

**AN ORDINANCE 2016-02-18-0105**

**AUTHORIZING A LICENSE TO THE U.S. AIR FORCE FOR USE OF APPROXIMATELY 10.747 ACRES IMMEDIATELY WEST OF THE KELLY FIELD RUNWAY FOR FIVE YEARS, LOCATED IN COUNCIL DISTRICT 4**

\* \* \* \* \*

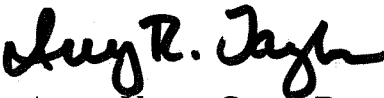
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

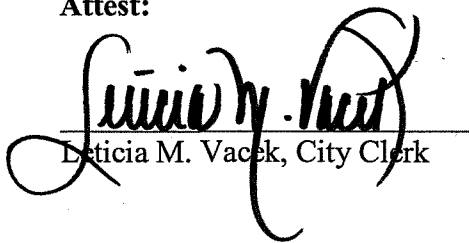
**SECTION 2.** There is no fiscal impact.

**SECTION 3.** This Ordinance becomes effective immediately upon receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

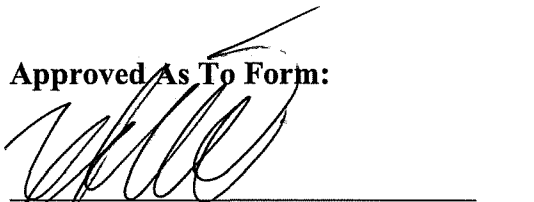
**PASSED AND APPROVED this 18<sup>th</sup> day of February, 2016.**

  
M A Y O R  
Ivy R. Taylor

Attest:

  
Leticia M. Vaccik, City Clerk

Approved As To Form:

  
Martha G. Sepeda, Acting City Attorney



<b>Agenda Item:</b>	16 ( in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 30A, 30C, 30D, 30E, 30F )						
<b>Date:</b>	02/18/2016						
<b>Time:</b>	10:40:05 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a five-year license agreement with the United States Air Force 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. [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development & Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**Exhibit A**

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**License**

(Growdon Road/USAF 2016)

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**Table of Contents**

1. License of Premises..... 3  
2. License Term..... 3  
3. License Fee..... 3  
4. Taxes..... 3  
5. Utilities..... 3  
6. Use of Premises..... 3  
7. Construction by Licensee..... 3  
8. Repairs, Maintenance, and Restoration..... 4  
9. Mechanic’s Liens..... 4  
10. Condemnation..... 4  
11. Immunities..... 4  
12. Assignment and Subletting..... 5  
13. Default and Remedies..... 5  
14. General Protective Provisions..... 5  
15. Miscellaneous..... 5  
16. Public Information..... 6  
Exhibit A..... 2

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**Authorizing Ordinance:**

**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 the Air Force Air Education and Training Command, 37<sup>th</sup> Training Wing, Lackland AFB, Texas 78236

**Premises:** A 10.47 acre tract of land being cut out of and part of New City Block 13966 being the same 10.47 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.

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

**License Commencement Date:** February 18, 2016

**Term:** 5 years

**1. License of Premises.**

Licensor Licenses the Premises to Licensee, and Licensee Licenses the Premises from Licensor 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 Licensor 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 Licensor 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 Licensor otherwise consents in writing. Licensee must not use or store, or permit 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 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, without the Licensor's prior written consent, 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.

12.02. Licensor's consent on one occasion does not waive the need for consent to any later attempted transfer, assignment, or subletting.

## **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.

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.

**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.**

Lessee 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.

**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: \_\_\_\_\_

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

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

Printed  
Name: Robert D. Labrutta

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

Title: Brigadier General, USAF  
Commander, 502d Air Base Wing

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

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

**Approved as to Form:**

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



