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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered in this 15th day of November, 2021 by and between the CITY AND COUNTY OF SAN FRANCISCO ("City"), acting by and through its AIRPORT COMMISSION ("Commission") and the SAN FRANCISCO AERONAUTICAL SOCIETY ("Society").

RECITALS

- A. <u>The Commission.</u> The Commission is a department of the City and has charge of the San Francisco International Airport ("Airport"), which includes the SFO Museum ("Museum"). The San Francisco Airport Commission Aviation Library and Louis A. Turpen Aviation Museum ("ALM") is a part of the Museum.
- B. <u>The ALM.</u> The ALM collects, preserves, and interprets written materials and artifacts associated with the history of commercial aviation in North America and the Pacific Region as it relates to the Airport. As a center for research and exhibition programming, its purpose is to increase and enrich public awareness of the achievements and historic significance of air transport. Collections management, exhibition programming, and museum volunteer programs are all administered for the ALM by the Museum.
- C. <u>The Society.</u> The San Francisco Aeronautical Society ("Society") was formed as the support group of the ALM in 1997. The Society is a non-profit corporation exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code. The Society's Board of Directors is dedicated to the Commission's goals in creating this active West Coast center for aviation. The Society intends to maintain its tax-exempt status during the term of this MOU.
- D. <u>Society's Purpose.</u> The Society's purpose is to support the ALM by (1) seeking donations for the collection, (2) raising funds for acquisitions for the collection, (3) promoting scholarly research within the collection, (4) producing educational publications, lectures, and seminars related to aviation, (5) identifying participants for the Oral History Program, and (6) sponsoring special exhibitions. In furtherance of these purposes, the Society has created a dues-paying general membership.
- E. <u>Prior Memorandum of Understanding.</u> The Commission and the Society executed a Memorandum of Understanding dated as of August 9, 2020 (the "Prior MOU"). The Prior MOU stated that the Commission and the Society agreed to comply with all regulations, policies, and guidance of the City Controller regarding groups, such as the Society, that support City departments, and to enter into any amendments to the memorandum of understanding that may be necessary to effect such regulations, policies or guidance.

F. <u>Amendment and Restatement.</u> On September 24, 2020, the City Controller published a preliminary assessment report addressing transparency and risk related to gifts to City Departments by so-called "friends of" organizations. This MOU amends and restates the Prior MOU to comply with the City Controller's guidance and recommendations for greater transparency in the September 2020 report.

IN ACCORDANCE WITH THE RECITALS ABOVE, the Commission and the Society express their intent to act cooperatively as follows:

- 1. <u>The Museum</u>. The Museum will be in charge of collection management, exhibition programming, and museum volunteer programs with respect to the ALM.
- 2. <u>Use of Commission Property.</u> The Commission will waive fees for use of the ALM Event Facility for Society fundraising, educational, or scholarly functions. The Society will be responsible only for the Commission's costs. The Society shall execute an event permit with the Commission in connection with such use in such form as the Commission shall reasonably require.
- 3. <u>**Retail Merchandise.**</u> The Society may retail merchandise at the Airport with the prior written approval of the Commission.
- 4. <u>Society's Membership Program.</u> The Society has created and will maintain a dues-paying Society membership program in furtherance of the Society's activities.
- 5. <u>Society's Efforts and Activities.</u> The Society will promote scholarship, produce seminars, and publish educational materials relating to the ALM's goals as a center for the West Coast and Pacific Rim aviation. The Society will also assist with the development of the Oral History Program.
- 6. <u>Annual Support.</u> The Society will actively seek donations as well as raise funds for acquisitions for the collection.
- 7. <u>Capital Campaigns and Special Fundraising Projects.</u> In addition to the Annual Support, Society may raise and expend funds for capital and special projects from time to time at the Commission's request.
- 8. <u>Sponsorship Program.</u> The Society will administer a sponsorship program, approved by the Commission, for donor recognition opportunities within the ALM. All proceeds of this program will be used for the acquisition of collection objects for the ALM.
- 9. <u>Acceptance of Donations.</u> The Museum will obtain Airport Commission and/or Board of Supervisors authorization to accept donations of cash, goods or services from the Society to the extent required by the San Francisco Administrative Code or other applicable law. The Society will attend any Board or Commission meetings regarding the acceptance of donations, as needed.

10. Restrictions on Donations of Goods and Services.

- a. The Commission will not request, and Society will not provide, any donation of funds to be expended or goods or services to be provided in connection with events for City staff, including but not limited to Commission's holiday parties, unless the events are open to members of the public on the same terms as City staff.
- b. If Society procures services, the Commission will not request or direct Society's selection of a vendor or provider for those services. All decisions regarding Society's procurement of vendors or providers will be made by the Society without interference or involvement by the Commission.
- 11. **Donations of Gifts.** In accordance with its non-profit purpose of supporting the ALM, the Society agrees to donate gifts to the Aviation Archive.
- 12. <u>Disclosure Obligations; Financial Reporting and Auditing.</u> The Commission and the Society shall comply with the additional provisions regarding disclosures, financial reporting, and auditing attached hereto as Appendix A which are fully incorporated herein.
- 13. <u>MOU Amendments.</u> The Society will comply with all Airport Rules and Regulations, and all City laws and regulations governing the use of City property. The Society will enter into all necessary permits for use of the ALM. The Commission and the Society agrees to comply with all regulations, policies and guidance of the City Controller regarding groups, such as the Society, that support City departments, and to enter into any amendments to this MOU that may be necessary to effect such regulations, policies or guidance.
- 14. <u>Execution of Necessary Agreements.</u> The Society and the Commission agree to execute all necessary agreements to effectuate the purposes of this MOU.
- 15. <u>Term.</u> The term of this MOU shall be five (5) years.
- 16. <u>Employer Taxes and Liability.</u> Employees, officers, or volunteers of the Society shall under no circumstances be deemed employees of the City due to their status as an employee, officer, or volunteer of the Society. The Society shall be responsible for any employer taxes and liabilities relating to its employees.

17. Liens and Encumbrances.

- a. *Liens*. During the Term, the Society shall keep the Commission free from any liens arising out of any work performed in furtherance of this MOU, material furnished, or obligations incurred by the Society or for the Construction.
- b. *Encumbrances*. Society shall not create, permit, or suffer any liens or encumbrances affecting the ALM or any portion of the Commission's or the City's interest therein.

- c. *Possessory Interest Tax.* The Parties do not intend hereby to establish a possessory interest. In the event, however, that it is determined that this MOU creates a possessory interest subject to property taxation, the Society agrees to pay any such levied tax.
- d. *Taxes, Assessments, Licenses, Permit Fees, and Liens.* Society shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against Society's personal property. Society shall make all such payments directly to the charging authority when due and payable, and in any case, reasonably prior to delinquency.

18. Indemnity.

Society shall indemnify, defend and hold harmless the City, its officers, agents, employees and contractors, and each of them, from and against any and all third party demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) the use in connection with the performance of this MOU by Society, its officers, employees, volunteers, agents, contractors or subcontractors (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), of the ALM, the Airport or other City property, or any part thereof, (b) any activities conducted thereon by Society, its Agents or Invitees in connection with the performance of this MOU, or (c) the negligence or willful misconduct of Society or its Agents in the performance of this MOU, except to the extent of Claims resulting in whole or in part from the active negligence or willful misconduct of the City or the City's agents. In addition to Society's obligation to indemnify the City, Society specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any Claim that actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Society by the City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified Parties, including, without limitation, damages for decrease in the value of the City property and claims for damages or decreases in the value of adjoining property. Society shall also indemnify and hold City harmless from all loss and liability (including attorneys' fees, court costs and all other litigation expenses) for any infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of Society's use of logos, trademarks or other intellectual property in connection with Society's retail sales or other commercial activities, or in consequence of City's acceptance or use of logos, trademarks, or other intellectual property created or provided to the City by Society or the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this MOU. Such obligation shall apply where City's use of Society's intellectual property is authorized under this or any subsequent agreement between the Parties. Society's obligations under this Section shall survive the expiration or other termination of this MOU.

City, acting by and through the Commission, shall indemnify, defend and hold harmless Society, its officers, agents, employees, volunteers and contractors, and each of them, from and against any and all third party demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) the use in connection with the performance of this MOU by City, its employees, agents, contractors or subcontractors (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), of City or other City property, or any part thereof, (b) any activities conducted thereon by the City, its Agents or Invitees in connection with the performance of this MOU, (c) the active negligence or willful misconduct of the City or its agents in the performance of this MOU or (d) the physical condition of the Property, except to the extent of Claims resulting in whole or in part from the active negligence or willful misconduct of Society or Society's agents. In addition to the City's obligation to indemnify Society, the City specifically acknowledges and agrees that it has an immediate and independent obligation to defend Society from any Claim that actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the City by Society and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified Parties, including, without limitation, damages for decrease in the value of the Property and claims for damages or decreases in the value of adjoining property. The City's obligations under this Section shall survive the expiration or other termination of this MOU.

- 19. <u>Assignments.</u> This MOU is personal to Society. Except as specifically provided herein, Society shall not assign, transfer, or encumber its interest in this MOU or any other right, privilege, or license conferred by this MOU, either in whole or in part, without obtaining the prior written consent of the Commission, which the Commission may give or withhold in its sole and absolute discretion; provided, however, that Society may assign its interest in this MOU to a non-profit public benefit corporation formed by Society for the purpose of performing the obligations hereunder and reasonably approved in advance by the Commission, and subject to any required approvals by City boards or commissions. Any assignment or encumbrance without the Commission's consent shall be voidable and, at the Commissioner's election, shall constitute a material default under this MOU.
- 20. <u>Non-Liability of City Officials, Employees and Agents.</u> Notwithstanding anything to the contrary in this MOU, no elective or appointive board, commission, member, officer, employee, or agent of the City shall be personally liable to Society, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Society, its successors and assigns, or for any obligation of the City under this MOU.
- 21. <u>Controller's Certification of Funds.</u> To the extent the City is required to expend any funds in furtherance of this MOU, the City's obligations are subject to the budget and fiscal provisions of the City's Charter. Any charges due hereunder will accrue to the City only after authorization is certified by the Controller, and any amount of the City's obligation

hereunder shall not at any time exceed the amount certified for the purpose and period stated in such authorization. This section shall control against any and all other provisions of this MOU; and if for any budgetary period of the City, the City fails to appropriate sufficient funds for the payment of any amounts due from City under this MOU, the City shall have the right to terminate this MOU without penalty, liability, or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year.

22. <u>Nondiscrimination; Penalties.</u> In the performance of this MOU, the Society agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), association with members of classes protected under this paragraph or in retaliation for opposition to such discrimination, against any employee or volunteer of, any City employee working with, or any applicant for employment with, the Society in any of Society's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Society.

23. Conflicts of Interest and Statement of Incompatible Activities.

- a. By executing this MOU, Society certifies that it does not know of any fact which constitutes a violation of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this MOU. For example, Society will notify the Commission if it becomes aware that any City employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest.
- b. The Commission's Statement of Incompatible Activities ("SIA") was adopted under San Francisco Campaign & Governmental Conduct Code Section 3.218. In general, the SIA (1) prohibits outside activities that are incompatible with the Commission's mission; (2) restricts the use of City resources, City work-product and prestige for any non-City purpose, including any political activity or personal purpose; and, (3) prohibits receipt or acceptance of gifts in exchange for doing the employee's job. A copy of the current SIA is attached to this MOU as Appendix B. The Commission will notify the Society in writing of any changes to the SIA during the term of this MOU. Society agrees that it will not knowingly cause Commission staff to violate the SIA.
- c. To ensure compliance with this Section, Society shall ensure that no employee or officer of the Commission is a member of Society's board of directors or otherwise holds a fiduciary position with Society, and that no employee or officer of the Commission and no member of an employee or officer's immediate family receives income from Society; provided, however, that a person employed by the Commission pursuant to Section A8.511(c)(2) of the City Charter (a "Proposition F employee")

may serve as a member of Society's board of directors so long as there is no compensation from Society to the Proposition F employee in connection with such service.

24. Intellectual Property; Grant of License.

- a. Except as otherwise provided, no intellectual property rights, including without limitation any trademarks, copyrights, trade names, service marks, images and technology of either Party, are transferred by this MOU, and all such intellectual property rights are and shall remain the property of each respective party.
- b. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. No proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior written consent.
- 25. <u>MOU.</u> This MOU and any attachments thereto contains the entire agreement between the Commission and the Society with respect to the subject matter of this MOU and supersedes all other oral or written agreements between the Commission and the Society relating thereto.
- 26. <u>MOU Amendments.</u> This MOU can be amended as appropriate and agreed to by both the Commission and Society. The party wishing to initiate an amendment should do so in writing and highlight the sections of the current MOU to be amended. All amendments must be in writing and signed by both parties.
- 27. <u>MOU Termination</u>. This MOU may be terminated by vote of either the Commission or the Society. The early termination date shall be at least ninety (90) days after such vote.
- 28. <u>Compliance with Laws.</u> Each Party shall, at its expense, conduct and cause to be conducted all activities performed under this MOU in a safe and reasonable manner and in compliance with all applicable laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity.
- 29. <u>Events of Default.</u> Any material failure by Society or Commission to perform any of the terms, conditions, or covenants under this MOU shall constitute a default. Upon written notice of such default by either Party, and failure of the other Party to comply with a reasonable opportunity to cure such default (in no event less than 30 days), the non-defaulting Party may terminate this MOU without additional notice.
- 30. <u>Notices.</u> Except as otherwise expressly provided herein, any notices given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending

it first class mail or certified mail, with a return receipt requested, with postage prepaid, or by overnight courier, addressed as follows:

City:	Director and Chief Curator, SFO Museum		
	P.O. Box 8097		
	San Francisco, CA 94128		
Society:	Board President, San Francisco Aeronautical		
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5	Society		
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Notices herein shall be deemed given two days after the date it was mailed if sent by first class, certified mail, or overnight courier, or upon the date personal delivery is made.

31. General Provisions.

- a. Except as otherwise expressly required by the City's Charter, any ordinance of City or other applicable law, the Director may exercise all rights, powers and privileges on behalf of the City or the Commission under this MOU.
- b. No waiver by any Party of any of the provisions of this MOU shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this MOU.
- c. The headings used in this MOU are for convenience of reference only and shall be disregarded in the interpretation of this MOU.
- d. Neither Party may record this MOU or any memorandum hereof in the real property records of any county.
- e. This MOU shall be deemed to be made in, and shall be construed in, accordance with the laws of the State of California.
- f. The Parties consent to the use of Digital Signatures, affixed using the City's DocuSign platform, to execute this MOU and all subsequent modifications. For this purpose, "Digital Signature" means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

By: Uvar Saturo ScrDc3e9126544B... (Signature) Name: <u>Ivar C. Satero</u> Title: <u>Airport Director</u>

SAN FRANCISCO AERONAUTICAL SOCIETY

By: Jean Caramatti							
	(Signature)						
Name:	Jean Caramatti						
Title:	President						

ATTEST:

- DocuSigned by: Fontur-Oqutur

Kantrice Ogletree Secretary, Airport Commission Resolution No.: 21-0176

Adopted: <u>August 31, 2021</u>

APPROVED AS TO FORM:

David Chiu City Attorney

By:

DocuSigned by:

Brooke Abola

Brooke D. Abola Deputy City Attorney

APPROVED AS TO INCLUSION OF REQUIRED DISCLOSURE OBLIGATIONS, RECORDKEEPING AND AUDITING PROVISIONS:

DocuSigned by:

Ben Rosenfield, Controller

APPENDIX A

Disclosure Obligations; Recordkeeping and Auditing

A. <u>Acknowledgment of Disclosure Obligations under City Law.</u> San Francisco Administrative Code Section 67.29-6 requires the Commission to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this MOU, the disclosure must identify Society as the contributor, the amounts contributed, and a statement as to any financial interest Society has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Commission must post this information on its website within 30 days of the date of any such donation. If required by City law, the Commission must also disclose this or other information about donations from the Society in any related resolution or ordinance submitted to the Airport Commission and/or Board of Supervisors for approval.

B. Society's Reporting & Disclosure Obligations.

- Donor and Grant Information. Society agrees to comply with San Francisco 1. Administrative Code Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to the Society, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Museum's performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the Society has involving the City, including any donor's contract, grant, lease, or request for license, permit, or other entitlement for use. Society will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Museum each year by no later than July 15 for the preceding fiscal year. Society will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, Society will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this MOU. These provisions shall also apply to any grants received by Society, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.
- 2. *Financial Reports.* Society will provide to the Commission and Commission will upload a PDF (searchable text) copy of the Society's annual audited financial report (or, if no audited financial report is prepared, an annual financial summary or other available unaudited financial report, if any) (the "annual financial report") and IRS Form 990 annual tax return into the City's financial system as part of the MOU documentation and prior to Commission's execution of this MOU. The annual financial report and/or IRS Form 990 provided by the Society must include detailed information about the Society's total sources and uses of funds and also the sources and uses of funds dedicated to support the Museum covered under this MOU, the names of the Society's Board of Directors and Officers, and the names of any and all payees of Funds covered by this MOU, including consultants, contractors and subcontractors and any current or past City employees paid and any funds provided directly to the City to support the Museum's functions including but not limited to employee recognition and public

events. Additionally, Society will post any annual financial report and its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

- 3. *Links to Society's Website.* The Commission will provide a link on its website to Society's website for the public to readily access the information required under this MOU. Society will also post this MOU on its website along with copies of any other copies of Grant Awards or other City Contracts and MOU Agreements with any City Department including the Commission which is covered by this MOU.
- 4. Society's Supplier Registration. As part of the MOU execution, the Society must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.
- 5. Society's Invoices through SF City Partner Online (eSettlements) site. If the MOU includes invoicing by Society to the Commission, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

C. <u>Recordkeeping and Auditing.</u>

- 1. *Recordkeeping.* Society will maintain books and records relating to this MOU, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Commission and/or the City's Controller, at their discretion, to audit Society's records and to verify contributions and expenditures in accordance with this MOU.
- 2. *Auditing.* Society shall make such books and records relating to this MOU available to the Commission and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. Society shall retain and shall allow the Commission and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the Society's annual financial report or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.

APPENDIX B

Commission's Statement of Incompatible Activities

[Attached]



San Francisco International Airport

SAN FRANCISCO AIRPORT COMMISSION STATEMENT OF INCOMPATIBLE ACTIVITIES

I. INTRODUCTION

This Statement of Incompatible Activities is intended to guide officers and employees of the Airport Commission ("Department") about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, "officer" shall mean the executive director ("director") and a member of the Airport Commission; and "employee" shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code ("C&GC Code") section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer's or employee's collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

Political Reform Act, California Government Code § 87100 *et seq.*; California Government Code § 1090; San Francisco Charter; San Francisco Campaign and Governmental Conduct Code; San Francisco Sunshine Ordinance; Applicable Civil Service Rules; and *Airport Executive Directives*.

Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City's and/or public's attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO								
LONDON N. BREED MAYOR	LARRY MAZZOLA PRESIDENT	ELEANOR JOHNS VICE PRESIDENT	RICHARD J. GUGGENHIME	EVERETT A. HEWLETT, JR.	MALCOLM YEUNG	IVAR C. SATERO AIRPORT DIRECTOR		

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No amendment to any Statement of Incompatible Activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the director. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the director, although the supervisor or director may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

II. MISSION OF THE AIRPORT COMMISSION

The mission of the Airport Commission is to provide safe and secure facilities for airlines, tenants, employees, and the traveling public; to provide accessible and convenient facilities and superior customer service for all users; to be fiscally prudent and contribute to the economic health of the local economy; to exercise environmental responsibility and operate in harmony with the Bay Area community.

III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

A. **RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES**

1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

[RESERVED.]

2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

Neither the director nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the director or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the director's or employee's performance of his or her City duties.

Example. An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the director or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activities: appearing before one's own department or commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

Assistance in Responding to City Bids, RFQs and RFPs. No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.

B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

[RESERVED.]

C. ADVANCE WRITTEN DETERMINATION

As set forth below, an employee of the Department or the director or a member of the Airports Commission may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III

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of this Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called "the requestor"; the individual or entity that provides an advance written determination shall be called "the decision-maker."

1. **PURPOSE**

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor's written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

(a) the requestor is an *employee* who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or

(b) the requestor is an *officer* who has not received a determination under subsection C from the decision-maker; or

(c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

2. THE DECISION-MAKER

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the director or his or her designee. The director or his or her designee will be deemed the decision-maker for the employee's request.

Decision-maker for request by the director: The director may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the director's request.

Decision-maker for request by a member of the Airport Commission: A member of the Airport Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Airport Commission or Ethics Commission will be deemed the decision-maker for the member's request.

3. THE PROCESS

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the request, the proposed activity will be determined not to violate this Statement.

The decision-maker may revoke the determination at any time, based on changed facts or circumstances or other good cause by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

4. **DETERMINATIONS ARE PUBLIC RECORDS**

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE

A. USE OF CITY RESOURCES

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and

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supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

Example. An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

B. USE OF CITY WORK-PRODUCT

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer's or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

C. USE OF PRESTIGE OF THE OFFICE

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

1. USING CITY BUSINESS CARDS

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.

Example of inappropriate use. An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

Example of acceptable use. An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and San Francisco Airport Commission Statement of Incompatible Activities

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asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

Example. An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

Example. An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216.) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve.

Example. A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

Example. A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- ii. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

Example. A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

Example. A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.

VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.