

ORDINANCE

2021-06-10-0442

**AUTHORIZING EXECUTION OF A TEN-YEAR LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE UNITED STATES AIR FORCE (USAF) FOR THE CONTINUED USE OF 10.747 ACRES OF LAND IMMEDIATELY WEST OF THE KELLY FIELD RUNWAY ALONG GROWDEN ROAD IN COUNCIL DISTRICT 4 FOR NO FEE DURING THE TERM.**

\* \* \* \* \*

**WHEREAS**, the subject 10.747 acre property has been licensed to the United States Air Force by the City of San Antonio (“City”) since February 1, 2009 and is part of several hundred acres acquired by the City in 1997 as part of a negotiated settlement with the Van de Walle family; the purpose of the proposed license agreement is to allow the USAF to continue to maintain the property in compliance with Federal Aviation Administration (FAA) guidelines regarding the control of vegetative growth within a certain proximity to the Kelly Field runway which is used jointly by the USAF’s 37th Training Wing, the 502d Air Base Wing and civilian operators under the purview of the Port of San Antonio; and

**WHEREAS**, the City does not currently have a use for the subject property; in the event a use is determined in the future, City has the right to terminate this license agreement at any time upon 90 days’ notice; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or designee is hereby authorized to execution of a ten-year license agreement between the City of San Antonio and the United States Air Force in a form substantially similar to **Attachment I** for the continued use of 10.747 acres of land area immediately west of the Kelly Field runway along Growdon Rd. in Council District 4 for no fee during the ten-year term. This license agreement may be terminated by either party with 90 days’ notice.


**SECTION 2.** Under the terms of the license agreement, the City will not collect any rent for the USAF’s use of the property. However, USAF is solely responsible for the costs associated with the maintenance of the property.

**SECTION 3.** This Ordinance becomes effective immediately upon its passage by eight (8) votes or more and 10 days after passage upon its approval by less than eight (8) votes.

VS  
06/10/2021  
Item No. 26


**PASSED AND APPROVED** this 10th day of June, 2021.

SAD 0-01-20-1505



M A Y O R  
Ron Nirenberg


**ATTEST:**



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Tina J. Flores, City Clerk

**APPROVED AS TO FORM:**



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Andrew Segovia, City Attorney



# City of San Antonio

City Council

June 10, 2021

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**Item: 26**

**File Number: 21-2849**

**Enactment Number:**

**2021-06-10-0442**

Ordinance approving a ten-year license agreement with the United States Air Force for their continued use of 10.747 acres of land area immediately west of the Kelly Field runway along Growdon Road. There is no impact to the General Fund. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]

Councilmember Jada Andrews-Sullivan made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

**Aye:** 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,  
Gonzales, Cabello Havrda, Sandoval, Courage and Perry

**Absent:** 1 Pelaez

VS  
06/10/2021  
Item No. 26

# ATTACHMENT I

**Attachment I**

USAF-AETC-KELL-20-1-0207

**License**  
(Growden Road/USAF 2021)

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**Authority:** Chapter 37-9

**Licensor:** City of San Antonio

**Licensor's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Licensee:** United States Air Force

**Licensee's Address:** Department of Air Force  
Joint Base San Antonio (JBSA)  
502 ABW/CC  
2080 Wilson Way  
JBSA Ft Sam Houston, Texas 78234

**Premises:** A 10.7477 acre tract of land being cut out of and part of New City Block 13966 being the same 10.7477 acre tract of land identified as Tract 2 as described in Volume 6965, Page 973, Deed Records, Bexar County Texas, the tract being more particularly described on **Exhibit A**, which is incorporated herein for all purposes.

## Attachment I

**Permitted Use:** Clearing vegetation and securing the Premises by means of a fence.

**License Commencement Date:** March 1, 2021

**License Expiration Date:** February 28, 2031

**Term:** 10 years

### 1. License of Premises.

Licensors license the Premises to Licensee, and Licensee licenses the Premises from Licensors under the terms of this License.

### 2. License Term.

2.01. The Term is as stated above.

2.02. This License terminates without further notice when the Term expires. It may be further terminated by either party on 90-days prior written notice to the other.

### 3. License Fee.

Licensee need not pay Licensors money for this License. The License Fee is in-kind: that Licensee must keep the Premises free of brush and other unsightly vegetation.

### 4. Taxes.

Both Licensors and Licensee are governmental entities, and neither should be liable for taxes as to any aspect of the transaction related to this License.

### 5. Utilities.

Licensee must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the License term, including any connection fees.

### 6. Use of Premises.

6.01. Licensee may use the Premises only for the Permitted Use, unless Licensors otherwise consents in writing. Licensee must not use or store, or permit

## Attachment I

to be used or stored, on the Premises any hazardous or toxic substances or materials.

6.02. Licensee must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation.

### **7. Construction by Licensee.**

7.01. Licensee may erect, maintain, alter, remodel, reconstruct, rebuild, replace, fencing around the Premises, subject to the following:

- a. Licensee bears the cost of the work.
- b. Licensee keeps the Premises free of mechanics' and materialmen's liens.

7.02. Any improvements constructed, placed, or maintained on any part of the Premises during the License term become part of the real property of the Premises and must remain on the Premises and become Licensor's property when the License terminates.

### **8. Repairs, Maintenance, and Restoration.**

Licensee must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Licensee's own expense.

### **9. Mechanic's Liens.**

Licensee's actions must not cause or affirmatively permit any mechanic's or other liens to be filed by a prime contractor against the fee of the Premises or against Licensee's Premises interest. Federal law shall govern any remedies or recourse of any contractors, subcontractors, vendors, suppliers, or materialmen arising out of the performance of any services on the licensehold. Absent a valid reason for non-payment by the prime contractor, Licensee will use any recourse available under the applicable contract and/or federal law to compel its prime contractor to resolve and remove any lien filed by a subcontractor or other third party vendors, suppliers, or materialmen for nonpayment by a prime contractor.

### **10. Condemnation.**

10.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs

## Attachment I

Licensor's and Licensee's interests in the award or consideration for the transfer and the effect of the taking or transfer on this License.

10.02. If the entire Premises are taken or so transferred, this License and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. All proceeds of condemnation are Licensor's.

10.03. If only part of the Premises is taken or transferred, Licensee can terminate by delivering written notice of termination to Licensor. In such case, this License and all rights, title, and interest under it cease on the date that title vests in the condemning authority. All proceeds of condemnation are Licensor's.

10.04. If part of the Premises is taken or transferred and Licensee wishes to continue this License, this License terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The License continues as to the portion not taken or transferred. All proceeds of condemnation are Licensor's.

### **11. Immunities.**

City and the United States Air Force acknowledge they are subject to immunities granted by the Constitution of the United States. City is also subject to the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 et seq. and to immunities granted by the Constitution of the State of Texas vis-à-vis nonfederal third parties. The terms of and case law decided under the Federal Tort Claims Act and other applicable federal law will determine the respective rights and liabilities of the Licensee vis-à-vis the Licensor for any property loss, damage, or destruction (whether owned by Licensee or Licensor) other than reasonable wear and tear, and any personal injury or death that may arise from this License.

### **12. Assignment and Subletting.**

12.01. Any attempt at transfer, assignment, or subletting of Licensee's rights, duties, and obligations hereunder is void and terminates the License. Licensee must, upon such termination, immediately and peacefully vacate the Premises within three days after Licensor's notice to Licensee.

### **13. Default and Remedies.**

13.01. If Licensee defaults in performing any obligation arising out of this License and does not correct the default within 10 days after receipt of written notice to Licensee and any lender, notice to whom is required by this License, Licensor may terminate this License. Licensor or its agent or attorney may resume possession of the Premises.



## Attachment I

13.02. Licensor's rights, options, and remedies under this License are cumulative, and no one of them is exclusive of the other. Licensor may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this License. No waiver by Licensor of a breach of any covenant or condition of this License is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this License.

13.03. Licensee's rights, options, and remedies under this License are cumulative, and no one of them is exclusive of the other. Licensee may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this License. No waiver by Licensor of a breach of any covenant or condition of this License is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this License.

### **14. General Protective Provisions.**

14.01. Licensee must permit Licensor or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Licensee is complying with this License, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective Licensees, purchasers, mortgagees, or beneficiaries under trust deeds.

14.02. The relationship between Licensor and Licensee is at all times solely that of Licensor and Licensee, not that of partners or a joint venturers.

14.03. If constructing the building, curing any default (other than failure to pay License Fee, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

### **15. Miscellaneous.**

15.01. Licensee will, upon expiration or termination, yield up the Premises peacefully to Licensor, in good order, condition, and repair, reasonable use and wear excepted.

15.02. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

15.03. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

## Attachment I

**15.04. This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

15.06. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

15.07. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

15.08. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.09. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

15.10. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

### **16. Public Information.**

Licensee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**Attachment I**

**In Witness Whereof, the parties have hereunto caused their representatives to set their hands.**

**City of San Antonio**, a Texas  
municipal corporation

**United States Air Force**

Signature: \_\_\_\_\_

LENDERMAN.LAU      Digitally signed by  
RA.LEE.114619893      LENDERMAN.LAURA.LEE.1146  
198933  
Date: 2020.05.29 06:50:35 -05'00'  
Signature: <sup>3</sup>\_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed LAURA L. LENDERMAN  
Name: Brigadier General, USAF

Title: \_\_\_\_\_

Title: Commander, 502d Air Base Wing

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

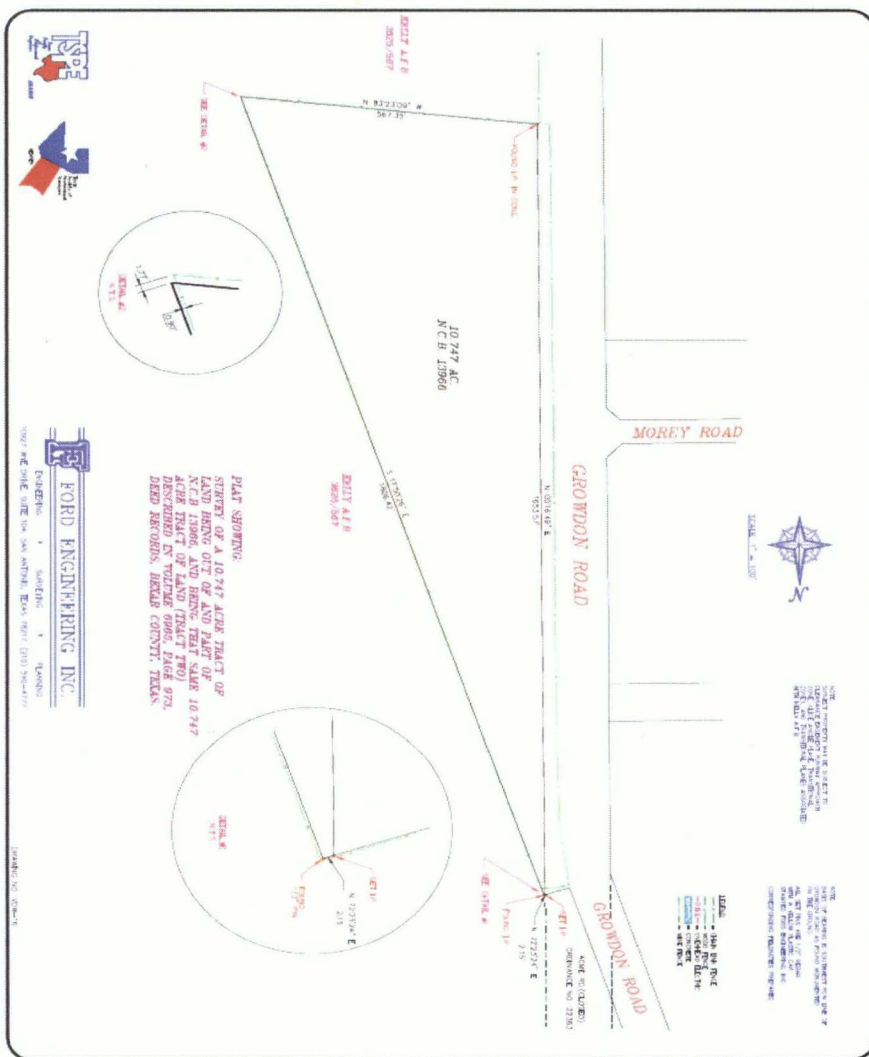
\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

Attachment I

Exhibit A



Attachment I

Exhibit 'A' to Exhibit 'A'

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F

FORD

ENGINEERING, INC.

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ENGINEERINGPLANNINGDEVELOPMENT

Date: January 2, 1996  
Project No: 1800.14  
Revised: March 13, 1996

**FIELDNOTES DESCRIBING A  
10.747 ACRE TRACT OF LAND  
(Tract 1)**

A 10.747 acre tract of land being out of and part of N.C.B. 13966, in the City of San Antonio, Bexar County, Texas, being that same 10.747 acre tract of land (Tract Two) described in Volume 6965, Page 973, Deed Records, Bexar County, Texas, and being more particularly described as follows:

Beginning at a  $\frac{1}{2}$ " iron pin in concrete found in the east right-of-way line of Acme Road in a north line of Kelly Air Force Base for the southwest corner of the 10.747 acre tract and the herein described tract.

Thence, N 00° 16' 49" E, 1,653.57 feet along the east right-of-way line of Acme Road and the west line of the 10.747 acre tract to a  $\frac{1}{2}$ " iron pin with a yellow plastic cap stamped "FORD ENG. INC." set in a north line of Kelly Air Force Base for the northwest corner of the 10.747 acre tract and the herein described tract.

Thence, N 72° 23' 24" E, 2.15 feet along a north line of a 196.96 acre tract of land described in Volume 3625, Page 567, Deed Records, Bexar County, Texas, being a north line of Kelly Air Force Base and the 10.747 acre tract to a  $\frac{1}{2}$ " iron pin found in a west line of Kelly Air Force Base for the northeast corner of the 10.747 acre tract and the herein described tract.

Thence, S 17° 50' 26" E, 1,806.42 feet along a west line of the 196.96 acre tract, being a west line of Kelly Air Force Base and the east line of the 10.747 acre tract of land to a point for an interior corner of Kelly Air Force Base for the southeast corner of the 10.747 acre tract and being the southeast corner of the herein described tract.

Thence, N 83° 23' 09" W, 567.35 feet along a north line of Kelly Air Force Base and the south line of the 10.747 acre tract to the Place of Beginning and containing 10.747 acres of land according to a survey made on the ground on November 14-30, 1995.

Corresponding plat prepared.  
whr-16.fns

Aubrey C. Hoffmann  
Registered Professional Land  
Surveyor No. 11044  
State of Texas

VOL 6966 Pg 1297

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10927 WYE DRIVE, SUITE 104, SAN ANTONIO, TEXAS 78217(210) 590-4777FAX: 590-4940