



CITY COUNCIL STAFF REPORT

DATE: September 16, 2009 CONSENT CALENDAR

SUBJECT: APPROVAL OF A LAND LEASE WITH U.S. DEPARTMENT OF TRANSPORTATION EFFECTIVE MARCH 1, 2010 THROUGH SEPTEMBER 30, 2050, FOR THE PROPOSED NEW AIR TRAFFIC CONTROL TOWER

FROM: David H. Ready, City Manager

BY: AVIATION DEPARTMENT

SUMMARY

The City Council will consider a new long term land lease with the U.S. Federal Aviation Administration (FAA) for the proposed new air traffic control tower at Palm Springs International Airport.

RECOMMENDATION:

1. Approve Agreement No. DTFAWP-09-L-00028 with the U.S. Department of Transportation effective March 1, 2010, through September 30, 2050, with no monetary consideration, Land Lease on-Airport, for the purpose of a new Air Traffic Control Tower at Palm Springs International Airport.
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS

The current Air Traffic Control Tower (ATCT) at the Palm Springs International Airport was built in 1967, and the FAA has made the determination that the current ATCT is in need of replacement. The new Air Traffic Control Tower, presently being designed by the FAA, will be constructed next to the existing facility and requires a separate new long term land lease. The FAA requests that the proposed ATCT land lease be executed by the City and returned before the end of the current FAA fiscal year on September 30, 2009.

At the November 14, 2007, Airport Commission Meeting representatives from the FAA presented the Commission the circumstances and the need for a new tower, and

ITEM NO. 2.3

provided details of the site selection process, used to determine where the new ATCT would be situated on Palm Springs International Airport property.

Furthermore, the Airport Commission was informed at the March 12, 2008, meeting, according to the early design estimates by the FAA, that the cost to construct the new tower is estimated at \$21 million, and will be funded in full by the Federal Government.

On July 8, 2009, the Airport Commission approved, by unanimous vote, and recommends that the City Council approve the new ATCT land lease.

The new ATCT tower has since completed the FAA environmental phase and is currently in the final design phase (copy of the facility rendering attached). If the project continues on the proposed schedule; with the remaining design, bid, and contract award, the actual construction may begin as early as March, 2010, with an estimated completion date late 2011 or early 2012.

The new lease will contain 1.2 acres compared to the existing tower lease which contains 0.785 acre. The current ATCT lease will remain in effect until the construction of the new facility is complete. Once the new facility is operational, the current ATCT will be demolished by the FAA, and the current land lease will be terminated.

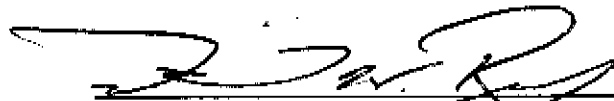
FISCAL IMPACT:

The estimated \$21 million in funding will be provided by federal funds and the project is being fully managed by the Federal Aviation Administration.

The City will be responsible for the cost associated with removing the airfield lighting control panel from the current ATCT building and installing it into the new ATCT or replacing it with a new unit. The estimated cost, addressing either of these options, will be in the range of \$30,000 to \$50,000, and will be budgeted in the year of the tower's completion.



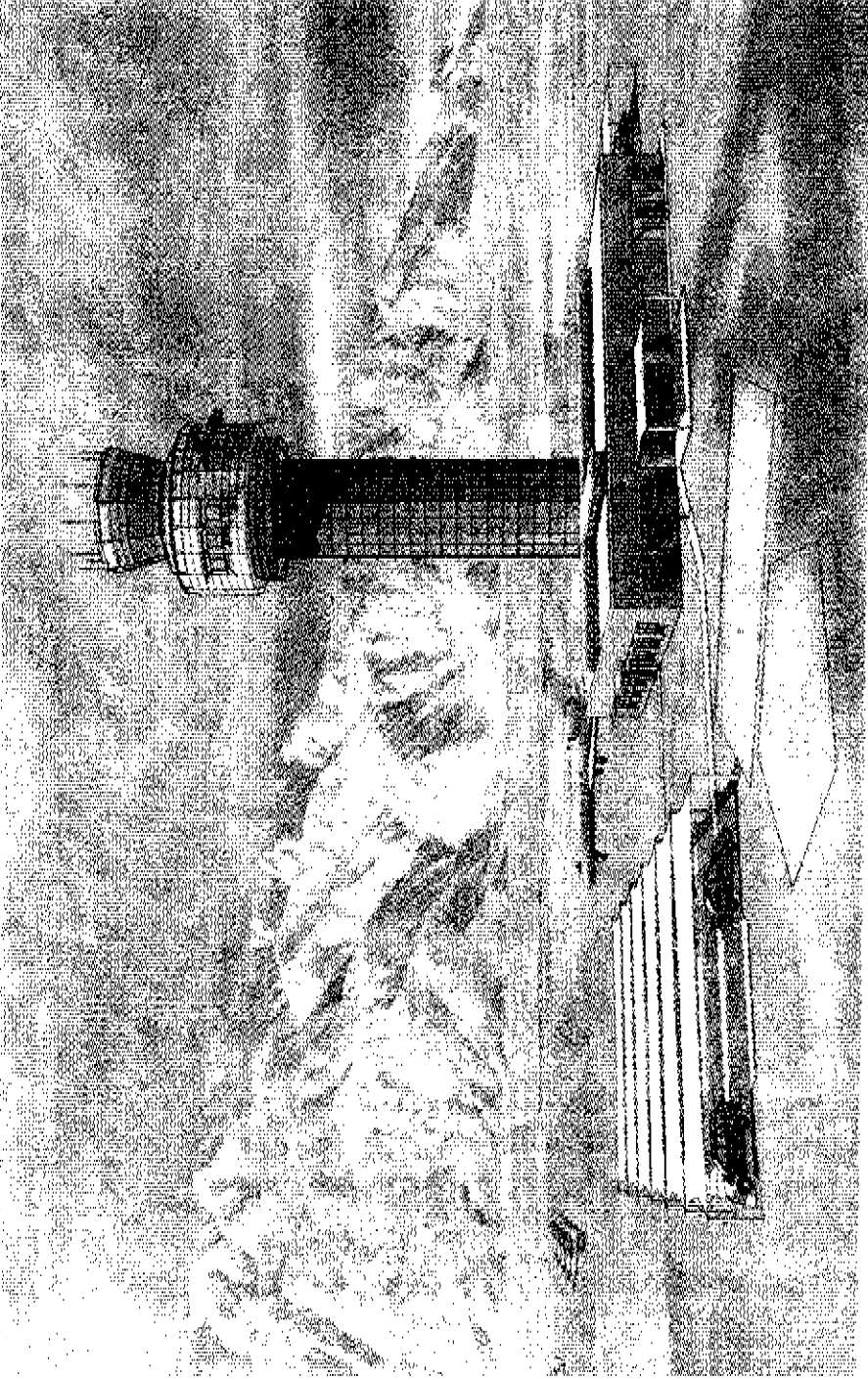
Thomas Nolan, Airport Executive Director



David H. Ready, City Manager

Attachments:

- ATCT Facility rendering
- Proposed ATCT Lease
- Airport Commission July 8, 2009 Minutes



Palm Springs International Airport Traffic Control Tower

FEDERAL AVIATION ADMINISTRATION



U.S. Department
of Transportation

Lease No.: DTFAWP-09-L-00028
Facility: ATCT
Palm Springs, CA

LAND LEASE ON-AIRPORT

Between

City of Palm Springs

and

THE UNITED STATES OF AMERICA

THIS LEASE is hereby entered into by City of Palm Springs
whose address is:

3200 Tahquitz
Palm Springs, CA 92263

herein after referred to as the Lessor and the United States of America, herein after referred to as the Government. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor and the Lessor's administrators, successors, and assigns.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows:

1. PREMISES (08/02)

The Lessor hereby leases to the Government the following described property, hereinafter referred to as the premises, viz.:

See Legal Description On Page 2.
LEGAL DESCRIPTION

Federal Aviation Administration

Page 1
Rev. 02/08

Initials: _____ / _____
Gov't Lessor(s)

**Airport Traffic Control Tower (ATCT)
Palm Springs International Airport
Palm Springs, California**

A parcel of land located in the NW ¼, Section 18, Township 4 South, Range 5 East, S.B.B.&M., County of Riverside, State of California, and more precisely described as follows:

Referring to the West ¼ corner of said Section 18 (which is also the intersection of the centerlines of El Cielo Road and Tahquitz-McCallum way) marked by a ½ inch iron pipe, thence along a bearing of North 0° 05' 30" East 1,320.14 feet to the West 1/16 corner of the NW ¼ of said Section 18 marked by 6 ½" inch iron pipe; thence North 83° 28' 53" East 560.56 feet to a point; thence North 0° 13' 38" East a distance of 109.98 feet to the Northwest plot corner, said point is the true point of beginning of the lease area:

Thence South 89° 51' 02" East a distance of 114.76 feet; thence South 36° 27' 49" East along a line parallel to the main runway of the Palm Springs Airport, a distance of 287.02 feet; thence South 53° 32' 11" West, a distance of 40.66 feet; thence North 89° 51' 02" West a distance of 14.00 feet; thence North 00° 8' 58" East a distance of 9.00 feet; thence North 89° 51' 02" West a distance of 41.62 feet; thence South 00° 8' 58" West a distance of 9.00 feet; thence North 89° 51' 02" West a distance of 198.03 feet; thence North 0° 13' 38" East, a distance of 254.63 feet to the True Point of Beginning, containing 1.202 acres, more or less.

All bearings are true and are based on the bearing of the runway centerline.

Initials: _____ / _____
Gov't Lessor(s)

(a) Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over the said lands and adjoining lands of the Lessor, and unless herein described otherwise, to be by routes reasonably determined to be the most convenient to the Government.

(b) And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.

(c) And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.

2. TERM (10/96)

To have and to hold commencing on March 1, 2010 and continuing through September 30, 2050, inclusive.

3. CANCELLATION (08/02)

The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by registered mail, return receipt requested and mailed at least 30 days before the effective termination date.

4. CONSIDERATION (08/02)

The Government shall pay the Lessor no monetary consideration in the form of rent. It being mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.

5. HOLDOVER (10/96)

If after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. This period shall continue until the Government has signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises.

Initials: _____ / _____
Gov't Lessor(s)

6. NON-RESTORATION (10/96)

It is hereby agreed between the parties, that upon termination of its occupancy, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.

7. INTERFERENCE WITH GOVERNMENT OPERATIONS (10/96)

The Lessor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature on the site or adjoining land within the airport boundaries that may interfere with the proper operation of the facilities installed by the Government under the terms of this Lease unless consent hereto shall first be secured from the Government in writing.

8. FUNDING RESPONSIBILITY FOR GOVERNMENT FACILITIES (10/96)

The Lessor agrees that any relocation, replacement, or modification of any existing or future Government facilities covered by this Lease during its term or any renewal thereof made necessary by airport improvements or changes which in the Government's opinion interfere with the technical and/or operational characteristics of the Government facilities will be at the expense of the Lessor, except, when such improvements or changes are made at the written request of the Government. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Lessor or the Government, funding responsibility shall be determined by the Government.

9. HAZARDOUS SUBSTANCE CONTAMINATION (05/00)

The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the ATCT facilities. The Lessor agrees to remediate, at its sole cost, any and all other hazardous substance contamination found on the leased premises. The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the ATCT facilities.

Initials: _____ / _____
Gov't Lessor(s)

10. QUIET ENJOYMENT (10/96)

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

11. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (10/96)

The Government agrees, in consideration of the warranties herein expressed, that this lease is subject and subordinate to any and all recorded deeds of trust, mortgages, and other security instruments now or hereafter imposed upon the premises, so long as such subordination shall not interfere with any right of the Government under this lease. It is mutually agreed that this subordination shall be self operative and that no further instrument shall be required to effect said subordination.

In the event of any sale of the premises, or any portion thereof, or any such transfer of ownership, by foreclosure of the lien of any such security instrument, or deed provided in lieu of foreclosure, the FAA will be deemed to have attorned to any purchaser, successor, assigns, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the lessor under this lease, establishing direct privity of estate and contract between the Government and said purchasers/transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided that such transferees shall promptly provide, following such sale or transfer, appropriate documentation deemed necessary by the Real Estate Contracting Officer, and shall promptly execute any instrument, or other writings, as shall be deemed necessary to document the change in ownership.

12. OFFICIALS NOT TO BENEFIT (10/96)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

13. COVENANT AGAINST CONTINGENT FEES (8/02)

The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the

Initials: _____ / _____
Gov't Lessor(s)

right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

14. ANTI-KICKBACK (10/96)

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

15a. CONTRACT DISPUTES (11/03)

(a) All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) All Contract Disputes shall be in writing and shall be filed at the following address:

- (1) Office of Dispute Resolution for Acquisition, AGC-70
 Federal Aviation Administration
 800 Independence Ave, S.W., Room 323,
 Washington, DC 20591
 Telephone: (202) 267-3290
 Facsimile: (202) 267-3720

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

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

15b. PROTEST (11/03)

(a) Protests concerning Federal Aviation Administration Screening Information Requests (SIRs) or awards of contracts shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA)

Initials: _____ / _____
Gov't Lessor(s)

and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A protestor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) Offerors initially should attempt to resolve any issues concerning potential protests with the Real Estate Contracting Officer.

(c) Protests shall be in writing and shall be filed at:

- (1) Office of Dispute Resolution for Acquisition, AGC-70
800 Independence Ave., S.W., Room 323
Washington, DC 20591
Telephone: (202) 267-3290
Facsimile: (202) 267-3720

(2) At the same time as filing the protest with the ODRA, the protestor shall serve a copy of the protest on the Real Estate Contracting Officer (RECO).

(d) A protest is considered to be filed on the date it is received by the ODRA and shall be filed:

- (i) Not later than seven (7) business days after the date the protestor knew or should have known of the grounds for the protest; or
- (ii) If the protestor has requested a post-award debriefing from the RECO, not later than five (5) business days after the date on which the RECO holds that debriefing.

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

16. NOTIFICATION OF CHANGE OF LAND TITLE *(08/02)*

If the Lessor sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting said demised premises, they shall immediately notify the Government, in writing, of any such transfer or conveyance affecting the demised premises within 30 calendar days after completion of the "change in property rights". Concurrent with the written notification, the Lessor shall provide the Government copies of the legal document(s) (acceptable to local authorities) for transferring and or conveying the property rights.

17. OTHER CONDITIONS.

- a). The Lessor shall maintain the exterior ATCT lighting as long as the ATCT is in operational.
- b). The Lessor shall ensure that no vehicles or aircraft shall be parked within 100 feet from the North and East of the building at all times.
- c). The Lessor shall be allowed to review and comment on the tower project during the design phase prior to construction.

18. The following are attached and made a part hereof: Attachment "A" – ATCT Operation Agreement; Exhibit "A" – Lease Plot.

19. NOTICES (10/96)

All notices/correspondence shall be in writing, reference the lease number, and be addressed as follows:

TO LESSOR: City of Palm Springs
 3200 Tahquitz
 Palm Springs, CA 92263

TO GOVERNMENT: Department of Transportation
 Federal Aviation Administration
 Real Estate & Utilities Team, AWP-54B
 P.O. Box 92007
 Los Angeles, CA 90009-2007

20. LEASE SUCCESSION (08/02)

This lease supersedes lease No. FA65WE-1223 and all other previous agreements between the parties for the leased property described in this document.

Initials: _____ / _____
 Gov't Lessor(s)

21. SIGNATURE BLOCK (08/02)

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR

UNITED STATES OF AMERICA

(Signature)

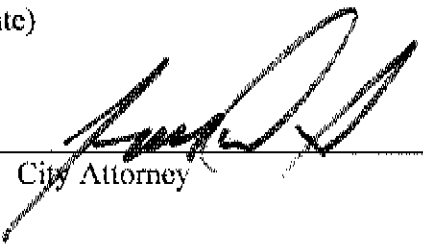
(Signature)

(Official Title)

Real Estate Contracting Officer, AWP-53
(Official Title)

(Date)

(Date)



By: City Attorney

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WESTERN-PACIFIC REGION
P.O. BOX 92007, WORLD WAY POSTAL CENTER
LOS ANGELES, CALIFORNIA

OPERATION AGREEMENT FOR AIRPORT TRAFFIC CONTROL TOWER
(Constructed by the Government)

I. THIS AGREEMENT is hereby attached to and made a part of Lease No. DTFAWP-09-L-00028 by and between the United States of America acting by and through the Federal Aviation Administration, hereinafter called the Government, and the **City of Palm Springs**, operating its airport known as **Palm Springs International Airport**, located in Palm Springs, California, hereinafter called the Lessor. This Agreement shall be executed by the parties hereto independently of said Lease to which it is a part.

II. WHEREAS, an Airport Traffic Control Tower (ATCT) will be or has been erected on the leased plot by and at the expense of the Government; and

III. WHEREAS, it is in the public interest that the said ATCT on the above airport be operated by the Government, subject to the availability of funds therefore, in accordance with standards established by the Government;

IV. NOW, THEREFORE, the Lessor agrees to the following conditions:

1. The Lessor shall, at no expense to the Government, provide the lighting control panels in the said Tower and shall provide all electrical circuits and current, on a continuing basis, necessary for the operation of boundary, flood and obstruction lights, including those which may be operated by the Government; all airport lighting which the Government determines is essential to aircraft operations, including the foregoing, and all such air traffic control devices which are designed to be directly or remotely controlled from the Airport Traffic Control Tower and the Lessor shall be responsible for the proper and continued functioning of any locally installed lights or other device placed under the Government's control.

2. The Lessor shall be responsible for the proper and continued functioning of all equipment and devices which the Government determines are necessary for air traffic control, but which cannot be placed in operation or controlled from said Tower, or are not otherwise operated by or under the control of the Government.

3. The Lessor shall promptly advise the Government's duly authorized representative(s) in said Tower of any conditions which render all, or any, area(s) of the Airport unsafe for normal utilization by aircraft and will, upon demand, appropriately mark any such area(s) in a manner approved by the Government which properly indicates the existing condition(s); the Lessor shall promptly give notice to the Government's Tower representative(s) prior to the time any maintenance or construction is begun on the airport landing area unless such action is in accordance with a schedule which has been previously coordinated with the said Tower; said notice shall be given not less than thirty (30) days prior to the scheduled date from beginning the first item of construction and/or maintenance on the schedule.

4. The Government shall have absolute control of the operation of said Tower and its associated facilities at all times and shall not be subject to direction from the Lessor in this regard. In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 U.S.C. 2671, et. seq.), hereafter termed "The Act", the government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of any employees of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the Act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.

5. The Lessor, upon request from the Government, agrees to provide two-way ground control communication equipment in its maintenance and emergency vehicles scheduled to regularly operate in the airport landing area, and such equipment shall be capable of maintaining radio communications with the Government's Tower on said Airport.

6. The Lessor, agrees to pay (and the Government shall not pay any part of such costs other than those provided by any existing Federal Aid to Airports Programs) for the relocation of said Tower and its associated facilities if such relocation is made necessary by Airport improvement or changes which impair the technical and/or operational characteristics of said Tower and its associated facilities.

7. The Lessor shall, as a protection to the proper operation of the ATCT by the Government, prohibit and refrain from the erection or construction of any structures or improvements which may interfere with the visibility of the Air Traffic Controllers' line of sight to all traffic patterns, approaches, runways, taxiways, operational portions of the aprons and other operational areas necessary for the control of ground and air traffic.

IN WITNESS WHEREOF, the parties hereto have subscribed their names hereunder as of the _____ of _____, 2009.

CITY OF PALM SPRINGS

**THE UNITED STATE OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

By _____

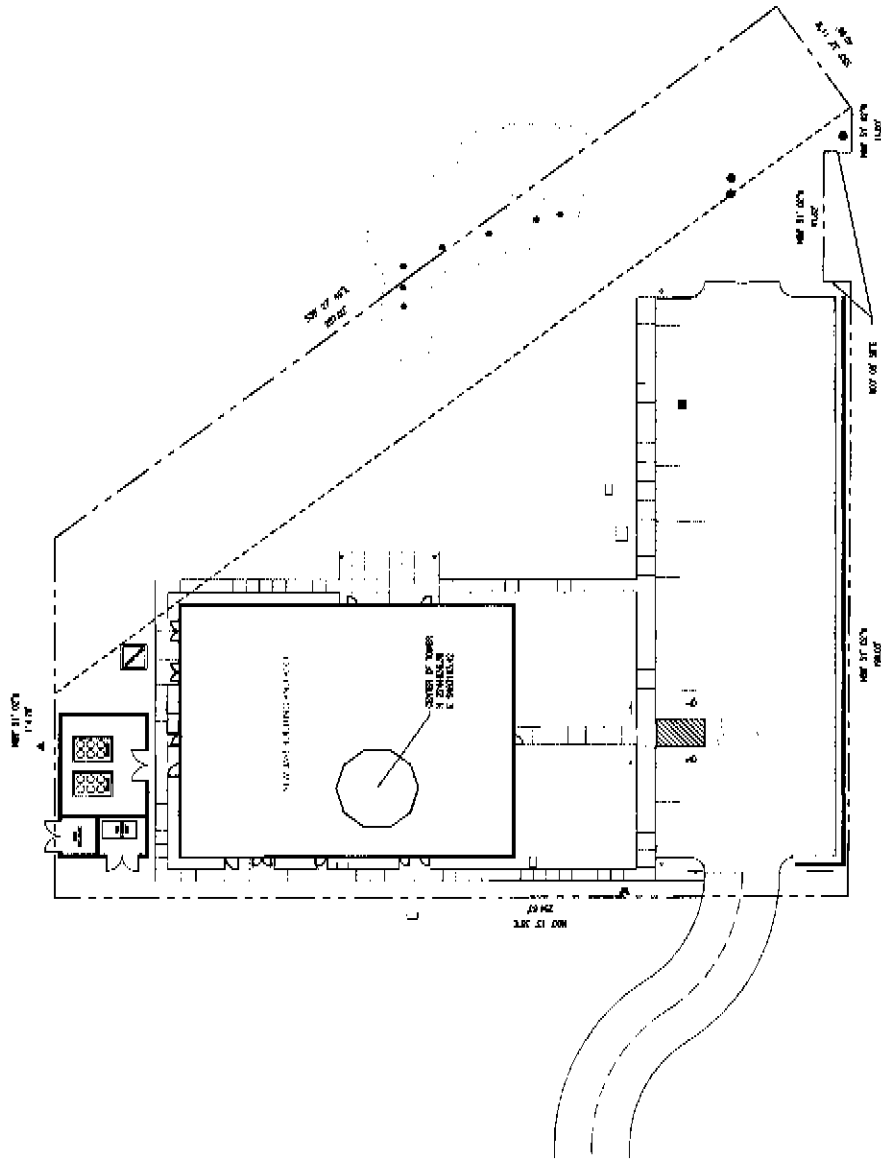
By _____

Title _____

Title: Real Estate Contracting Officer

By:  _____
City Attorney

Exhibit A
 DEAWP-09-L-00028



NO.	DATE	DESCRIPTION	BY	CHK'D

65% Submittal

LEDA DIV
 LEADING EDGE DESIGN ARCHITECTS
 1000 PAVAN DRIVE
 SUITE 100
 LOS ANGELES, CA 90024
 TEL: (310) 551-1100
 FAX: (310) 551-1101
 WWW.LEDA.COM

PROJECT NO. 2008-0001
 PROJECT NAME: WESTERN SERVICE AREA
 PROJECT LOCATION: LOS ANGELES, CA
 PROJECT DESCRIPTION: DEPARTMENT OF TRANSPORTATION
 FEDERAL AVIATION ADMINISTRATION
 WESTERN SERVICE AREA
 REPLACE AIRPORT TRAFFIC CONTROL TOWER AND
 ESTABLISH BASE BUILDING

LEASE AREA

DATE: 03/20/09
 DRAWN BY: J. HARRIS
 CHECKED BY: M. HARRIS
 SCALE: AS SHOWN

NO.	DATE	DESCRIPTION
1	03/20/09	ISSUED FOR PERMITTING
2	03/20/09	ISSUED FOR PERMITTING

NOTES:

- SEE EXHIBIT B FOR THE PROPOSED AIR TRAFFIC CONTROL TOWER AND BASE BUILDING.
- THE PROPOSED AIR TRAFFIC CONTROL TOWER AND BASE BUILDING ARE SHOWN WITHIN THE EXISTING AIRPORT TRAFFIC CONTROL TOWER AND BASE BUILDING.
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**PALM SPRINGS AIRPORT COMMISSION
ACTION SUMMARY MINUTES OF ADJOURNED MEETING**

**WEDNESDAY
July 8, 2009**

8:00 A.M.

10. DISCUSSION AND ACTION ITEMS:

10.A NEW AIR TRAFFIC CONTROL TOWER LAND LEASE WITH U. S. DEPARTMENT OF TRANSPORTATION EFFECTIVE March 1, 2010 THROUGH SEPTEMBER 30, 2050:

Executive Director Nolan provided a brief overview of the new Air Traffic Control Tower and request for a new land lease with the U. S. Department of Transportation.

Commissioner Elsner asked if the Planning Commission or other bureaucracy will have any say in the design of the tower.

Executive Director Nolan explained that the federal government is somewhat exempt from that process; however the Airport is owned by the City of Palm Springs and it is concerned about aesthetic and architectural features; that he has had several meetings with Councilman Mills and the FAA design firm, and a lot of constructive input has been given as to the architectural features; that it will not cost any additional funding, but if City Council wants something above and beyond what the FAA has approved they would have had to cover the cost; that the FAA is incorporating as many "green features," (e.g., solar panels etc.) as possible.

Commissioner Elsner noted that the new tower is about twice the height of the current tower.

Executive Director Nolan said that it was more than twice the height of the current tower; that the purpose of the tower height is to provide for a clear line of sight.

ACTION: Recommend to City Council approval of the new Air Traffic Control Tower Land Lease DTFWP-09-L-00028 with the U. S. Department of Transportation effective March 1, 2010 through September 30, 2050 with no monetary consideration in the form of rental. **Motion Commissioner Elsner, seconded by Commissioner Block and unanimously carried.**

AYES: Ahlstrom, Albert, Block, Doria, Elsner, Gregory, Hoehn, Horner, King, Luisi, Medrano, Parks, Rosenberg, Villarreal, Wilmeth and Gebhart

NOES:

ABSENT: Johnson and Simmons

10.B AIRPORT RUNWAY RUBBER REMOVAL SERVICES AGREEMENT:

Executive Director Nolan provided background information outlined in the staff report and indicated that rubber removal is conducted every year.

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