become California's largest commercial land border port, as well as one of the busiest commercial land border crossings in the United States. Otay Mesa currently has large parcels of value-priced industrial land and numerous economic development incentive programs, such as the State Enterprise Zone and the Foreign Trade Zone, all designed to induce companies to locate in the region.

Recently, development has begun in East Otay Mesa, which is located in the unincorporated area of the County of San Diego. Plans are already underway in East Otay Mesa to establish a high technology business park. With three major freeways, a higher education center, and over 11,000 homes under development in the area, Brown Field is set to become a regional economic engine for both commerce and industrial development.

A June 2004 land-use inspection report by the FAA expressed concern over the amount of non-aviation land uses at Brown Field. More notably, the report cited non-aviation activities are occurring on areas designated only for aviation use on the Airport Layout Plan. The City has been concerned with this situation for some time, and has litigated with three tenants in an effort to eradicate non-aviation activities from the airport. Several of the activities cited by the FAA involve short-term, temporary agreements entered into in an effort to help stabilize the economic condition of the airport while long-term development plans were being formulated. The vast majority of these leases have been terminated. It is the goal of the airport to meet current and anticipated general aviation demand through the development of new facilities. In compliance with the FAA's request, the airport has created a plan to eliminate, consolidate or relocate the majority of non-aviation uses and to market and develop Brown Field primarily for aeronautical purposes. To further effect this plan, staff has take the steps set forth above.

FISCAL CONSIDERATIONS:

The Airports Division is an enterprise fund that is supported largely by rent collected from leases. This proposed development would significantly increase revenue from aviation activities at the airport. The costs for development, including any required infrastructure, will be the sole responsibility of the developer.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

- On July 11, 2007, the Land Use and Housing Committee voted unanimously to support the issuance of the Brown Field RFP.
- On January 23, 2008, the Land Use and Housing Committee voted unanimously to support exclusive negotiations with DPC-Brown Field.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

City staff has made presentations regarding the issuance of the proposed RFP to the City Airports Advisory Committee, Otay Mesa Planning Group, Otay Mesa Chamber of Commerce, and South County Economic Development Council.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The stakeholders and likely groups to be impacted are the airport users and existing tenants at the airport and the surrounding Otay Mesa Community. There are currently four aviation tenants at Brown Field:

- Experimental Aircraft Association, Chapter 14
  EAA currently leases 2.3 acres at Brown Field, adjacent to the control tower. EAA has operated as a nonprofit organization at Brown Field Airport since 1981 and is dedicated to the education of its members in the aeronautical sciences and engineering, the introduction and education of young people in flying and aircraft building, the promotion of general aviation and safety, and outreach to the San Diego community.

- Brown Field Aviation Ventures/Lancair
  Lancair currently subleases approximately 20 acres from Brown Field Aviation Ventures and operates the largest FBO at Brown Field, handling the majority of the large multi-engine and jet traffic.

- Aviation International
  Aviation International leases approximately 2.5 acres in the center of the airport's main ramp area. The primarily services offered are hangar and tiedown rentals.

- First Flight
  First Flight Corporation current leases and operates approximately 2.9 acres at the western end of the ramp, offering services to mainly small twin and single engine aircraft.

Michael C. Tussey
Deputy Director, Airports Division

David Jarrell
Deputy Chief Operating Officer, Public Works

Attachments: Exclusive Negotiation Agreement
EAA Amendment

EXCLUSIVE NEGOTIATION AGREEMENT

FOR A PROPOSED DEVELOPMENT AT BROWN FIELD AIRPORT

This Exclusive Negotiation Agreement [ENA] for a proposed development at Brown Field Airport, is made by and between the City of San Diego [City], a municipal corporation, and Brown Field International Business Park LLC, dba DPC Brown Field [Developer], jointly referred to as the "Parties", and shall be effective the _____day of _____, 2009 [Effective Date].

RECITALS

WHEREAS, the City owns in fee simple approximately 356 gross acres of land available for development at Brown Field Airport [Airport] that are the subject of this agreement, more particularly described in "Exhibit A" [Property], being attached hereto and made a part hereof; and

WHEREAS, the City issued a Request for Qualifications in regard to the possible development of the Airport, to which Developer timely responded and whereby the Developer's financial, managerial, and development qualifications were validated in an open competitive Request for Qualifications process; and

WHEREAS, thereafter the Developer submitted a response to the City's Request for Proposals at Brown Field Airport [RFP], for the purposes of developing the same with aviation, commercial, and industrial facilities to be operated and/or subleased by Developer to third party users, and was ultimately selected by City under the terms of the RFP; and

WHEREAS, City staff was supported by the Land Use and Housing Committee [LU&H] to engage in exclusive negotiations with Developer, pursuant to an exclusive negotiation agreement, and subject to approval by the City Council; and

WHEREAS, prior to submitting this ENA to the City Council for its approval, the Parties have reached certain understandings respecting processes and procedures for negotiating terms which are meant to lead to the eventual submission and approval of documents required for the development of Brown Field Development Airport [the Proposed Project]; and

WHEREAS, upon completion the Proposed Project contemplated by this ENA, as more fully described in the Developers response to the RFP, is anticipated to generate significant economic impacts to the local and regional community, including up to $20,000,000 per year in increased tax revenues, up to 3,800 new permanent jobs, and up to $2,200,000 per year in additional revenues for the Airport Enterprise Fund.

NOW, THEREFORE, City and Developer agree that the purpose of this ENA is to provide a broad outline of the basis on which the City and Developer will work with each other during the term of this ENA, and hereby express their understanding as follows:

Section 1 Definitions

"Basic Aviation Facilities" means the development and construction of aviation-related facilities and related aeronautical improvements, consistent with City's Request for Proposal, Exhibit "B" (General Aviation Aeronautical Activities and FBO Minimum Standards for Brown Field Municipal Airport), and Developer's proposal as presented at LU&H.

"Conditional Airport Layout Plan" means a provisional approval of a plan by the FAA which identifies existing airport facilities, proposed land uses and proposed developments. A Conditional Airport Layout Plan is for planning purposes only. It does not commit the airport sponsor to building any depicted airport facilities.

"Core Infrastructure" means those improvements to the Property, including without limitations, grading and drainage, roadways, water/sanitary sewer, utilities, and other improvements necessary for the development of the Proposed Project.

"Development Agreement" means that contract between the City and Developer to be negotiated as a set forth in this agreement which will direct the development of the Proposed Project.

"FAA" means the Federal Aviation Administration.

"Infrastructure Financing District" means a mechanism, described in Government Code section 53398, by which public works and services needed to support new commercial and industrial development can be financed within the Border Development Zone.

"Land Use Classifications" means those development uses and users for the Proposed Project established pursuant to FAA guidelines.

"Land Use Plan" means that geographic depiction of the Proposed Project setting forth the Land Use Classifications, and other pertinent information pertaining to the Proposed Project, as attached hereto as Exhibit A.

"Museum Facility" means a proposed facility of the San Diego Air and Space Museum, and which is subject to approval by the FAA.

"Proposed Project" means the development of the Property as set forth conceptually in the Land Use Plan.

"Solar Power Facility" means the power generating facility, which will be developed by the Developer, and which is subject to approval by the FAA.

Section 2 Term

Unless terminated earlier by agreement of the Parties, as set forth elsewhere herein, the obligations and privileges contained in this ENA shall be in effect for a period of two (2) years commencing upon the Effective Date hereof, or until the effective date of an approved Development Agreement, whichever occurs first in time ("Term"). Provided, however, that the City may, good cause having been shown, extend this ENA for an additional twelve (12) months upon payment of an additional non-refundable Fifty Thousand Dollars ($50,000) to the City's Airport Enterprise Fund. Upon the expiration or early termination of this ENA, all obligations and privileges under this ENA shall terminate.

Section 3 Exclusive Rights

City hereby agrees that so long as Developer is negotiating in good faith toward the submission of a Development Agreement (and all other associated and necessary documents) to the City Council for their approval, City shall not negotiate with any person or entity, other than Developer, regarding the Proposed Project or any development or redevelopment of the Property, for the Term of this ENA. This prohibition does not apply to the temporary use of any areas of the Property which are not under development or are currently occupied and whose temporary use by City or another would not preclude Developer from fulfilling its obligations under this ENA.

City and Developer further agree that if during the Term of this ENA it is determined that less than the entire Property would be required for the Proposed Project, the description of the Property would be so modified, and the City would be permitted to negotiate and/or discuss the development of that portion eliminated from the boundaries of the Property with potential third-party developers.

City further explicitly reserves the right to offer, negotiate, and lease other portions of the Airport which are not part of the Property.

Section 4 Consideration

In consideration of City's agreement to negotiate exclusively with Developer pursuant to Section 3 herein, Developer shall pay, within ten (10) business days after the Effective Date of this ENA, a non-refundable sum of One Hundred Thousand Dollars ($100,000.00), to the City's Airports Enterprise Fund.

Section 5 Basic Aviation Facilities

As an essential inducement to the City to enter into this ENA, the Developer agrees that any Development Agreement submitted for approval to the City Council will provide for the development of, and strict timelines for, the construction of Basic Aviation Facilities and related Core Infrastructure as a component of the Proposed Project, and that the Basic Aviation Facilities shall be constructed in the first phase of the Proposed Project, if developed in phases.

Section 6 **Environmental Review**

As soon as is reasonably practicable, but no later than one hundred eighty (180) days after the Effective Date of this ENA, Developer agrees to submit to City, at Developer's sole cost and expense, a Planned Development Permit Application [Application] for the Proposed Project. The Application shall include a proposed CEQA scoping document in conformity with the then-current standardized Appendix G checklist as set forth in the CEQA guidelines. This ENA shall be subject to early termination, as provided for in Section 16, on Developer's failure to timely submit the Application.

Section 7 **Initial Financing Plan**

It is agreed that within ten (10) days of the execution of this ENA, Developer shall, at its sole cost and expense, submit a financing plan which will, to the reasonable satisfaction of City, evidence Developer's ability to finance all activities required during the Term of this ENA.

It is further agreed that said financing plan shall include, but not be limited to: (1) up-dated corporate financial statements of Developer and its existing members; (2) current SEC 10Q and 10K reports of any new members of the Developer if those members are public companies or proof reasonably acceptable to the City of the new members capacity to meet its financial commitments to the Developer if those members are private companies or individuals; and (3) the Developer's debt to equity ratio.

Within thirty (30) days of receipt of the materials described above, City shall notify Developer in writing concerning the acceptability of the financing plan. In the event that City rejects the financing plan, City shall provide the developer with a written explanation for the rejection. Thereafter, Developer shall have one opportunity, within thirty (30) days of receipt of the explanation for rejection, to address the reasons for rejection given by City and resubmit the financing plan for City's approval.

Section 8 **Airport Water/Sewer Capacity**

It is agreed that during the term of this ENA, City and Developer will use reasonable business efforts to investigate the formation of an Airport Infrastructure Financing District, from which incremental property tax revenue could be made available to Developer to finance certain Core Infrastructure necessary to support development of the Proposed Project or infrastructure elsewhere at the Airport.

Section 9 **FAA - Conditional Airport Layout Plan**

It is understood and agreed that FAA approval of certain elements of the Proposed Project will be required. In order to facilitate the negotiation process of the Proposed Project, City agrees to seek from the FAA a Conditional Airport Layout Plan based on the Developer's proposed Land Use Plan. In that regard, as soon as is reasonably practicable after the Effective Date of this ENA, the City's Airports Director, or his designee, and Developer shall commence consultation efforts with the FAA, with input from appropriate community planning groups, to facilitate the granting of such a conditional plan.

Section 10 **FAA - Land Use Classifications**

It is understood and agreed that in order for the Proposed Project to receive FAA approval, the FAA must be satisfied with the Land Use Classifications proposed for the Project. In order to facilitate the negotiation process, City and Developer agree to work together to develop land use classifications which are satisfactory to the FAA and which are in accordance with applicable state laws and other laws and/or regulations.

Section 11 **Parcel Lease Rates and Charges**

The determination of the parcel lease rental rates, charges and/or additional rents, will be established in accordance with the terms of an approved Development Agreement. However, subject to approval of the Development Agreement, and for preliminary guidance purposes only, it is agreed that the rate-making methodology for the determination of parcel lease rental rates, charges, and/or additional rents be based on the following proposed terms:

(i) Aviation Parcel Leases: For parcel leases used for direct aviation and direct aviation support purposes, base ground rent would be the fair market ground rent established by the City for aviation leases. A fair market ground rent shall be determined no more than six (6) months prior to the issuance of a Certificate of Occupancy [COO] for a parcel lease, and shall commence upon the issuance of a COO for a parcel lease. Direct Aviation users may be subject to non-discriminatory additional rents established by the City for aviation related activities at the Airport.

(ii) Non-Aviation Parcel Leases: For Parcel Leases used for indirect aviation purposes and non-aviation purposes, the annual base ground rent would be ten percent (10%) of the fair market value of the parcel established by the City. A fair market value shall be determined no more than six (6) months prior to the issuance of a COO for a parcel lease, and shall commence upon issuance of a COO for a parcel lease. All Non-Aviation uses would be subject to non-discriminatory additional rents established by the City for non-aviation related activities at the Airport. In addition, non-aviation retail uses would be subject to a percentage rents.

(iii) Non-Aviation Retail Parcel Leases: For parcel leases where all or a portion of the parcel lease premises are sites for non-aviation commercial retail uses, the base ground rent would be established as set forth in Paragraph (ii) above. In addition, non-aviation retail users would be subject to a percentage rents based on a percentage of gross revenues, to the extent that such percentage rents on a monthly basis exceed the base ground rent of the parcel lease attributable for the premises of such retail site for the month. The percentage used to calculate percentage rents would be determined in the amounts similar to percentages used for retail users at airports located in southern California.

In addition, all non-aviation commercial retail uses would be subject to non-discriminatory additional rents established by the City for non-aviation related activities at the Airport.

(iv) Non-Aviation Museum parcel lease: For a parcel lease or portion thereof used solely for a proposed Museum Facility, which use is subject to approval by the FAA, base ground rent would be One Dollar ($1.00) per year, plus an additional annual administration fee, as determined by the then-current City fee schedule. In addition, such a Museum Facility use would be subject to non-discriminatory additional rents established by the City for non-aviation related activities at the Airport.

(v) Non-Aviation Solar Power Facility Lease: For a parcel lease or portion thereof used solely for a proposed Solar Power Facility, which use is subject to approval by the FAA, base ground rent would be established pursuant to the normal and customary fee structure for such facilities in the United States. Consideration would be given to the City for the value of the premises, but such consideration may include the benefit of the energy produced and used by the City or the Airport. A Solar Power Facility use would be subject to non-discriminatory additional rents established by the City for non-aviation related activities at the Airport.

In determining the fair market ground rent or fair market value for parcel leases, as set forth above, it is proposed that the real estate appraiser, among other factors, shall assume that the property is in an "as is" condition, and that the use on each parcel lease is the use approved in any development permits. Further, in compliance with FAA rules, it is proposed that the lease term for aviation related leases be 50 years, and that other non-aviation related leases be granted terms of 50 years with a non-assignable right of first refusal to the Developer for one subsequent term for each lease parcel. However, if the term of a parcel lease is extended prior to the expiration of the original term, or if the use changes, for that parcel lease, Developer shall not be granted a first right of refusal on that particular parcel lease. If, during the term of the lease, the parties agree to a change in use, the lease rate shall be revised to reflect the new use. For example if a non-aviation parcel is changed to an aviation parcel then the rental rate would be modified to reflect the new use. Notwithstanding anything set forth in this ENA, all lease terms, and/or methodologies for establishing lease terms, will be set forth in a proposed Development Agreement and are subject to approval by the City Council, in its sole discretion.

Section 12 Proposed Phasing Schedule

If the Proposed Project is developed in phases, it is agreed that: (1) Developer shall include in any Development Agreement the requirement that the Basic Aviation Facilities shall be completed within the first phase of the Proposed Project; (2) that any subsequent phases shall be developed in accordance with approved schedules, which will determine the requirement, if any, to construct, and the order of construction, all in accordance with applicable law.

Section 13 Regional Studies

During the term of this ENA, City agrees to use its reasonable business efforts to work cooperatively with the San Diego Regional Airport Authority and the San Diego Association of Governments during their Airport Land Use Compatibility Plan ("ALUCP"), Regional Aviation Strategic Plan ("RASP"), and Airport Multimodal Accessibility Plan ("AMAP") update processes ("Regional Studies") to provide information pertaining to the Proposed Project, with the intension to ensure consistency with the master plan for the community.

Section 14 Right of Entry

During the term of this ENA, the City will execute and deliver to Developer a right-of-entry permit, in form and content mutually agreeable to Develop and City, under the terms of which the City will grant to Developer and its agents, employees, a reasonable right-of-entry upon the Property to make or cause to be made such investigations, surveys and testing on the Property, as considered necessary or advisable by Developer in connection with the Proposed Project.

Section 15 Termination of ENA by Developer

Developer shall have the right at any time during the term of this ENA, exercisable at its option by giving written notice thereof to the City, to terminate this ENA if the Proposed Project proves to be impractical, uneconomical or otherwise unfeasible as determined by Developer in its sole discretion. If Developer exercises it option to terminate as set forth in this section, Developer (i) shall not be entitled to any compensation or other payment whatsoever by the City on account of such termination, and (ii) shall offer to the City, at a reasonable cost to be determined by the Developer in Developer's sole discretion, copies of and rights to all plans, specifications, permits and studies prepared for or germane to the Proposed Project and the Property or any part thereof.

Section 16 Termination of ENA by City

City expressly reserves the right and option to terminate this ENA upon written notice to Developer if: (i) the Developer fails to commission, at Developer's expense, environmental review as set forth in Section 6 herein; or (ii) the City does not approve the Developer's Financing Plan as set forth in Section 7 herein; or (iii) the Developer fails to fully observe and perform all of the terms, covenants, and conditions set forth in this ENA.

Upon termination of this ENA as set forth in this Section, this ENA shall: (i) become null and void; (ii) Developer shall have no rights to develop the Property or any part thereof; and (iii) Developer shall have no rights or interest whatsoever in or to the Property. In addition, Developer: (i) shall not be entitled to any compensation or other payment whatsoever by the City on account of such termination or for any improvements constructed by Developer on the Property (if any); and (ii) shall offer to the City, at a reasonable cost to be determined by the Developer in Developer's sole discretion, copies of and rights to all plans, specifications, permits and studies prepared for or germane to the Proposed Project and the Property or any part thereof.

Section 17 Construction and Amendment

This ENA constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, representations, and warranties between the Parties with respect to the subject matter hereof. This ENA has been negotiated by Developer and City with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of the ENA or any attachment hereto shall be effective unless incorporated in a written instrument executed by the City and Developer.

Section 18 Assignment

Developer shall not sell, assign, convey or transferred in any manner, to any other person or entity, any right hereunder granted to Developer. Any such sale, assignment, conveyance or transfer would be in breach of this provision and would be null and void.

Section 19 Governing Law

This ENA and the Parties' respective rights and obligations hereunder shall be governed and construed in accordance with the laws of the State of California without regard to conflicts of law, principles thereof, or of any other jurisdiction. If any term or provision of this ENA is held by a court or other competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this ENA shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Any of the terms or conditions of this ENA may be waived at any time and from time to time in writing by mutual consent of the Parties, without affecting any other terms or conditions herein.

Section 20 Counterparts

This ENA may be executed in two or more counterparts, each of which will be deemed to be an original copy of this ENA and all of which, when taken together, will be deemed to constitute one and the same agreement. Scanned and facsimile copies shall be deemed originals in all respects.

Section 21 Notices

All notices required or permitted under this MOU shall be given (i) by hand, recognized overnight courier, or by the United States Postal Service to the Parties as the addresses set forth below, effective upon receipt or refusal of delivery, or (ii) by facsimile (fax) transmission to the Parties at their fax numbers set forth below effective upon electronic confirmation of transmission by sender. The Parties may change the entity to receive notice or the address of that entity upon thirty (30) days' written notice to the other Party.

Address for Developer:

Brown Field International Business Park LLC
% Foley & Lardner LLP
402 West Broadway, Suite 2100
San Diego, California 92101
Attention: S. Wayne Rosenbaum, Esq.
Tel: (619) 685-6413
Fax: (619) 234-3510

Address for the City:

The City of San Diego Airports Director
3750 John J. Montgomery Drive
San Diego, California 92123
Tel: (858) 573-1441
Fax: (858) 279-0536

Section 22 Relationship of the Parties

Notwithstanding anything to the contrary contained herein, the relationship of City and Developer shall be solely that of property owner and prospective developer/tenant, respectively, and nothing contained herein shall be deemed to create a partnership or joint venture between them.

Further, Developer specifically acknowledges that City shall not be responsible or held liable for any costs incurred by the Developer in relation to this ENA, regardless of the type or amount of cost(s) incurred.

Section 23 City Council Approval Required

Notwithstanding anything which may seem to the contrary, it is understood and agreed that any proposed Development Agreement, parcel lease, or other binding agreement(s) contemplated in this ENA, must be reviewed, considered, and approved at a hearing before the City Council of the City of San Diego. Further, that this ENA does not convey to Developer any property rights in the Property, nor any right to develop and/or lease the Property. While the City Airports Director and/or staff may recommend approval of documents contemplated in this ENA, the City Council shall have the sole discretion to approve or disapprove any such documents.

IN WITNESS WHEREOF, City and Developer have executed this ENA as of the date first set forth above.

THE CITY OF SAN DIEGO,
a municipal corporation

By: _____

Name: _____

Title: _____

BROWN FIELD INTERNATIONAL BUSINESS PARK LLC,
a Delaware limited liability company, dba DPC Brown Field

By: _____

Name: _____

Title: _____

Approved as to form and legality

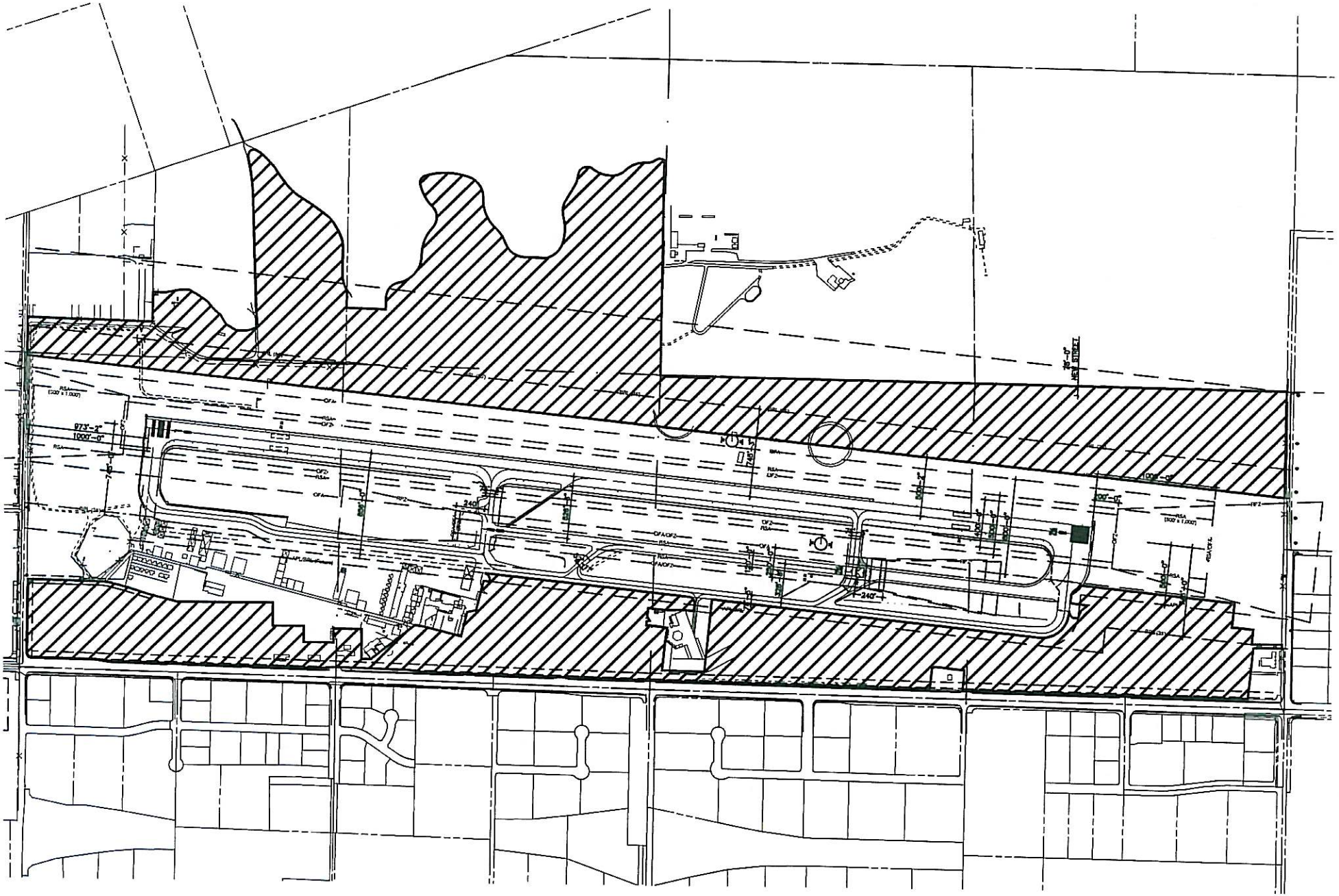
this _____ day of _____, 2009.

JAN I. GOLDSMITH, City Attorney

By: _____
Debra J. Bevier
Deputy City Attorney

Exhibit A

Brown Field International Business Park
06.09.09



FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT [First Amendment] is made by and between the CITY of SAN DIEGO, a municipal corporation [CITY], and EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 14, INC., a California non-profit corporation [LESSEE], to be effective as of the first day of the calendar month following the date of execution by CITY [Effective Date], when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

1. By a ten (10) year Lease Agreement [Lease] between the CITY and LESSEE filed on January 17, 2007, in the Office of the Clerk in San Diego, California, Resolution number 302261, CITY leased to LESSEE certain real property on Brown Field Airport, in the City of San Diego, County of San Diego, State of California, more particularly described in the Lease; and

2. Currently, the CITY is negotiating a new, large-scale development on Brown Field Airport that will encompass more than 350 acres; and

3. The Airport Layout Plan and Airport Master Plan contemplate a new airport entrance to Brown Field Airport at Britannia Blvd. and Otay Mesa Road; and

4. The planned new development intends to incorporate into its construction plans, the construction of the new airport entrance at Britannia Blvd; however, LESSEE's current leasehold boundaries are within the planned new entrance area; and

5. The purpose of this First Amendment is to allow for the realignment of LESSEE's leasehold boundaries to accommodate the new airport entrance. A new rent and term structure will compensate LESSEE for agreeing to the leasehold modifications.

NOW, THEREFORE, CITY AND LESSEE agree that the Lease shall be amended and modified as follows:

1. Premises:

The terms and conditions set forth in Section 2.1 Commencement, shall be deleted in its entirety and replaced with the following:

CITY herby leases to LESSEE and LESSEE leases from CITY all of that certain real property consisting of approximately 2.07 acres situated on Brown Field Airport in the City of San Diego, County of San Diego, State of California, described in Exhibit "B", Initial Leased Premises, of this lease ("Premises").

2. Commencement:

The terms and conditions set forth in Section 2.1 Commencement, shall be deleted in its entirety and replaced with the following:

The term of this Lease shall be fourteen (14) years commencing on the Effective Date. "Lease Year" as used in this Lease shall mean the twelve (12) month period commencing on the Effective Date.

3. Option to Extend/Increase Premises:

Section 2.3 Option to Extend, and Section 2.4 Option to Increase Premises, shall be deleted in their entirety and replaced with the following:

2.3 Option to Extend.

Provided that LESSEE is not in default of its Lease, LESSEE will be given the right to extend this Lease for two (2), seven (7) year terms, subject to all original agreements, considerations, covenants and conditions of this Lease and upon the following terms and conditions:

a. LESSEE must give the CITY written notice of its intention to exercise its option to extend the Lease by exercising OPTION "A", as described as Parcel A in the attached Exhibit "B", and leasing an additional 0.689 acres of land at the Brown Field Airport no later than six (6) months prior to the expiration of the amended and restated term of this Lease;

b. LESSEE must submit a development plan and show due diligence and good faith toward obtaining development entitlements, building permits and FAA authorization on the Parcel A Area no later than six (6) months prior to the expiration of the amended and restated term of this Lease;

c. LESSEE must provide evidence of adequate and timely funding of the Parcel A development no later than six (6) months prior to the expiration of the amended and restated term of this Lease;

d. If LESSEE exercises OPTION "A" to the satisfaction of the CITY, LESSEE shall be granted a seven (7) year extension of the lease term;

e. Provided LESSEE is not in default of this Lease, and LESSEE has developed Parcel A to the CITY's satisfaction, LESSEE shall be given the opportunity to lease OPTION "B" and/or OPTION "C" as described as Parcel B and Parcel C in Exhibit 1. LESSEE must give written notice to the CITY to exercise OPTION "B" and/or OPTION "C" and increase the size of their Premises by an additional 0.989 acres for Parcel B and 0.470

acres for Parcel C on the Brown Field Airport no later than six (6) months prior to the expiration of the OPTION "A" term of the Lease;.

f. LESSEE must submit a development plan and show due diligence and good faith toward obtaining development entitlements, building permits and FAA authorization on the Parcel B and/or Parcel C no later than six (6) months prior to the expiration of the amended and restated term of this Lease;

g. LESSEE must provide evidence of adequate and timely funding for this Parcel B and/or Parcel C development no later than six (6) months prior to the expiration of the amended and restated term of this Lease;

h. If LESSEE exercises OPTION "B" and/or OPTION "C" to the satisfaction of CITY, LESSEE shall be granted an additional seven (7) year extension of the lease term.

4. Numbering Sequence of Section 2 of the Lease:

Due to the deletion of former sections 2.3 and 2.4 into a single new section 2.3, it is the intention of the CITY and LESSE that section 2.4 shall intentionally be left blank.

5. Rent:

The first paragraph of Section 3.2 Rent of this Lease shall be deleted in its entirety and replaced with the following:

Upon the amended and restated Commencement Date, Rent shall be Five Hundred Eighty Three Dollars ($583.00) per acre per month or $1,206.81 per month. Any increase in the size of the Premises pursuant to Sections 1.1 and 2.3 hereof shall include an increase in rent based on the annually adjusted rent per acre for the year in which the acreage of the Premises is increased.

6. The following paragraph shall be added to the lease:

San Diego's Strong Mayor Form of Governance:

All references to "CITY Manager" in this Consent to Sublease shall be deemed to refer to "Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

7. No Other Changes:

All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the First Amendment is executed by CITY acting by and through its Mayor, or his designee, and by LESSEE acting by and through its lawful authorized designees.

EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 14, INC.

Date: June 9, 2009 By: _____
Larry Rothrock, President

Date: 06/09/2009 By: _____
Joseph Russo, Vice President

Date: June 9, 2009 By: _____
~~Dennis Collum, Treasurer~~
Donna Ryan, Secretary

CITY OF SAN DIEGO

Date: _____ By: _____
David Jarrell
Deputy Chief Operating Officer, Public Works

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA guidelines, section _____.Date: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY
this _____ day of _____, 2009.

JAN I. GOLDSMITH, City Attorney

By: _____
Debra J. Bevier, Deputy City Attorney