

**LEASE AGREEMENT**  
**by and between**  
**CITY OF SALINAS**  
**and**  
**SEATEC UNDERGROUND UTILITIES, INC.**

## Table of Contents

1 - DEMISED PREMISES .....	3
2 - USE OF LEASED PREMISES .....	3
3 - TERM .....	4
4 - RENTAL .....	5
5 - LEASEHOLD IMPROVEMENTS .....	6
6 - REPAIR AND MAINTENANCE OF PREMISES .....	7
7 - RESTORATION OF PREMISES .....	8
8 - SIGNS.....	8
9 - TITLE TO IMPROVEMENTS .....	8
10 - EMINENT DOMAIN.....	9
11 - TERMINATION BY LESSOR .....	9
12 - TERMINATION BY LESSEE.....	10
13 - RESERVATIONS .....	10
14 - LEASE SUBORDINATE TO AGREEMENTS WITH U.S.A. ....	11
15 - WAR OR NATIONAL EMERGENCY .....	12
16 - USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS.....	12
17 - USE TO CONFORM WITH CITY OF SALINAS REGULATIONS.....	12
18 - NON-DISCRIMINATION .....	12
19 - EQUAL OPPORTUNITY PLAN .....	12
20 - NON-EXCLUSIVE RIGHT .....	13
21 - LESSEE AGREEMENTS .....	13
22 - UTILITIES .....	13
23 - USE OF PUBLIC AIRPORT FACILITIES.....	14
24 - TAXES AND ASSESSMENTS.....	14
25 - INSURANCE .....	14
26 - COMMON AIRPORT AREAS .....	16
27 - LIENS AND CLAIMS .....	16
28 - RIGHT TO ASSIGN OR TRANSFER .....	16
29 - DEFAULT .....	18
30 - INDEMNIFICATION AND HOLD HARMLESS .....	19
31 - ABANDONMENT, ETC. ....	19
32 - CO-ORDINATES.....	19
33 - BANKRUPTCY, ETC.....	19
34 – NO WAIVER OF RIGHTS .....	20

35 - LITIGATION INVOLVING LEASE .....	20
36 - HOLDING OVER .....	20
37 - LESSEE’S ASSUMPTION AND WAIVER .....	20
38 - CONSTRUCTION OF LEASE.....	21
39 - TIME .....	21
40 - MATERIAL BREACH .....	21
41 - NOTICES .....	21
42 - ENCUMBRANCES OF LEASEHOLD INTEREST.....	22
43 - HEIRS, SUCCESSORS AND ASSIGNS .....	24
44 - HEADINGS.....	24
45 - SEVERABILITY.....	24
46 - HAZARDOUS SUBSTANCES .....	24
47 – COUNTERPARTS .....	25
48 - LEGAL REPRESENTATION .....	25
49 - WARRANTY OF AUTHORITY.....	25
50 – INTEGRATION AND AGREEMENT .....	25
51 – JURISDICTION .....	26

## **LEASE**

**THIS LEASE** ("Lease") is entered into this \_\_\_\_ day of August, 2016 by and between the **City of Salinas**, a California charter city and municipal corporation of the State of California (hereinafter referred to as "Lessor") and **SEATEC UNDERGROUND UTILITIES, INC.**, a **California** corporation (hereinafter referred to as "Lessee").

### **WITNESSETH:**

**WHEREAS**, Lessor owns and operates the Salinas Municipal Airport in the City of Salinas, State of California (hereinafter "Airport"); and

**WHEREAS**, Lessee desires to lease a portion of Airport, including an existing office and hangar complex ("Improvements") constructed by \_\_\_\_\_ ("Gomes") pursuant to a lease between Gomes and Lessor ("Gomes Lease") for the uses permitted therein, including related aeronautical use and services; and

**WHEREAS**, with the consent of Lessor, Lessee has acquired Gomes' interest in the leasehold improvements constructed by Gomes and shall own such improvements during the term and subject to the terms of this Lease; and

**WHEREAS**, Lessor and Gomes have agreed to terminate the Gomes Lease concurrently with the commencement of this Lease; and

**WHEREAS**, it is mutually agreed that the letting hereunder is upon and subject to the following terms, covenants, conditions, and provisions, and Lessee covenants, as a material part of the consideration of this Lease, to keep, perform, and comply with each and all of said terms, covenants, conditions, and provisions by Lessee to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

### **1 - DEMISED PREMISES**

The demised premises leased to Lessee are herein referred to as the Premises and are a portion of the Airport, including corporate office and hangar(s), and are described more particularly on Exhibit A and as depicted on the parcel map at Exhibit B, both of which are attached hereto and incorporated herein by reference.

### **2 - USE OF LEASED PREMISES**

This Lease is made for the purpose of allowing Lessee use of the Premises and for granting to Lessee certain non-exclusive rights and privileges for use of which are more specifically described below:

- a. Landscaping of lands and property; a corporate office for administration of Lessee's general engineering construction business; and a hangar for storage, repairs and maintenance of owned or leased aircraft and/or aircraft allowed under this Lease; and storage, repairs and maintenance of Lessee owned vehicles, trailers, equipment, supplies and materials used in the operation of Lessee's general engineering construction business.
- b. Only as specifically authorized by local ordinance, including the Salinas Zoning Code, or state or federal law, performing repairs and maintenance on aircraft and owned vehicles, trailers, equipment, supplies and materials. As used in this subparagraph the term "Maintenance" shall be defined as "repair limited to exchange

of parts and maintenance requiring no open flame welding or the use of Class I or II liquids,” so as to comply with the provisions of the Uniform Building Code, Chapter 7 and California Administrative Code Title 24.

- c. Lessee shall not use the Premises, or any part thereof, or permit them to be used for any purpose or purposes other than for the uses described herein. Maintenance shall only be allowed on aircraft owned by Lessee and stored within the Improvements. Such maintenance shall be restricted to that allowed under the Salinas City Code for the rating of the structure approved under Lessor’s permitting process. Lessee shall not do or permit to be done upon the Premises any act or thing which constitutes a nuisance or which may disturb the quiet enjoyment of the City, of any tenant of the City, or private businesses on adjacent land or neighboring property. Lessee further agrees, within 72 hours from receiving written notice by the Lessor that a nuisance exists, to abate or otherwise cause said nuisance to be cured. In the event Lessee has not taken corrective action within 72 hours, the Lessor may use all available remedies to abate the nuisance, including but not limited to entering and abating said nuisance, at the expense of the Lessee without any liability whatsoever to Lessor for monetary loss or anticipated profits of Lessee or others.
- d. Storage of ancillary items, including without limitation, automobiles, watercraft and other vehicles shall be allowed within the Improvements, subject to Airport Rules and Regulations, as long as the Improvements are primarily used for the storage of aircraft.

### 3 - TERM

A. The term of this Lease shall be for a period of thirty (30) years commencing on [ ] (“Commencement Date”) and ending thirty (30) years thereafter, unless sooner terminated in the manner and under the conditions herein provided (the “Original Term”). Rent due pursuant to Section 4 begins upon commencement of the term, not upon the occupancy of the Premises or Improvements.

B. Lessor grants to Lessee the option to renew this Lease for two (2) additional ten (10) year periods (each, a “Renewal Term”). Lessee’s options to renew shall be exercised by Lessee delivering notice in writing to Lessor of its intent to exercise each option. Notice shall be delivered not more than 365 days, or less than 180 days, before the expiration of the Original Term for the first Renewal Term, and not more than 365 days, or less than 180 days, before the expiration of the first Renewal Term for the second Renewal Term. Lastly, Lessee may only exercise said options to renew as long as Lessee is not in default of any the conditions and covenants provided herein at the period of time permitted herein for the exercise of the option. If Lessee fails to properly exercise the first Renewal Term, the option for a second Renewal Term shall automatically terminate and may not be exercised by the Lessee.

C. In consideration of Lessor providing the two (2) ten (10) year options to renew the term of this Lease, Lessor agrees to establish and maintain an escrow account established for the purposes of administering capital improvement projects for the Demised Premises as described in Section 1. The annual contribution to the escrow account by the Lessee will be as follows:

Initial deposit at beginning of lease:		\$25,000.00
Years 1-10	\$2,500.00/year	25,000.00
Years 11-20	\$3,000.00/year	30,000.00
Years 21-30	\$3,500.00/year	35,000.00

Years 31-40 (if applicable)	\$4,000.00/year	40,000.00
Years 41-50 (if applicable)	\$4,500.00/year	45,000.00
Total:		\$200,000.00

The capital improvement fund shall be utilized by Lessee for exterior improvements (not routine maintenance) of the structures and site improvements located on the Premises as mutually agreed upon by both the Lessor and Lessee. The following improvements may be funded by the capital improvement fund and are deemed to be pre-approved by Lessor, subject to the Lessee's having first obtained all required approvals and permits including, but not limited to, building permits:

1. Exterior perimeter security fencing and gate improvements and construction along Airport Blvd;
2. Install/Upgrade Access Control System to be compatible with City Airport access control system;
3. Enclosing the existing awning;
4. Pavement rehabilitation (not maintenance). Tenant is responsible for regular maintenance and upkeep of pavement, including, marking refreshing pothole and crack repair, and regular pavement sealing and rejuvenation;
5. Roof replacement due to age (not maintenance).

Lessee may prepay into the fund as necessary to cover the cost of the approved capital improvements.

D. Upon the expiration of the Original Term or the Renewal Term(s), if applicable, the Improvements will revert back to the Lessor in accordance with Section 9B. However, at said time Lessee shall have the option enter into a new lease agreement for a period of \_\_\_\_\_ (\_\_\_\_) years with Lessor for the rental of the Premises and Improvements for a sum equivalent to the then current monthly rent charged by Lessor for occupancy of a [R-1 Hangar] or, if no [R-1] rental rate exists, fair market value as established in accordance with Section 4B(2). Lessee shall have a right to exercise this option for a period of six months prior to the expiration of the Renewal Term as provided herein.

#### **4 - RENTAL**

##### **A. Time and Place of Payments.**

The Lessee shall make all rental payments monthly in advance on or before the first day of each new month. Checks should be made payable to the City of Salinas and be delivered to:

City of Salinas  
Office of the Finance Director, Attn: Airport Fund  
200 Lincoln Avenue  
Salinas, California 93901

Failure to pay rent within a ten (10) day time frame from due date constitutes a default, within the meaning of Section 29(a) of this Agreement. The place and time of payment may be

changed at any time by the Lessor upon thirty (30) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges.

**B. Rent.**

(1) During the Original Term, rent shall be payable, at the option of the Lessee, in either annual or equal monthly installments, at the annual rate of \$0.32 per square foot, which equals \$1,363.70 per month, or \$16,364.40 per annum. The rent amount shall be adjusted every two and one-half (2 ½) years pursuant to Section 4B(3) herein. In the event that Lessee elects to pay said rent annually, said payment shall be due and payable on the annual anniversary date of the execution of this Agreement, subject to any adjustment to rent pursuant to Section 4B(3). In the event that Lessee elects to pay said rent on a monthly basis, said rent shall be due and payable on the 1<sup>st</sup> day of each calendar month.

(2) After the two and one half (2 ½) year anniversary of the Commencement Date of both the Original Term and each Renewal Term (the "Adjustment Date"), rent shall be increased at a rate equal to the percent change in the Consumer Price Index for "All Urban Consumers, All Items" (1982-1984=100) for San Francisco/Oakland/San Jose, California during such two and one half (2 ½) year period.

(3) Regardless of the index publication dates, the rental adjustments herein shall only occur on the applicable Adjustment Date. Until the rent adjustment can be actually calculated in accordance with this Lease, Lessee shall continue to make payments at the existing rental rate. When the adjustment is calculated, the balance of rents due at the adjusted rate, from the applicable Adjustment Date through the date of calculation, shall be paid to Lessor within thirty (30) days of written notice by the Lessor. In no event shall the adjusted rent as established by the Consumer Price Index, be less than the rent in existence immediately prior to the Adjustment Date.

C. Delinquent Rent. If Lessee fails to pay the rent when due, Lessee will pay, in addition to the unpaid rents, ten percent (10%) of the delinquent rent per month from the date when due and payable under the terms of this Agreement until the same shall be paid. In the event that Lessor elects to pay said rent in annual installments, rent shall be considered delinquent if not paid within 15 days following the annual anniversary date of the execution of this agreement. In the event that Lessor elects to pay rent in monthly installments, rent shall be considered delinquent if not paid by the 10<sup>th</sup> day of each month.

## **5 - LEASEHOLD IMPROVEMENTS**

A. No improvement, including landscaping, shall be erected or placed on the Premises and no alterations shall be made in the Improvements and facilities constructed or to be constructed ("Additional Improvements") on the Premises without the prior written approval of Lessor. Lessee shall complete and submit to Lessor's Permit Center for review and approval, an application for any building permits, including detailed working drawings and specifications covering the construction of all planned Additional Improvements.

B. Lessor shall promptly review and approve or note in writing any changes and corrections which must be made to the plans submitted. Lessor's approval of these plans are subject to any changes or corrections which must be made to the plans, drawings and specifications in accordance with the terms of this Lease. Any changes and/or corrections must be made by Lessee and the plans resubmitted to Lessor within sixty (60) days after the corrections and/or changes have been noted.

C. One (1) complete copy of plans for all buildings and improvements and for subsequent changes therein or alterations thereof shall, within fifteen (15) days after approval thereof by Lessor, be signed by Lessee and deposited with Lessor.

D. Promptly following issuance of all permits for the construction of the Additional Improvements, Lessee shall commence and diligently pursue construction of the Additional Improvements to completion within 18 months of the issuance of a Building Permit. The date for completion of such work shall, however, be extended for the period of any unavoidable delay not to exceed six months, if Lessee makes a claim for such delay in writing to Lessor within ten (10) days after commencement of the cause of such delay. For the purpose of this Lease, the term "unavoidable delay" shall mean delay suffered by Lessee or Lessee's contractors which necessarily and materially interferes with the progress and extends the time required for completion of such work and which is caused by acts of God or the elements, strikes, lockouts, fires or other causes beyond the control of Lessee or Lessee's contractors.

E. Lessee shall construct and/or install any and all site improvements required by Lessor consistent with City development standards, including, but not limited to, drainage, utilities, parking, paving, landscaping, lighting, and fencing.

F. Lessee shall provide for parking of automobiles, as provided for in the City Code.

G. Lessee shall cause to be made, executed and delivered to Lessor, prior to the date of commencement of any work in or on the Premises, corporate surety bonds approved as to form and as to surety by Lessor, with Lessee's contractor or contractors as principal, and Lessor as an additional obligee, each in the sum of one hundred percent (100%) of the amount of the contract for (a) the said required work in accordance with the approved plans and specifications, and (b) to provide that if Lessee or its contractor or contractors fail to pay for any materials, provisions or other supplies, used in or upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, that the surety will pay the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee as set by the court.

H. [intentionally omitted].

I. Lessee shall design any Additional Improvements so as to meet all applicable guidelines and regulations of the Federal Aviation Administration ("FAA"), the California Department of Transportation (Division of Aeronautics), and the City of Salinas. Lessor makes no warranties as to the suitability of the location identified for the purpose intended, particularly with respect to height and setback requirements, and all other State and Federal regulations.

## **6 - REPAIR AND MAINTENANCE OF PREMISES**

Lessee agrees to maintain the Premises and all improvements thereon, in good order and repair and to keep said premises in a neat, clean, and orderly condition. This includes, but is not limited to, the prevention of accumulation of any refuse or waste materials that might constitute a fire hazard or a public or private nuisance. Failure of Lessee to properly maintain and repair the Premises shall constitute a breach of the terms of this Lease.

If, in the opinion of the Lessor's Airport Manager, the Premises are not being properly maintained, the Salinas Airport Manager may, after giving written notice to Lessee and after a reasonable time, cause such repair and maintenance to be made. The cost of such maintenance shall be added to the rent. If said costs are not paid promptly by Lessee, this Lease shall be deemed to be in default and Lessor shall be entitled to all legal remedies provided hereunder.



## **7 - RESTORATION OF PREMISES**

A. If during the term hereof the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee may, at its cost and expense, either (a) repair or restore said improvements, in accordance with Zoning and Building requirements in effect at that time, or (b) tear down and remove the same from said premises. If Lessee shall elect to repair or restore said improvements, the work thereon shall commence within one hundred eighty (180) days after the damage occurs and shall be completed with due diligence.

B. If Lessee shall elect not to repair or restore said improvements, Lessee shall, at its sole expense, within one hundred eighty (180) days after said damage occurs, tear down and remove all parts thereof remaining and the debris resulting from said fire or other casualty and otherwise cleanup said premises, including but not limited to filling all excavations and removing all foundations, debris, and other parts of said buildings remaining after same are removed, and peacefully surrender possession of said premises to Lessor in a clean and orderly condition. Failure by Lessee to do so shall constitute a breach of the covenants and conditions of this Lease. After completion of the above work to the satisfaction of Lessor, Lessee may give written notice to terminate this Lease and shall then immediately comply with the requirements of Section 9.

C. Pursuant to Section 9(B) herein, upon surrender of the Improvements and any Additional Improvements by Lessee to Lessor, Lessee shall have no responsibility pursuant to the terms of this section for the restoration of the Improvements.

## **8 - SIGNS**

Lessee shall have the right to post such signs as are necessary and usual in the conduct of its business in and upon the Premises. Location, size, shape, and copy of all signs exposed shall be in accordance with the Salinas City Code and approved by Lessor's Airport Manager, Department of Community Development and Permit Center prior to installation.

## **9 - TITLE TO IMPROVEMENTS**

A. Throughout the Original Term, and Renewal Terms, if any, title to the Improvements and any Additional Improvements shall be owned and may be depreciated for income tax purposes by Lessee.

B. Upon the later of the expiration of the Original Term of this Lease, or the expiration of the Renewal Terms, if exercised, or upon any sooner termination (pursuant to an actual default by Lessee of the terms and conditions of this Lease, thereby giving rise to the termination of the Lease, by means of negotiation or adjudication) of this Lease, the Improvements and any Additional Improvements shall, without compensation to Lessee, then automatically and without any act of Lessee or any third party become Lessor's property. Lessee shall surrender the Improvements and any Additional Improvements to Lessor in reasonably good condition and repair, ordinary wear and tear excepted, free and clear of all liens and encumbrances, other than those, if any, permitted under this Lease or otherwise created or consented by Lessor. Lessee shall execute, acknowledge, and deliver to Lessor any instrument requested by Lessor as necessary in Lessor's opinion to perfect Lessor's right, title, and interest in the Improvements.

C. All improvements and fixtures made or attached to the Leased Premises shall be and become upon the termination of this Lease, or at the sooner termination of Lessee's tenancy, the property of Lessor and shall not be removed by Lessee unless Lessee is directed to do so by Lessor; provided, however, if Lessee is not in default in the payment of rent or in the performance of its obligations under this Lease, it may remove from said premises, at its sole expense, such personal property, including machinery and "trade fixtures," which are not an integral part of the premises, and which can be removed without damage to the premises, and provided the same may be removed prior to the expiration of this Lease or any extension thereof. In no event will furniture, fixtures, and equipment, or other personal property, be removed until all rental due Lessor has been paid in full. All machines, equipment, material, appliances, and fixtures now or hereafter installed or placed by Lessee on or in the Premises or the Improvements for the generation and distribution of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or air-conditioning purposes, or for sanitary or drainage purposes, or for the exclusion of vermin, or insects, or for the removal of dust, refuse, or garbage, and including all awnings, window shades, drapery rods and brackets, screens, floor coverings, incinerators, carpeting and all other fixtures used in the operation of the Improvements and Additional Improvements, together with all additions to, substitutions for, changes in or replacements of, the whole or any or all of said articles of property, shall be deemed integral parts of the Premises, Improvements, and Additional Improvements for purposes of this Lease.

## **10 - EMINENT DOMAIN**

A. If at any time during the term hereof, the Premises or any part thereof are taken by public authority by the laws of eminent domain, then and in every case the leasehold estate and interest of Lessee in said premises, or any part thereof taken, shall forthwith cease and terminate, and all compensation awarded by reason of the taking of the leased land and improvements, except those installed or owned by Lessee, there on shall be payable to and be the sole property of Lessor. Notwithstanding the foregoing, Lessee shall have the right to make a claim for compensation for its improvements, relocation expenses and business loss caused by such taking and as allowed by law.

B. If only a portion of the Premises is so taken by the powers of eminent domain, Lessee may elect to terminate this lease giving one hundred twenty (120) days prior written notice of Lessee's intention to terminate.

C. If such public taking shall prevent Lessee's use and occupancy of the Premises, Improvements, and Additional Improvements then Lessee shall have the option to terminate this Lease, which option to terminate shall be conditioned upon Lessee paying to Lessor any rent accruing hereunder to the date of termination, and all unpaid taxes and assessments then accruing upon said premises.

D. Any compensation which would otherwise be payable under this paragraph to Lessee shall be paid directly to any encumbrancer of the leasehold interest, to the extent of such encumbrance.

## **11 - TERMINATION BY LESSOR**

A. In the event Lessor should require the Premises in connection with the future expansion and/or operation of the Airport, Lessor may, upon six (6) months' written notice, terminate this Lease.

B. Should Lessor alter its proposed plan of development of the Airport in a manner that would preclude Lessee from operating under the terms of this Lease; or should any other government agency assume control of the Airport or any portion thereof in a manner that would preclude Lessee from operating under the terms of this Lease; or should it occur that during the term of this Lease any governmental action, law, regulation, rule, order, judicial decision or ordinance should come into effect, the terms of which so restrict the use to which the Premises can be put that Lessee is unable to use the Premises in the manner contemplated herein, Lessor will, upon written request from Lessee, terminate this Lease or extend the term of this Lease for the period of time Lessee's operation is so precluded; and no rent shall accrue during said period.

C. If this Lease is cancelled under the provisions of this section, Lessor shall pay to Lessee the fair market value of Lessee's interest. The term "Lessee's interest" as used herein is expressly limited to and defined as the then-in-place, fair market value, not to exceed the original purchase cost of the Improvements and construction cost of the Additional Improvements that are considered fixtures under the rules of fixtures, expounded in Section 1013 and 1019 of the Civil Code of California. Fixtures include buildings, floor slabs, foundations and paving. The fair market value of Lessee's interest shall be determined in accordance with appraisal procedures delineated in Section 4 herein.

## **12 - TERMINATION BY LESSEE**

In the event Lessor ceases or substantially restricts the use of the Airport as an Airport for reasons beyond the control of Lessor, including without limitation, war, civil unrest, acts of terrorism, and acts of God, and Lessee can no longer use the Premises for the purposes contemplated in this Lease, Lessee may upon three (3) months written notice terminate this Lease. City shall have no liability for any damages to Lessee in the event of such change in Lessor's use of the Airport. Notwithstanding the foregoing, Lessee shall have all rights and remedies under Section 10 of this Lease.

## **13 - RESERVATIONS**

A. The Premises are accepted as-is by Lessee subject to any and all existing easements and encumbrances. Lessor reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone, telegraph and electric power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Premises. No right reserved by Lessor in this clause shall be so exercised as to interfere unreasonably with Lessee's permitted use or operations hereunder or to impair the security or any secured creditor of Lessee.

B. Lessor agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the Premises shall be restored as nearly as practicable to its original condition upon the completion of any construction. Lessor further agrees that should the exercise of these rights temporarily interfere with the use of any and all of the Premises by Lessee, the rental shall be reduced in proportion to the interference with Lessee's use of the Premises.

C. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Lessee and without interference or

hindrance to Lessee's permitted use or operations hereunder or to impair the security or any secured creditor of Lessee.

D. The Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard.

E. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the development, operation or maintenance of the Airport subject to the provisions of Sections 10, 11 and 12 of this Lease.

F. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to erect, any building or other structures on the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

G. Lessor reserves and excepts from this Lease all that portion of the real property herein leased which is super adjacent to a plane sixty (60) feet above and parallel to the existing ground surface of said real property (which portion is hereby referred to as "Super adjacent Air Space").

H. Lessor further reserves and excepts from this Lease, and Lessee hereby grants to Lessor (insofar as the hereinafter described easements and rights in any manner or to any extent that affect the Premises, any improvements which may be made thereon, and Lessee's leasehold or other interest therein and Lessee's use, occupancy or enjoyment thereof):

1. An aviation easement over and laterally adjacent to the Premises and any improvements which may be made thereon, including but not limited to the easement and right to fly, or cause or permit flight by any person of, any aircraft of and all kinds now or hereafter know, in, through, across or about any portion of said super adjacent air space and any air space laterally adjacent thereto; and

2. The easement and right to cause or create, or permit to be caused or created, such noise, vibration, currents and other effects of air, illumination and fuel consumption which may arise or occur:

(a) from or during the use of said aviation easement and such flight as is described in subsection H.1. hereinabove, or

(b) from or during the use by such aircraft of any Salinas Municipal Airport facilities, including but not limited to the landing, storage, repair, maintenance, operation, warm-up and take-off of such aircraft, upon, within or about said Airport, and the approach and departure of aircraft to or from such Airport.

The easements and rights herein reserved and excepted by Lessor, and the easements and rights herein granted by Lessee to Lessor, shall be deemed both in gross and also appurtenant to each and every portion of the real property of the Salinas Municipal Airport (save and except the Premises herein described).

#### **14 - LEASE SUBORDINATE TO AGREEMENTS WITH U.S.A.**

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between Lessor and the United States of America relative to the development, operation or maintenance of the Airport subject to the provisions of Sections 10, 11 and 12 of this Lease.

#### **15 - WAR OR NATIONAL EMERGENCY**

This Lease and all the provisions hereof shall be subject to whatever right the United States Government has affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency subject to the provisions of Sections 10, 11 and 12 of this Lease.

#### **16 - USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS**

Lessee agrees that Lessee's use of the Premises, including initial construction, all future construction, modification or alteration thereon, shall comply with all applicable Federal Aviation Regulations now in force or those that may be hereafter adopted by Federal authority.

#### **17 - USE TO CONFORM WITH CITY OF SALINAS REGULATIONS**

Lessee agrees to comply at all times with all applicable provisions of the Salinas City Code including, but not limited to, Chapter 4 and Chapter 37 of said Code. Lessor agrees that the Premises, Improvements and intended use are compliant with such provisions as of the date of this Lease. Lessee further agrees to comply with all the rules and regulations established by the Salinas City Council, the Salinas Airport Commission and the Salinas Airport Manager for the use of the Premises and all other portions of the Salinas Municipal Airport. No right reserved by Lessor in this clause shall be so exercised as to interfere unreasonably with Lessee's permitted use or operations hereunder or to impair the security or any secured creditor of Lessee.

#### **18 - NON-DISCRIMINATION**

Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree to furnish all services on a fair, equal and non-discriminatory basis to all users; and charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

#### **19 - EQUAL OPPORTUNITY PLAN**

Lessee assures that it will undertake an equal opportunity program as may be required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on those grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub organizations provide assurance to Lessee that they similarly will undertake equal opportunity programs and that they will require assurances from their sub organizations, as may be required by 14 CFR Part 152, Subpart E, to the same effort.

## **20 - NON-EXCLUSIVE RIGHT**

Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308A of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1349a).

## **21 - LESSEE AGREEMENTS**

A. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations and Ordinance No. 1719 of the City of Salinas, dated November 21, 1977, in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure on the Premises.

B. The Lessee by accepting this, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises to penetrate the transitional surfaces, as defined in Federal Aviation Regulations and Ordinance No. 1719 of the City of Salinas. In the event the aforesaid covenants are breached, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

C. Lessee by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Salinas Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

## **22 - UTILITIES**

A. The costs of bringing utilities of gas, electricity, sewage, drainage, telephone and water to the Premises as may be necessary, shall be borne by Lessee.

B. Lessee shall install, connect and maintain, at Lessee's sole cost and expense, all necessary utilities and utility facilities and services, including but not limited to light, power, gas, telephone, water, sewage, drainage, garbage, rubbish and other disposal facilities and services. In addition to the rent hereinbefore reserved, Lessee shall pay for all water, gas, heat, light, power, telephone, sewage, garbage and rubbish disposal, and all other services supplied to the Premises. It is anticipated that the Lessor may enter into additional leases with unrelated third parties in connection with the construction of any Additional Improvements to the Premises. Due to the foregoing, Lessee may, during the construction of the Additional Improvements, provide for utilities, common area improvements, and services in excess of those required in connection with the Improvements.

C. Lessor and Lessee shall enter into a separate Reimbursement Agreement whereby Lessor agrees to reimburse Lessee for the pro rata share of the costs of providing all necessary utilities and common area improvements. Lessor agrees that for the period of twelve years following the Commencement Date, any party attaching to, and using, any utility or common area improvements provided by Lessee pursuant to this Section shall pay a proportionate share of the original construction cost and that Lessor shall in turn reimburse Lessee said amounts. For the purposes of cost-sharing, utilities, electronic gate, and other common area improvements, such as taxiway, bathroom, driveway and parking area, shall be considered a utility.

## 23 - USE OF PUBLIC AIRPORT FACILITIES

Lessee is granted the non-exclusive use of all public Airport facilities, including but not limited to taxiways, runways, aprons, navigational aids, and facilities relating thereto, for purposes of landings, take-offs, and taxiing of Lessee's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by ordinance or by law.

## 24 - TAXES AND ASSESSMENTS

Lessee shall pay all taxes (including possessory interest tax) and assessments that may be levied upon the Premises, any and all buildings and improvements and other property situated therein, and any interest of Lessee therein, for the full term of this Lease.

## 25 - INSURANCE

Lessee shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** ("CGL"): Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.
3. **Property** insurance against all risks of loss to any Lessee owned or controlled property, including without limitation Improvements, Additional Improvements, or betterments, at full replacement cost with no coinsurance penalty provision. Such property insurance shall include fire insurance with extended coverage and debris-cleanup provisions in an amount equal to ninety percent (90%) of the actual cash value of all Improvements and Additional Improvements in or on the Premises.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Lessor requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Lessor to the extent of Lessor's insurable interest therein.

### Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

### *Additional Insured Status*

The Lessor, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance at (least as broad as ISO Form CG 20 10).

### ***Primary Coverage***

For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Lessor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Lessor.

### ***Waiver of Subrogation***

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Lessor.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the Lessor. At the option of the Lessor, either the Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Lessor, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Lessor guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lessor.

### ***Verification of Coverage***

Lessee shall furnish the Lessor with original certificates, copies of the policy declarations pages, and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Lessor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

### ***Special Risks or Circumstances***

Lessor reserves the right to reasonably modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### ***Contractors and Subcontractors***

Lessee shall require all contractors and subcontractors who perform work on the Premises to maintain general liability insurance in an amount of no less than \$1 million combined single limit per occurrence which complies with all of the provisions in this Insurance section above,



including providing an additional insured endorsement in favor of the City, and Lessee shall provide City with copies of such insurance certificates and endorsements upon request.

Furthermore, before commencing or allowing commencement of any work of improvement, Lessee shall ensure that all of its employees and/or all employees of any contractors and subcontractors retained by Lessee, are covered by workers' compensation insurance.

## **26 - COMMON AIRPORT AREAS**

Lessee shall have the privilege of using, in common with others to whom such privileges may also be given by Lessor, such airplane runways as are provided in the Salinas Municipal Airport for the take-off and landing of airplanes. Lessee shall also be entitled, in common with others to whom such privileges may also be given by Lessor, to such of the following services as may be provided by said Airport, to facilitate the take-off and landing of aircraft at and the flying of aircraft within and about said Airport, to wit: landing light, floodlights, signals and other such facilities. Such privileges, however, shall be subject to all rules and regulations now in effect or hereafter established by the City of Salinas governing or controlling such privileges, uses or operations, and shall be subject to the payment of all such fees or charges as the City of Salinas may now or hereafter impose for such privileges, uses and operations.

## **27 - LIENS AND CLAIMS**

A. Lessee shall not suffer or permit to be enforced against Lessor's title to the Premises, or any thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of Lessor).

B. Lessee shall pay all such liens, claims and demands before any action is brought to enforce the same against the Premises; and Lessee agrees to hold Lessor and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

C. Should Lessee fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration, maintenance and use of the Premises and the buildings and improvements hereon, or any other claim charge or demand which Lessee has agreed to pay under the covenants of this Lease, Lessee or its authorized encumbrances, if any, shall, within thirty (30) days provide written notice from Lessor to Lessee or its said encumbrancer, pay and discharge the same or shall furnish to City, in a form satisfactory to City, sufficient security to hold Lessor and said land free from all liability for such lien, claim, or demand and all costs and expenses in connection therewith. Should Lessee or its said encumbrancer, within said thirty (30) days period, not pay discharge said lien, claim or demand or not provide said security to Lessor, then Lessor may at its own option, either treat such failure or refusal as a breach of or default under this lease, or may pay any such lien, claim or demand, or settle or discharge any action therefore or judgment thereon, and all costs, expenses and other sums incurred or paid by Lessor in connection therewith shall be repaid to Lessor by Lessee upon written demand, together with interest thereon at the rate of ten percent (10%) per annum from the date of payment until repaid, and any default in such repayment shall constitute a breach of the covenants and conditions of this Lease.

## **28 - RIGHT TO ASSIGN OR TRANSFER**

A. Lessee shall not encumber, assign or otherwise transfer this Lease, or any right or interest herein, to any of the Improvements, without the prior written consent of Lessor, and no such encumbrance, assignment or transfer, whether voluntary or involuntary, by operation of law, under legal process or proceedings, or otherwise, shall be valid or effective without such prior written consent.

B. If Lessee hereunder is a corporation or an unincorporated association or a partnership, the transfer, assignment or hypothecation of any stock or interest in said corporation, association or partnership, in the aggregate in excess of twenty-five percent (25%) shall be deemed an assignment within the meaning of this lease. The following transfers are excepted from the provisions of this paragraph:

1. Transfer or assignment of stock or interest to a shareholder or member of the same corporation, association, or partnership.

2. Transfer or assignment of stock or interest to a spouse, child, or grandchild of a shareholder or member to a trust for the benefit of the same.

C. Should Lessee attempt to make or suffer to be made any such encumbrance, assignment, or transfer, except as aforesaid, or should any right or interest of Lessee hereunder or in or to the Improvements be transferred or sold by or under court order or legal process, or otherwise, then any of the foregoing events shall be deemed a breach of this Lease and thereupon Lessor may, at its option, terminate this Lease forthwith by written notice thereof to Lessee, or exercise other rights provided by law or in this Lease to be exercisable by Lessor in the event of any default or breach under this Lease. Should Lessor consent to any such encumbrance, assignment, or transfer, such consent shall not constitute a waiver of any of the restrictions of this clause and the same shall apply to each and every encumbrance, assignment, or transfer hereunder and shall be severally binding upon each and every encumbrancer, assignee, transferee, and other successor in interest of Lessee.

D. Lessor agrees that it will not unreasonably withhold its consent to any assignment, or transfer requiring its prior approval hereunder, but Lessor may withhold such consent:

1. If the proposed assignee shall not covenant in writing to keep, perform and be bound by each and all the covenants and conditions of this Lease herein provided to be kept and performed by Lessee and to assume any previously accrued obligations hereunder.

2. If this Lease is in default at such time in any respect.

3. If the construction, or demolition of the Improvements on the Premises is in progress, or if said construction or demolition is incomplete.

4. Until a determination has been made by Lessor that the assignee, transferee, or other successor in interest of Lessee can pay rent and operate in accordance with the standards required by Lessor.

E. Any document that purports to assign, transfer, or encumber the Premises or any part thereof, shall incorporate directly or by reference all provisions of this Lease unless otherwise amended in writing. Upon any assignment or transfer approved by Lessor, Lessee shall be relieved of any further obligations arising under this Lease after the effective date of such assignment.

F. Lessee may sell interest in its corporate aircraft stored within the Improvements, but Lessee understands and agrees that at any time its financial interest in the ownership of any such

individual aircraft drops below twenty percent (20%), then Lessee shall pay to Lessor during that period, in addition to the rent identified in Section 4.B, a sum equivalent to the monthly rent charged by Lessor for occupancy of an R-1 Hangar at that time.

G. Lessee shall be permitted to sublet the Premises to third parties for the purpose of storing, maintaining and repairing aircraft, provided that such subletting shall only be to third parties deemed acceptable by Lessor in writing.

## **29 - DEFAULT**

A. In the event Lessee shall default in the performance of any condition or covenant in this Lease (except the payment of rent), Lessor may, at its option, take such action as provided in paragraph C hereof, but only if Lessee fails to rectify said default within thirty (30) days after written notice thereof is served upon Lessee by Lessor. In the event, however, that the default is of such nature that the same cannot be rectified in such thirty (30) day period, then such default shall be deemed to be rectified if Lessee shall have commenced the compliance of the provisions hereof breached by it within said thirty (30) day period and shall with all diligence prosecute work or perform the particular provisions until the same shall have been fully rectified or performed.

B. In the event Lessee should fail to pay any installment of rent or pay any other sum due provided in this Lease to be paid by Lessee at the time or times herein specified, Lessor may, at its option, take such action as provided in paragraph C hereof, but only if said default is not rectified within ten (10) days after written notice thereof is served on Lessee by Lessor.

C. In the event Lessee shall fail to pay rent or any other sum provided in this Lease, or in the event of any other breach of this Lease by Lessee, then Lessor, in addition to and without prejudice to any other right or remedy of Lessor hereunder, shall have the immediate right to lawfully re-enter and remove all persons and personal property from the Premises, and such personal property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. Should Lessor elect to re-enter, as herein provided, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided by law, Lessor may either terminate this Lease or may from time to time, without terminating this Lease, relet premises or any part thereof for such term or terms (extending, at Lessor's option, beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. Upon such reletting:

1. Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than rent hereunder, the cost and expenses of such reletting and of any such alterations and repair, incurred by Lessor, and the amount, if any, by which the rent reserved in this Lease for the period of such reletting (up to but not beyond the term of this Lease) exceed the amount agreed to be paid as rent for the Premises for such period of such reletting; or

2. At the option of Lessor, rents received by Lessor from such reletting shall be applied: first, to the payment of any indebtedness hereunder of Lessee to Lessor, other than rent due; second, to the payment of any costs and expenses of such reletting and of any such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be paid by Lessor and applied in payment of future rent as the same may become due and payable hereunder.

3. If Lessee has been credited with any rent to be received by such reletting under Option (1), and such rent shall not be promptly paid to Lessor by the new tenant, or if such rentals received from such reletting under Option (2) during any month be less than that to be

paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by Lessor shall be construed as an election by Lessor to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for any breach, in addition to any other remedy available to Lessor hereunder, Lessor may recover from Lessee all damages which Lessor may incur by reason of such breach, including any cost of recovering the Premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of stated term, all of which amount shall be immediately due and payable from Lessee to Lessor.

### **30 - INDEMNIFICATION AND HOLD HARMLESS**

This Lease is made upon the express condition that Lessee shall indemnify, defend, and hold harmless Lessor and its officers, employees, and agents from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, damage to property, violation of federal, state or municipal law or ordinance, or other cause to the extent arising from or in connection with the use of Premises by Lessee during the term of this Lease; Lessee's failure to keep the Premises and any and all improvements and other property therein in good, safe, and sanitary condition; any acts or omissions; or otherwise connected with Lessee, its employees, contractors, subcontractors or agents, except for any such claim arising from the negligence or willful misconduct of the Lessor.

Lessee shall reimburse the Lessor for all costs and expenses including, but not limited to court costs, incurred by the Lessor in enforcing the provisions of this section.

### **31 - ABANDONMENT, ETC.**

Except as may be herein in this Lease otherwise expressly provided, Lessee shall not vacate or abandon the Premises at any time during the term of this Lease; and if Lessee shall abandon, vacate or surrender said premises or be dispossessed by process of law or otherwise, any property belonging to Lessee and left on the Premises shall be deemed, at the option of Lessor, to be abandoned.

### **32 - CO-ORDINATES**

Co-ordinates used in the description in this lease are based upon the "Horizontal Control Net California Plan Co-ordinates, Zone 4," for the City of Salinas, on file in the office of the City Engineer of the City of Salinas.

### **33 - BANKRUPTCY, ETC.**

Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Lessee. Notwithstanding the above provisions, the filing of any involuntary petition in bankruptcy against Lessee shall not constitute a breach of this Lease, unless and until there is an adjudication in such involuntary bankruptcy proceedings that Lessee is bankrupt, which adjudication shall constitute a breach of this Lease.

### **34 – NO WAIVER OF RIGHTS**

The waiver by Lessor of any breach of any term, covenant or condition contained in this lease shall not be deemed to be a waiver of such term, covenant or condition in any subsequent breach of the same or any other term, covenant or condition; and the consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee, and the subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

### **35 - LITIGATION INVOLVING LEASE**

In the event Lessor is made a party to any litigation concerning this Lease or the Premises of any act or omission by Lessee, Lessee shall hold Lessor harmless from all loss or liability, including reasonable attorney's fees incurred by Lessor in such litigation. Further, Lessee shall at its own expense, upon written request by Lessor, defend any such suit or action brought against Lessor, its officers, agents and employees. This section specifically includes any liability arising out of or in connection with separate agreements that Lessor may execute with third parties for services, volunteer or otherwise, relating to or in support of airport activities. In case suit shall be brought for an unlawful detainer of said premises, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant or provision herein contained on the part of Lessee to be kept or performed, and Lessor prevails therein, Lessee shall pay to Lessor reasonable attorney's fees, which shall be fixed by the court.

### **36 - HOLDING OVER**

Any holding over after the expiration of this Lease with the consent of Lessor shall be construed to be a tenancy from month to month at a monthly rental equal to one twelfth of the rental for the year immediately preceding the expiration of said term, and shall otherwise be on the terms and conditions herein in this Lease specified so far as applicable, except that there shall be no right to extend the term of this Lease.

### **37 - LESSEE'S ASSUMPTION AND WAIVER**

This Lease is made upon the express condition, and (in consideration of Lessor's leasing the Premises as herein provided) Lessee covenants, that Lessee hereby voluntarily assumes all risk of loss, damage or injury to the person or property of Lessee (including the leasehold interest of Lessee herein), and of its agents or employees, and of any other person in or about the Premises, which during the term of this Lease may be caused by or arise or occur in any manner from:

A. Flight of any aircraft of any and all kinds now or hereafter known in, through, across, around, or about any portion of the airspace over the Premises; or

B. Noise, vibration, currents and other effects of air, illumination and fuel consumption, or fear thereof, arising or occurring from or during such flight, or from or during the use by such aircraft of Salinas Municipal Airport facilities, including but not limited to landing, storage,

repair, maintenance, operation, warm-up, and take-off of such aircraft, and the approach and departure of aircraft to or from said Airport.

Lessee hereby waives and releases Lessor, its officers, employees, agents and contractors, from any and all claims or causes of action which it may now or hereafter have against Lessor, its officers, employees, agents or contractors, for any loss, damage or injury as outlined in subsections A and B of this paragraph except to the extent arising from the negligence or willful misconduct of Lessor. Nothing in this Section shall be construed to be a waiver or release of any claims or causes of action against any third party for any loss, damage or injury arising from such third party's negligent acts or omissions.

### **38 - CONSTRUCTION OF LEASE**

Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there be more than one Lessee designated in or signatory to this lease, the obligations hereunder imposed upon Lessee shall be joint and several; and the term "Lessee" as used herein shall refer to each and every of said signatory parties severally as well as jointly. Each term and provision of this Lease performable by Lessee shall be construed to be both a covenant and a condition. This instrument contains all of the agreements and conditions entered into and made by and between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto or their respective successors in interest.

### **39 - TIME**

Time is and shall be of the essence of each term and provision of this Lease.

### **40 - MATERIAL BREACH**

Each and every term, condition, covenant and provision of this Lease is and shall be deemed to be a material part of the consideration for Lessor's entry into this Lease, and any breach hereof by Lessee shall be deemed to be a material breach.

### **41 - NOTICES**

Except as is otherwise herein provided, all notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party shall be in writing and shall be sufficiently given and served upon the other party if sent by mail, postage prepaid and addressed as follows:

If to Lessor, the same shall be addressed to:

Airport Manager  
Salinas Municipal Airport  
30 Mortensen Avenue  
Salinas, CA 93905

or to such other place as Lessor may by such similar notice in writing designate.

If to Lessee, the same shall be addressed to:

Seatec Underground Utilities, Inc.

---

---

or to such other place as Lessee may by such similar notice in writing designate.

## **42 - ENCUMBRANCES OF LEASEHOLD INTEREST**

Lessee may encumber by mortgage or deed of trust or mortgages or deeds of trust Lessee's leasehold interest in the Premises, Improvements, and/or Additional Improvements to secure a loan from any bank or savings and loan institution that is federally insured to construct the buildings, structures or improvements mentioned in Section 5 hereof and for the expansion of Lessee's buildings, structures or improvements thereon, provided the unpaid balance of any and all such loans and increases shall not at any time exceed \$750,000.00 without the prior written consent of the Council of the City of Salinas first had and obtained. In connection therewith, Lessee may assign, for security purposes, Lessee's leasehold interest in said premises and Lessee's rights in the Improvements, to the mortgagees or trustees under such mortgages or deeds of trust, such encumbrances and assignments to be subject, however, to the following covenants and conditions, each and all of which shall be binding upon and inure to the benefit of Lessor, Lessee, mortgagees, and trustees:

A. That any such encumbrances and assignments for securing purposes shall not be effective unless a photocopy of the particular mortgages or deeds of trust encumbering Lessee's leasehold interest in said Premises and Lessee's rights in the Improvements shall be filed with Lessor's City Clerk within ten (10) days from and after the date of their execution.

B. That, except as hereinafter otherwise provided, the mortgages or deeds of trust and all rights acquired thereunder shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease and to all rights and interests of Lessor hereunder.

C. That in the event of any conflict between the provisions of this Lease and the provisions of such mortgages or deeds of trust, the provisions of this Lease shall control.

D. That in the event at any time prior to the expiration of the term of this Lease there shall be a non-substantial destruction of the buildings, structures and improvements on the Premises, defined as damage costing less than \$25,000 to repair and restore, then notwithstanding the provisions of Section 7 of this Lease, Lessee shall be required to diligently restore said buildings, structures and improvements, and Lessee agrees to use the proceeds of the fire and extended coverage insurance mentioned in Section 25 hereof for the purpose of restoring and rehabilitating said buildings, structures and improvements.

E. That in the event at any time prior to expiration of the term of this Lease there shall be a substantial destruction of all the buildings, structures and improvements on the Premises, defined as damage costing \$25,000 or more to repair and restore, then Lessee shall have the rights as are given to Lessee by the provisions of Section 7 of this Lease to either diligently restore and rehabilitate said buildings, structures and improvements or to terminate this Lease.

In the event Lessee should elect to restore and rehabilitate said buildings, structures and improvements, Lessee agrees to use the proceeds of such fire and extended coverage insurance mentioned in Section 25 hereof to restore and rehabilitate said buildings, structures and improvements.

In the event Lessee should elect to terminate this Lease, Lessee shall first disburse the proceeds of the fire and extended coverage insurance mentioned in Section 25 hereof to the mortgagees or trustees in such amount to pay off in full the indebtedness secured by said mortgage or deeds of trust. The remaining proceeds, if any, of such fire and extended coverage insurance shall be paid to Lessor for such amounts, if any, due and owing to Lessor by Lessee under any of the terms of this Lease. Thereafter, any proceeds remaining shall be disbursed to Lessee.

F. That Lessor shall mail to the trustees or mortgagees (if such trustees or mortgagees shall have first requested such notice from Lessor in writing and provided Lessor with an address to which such notice shall be sent) a duplicate copy of any and all notices in writing which Lessor may from time to time give to or serve upon Lessee under and pursuant to the terms and provisions of this Lease. Said copies shall be mailed to mortgagees or trustees as nearly as is reasonably possible to do so at the same time such notices are given to Lessee.

G. That the mortgagees or trustees may, at their option, at any time before the rights of Lessee shall have been terminated as provided in this Lease, pay any of the rents due under this Lease or pay any taxes or assessments and make any repairs or improvements or do any other act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by mortgagees or trustees shall be as effective to prevent the termination of the rights of Lessee there under as if they were done and performed by Lessee instead of by mortgagees or trustees.

H. That in the event a mortgagee or trustee or third person acquires Lessee's interest in the Lease and possession of the Premises by foreclosure, by trustee's sale, or as a result of any other action or remedy provided for or by any mortgage or deed of trust, or by deed or assignment in lieu of trustee's sale or foreclosure proceedings, such mortgagee or trustee or third person shall take Lessee's interest in the Premises and possession of the Premises subject to all the provisions of this Lease and shall, so long as trustee or mortgagee or third person shall be the owner of the leasehold interest and legally entitled to possession of the Premises by reason of such foreclosure, trustee's sale, or any other action or remedy provided for or by any mortgage or deed of trust or deed of assignment in lieu of trustee's sale or foreclosure proceedings, personally assume all of Lessee's obligations under this Lease arising after the date such mortgagee or trustee or third person acquires title thereto. In no event shall the Premises be used for a non-aviation purpose.

I. In the event such mortgagee or trustee or third person acquires, as a result of this paragraph, Lessee's interest in the Premises and possession of the Premises, such trustee, mortgagee, or third person may encumber, by mortgages or deeds of trust, for security purposes, its leasehold interest in said premises and its rights in the Improvements to secure loans thereof from any bank or savings and loan institution that is federally insured to the same extent as Lessee has such right under and by virtue of the provisions of Section 42 hereof, it being understood that any reference to Lessee appearing therein shall apply to such mortgagee or trustee or third person.

Notwithstanding the provisions of Section 29 hereof, Lessor shall not, in the event of a breach of this Lease by Lessee, terminate this Lease or re-enter, retake possession of or relet the Premises or take advantage of any other legal right or remedy Lessor might have by reasons of a breach if, within forty-five (45) days after notice of such breach has been sent to the mortgagees or trustees or third persons, the mortgagees or trustees or third persons commence an action to obtain possession of said premises, including the appointment of a receiver, or institute foreclosure proceedings to sell the interest of Lessee at foreclosure sale or trustee's sale, or acquire title to Lessee's interest by deed or assignment in lieu of such trustee's sale or foreclosure proceedings, and thereafter diligently proceed in good faith to cure such breach;



provided, however, that the rental agreed to be paid and the other covenants of Lessee hereunder are fully paid and are fully performed and the breach cured by such mortgagees or trustees or third persons or by Lessee during such forty-five (45) period.

If any such breach is of such a nature that it is impractical to cure the breach without physical possession of the Premises within forty-five (45) days after notice thereof, Lessor shall not terminate this Lease or re-enter, retake possession of or relet the Premises, or take advantage of any other legal right or remedy Lessor might have by reason of a breach, as long as such mortgagees or trustees or third persons shall have commenced the curing of such breach within said forty-five (45) days and shall then be continuously and diligently proceeding in good faith to cure such breach so that it can and will be cured within a reasonable time; provided the rental agreed to be paid is in fact paid within said forty-five (45) day period and thereafter paid on time and provided further that other covenants and obligations of Lessee which are not physically impossible of performance within said forty-five (45) day period are in fact fully performed by such mortgagees or trustees or third persons or by Lessee within said forty-five (45) day period.

### **43 - HEIRS, SUCCESSORS AND ASSIGNS**

All of the covenants, agreements, conditions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the representatives, heirs, executors, administrators, successors and/or assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

### **44 - HEADINGS**

The various section headings and numbers herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

### **45 - SEVERABILITY**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

### **46 - HAZARDOUS SUBSTANCES**

A. Pursuant to Health and Safety Code section 25359.7, Lessee shall notify Lessor in writing within a reasonable time after Lessee obtains knowledge of any material release of hazardous substances and of any hazardous substances that have come to be located beneath the Salinas Municipal Airport.

B. Prior to the expiration of this Lease, Lessee shall at its sole expense, remove all items of personal property from the Premises, including but not limited to all flammable substances and hazardous materials and wastes (as defined by state and federal law) at the time of expiration of this Lease to the extent released or deposited by Lessee and to the extent the presence of which violates applicable Law. Lessee shall have no liability or responsibility for removal of flammable substances or hazardous materials and wastes migrating to beneath the Premises or existing prior to the Commencement Date.

C. Lessee shall make available for inspection to the Lessor, all records relating to the maintenance, release, mitigation, cleanup and disposal of any hazardous substances on the Premises.

D. Lessee shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes it uses, stores, releases or discharges on the Premises during the term of this Lease, and shall timely comply with the orders of any governmental agencies relating thereto.

E. Lessor may reasonably enter upon and inspect the Premises at any time. Lessee shall be responsible for meeting current storm water pollution prevention Best Management Practices (BMPs), as identified by Lessor in Lessor's Storm Water Pollution Prevention Plan (SWPPP) as amended. As of the commencement date of this Lease Agreement, these BMPs are:

- a labeled and stocked spill kit must be on site;
- personnel must undergo routine spill response training.
- keep all maintenance activities covered from wet weather.
- use of drip pans.
- off site removal of pollutants.
- use of dry cleanup methods.
- use of spill and overflow protection.
- proper storage and labeling of materials.

Lessee understands and agrees that failure to meet the BMPs listed above may result in Lessee no longer being included by Lessor in Lessor's participation in the general permit of the California State Water Resources Control Board concerning storm water discharges.

#### **47 – COUNTERPARTS**

This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

#### **48 - LEGAL REPRESENTATION**

Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Lease and the matters and claims set forth herein, and that each of them has read this Lease and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Lease as an inducement to enter into this Lease.

#### **49 - WARRANTY OF AUTHORITY**

Each party represents and warrants that it has the right, power, and authority to enter into this Lease. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Lease for it, to enter into this Lease.

#### **50 – INTEGRATION AND AGREEMENT**

This Lease represents the entire understanding of City and Lessee as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Lease may not be modified or altered except by amendment in writing signed by both parties.

## **51 – JURISDICTION**

This Lease shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Lease on the date first written above.

**CITY OF SALINAS**

**SEATEC UNDERGROUND  
UTILITIES, INC.**

---

Ray E. Corpuz, Jr.  
City Manager

---

By: Alan Bikle  
Its: President

APPROVED AS TO FORM:

---

Christopher A. Callihan  
City Attorney

RECOMMENDED FOR APPROVAL:

---

Brett J. Godown  
Airport Manager

**Property Description**

Seatec Underground Utilities, Inc. - Airport

That certain real property lying within the City of Salinas, County of Monterey, State of California, and being a portion of that certain 155.14 acre tract of land acquired by Salinas, a municipal corporation, from Ada May Bardin by Resolution No. 1126(N.C. S.) dated September 23, 1940 and recorded in Volume 684 of Deeds at Page 403 therein, Official Records of Monterey County, California, and being more particular.ly described as follows:

Beginning at the true point of beginning of that certain 1.0616 acre parcel designated as Parcel A as leased to A. Teeters by Salinas, a municipal corporation, by lease indenture as recorded in Reel 1048 at Page 202, Monterey County Records; thence from said point of beginning, South 6°06'00" West, 116.00 feet along the westerly line of said Parcel A, to the corner common to said Parcel A and Parcel B of said lease said point being the TRUE POINT OF BEGINNING; thence leaving the boundary of said Parcel A and running the following courses:

1. South 32°35'42" West 184.36 feet to an angle point; thence
2. North 83°54'00" West 406.55 feet to the southerly line of Airport Boulevard, a city street 84 feet wide,; thence
3. North 57°47'00" East 266.12 feet along said southerly line of Airport Boulevard, to the southerly corner of that certain 0.711 acre parcel designated as Parcel 1 as leased to Wells Fargo by Salinas, a municipal corporation, by lease indenture as recorded in Reel 659 at Page 294, Monterey County Records; thence easterly along a fence line
4. South 63°48'30" East 62.33 feet to an angle point in said fence line; thence
5. South 73°00'42" East 21.93 feet to an angle point in said fence line; thence
6. South 83°21'50" East 116.80 feet to an angle point in said fence line; thence
7. North 86°02'18" East 27.51 feet to an angle point in said fence line; thence
8. North 79°01'16" East 30.21 feet to an angle point in said fence line; thence
9. North 70°34'29" East 30.10 feet to the TRUE POINT OF BEGINNING, containing 1.174 acres of land, more or less.



This description was prepared  
under my direction.

A handwritten signature in black ink, appearing to read "Don Clark Whittle", written over a horizontal line.

D. Clark Whittle L.S. 3753  
License Expires 6/96

**EXHIBIT B**

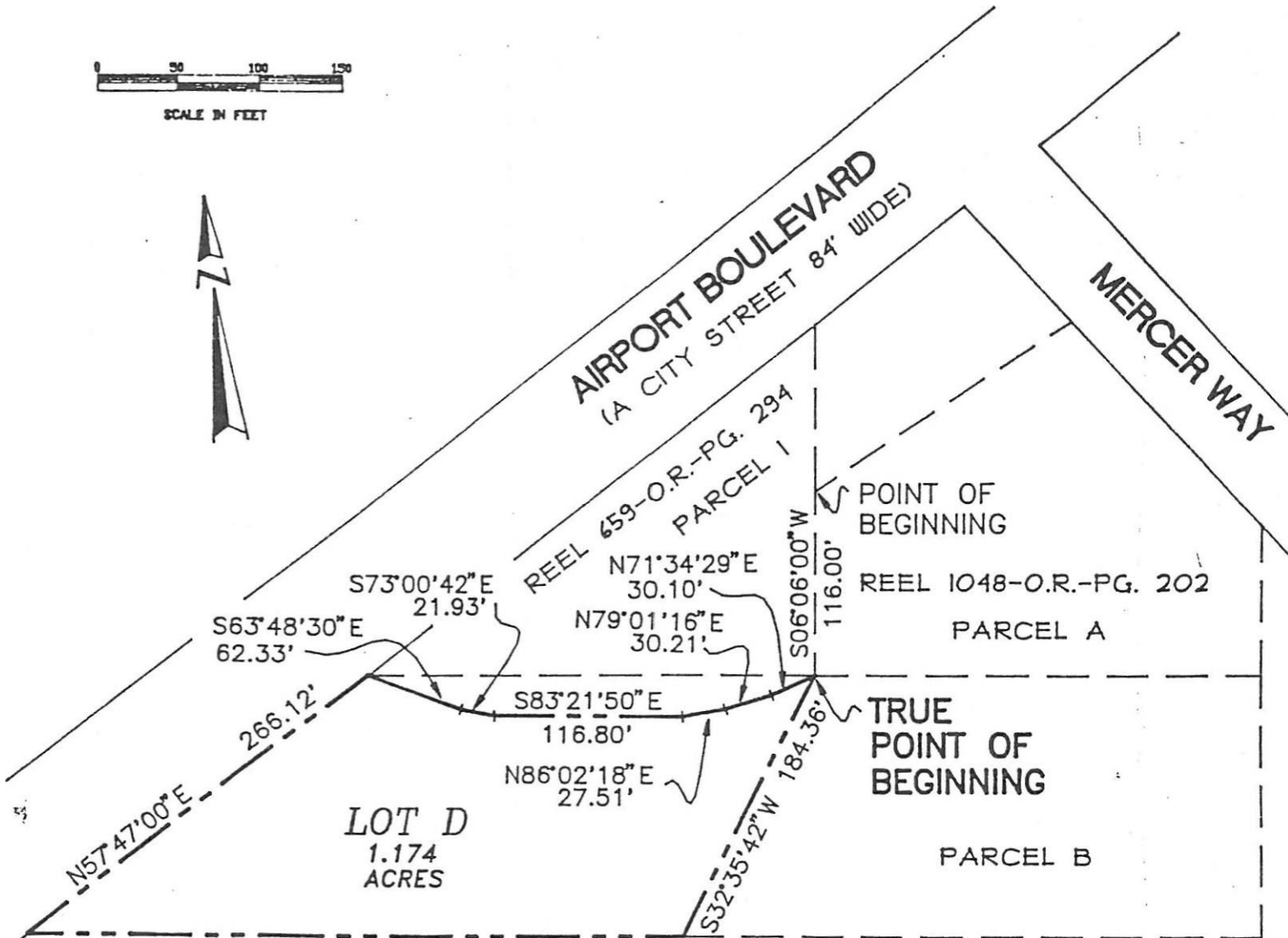
Parcel Map

LOT D, SEATEC UNDERGROUND UTILITIES, INC. PARCEL

BEING

A PORTION OF THAT 115.14 ACRE TRACT

RECORDED IN VOL. 684-DEEDS-PG. 403, BEING WITHIN THE  
CITY OF SALINAS, MONTEREY COUNTY, CALIFORNIA



N8354'00"W

406.55'



*[Signature]*

D. CLARK WHITTLE L.S. 3753  
MY LICENSE EXPIRES 6/96