

MEMORANDUM OF AGREEMENT (MOA)

Between

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

And

CITY OF ANN ARBOR, MICHIGAN

**MOA No. 697DCM-20-L-00135
(ARB) Ann Arbor Municipal Airport
Ann Arbor, Michigan**

SECTION 1 - OPENING

6.1.1-1 Preamble (JAN 2017)

This Agreement is made and entered into by the City of Ann Arbor, Michigan, hereinafter referred to as "Airport", for itself, its successors and assigns, and the Federal Aviation Administration, hereinafter referred to as the "FAA".

6.1.3-1 Witnesseth (JAN 2017)

Whereas, the parties listed above have entered into an Airport Improvement Grant Agreement; and

Whereas, the parties listed above have entered into an agreement providing for the construction, operation, and maintenance of FAA owned navigation, communication and weather aids for the support of Air Traffic Operations; and

Whereas, the parties consider it desirable to work in cooperation with each other in the technical installation and operation of air navigational aids; and

Whereas, both parties agree the establishment, operation, and maintenance of systems for air traffic control, navigation, communication, and weather reporting is in the primary interest of safety and direct support of the ongoing operation of the Ann Arbor Municipal Airport.

Whereas, this agreement succeeds Lease No. DTFA14-01-L-R3240 and all other previous agreements between the parties for the property described in this document.

Now, therefore, the parties mutually agree as follows:

SECTION 2 - TERMS

6.2.1-1 Purpose

It is understood and agreed that the use of the herein described premises, known as Ann Arbor Municipal Airport, shall be related to the FAA's activities in support of Air Traffic Operations, including but not limited to navigational, communication and weather aid facilities.

6.2.5-4 Terms and Conditions (JAN 2019)

It is mutually understood and agreed that the Airport requires FAA navigation aid facilities in order to operate their business and that the FAA requires navigation, communication and weather aid facilities at the Airport in order to support Air Traffic Operations. Thus, in the interest of both parties it is hereby agreed that the Airport will allow the FAA to construct, operate, and maintain FAA owned navigation, communication and weather aid facilities in areas on the Airport that have been mutually determined and agreed upon for the term commencing October 01, 2020 and continuing through September 30, 2040. The FAA can terminate this agreement, in whole or part at any time by giving at least thirty (30) days' notice in writing. Said notice shall be sent by certified or registered mail.

A. Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining pole lines or underground lines for extending electrical power and/or telecommunications lines to the premises; including a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over the area referred to as Ann Arbor Municipal Airport to be routed reasonably determined to be the most convenient to the FAA and as not to interfere with Airport operations. The Airport shall have the right to review and comment on plans covering access and utility rights-of-way under this paragraph.

B. And the right to grading, conditioning, and installing drainage facilities, seeding the soil of the premises, and removing all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of navigational aid systems. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.

C. And the rights to make alterations, attach fixtures, and erect additions, structures or signs, in direct support of the Airport. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.

D. And the right to park, without cost, all official and privately owned vehicles used for the maintenance and operation of the air navigational facilities. Parking shall be provided adjacent to the navigational aid facility or as near as possible without interfering with the operation of the Airport.

E. The Airport also agrees to provide adequate grass cutting, vegetation control, weed cutting and /or snow plowing at the Federal Aviation Administration air navigation, communication, meteorological facilities and access roads to said facilities at the Ann Arbor Municipal Airport at no cost to the Government.

6.2.6-2 Consideration - No Cost (AUG 2002)

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

6.2.9 FAA Facilities (APR 2005)

The FAA facilities covered by this agreement are identified on the most current approved Airport Layout Plan (ALP) and/or other pertinent drawings that are made part of this Agreement by reference and shown on the attached FAA "List of Facilities".

SECTION 3 - GENERAL CLAUSES

3.2.5-1-RE Officials Not to Benefit

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

6.3.5 Title to Improvements (APR 2005)

Title to the improvements constructed for use by the FAA during the life of this Agreement shall be in the name of the FAA.

6.3.6 Funding Responsibility for FAA Facilities (JAN 2017)

The Airport agrees that any and all Airport requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Airport improvements or changes will be at the expense of the Airport. In the event that the Airport requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Airport will immediately correct the interference issues at the Airport's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Airport or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.

6.3.18 Non-Restoration

It is hereby agreed between the parties that, upon termination of its occupancy (due to termination or expiration of the Agreement), the FAA shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this Agreement,

including any holdover period. It is further agreed that the FAA may abandon in place any or all of the structures and equipment installed in or located upon said property by the FAA during its tenure. Such abandoned equipment shall become the property of the Airport. Notice of abandonment will be conveyed by the Government to the Airport in writing.

6.3.25 Quiet Enjoyment (OCT 1996)

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

6.3.28-2 Interference with FAA Operations (JAN 2017)

The Airport agrees not to erect or allow to be erected any structure or obstruction of any kind or nature within the Airport's boundaries that the FAA determines may interfere with the proper operation of the facilities installed by the FAA. The FAA and the Airport agree that such action(s) would not be in the best interest of the Airport or the FAA.

6.3.33 Covenant Against Contingent Fees (AUG 2002)

The Airport warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

6.3.34 Anti-Kickback (JAN 2017)

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

6.3.36 Subordination, Nondisturbance and Attornment (JAN 2017)

A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this Agreement is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this Agreement. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as Airport may reasonably request to evidence further the subordination of this Agreement to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining

property owned in whole or in part by Airport if such easement does not interfere with the full enjoyment of any right granted the Government under this Agreement.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this Agreement so long as the Government is not in default under this Agreement. Airport will include in any future mortgage, deed of trust or other security instrument to which this Agreement becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Airport warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Airport under this Agreement, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the Agreement had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this Agreement, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

6.3.37 Notification of Change in Ownership or Control of Land

If the Airport sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Airport or its successors, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

SECTION 8 - ENVIRONMENTAL OCCUPATIONAL SAFETY AND HEALTH CLAUSES

6.8.1 Hazardous Substance Contamination (JUL 2017)

The FAA agrees to remediate, at its sole cost, all hazardous substance contamination on the FAA facility premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's "facilities" covered by this Agreement. The Airport agrees to remediate or have remediated at its sole cost, any and all other hazardous substance contamination found on the FAA facility premises. The Airport also agrees to save and hold the U.S. Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the FAA facility premises that are not directly attributable to the installation, operation and/or maintenance of the facilities on the attached FAA "List of Facilities."

SECTION 10 - CLOSING

6.10.1-4 Notices (JUL 2017)

All notices/correspondence shall be in writing, reference the MOA No. 697DCM-20-L-00135 and be addressed as follows:

TO THE AIRPORT OWNER:
City of Ann Arbor, Michigan
c/o Airport Manager
301 E. Huron Street, PO Box 8647
Ann Arbor, MI 48107-8647

TO THE GOVERNMENT:
Federal Aviation Administration
Real Estate Branch AAQ-920
101 Hillwood Parkway
Fort Worth, Texas 76177

6.10.3-4 MOA Signature Block (JUL 2017)

The Airport and the FAA hereby agree to the provisions outlined in this agreement as indicated by the signatures herein below of their duly authorized representative(s). This agreement is effective upon the date of signature by the last party thereof.

CITY OF ANN ARBOR, MICHIGAN

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

By: _____
Christopher Taylor, Mayor

By: _____
Stacy S. Twiggs, Real Estate Contracting Officer

Date: _____

Date: _____

By _____ This ____ day of _____, 2020
Jacqueline Beaudry, City Clerk

Approved as to substance

Tom Crawford, Interim City Administrator

John Fournier, Assistant City Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

Dated August 13, 2020

List of Facilities

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ANN ARBOR MUNICIPAL AIRPORT

<u>Number</u>	<u>Facility</u>	<u>R/W (ATID) Number</u>	<u>GSA Control Number</u>	<u>Comments</u>
1	REIL	06 (ARB)	26124	Facility Site
2	ODALS	24 (ARB)	N/A	Decommissioned – Pending environmental/removal for closeout
3	ASOS	(ARB)	26010	Sensor Group/ACU located in ATCT building
4	SAWS	(ARB)	26992	Facility Site