



11

CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

DANBURY MUNICIPAL AIRPORT
P.O. BOX 2299
DANBURY, CT. 06813-2299

AIRPORT ADMINISTRATOR
PAUL D. ESTEFAN
(203) 797-4624

June 22, 2016

Mayor Mark D Boughton

Honorable Members of the City Council

City of Danbury

Honorable Mayor Boughton & City Council Members,

Attached for your consideration is a Proposed MOA DTFAEN-16-L-00055 & Operational Agreement for Danbury ATCT from the United States of America, Department of Transportation Federal Aviation Administration on the MOA renewal of the Air Traffic Control Tower Location. This Memorandum of Agreement has been going on since 1973 between the City and the Federal Aviation Administration and I recommend approval of the MOA.

If you have any questions concerning this MOA please feel free to contact me.

Sincerely,

Paul D Estefan

Airport Administrator

Cc: FAA MOA

11-1

Air Traffic Control Tower

Land Site

Memorandum of Agreement

MOA No: DTFAEN-16-L-00055

Geographical Location: Danbury, CT

This agreement is made and entered into by the City of Danbury, hereinafter referred to as the Airport, for itself, its successors and assigns, and the Federal Aviation Administration, hereinafter referred to as the FAA.

WITNESSETH

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 agreed 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 Danbury Municipal Airport.

NOW, THEREFORE, the parties mutually agree as follows: the Lessor hereby grants the Government the right to use the property described in Exhibit "A", attached hereto and made a part hereof.

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 under ground 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 right-of-ways to be over the area referred to as Danbury Municipal Airport, and unless herein described to be over routes 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. Together with the right to grade, condition, and install drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which 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. Together with the right 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. Together with 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.

1. TERMS AND CONDITIONS (July -10):

It is mutually understood and agreed that the Airport requires an FAA Air Traffic Control Tower (ATCT) in order to operate its business and that the FAA requires an ATCT facility 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 lease and construct, operate, and maintain FAA ATCT facility in areas on the Airport that have been mutually determined and agreed upon for the term commencing on **October 1, 2016** and continuing through **September 30, 2036**. The FAA can terminate this agreement, in whole or part at any time by giving at least (60) day's notice in writing. Said notice shall be sent by certified or registered mail.

2. PREMISES (JUL-10)

The Airport hereby leases to the GOVERNMENT the following described property, hereinafter referred to as the premises: as shown in Exhibit "A" along with a right of way described in Exhibit "B" attached hereto and made a part hereof.

3. CONSIDERATION (NO-COST) (Aug- 02):

The FAA shall pay the Airport no monetary consideration, it is mutually agreed that the rights extended to the FAA herein are in consideration of the obligations assumed by the FAA in its establishment, operation, and maintenance of navigational aid facilities upon the premises.

4. TITLE TO IMPROVEMENTS (Apr-05):

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

11-3

5. HAZARDOUS SUBSTANCE CONTAMINATION (May-00):

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."

6. INTERFERENCE WITH FAA OPERATIONS (Oct-96):

The Airport agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature within the Airport's boundaries that may interfere with the proper operation of the Air Traffic Control Tower facility, as it is not in the best interest of the Airport or the FAA.

7. FUNDING RESPONSIBILITY FOR FAA FACILITIES (Oct-96):

The Airport agrees that any relocation, replacement, or modification of Air Traffic Control Tower made necessary by Airport improvements or changes, which interferes with the technical and/or operational characteristics of the facility, will be at the expense of the Airport, with the exception of any such improvements or changes which are made at the request of the FAA. 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.

8. RESTORATION (APR-10):

The FAA shall surrender possession of the Premises upon the date of expiration or termination of this MOA. Before such expiration or termination, the FAA shall if requested by the owner and determined by the Real Estate Contracting Officer to be in the best interest of the Government, restore the Premises to as good condition as that at the time of the FAA's initial entry upon the Premises under this MOA or a previous agreement or lease, except for ordinary wear and tear or damage by natural elements. The FAA may also elect to offer abandonment of installed real property improvements in lieu of restoration or some combination of abandonment and restoration as determined by mutual agreement with the owner, so long as determined by the Real Estate Contracting Officer to be in the best interests of the Government.

11-4

No Implied Obligations:

Any obligation of the FAA under this MOA that requires the expenditure or obligation of funds is subject to the availability of funds. The FAA shall incur no liability under the MOA until funds that may be used for the purpose are appropriated. No provision in this MOA shall be interpreted to require an expenditure or obligation in violation of the Anti-Deficiency ACT, 31 U. S. C. 1341.

9. UTILITY LINES AND CONSUMPTION (JUL-10):

The Airport agrees to maintain the necessary water and sanitary sewer lines to the ATCT facility and to install necessary meters to the Government's lines without cost to the Government. The Government shall pay for all of its utility consumption at no more than prevailing rates charged the general public for such similar utility services under a separately negotiated custodial and janitorial contract.

10. NOTICES (Oct-96):

All notices/correspondence shall be in writing, reference the Agreement number, and be addressed as follows:

AIRPORT:

City of Danbury, Town Hall, 155 Deer Hill Avenue, Danbury, CT 06810

FEDERAL AVIATION ADMINISTRATION:

Federal Aviation Administration, Attention: Real Estate Contracting Officer, ALO620-BOS, 1200 District Avenue, Burlington, MA 01803

11. PREVIOUS LEASE(S)/AGREEMENT(S)

This agreement supersedes Land Lease number DTFA12-96-L-R3189, which is hereby terminated.

12. OFFICIALS NOT TO BENEFIT (10/96) – No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

11-5

13. COVENANT AGAINST CONTINGENT FEES (8/02) - The Lessor 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.

14. ANTI-KICKBACK (10/96) - The Anti-Kickback Act of 1986 (41 U.S.C. § 8701 et seq.), prohibits any person from

A. Providing or attempting to provide or offering to provide any kickback;

B. Soliciting, accepting, or attempting to accept any kickback; or

C. Including, directly or indirectly, the amount of any kickback in the lease price charged by a prime Lessor to the United States Government or in the lease price charged by a sublessor to a prime Lessor or higher tier sublessor.

15. QUIET ENJOYMENT (OCT-96) - The Lessor 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.

16. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (7/14) -

A. Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease 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 lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease 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 Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

- 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 lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor 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 Contracting Officer 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 Lessor under this lease, 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 lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer 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 lease, 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.

17. NOTIFICATION OF CHANGE OF LAND TITLE (AUG-02) – If the Lessor sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto and any areas affecting said demised premises, they shall immediately notify the Government, in writing, of any such transfer or conveyance affecting the demised premises within 30 calendar days after completion of the “change in property rights”. Concurrent with written notification, the Lessor shall provide the Government copies of the legal documents(s) (acceptable to local authorities) for transferring and or conveying the property rights.

11-7

EXHIBIT A

From a concrete monument located between property corners 14 and 15 of the Danbury Municipal Airport, Fairfield County, Connecticut, proceed S 48° 01' E, 598.7 feet to a point marked by an iron pipe; thence N 26° 18' W, 75.0 feet to a point; thence N 63° 42' E, 150.0 feet to a point; thence S 26° 18' E, 175.0 feet to a point; thence S 63° 42' W, 150.0 feet to a point; thence N 26° 18' W, 100.0 feet to the point of beginning; containing in all 0.60 acres, more or less, all being situated in Danbury Municipal Airport, Town of Danbury, County of Fairfield, State of Connecticut. All bearings are true.

EXHIBIT B

Right-of-way:

From the airport property line to the leased plot, the centerline of which is described as follows: From a spike at the intersection of the center of Kenosia Avenue and the airport property line, said point being the point of beginning of the herein described right-of-way centerline; thence S 33° 46' E, 148.3 feet to a point; thence S 57° 08' E, 475.0 feet to a point marked by a stake at the leased plot, all being situated in Danbury Municipal Airport, City of Danbury, County of Fairfield, State of Connecticut. All bearings are true.

11-8

ATCT MOA No.: DTFAEN-16-L-00055
Attachment: "A"

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

OPERATION AGREEMENT FOR AIRPORT TRAFFIC CONTROL TOWER

I. THIS AGREEMENT is hereby attached to and made a part of ATCT MOA (MOA) by and between the United States of America, acting by and through the Federal Aviation Administration, hereinafter called the Government and the City Of Danbury operating its airport known as Danbury Municipal Airport located in Danbury, CT hereinafter called the Airport. This Agreement shall be executed by the parties hereto independently of said MOA to which it is a part.

II. WHEREAS, an Airport Traffic Control Tower (ATCT) will be or has been erected on the plot described in the ATCT MOA by and at the expense of the Government; and

III. WHEREAS, it is in the public interest that the above described ATCT be operated by the Government, subject to the availability of funds, in accordance with standards established by the Government;

IV. NOW, THEREFORE, the Airport agrees to the following conditions:

1. The Airport shall, at no expense to the Government, provide the lighting control panels in the said Tower and shall provide all electrical circuits and current, on a continuing basis, necessary for the operation of boundary, flood and obstruction lights, including those which may be operated by the Government; all airport lighting which the Government determines is essential to aircraft operations, including the foregoing, and all such air traffic control devices which are designed to be directly or remotely controlled from the Airport Traffic Control Tower and the Airport shall be responsible for the proper and continued functioning of any locally installed lights or other device placed under the Government's control.

2. The Airport shall be responsible for the proper and continued functioning of all equipment and devices which the Government determines are necessary for air-traffic control, but which cannot be placed in operation or controlled from said Tower, or are not otherwise operated by or under the control of the Government.

3. The Airport shall promptly advise the Government's duly authorized representative(s) in said Tower of any conditions which render all, or any, area(s) of the Airport unsafe for normal utilization by aircraft and will, upon demand, appropriately mark any such

11-9

area(s) in a manner approved by the Government which properly indicates the existing condition(s); the Lessor shall promptly give notice to the Government's Tower representative(s) prior to the time any maintenance or construction is begun on the airport landing area unless such action is in accordance with a schedule which has been previously coordinated with the said Tower; said notice shall be given not less than thirty (30) days prior to the scheduled date from beginning the first item of construction and/or maintenance on the schedule.

4. The Government shall have absolute control of the operation of said Tower and its associated facilities at all times and shall not be subject to direction from the Airport in this regard. In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 U.S.C. 2671, et. seq.), hereafter termed "The Act," the government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of any employees of the Government while acting within the scope of his office or employment under the same circumstances where a private person would be liable in accordance with the law of the place where the Act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.

5. The Airport, upon request from the Government, agrees to provide two-way ground control communication equipment in its maintenance and emergency vehicles scheduled to regularly operate in the airport landing area, and such equipment shall be capable of maintaining radio communications with the Government's Tower.

6. The Airport, agrees to pay (and the Government shall not pay any part of such costs other than those provided by any existing Federal Aid to Airports Programs) for the relocation of said Tower and its associated facilities if such relocation is made necessary by Airport improvement or changes which impair the technical and/or operational characteristics of said Tower and its associated facilities.

7. The Airport shall, as a protection to the proper operation of the ATCT by the Government, prohibit and refrain from the erection or construction of any structures or improvements which may interfere with the visibility of the Air Traffic Controllers' line of sight to all traffic patterns, approaches, runways, taxiways, operational portions of the aprons and other operational areas necessary for the control of ground and air traffic.

8. In accordance with the provisions of paragraph 2 of the ATCT MOA, the Government shall have the right and privilege to maintain the ATCT on the airport premises and to install and maintain antennas and antenna wires and appurtenances for Air Traffic operating facilities at the MOA site and other locations on the airport where deemed necessary, together with the right to install, operate and maintain necessary connecting cables and wires where needed to perform the necessary linking of facilities. The Government shall have the right to install, operate and maintain such cables, conduits and wiring necessary to link and connect its facilities located on airport property;

11-10

IN WITNESS WHEREOF, the parties hereto have subscribed their names hereunder as of the _____ of _____, 20 ____.

CITY OF DANBURY

THE UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

By _____

By _____

Title _____

Title _____

Date: _____

Date: _____