

MEMORANDUM OF UNDERSTANDING

BETWEEN

COUNTY OF MARIN

AND

SAN RAFAEL AIRPORT, LLC

This Memorandum of Understanding (MOU), made and entered into this 18th day of September, 2018, by and between the County of Marin, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and San Rafael Airport LLC (hereinafter referred to as "AIRPORT"), collectively the "PARTIES."

WHEREAS, the State of California, per Chapter 898 of the Statutes of 1975, granted the County of Marin right, title, and interest of the State of California, in and to the salt marsh and tide and submerged lands, filled or unfilled, of Las Gallinas Creek in San Rafael, California, known as "Gallinas Canal"; and

WHEREAS, AIRPORT owns property in San Rafael, California, developed with levees and airport facilities, known as APNs 155-230-10, 155-230-11, 155-230-12, and 155-230-13 in the City of San Rafael, and 155-230-14, 155-230-15, and 155-230-16 in unincorporated Marin County; and

WHEREAS, COUNTY was granted State Tidelands, which have about 4700 lineal feet of levee constructed upon them (see Exhibit A: Levee Map); and

WHEREAS, the AIRPORT's deed boundary of APN 155-230-14 extends into the existing bed of Gallinas Canal between 101 – 407 Vendola Drive; and

WHEREAS, the COUNTY and AIRPORT levees are subject to erosion and settlement, and therefore require periodic repair and topping to maintain their height and structural integrity; and

WHEREAS, this MOU is intended to clarify property boundaries and remove clouds on title, but shall not change maintenance obligations of the existing levees on the south side of Gallinas Creek; and

WHEREAS, this MOU sets forth concepts that will be submitted for complete review and approval pursuant to the requirements of the California Environmental Quality Act ("CEQA"), where applicable, and all other applicable laws, standards, and regulations; and

WHEREAS, it is in the PARTIES mutual best interest to continue to provide for maintenance of levees on COUNTY and AIRPORT properties and to provide for navigational operations and maintenance along Las Gallinas Creek.

THEREFORE, the PARTIES are entering into this mutually beneficial MEMORANDUM OF UNDERSTANDING.

It is mutually agreed and understood that:

1. AIRPORT shall prepare plans and conduct repair and maintenance work on existing levees; COUNTY will review plans and process an excavation permit for work in the unincorporated area, including compliance with CEQA where applicable.
2. AIRPORT will apply to the COUNTY Department of Public Works Land Development Division for the excavation permit for the repair and maintenance work described in Paragraph 1 in accordance with Marin County Code 23.08; this permit, if approved, will be issued to AIRPORT. The COUNTY, as a property owner, will co-sign the applications. The work can be divided into more than one construction phase under the grading permit.
3. COUNTY will waive all COUNTY fees, up to, but not exceeding, \$50,000, for permits for repair and maintenance work of the levees in the unincorporated area, including COUNTY Department of Public Works permit fees established in Marin County Code Chapter 3.48. (Excavation permit application fee, MCC3.48.020 (4), Plan review fee, MCC3.48.020 (14), and Field Inspection fee, MCC 3.48.020(15).) The County's waiver will only apply for the period of the interim lease described in Paragraph 9 below. AIRPORT will pay any required state or federal fees.
4. Except as expressly set forth in Paragraph 3 above, AIRPORT will pay any and all costs to repair and maintain existing levees on COUNTY property, as well as on AIRPORT property.
5. The PARTIES will cooperate with the State Lands Commission in accordance with state requirements to exchange COUNTY lands within the levees surrounding the airport (including the levees themselves) down to the point of mean lower low water (as defined by National Oceanographic and Atmospheric Administration) on the creek-side of the levees, with any interest the AIRPORT has in the bed and bank of the existing Gallinas Creek channel (South Fork) located below the line of mean lower low water and all those

lands to the south and east of the creek centerline, including those above mean lower low water (see Exhibit B: Cross Lease Areas). This MOU sets forth the framework for a potential transfer of land and the potential location of a future levee.

It's the intent of the PARTIES that any land transferred to AIRPORT be subject to the same restrictions as those set forth in Declaration of Restrictions, recorded at the County of Marin on December 15, 1983, as document no. 83062935, as follows:

1. Limitations On Use. No use of said real property described shall be made or permitted except the following:
 - (a) Existing uses consisting of an airport and related uses.
 - (b) Public utility uses as approved by the appropriate government agencies, including flood control, sanitary sewer, gas and electric, and public safety facilities.
 - (c) Airport and airport related uses.
 - (d) Roadways.
 - (e) Open space.
 - (f) Private and public recreational uses.

The AIRPORT acknowledges and agrees that, under this framework, (1) COUNTY will not transfer land until there has been compliance with CEQA; and (2) that any potential new projects identified in this MOU will be subject to separate environmental analysis and COUNTY does not in any way commit itself to said transfer of land or potential projects by virtue of this MOU. COUNTY reserves absolute discretion to require additional environmental analysis and to: (a) modify any potential project to mitigate significant adverse environmental impacts, (b) select feasible alternatives which avoid significant adverse impacts of any potential project, or (c) reject any potential project.

6. The State Lands Commission land exchange documents referenced in Paragraph 5 above will also provide an easement for navigational-related operations and maintenance activities to COUNTY for the area above mean lower low water on the creek-side of the levees.

7. The State Land Commission exchange parcel boundary for the most easterly land at the end of the runway will be based on a revised levee location west of the existing levee (subject to state transportation and Federal Aviation Administration requirements) to permit removal of the existing levee and restoration of the area. COUNTY will pursue outside grant funds for this potential project. COUNTY will not grant the levee and land to the west to AIRPORT until after the new levee is built. The revised levee location will establish the boundary of the State Lands Commission exchange.
8. COUNTY will pay for in-kind staff costs of COUNTY and State Lands Commission staff, as well as required contract costs, associated with the land exchange. COUNTY will not reimburse AIRPORT for any costs incurred, including but not limited to costs incurred as a result of this MOU or any subsequent actions related to the land exchange.
9. In the interim until the above land exchange in Paragraph 5 above is completed, subsequent to execution of this MOU, COUNTY will issue an interim lease to AIRPORT for COUNTY lands within the levees surrounding AIRPORT (including the levees themselves), down to the point of mean lower low water on the creek-side of the levees that will provide only for the repair and maintenance on the existing levees by AIRPORT. The interim lease will contain the following clause:

Hold Harmless. This lease is made on the express condition that COUNTY and County Service Area #6 shall be free from all liability or loss by reason of injury to any person or damage to any property connected with or arising out of AIRPORT's repair, maintenance or improvements on COUNTY property, including any liability for injury to the person or real or personal property of AIRPORT, their Lessees, contractors, successors, assigns, guests or invitees, or any other person or entity. AIRPORT hereby covenant, and agree to, and shall, indemnify and defend COUNTY and save COUNTY harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury, damage or losses.

The interim lease will be issued prior to commencement of any levee construction work on COUNTY property and any work contemplated by the interim lease will be subject to compliance with CEQA where applicable.

10. Further, in the interim until the above land exchange in Paragraph 5 above is carried out, AIRPORT will waive its rights, if any, to prohibit public or private activities taking place on AIRPORT parcels along the South Fork of Gallinas Creek below the mean lower low water line and all those lands to the south and east of the creek centerline, including those above mean lower low water. It is anticipated that these activities will include, but not be limited to, dredging of the creek bed, and extension to reach the dredged channel or repair of private boat docks. This waiver will allow COUNTY to provide authorization under Marin County Code Chapter 11.24 – Gallinas Creek Encroachments for creek-side property owners to extend their private docks to access the deep parts of the creek. Authorizations issued by COUNTY will require that the existing docks and future dock extensions be maintained in accordance with Marin County Code Section 11.24.050 - Maintenance and Repair. This waiver will be in the form of an irrevocable grant of permission to COUNTY and adjacent parcel owners of addresses 101 to 407 Vendola Drive. This waiver shall not impact or dilute COUNTY's assertion that the entire creek is subject to a public trust easement for purposes of commerce, navigation, and fisheries.

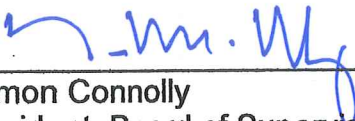
11. AIRPORT is willing to work with COUNTY on permitting and conducting future navigational projects (separate from the work described in Paragraph 1 above). COUNTY is evaluating multiple sites, including the McInnis Marsh, for disposal of dredge sediments. AIRPORT will accept Gallinas Creek dredge sediments onto AIRPORT property if that is the site selected by COUNTY, in locations to be mutually approved by AIRPORT and COUNTY. If the AIRPORT site is selected by COUNTY, dredge sediments shall become the property of AIRPORT and may be used for any legal purpose. Any reuse of spoils by AIRPORT requires compliance with CEQA and any required City of San Rafael or COUNTY permits. COUNTY shall pay all design, permitting, and construction costs related to this work, including typical environmental evaluation review of existing creekbed soil for hazardous materials. In addition, COUNTY will perform an evaluation of existing levees for potential

substantial adverse effects that may occur because of this work.

DURATION AND TERM

The terms of this MOU shall remain in full force and effect for ten years from the date adopted and signed. This MOU may be renewed by the mutual consent of all PARTIES. Any party may terminate this MOU by notifying the other PARTIES in writing a minimum of 30 days in advance.


COUNTY OF MARIN



Damon Connolly
President, Board of Supervisors

ATTEST

Approved as to Form




Deputy Clerk



Deputy County Counsel

SAN RAFAEL AIRPORT, LLC

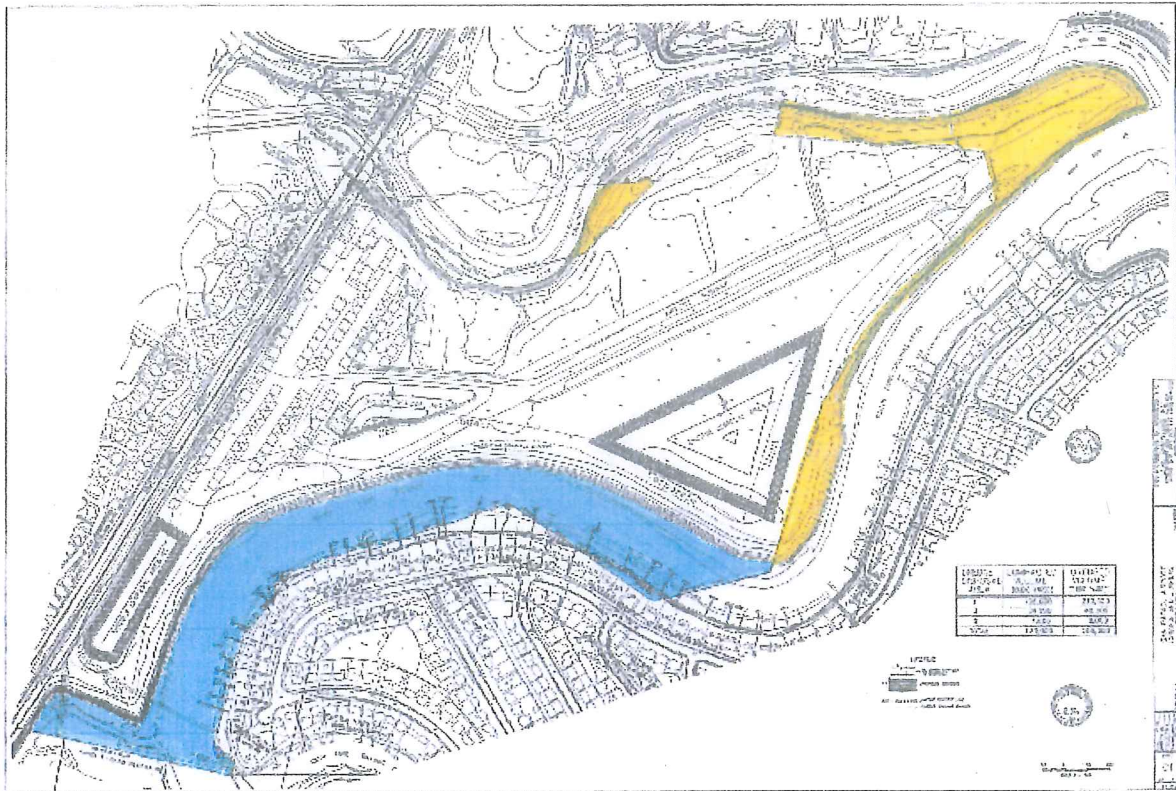


Robert Herbst

J.W. Miller

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Exhibit B: Cross Lease Areas



SECTION	ACRES	PERCENT	TOTAL
1	125.00	99.00	125.00
2	1.00	0.80	1.00
TOTAL	126.00	100.00	126.00

LEGEND
 [Symbol] LEVEE
 [Symbol] AIRPORT PROPERTY



SCALE
 1" = 100'

Lands of San Rafael Airport LLC to be leased to County of Marin
 Includes all lands in the bed of existing Gallinas Creek channel (south fork) below mean lower low water line, along with all those lands to the south and east of the creek centerline, including those above mean lower low water.

Lands of County of Marin to be leased to San Rafael Airport LLC
 Includes all lands within the levees protecting San Rafael Airport property (including the levees themselves), down to the point of mean lower low water on the creek side of the levees.

