

State Project No. 58002-2401
W.P.I. No. 3148504
F.A.P. No. 042-0101-029
State Road No. 8 and I-10
Parcel No. Rest area--West Bound Lane
County Santa Rosa

THIS AGREEMENT made and entered into this 9th day of December 19 96, by and between _____ of Santa Rosa County, Florida (hereinafter called Lessee) and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida (hereinafter called Department or Lessor).

WITNESSETH:

WHEREAS, under Section 337.25(5) of the Florida Statutes, Department may convey a leasehold in the name of the State, to any land, buildings or other property, real or personal; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (hereinafter called FHWA), requires any use of airspace above, at or below the highways' established grade line, lying within the approved right-of-way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement providing for adherence to all policy requirements in the applicable directive, (23 CFR 713 Subpart B), where such are appropriate to the intended use; and

WHEREAS, the Department has acquired sufficient legal right, title and interest in the right of way of SR 8 (I-10) which includes the property described in Exhibit "A" attached hereto and by reference made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease the airspace above the property described in Exhibit "A" to Lessee for the following purpose: A Blue Angel A-4 Aircraft display on the ground of the westbound rest area on I-10 in Santa Rosa County.

_____ ; and

WHEREAS, the proposed use will not impair the full use and safety of the highway; or require or permit vehicular access to such space directly from the established grade line of said highway; or interfere with the free flow of traffic on said highway; and will not result in violation of Part 626 of the Regulations of the Administrator, Federal Aviation Agency, as amended;

NOW, THEREFORE, in consideration of the premises, and the covenants, promises, understandings and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Property and Term

The Department does hereby lease unto Lessee the airspace above the lands described in Exhibit "A", attached hereto and made a part hereof, for a period of Twenty (20) beginning with the date of this Agreement. One renewal of this Agreement may be made for N/A. However, except for a public

purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the land itself lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each year in advance N/A plus applicable sales tax. When this Agreement is terminated, the unearned portion of any rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: N/A

d. Lessee shall be responsible for all state, county, city and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental and economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, lessee agrees to pay, at that time, the rent that should have been paid under the fair market rental value requirement as determined by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the space is as follows: To construct and maintain an aircraft display. Any advertisement on the aircraft display or rest area grounds is prohibited.

c. The general design for the use of the space, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the space in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

- d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the District Secretary of the Department, subject also to concurrence by the FHWA.
- e. The Department, through its duly authorized representatives, employees and contractors, and any authorized FHWA representative, may enter the airspace facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installation, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.
- f. Lessee, at lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.
- g. Portable or temporary advertising signs are prohibited.
- h. The occupancy and use of the space shall not be of such as will permit unreasonably objectionable smoke, fumes, vapor or odors to rise above the grade line of the highway.
- i. Where, for the proposed use of the space, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.
- j. The proposed use shall not cause or allow any changes in the existing drainage on the land under the airspace.
- k. Lessee shall not occupy or use or permit or suffer the demised premises or any part thereof to be occupied or used for any illegal business use or purpose, nor for any business, use or purpose deemed to be hazardous or involving any substance which under State law, Federal law, or common usage, constitutes a hazardous substance or waste; nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, orders, directions, ordinances or regulations of the United States of America, the State of Florida, any county or other lawful authority.
- l. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb the same.
5. **Insurance and Indemnification**
- a. Lessee and its contractors constructing the facility shall at all times during the term of this Agreement (unless a shorter time is specified) maintain such insurance coverage in such amounts as are specified in the Addendum, if any, attached hereto and by this reference made a part hereof. Upon execution of this Agreement by both parties (or upon execution of the construction contract with respect to Lessee's contractors), Lessee shall provide to the Department certificates of insurance showing such coverage to be in effect and showing the Department to be an additional named insured under such policies. Such policies shall provide that the insurance is not cancelable except upon thirty (30) days prior written notice to the Department, and the coverage thereunder shall apply on a primary basis to any other insurance maintained by the Department, its officers, servants, agents and employees. Except with respect to the total limits of liability, the insurance coverage provided shall apply to each insured in the same manner as if separate policies had been issued to each.

b. Lessee shall be solely responsible for the payment of any damages occurring to the highway or any related facilities or structures or to the public for personal injury, loss of life, and property damage which arise out of or relate to the construction, maintenance, or use of the airspace or of the facility existing or to be constructed.

c. The Lessee understands and agrees that the rights and privileges herein set out are granted only to the extent of the state's right, title, and interest in the land to be used by the Lessee. The Lessee will at all times assume all risk and indemnify, defend, and save harmless the State of Florida and the Department from and against all loss, damage, cost, or expense, including but not limited to attorney's fees, arising in any manner on account of the exercise or attempted exercise by said Lessee of the aforesaid rights and privileges including, but not limited to, the construction, operation, and maintenance of the facility or the Lessee's default under this Agreement, ~~regardless of the apportionment of negligence of the parties involved, unless due to the sole negligence of the Department. THE LESSEE, THEREFORE, AGREES TO INDEMNIFY THE DEPARTMENT FOR THE DEPARTMENT'S OWN NEGLIGENCE, UNLESS DUE TO THE SOLE NEGLIGENCE OF THE DEPARTMENT.~~

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate and associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the final appeal is exhausted specifically finding the Department solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. Department's failure to notify Lessee of a claim shall not release Lessee of the above duty to defend.

6. Termination and Revocation

a. This Agreement may be terminated by the Lessor upon thirty (30) days notice to the Lessee.

b. It is understood and agreed to by the Lessee that the Department reserves the right to revoke this lease without liability, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is revoked and the Department deems it necessary to request the removal of the facilities occupying the space, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renegotiate the lease not later than (30) days prior to the expiration of the original lease term, but no earlier than one hundred eighty (180) days prior to the expiration of the original lease term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renegotiate the lease.

d. Upon expiration of this Agreement, Lessee shall peaceably surrender and deliver the premises to Lessor, or its agents, in the condition existing at the commencement of this Agreement, (except for the removal of the facility if removal is not requested), normal wear and tear excepted.

e. If removal of the facility is requested, any such structures or improvements shall be removed by the Lessee at the Lessee's expense by midnight of the day of termination of this Agreement and the land restored as nearly as practicable.

f. This Agreement is revocable by the Department in the event that the airspace facility ceases to be used or is abandoned.

g. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of Landlord and Tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including but not

limited to (I) any residual interest in the Lease, or (ii) any other facts or circumstances arising out of or in connection with this Lease.

h. Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, severance damages, removal costs or loss of business profits, resulting from Lessee's loss of occupancy of the leased property specified in this Agreement, or any such rights, claims or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether (I) this Lease is still in existence on the date of taking or sale; or (ii) has been terminated prior thereto.

7. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and Title 49 Code of Federal Regulations Part 21, the Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed pursuant to Title 15 Code of Federal Regulations, Commerce and Foreign Trade, Subtitle A, Office of the Secretary of Commerce, Part 8 (15 C.F.R. Part 3), and as said Regulations may be amended.

2. That in the event of breach of any of the above discrimination covenants, the Department shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

c. During the term of Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances and regulations of the United States of America, the State of Florida, county or city governments or lawful authority whatsoever, affecting the demised premises or appearances or any part thereof, and of all insurance companies writing policies covering the demised premises, or any part thereof.

d. In addition to the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. This Agreement shall not be recorded in the public records of any city, county, or other governmental entity.

- g. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.
- h. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this lease freely and voluntarily. This lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely express the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both such parties.
- i. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone and telegraph services, or any other utility or service used on the land.
- j. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United State of America.
- k. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address.
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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

WITNESSES:

[Signature]

[Signature]
As to Lessor

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: [Signature]
District Secretary

District: _____

LESSOR

ATTEST: [Signature]
Executive Secretary

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Office of General Counsel

WITNESSES:

[Signature]

[Signature]
As to Lessee

BOARD OF COUNTY COMMISSIONERS
SANTA ROSA COUNTY, FLORIDA

By: [Signature]

TITLE: Chairman, Board of Commissioners

ATTEST: [Signature]

TITLE: Deputy Clerk
LESSEE

APPROVED: July 25, 1996

EXHIBIT "A"

July 15, 1996

This description prepared by,

Eddy A. Rudd

Department of Transportation

P. O. Box 607

Chipley, FL 32428

Section 58002-2401

S.R. No. 8 (I-10)

County Santa Rosa

LEGAL DESCRIPTION FOR AIRSPACE AGREEMENT

A parcel of land situate, lying and being in Section 8, Township 1 North, Range 27 West, Santa Rosa County, Florida, being described as follows: Commence at a 2 inch pipe marking the southwest corner of said Section 8; thence North $01^{\circ}24'33''$ East a distance of 2,504.73 feet along the west line of said Section 8 to the centerline of survey of State Road 8 (Interstate 10); thence departing said west line, run North $48^{\circ}19'33''$ East a distance of 841.73 feet along said centerline; thence departing said centerline, run North $41^{\circ}40'27''$ West a distance of 195.00 feet to the POINT OF BEGINNING; thence North $10^{\circ}33'01''$ East a distance of 12.65 feet to a point of intersection with a non-tangent curve, concave westerly, having a radius of 149.20 feet; thence from a tangent bearing of North $11^{\circ}18'38''$ East run northerly a distance of 37.71 feet along said curve through a central angle of $14^{\circ}28'59''$ to the end of curve; thence North $04^{\circ}35'38''$ West a distance of 22.89 feet to a point of intersection with a non-tangent curve, concave southwesterly, having a radius of 1.65 feet; thence from a tangent bearing of North $17^{\circ}45'45''$ West run northerly, northwesterly, and westerly a distance of 2.22 feet along said curve through a central angle of $77^{\circ}06'43''$ to a point of intersection with a non-tangent curve, concave northerly having a radius of 118.00 feet; thence from a tangent bearing of South $73^{\circ}43'05''$ West run westerly a distance of 53.98 feet along said curve through a central angle of $26^{\circ}12'39''$ to a point of intersection with a non-tangent curve, concave southeasterly, having a radius of 1.50 feet; thence from a tangent bearing of North $70^{\circ}19'30''$ West run northwesterly, westerly, southwesterly, southerly, and southeasterly a distance

of 3.37 feet along said curve through a central angle of $128^{\circ}38'06''$ to the end of curve; thence South $45^{\circ}38'49''$ East a distance of 30.74 feet to a point of intersection with a non-tangent curve, concave southwesterly, having a radius of 112.80 feet; thence from a tangent bearing of South $45^{\circ}44'21''$ East run southeasterly a distance of 56.13 feet along said curve through a central angle of $28^{\circ}30'46''$ to a point of intersection with a non-tangent curve, concave northerly, having a radius of 1.50 feet; thence from a tangent bearing of South $09^{\circ}46'01''$ East run southeasterly, easterly, and northeasterly a distance of 4.02 feet along said curve through a central angle of $153^{\circ}32'13''$ to the end of curve and POINT OF BEGINNING;

Containing 1,966 square feet of land, more or less.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is between the Naval Aviation Museum Foundation, Inc., a Florida corporation not for profit (Foundation), and the Santa Rosa County Board of Commissioners. The purpose of the MOU is to clarify the general understanding and intent of the parties to accomplish the placement of an A-4 Skyhawk aircraft on a pylon for static display at the Westbound Rest Area on I-10, in Santa Rosa County.

1. The following constitutes the plan agreed upon by both the Foundation and Santa Rosa County:

- a. Santa Rosa County will sign the Airspace Agreement with the State of Florida, Department of Transportation which allows the aircraft to be placed at the rest area.
 - b. The Foundation will construct the static display with the aircraft on the pylon at the rest area and bear all expenses associated with the construction.
 - c. The Foundation will perform any and all routine maintenance required on the aircraft, so as to assure that the structures in the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner as to cause no unreasonable interference with the highway use. In the event that the Foundation fails to maintain the structure, the County through its duly authorized representatives, employees and contractors may perform such work, and the cost thereof shall be chargeable to the Foundation and shall be immediately due and payable to the County upon the performance of such work.
 - d. The Foundation will indemnify, save harmless, and defend the County from and against all claims, demands, actions, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from performance of routine maintenance and from the static display of the aircraft.
 - e. In the event that the Airspace Agreement between Santa Rosa County and the State of Florida Department of Transportation is terminated by either party with or without cause, the Foundation will, at the direction of the County, remove the structure occupying the space leased to the County by Florida Department of Transportation at no cost to the County.
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f. The Foundation agrees to comply with all rules, regulations and requirements, including insurance requirements imposed upon County, pursuant to the Airspace Agreement, a copy is attached hereto and identified as Exhibit 1.

COUNTY

CORPORATION

SANTA ROSA COUNTY
BOARD OF COUNTY COMMISSIONERS

NAVAL AVIATION MUSEUM
FOUNDATION, INC.

BY 
William S. Lundin, Chairman

BY 
John H. Fetterman
Vice Admiral, U.S. Navy (Ret)
President and CE

Approved by Board of County Commissioners

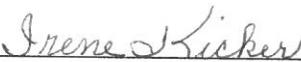
Approved by Foundation:

Date: July 25, 1996

Date: 19 August 1996

ATTEST:

ATTEST:


Deputy Clerk



REGULAR MEETING
July 25, 1996
Milton, Florida

The Board of County Commissioners of Santa Rosa County, Florida, met in regular session on the above date with the following members present: Chairman Bill Lundin, Vice-Chairman David Kessler and members Ira Mae Hewatt, Lydia Ezell and Byrd Mapoles. Also present were Attorney Dannheisser, the Deputy Clerk, County Administrator, Budget Director, Public Works Director and Public Services Director. The meeting was called to order by Chairman Lundin at 8:30 a.m. and opened with prayer by Rev. Carl Gallups. The audience joined the Board in the pledge of allegiance to the flag.

David Kessler moved approval of the amended agenda, which was seconded by Ira Mae Hewatt and carried by unanimous vote.

First on the agenda was an update on the construction of the new Criminal Justice facility. Doug Wells, with Centex Rooney, said 90% of the parking lot is completed and the outbuilding concrete slab and footings are all completed. They have approximately 100,000 sq. ft. of the slab completed to date, the only thing still to be poured is the kitchen. Bob McCormick said presently they are setting roof top, cell top precast and will be setting second floor cells off D2, 95% of all slab on grade has been poured. They are currently setting bar joists in the D1 area and all of B. By August 1 they expect to have C section, bar joists and alligator which will be close to 70% of the roof bar joists. The roofer, fire proofer and exterior skin contractors will be coming in next month. McCormick said their goal is to have all this dried in under roof and then start the major finishes. Everything has been coming along real good and there is a lot of local participation which has been working out well for them also.

Wells pointed out on a map the area where they have started going vertical and the first area that would be roofed in. They anticipate toward the end of August having an Open House with guided tours for the general public. He also pointed out the locations of the different areas and offices. Wells noted there would be 48 inmates on one side and 48 on the other which could be staffed by one man so reducing staff over a long term will be a cost savings. He also pointed out the areas that can be expanded in the future with a potential for 300 beds and said the electrical, plumbing and fire sprinkler conduit has been put in to help reduce the cost of future expansion.

David Kessler said the Commissioners, Builder and Architect have all worked together to reduce the amount of operational costs that can be upward of 90% of the cost to run a facility over the 10% it takes to build it. Byrd Mapoles said there will be an Open House before completion so the public can see where their dollars are going and hoped a lot of people would take the tour. He said the Board had an opportunity to do this at Manatee County and when we walked through the jail it was amazing to him. Mapoles said Centex Rooney have done an excellent job, the project has gone along real smooth and he has been amazed at how little frustration there has been in relation to this project. Kessler said we are building in the ability to expand in the future and Wells said it is good to have the foresight to go ahead with this.

COMMITTEE REPORTS:

Administrative & Personnel Committee - Lundin & Kessler

1. Kessler moved approval of the 1996 Escambia Consortium Annual Action Plan for Housing and Community Development, including the Santa Rosa County 1996 Annual Plan, detailing use of HOME Investment Partnerships Act (HOME) funds for housing assistance within Santa Rosa County and the City of Milton; Also authorize the Chairman to sign all Annual Action Plan forms, certifications and related documents as required to submit the Plan to the U.S. Department of Housing and Urban Development (HUD), and to implement the 1996 HOME Program. Hewatt seconded the motion. Mapoles said he is not against all the program, only this particular part because he is still unhappy with the \$40,000.00 for renovation of homes and felt there should be a better way to do it. Kessler said this gives us leverage financially to do more with the money and that is an important aspect of moving ahead. Hewatt said it is a federal program and it is not within the county's purview to make the

current rates for 1996/97, which was seconded by Hewatt and carried by unanimous vote.

10. Hewatt moved approval to waive the Comprehensive Plan amendment fee for Pensacola Skid & Pallett, Inc, which was seconded by Kessler and carried by unanimous vote.

11. Kessler moved approval to re-appoint Dr. E.W. Sutton to the Northwest Florida/Big Bend Health Council, appoint Fred Vallianos to the Council replacing Freida Nichols and send her a letter of appreciation, which was seconded by Hewatt and carried by unanimous vote.

12. Kessler moved approval of Resolution No. _____ to Governor Chiles requesting that two commercial fishermen serve on the Florida Marine Fisheries Commission, which was seconded by Mapoles and carried by unanimous vote.

13. Mapoles moved approval of the Memorandum of Understanding and airspace Agreement between Santa Rosa County, Florida Department of Transportation and Naval Aviation Museum Foundation, and authorization for the Chairman to sign, regarding the Blue Angel airplane at the I-10 Rest Stop, which was seconded by Hewatt and carried by unanimous vote.

14. Kessler moved approval of a request from Sheriff Brown to expend \$6,723.79 from the Law Enforcement Trust Fund for the purchase of equipment and \$1,021.00 for the purchase of shirts for the Citizens Law Academy, which was seconded by Hewatt and carried by unanimous vote.

15. Meetings:

8/6/96	8:30 a.m.	Budget Workshop
8/8/96	8:30 a.m.	Regular Meeting
8/19/96	6:00 p.m.	Special Meeting/Rezoning Hearings
8/22/96	8:30 a.m.	Regular Meeting
8/22/96	6:00 p.m.	Special Meeting on MSBUs

Public Works Committee - Mapoles & Hewatt

1. Mapoles moved approval for the Clerk's Office to call for bids on an emergency basis for Type II Riprap and Bedding Stone, which was seconded by Hewatt and carried by unanimous vote.

2. Mapoles moved approval to advertise a Public Hearing to vacate property located between Lots 18 and 19 in Santillana Subdivision, which was seconded by Hewatt and carried by unanimous vote.

Public Services Committee - Kessler & Ezell

1. Rod O'Donnell said based on the information provided at the committee meeting on Monday regarding the Summit Condominium project he requested the Board modify it's previous action regarding the building height for R-3 districts and apply the current building height standards as interpreted by Attorney Dannheisser. Kessler asked the acreage of the project and O'Donnell said it is close to nine acres. Mapoles said based on the discussion in committee he moved approval to allow the construction of this project on the present planning and zoning specifications, this was five stories including the parking lot, that he be allowed to build under the present regulations and not the proposed ones. Ezell said she understood this will allow much greater green space in the development and O'Donnell said they can put parking underneath the building instead of on a hillside. Kessler seconded for discussion.

David Crossman, President of the United Peninsula Homeowners Association, said they have a number of concerns about this project. He realized that Mr. O'Donnell complies with the zoning as it presently is but it will generate a lot of traffic in this area with around 200 units. Mr. O'Donnell said it will be closer to 140 units and will be five stories not six. Crossman said there are three issues to look at: (1) traffic, the Board knows there is to be a Sonic Drive-in on the corner where this project will enter onto Highway 98, a red light will be immediately needed. (2) drainage, he realized there will be no more drainage than now but how it is handled will be very important. He said there is a pond there now and asked the Board to consider what will happen with the drainage if it overflows again. (3) sewage in that area is South Santa Rosa Utilities and hopefully we will get some more areas to spray it on. This utility company has a number of problems with the water supply and understood we are getting E.C.U.A. water as far east as Tiger Point so things need to be worked out. Crossman asked the Board to take into consideration (1) Traffic (2) water, both drinking it and afterwards and (3) drainage.

Mapoles said as he understood it if we drop the height the project just spreads out, the same number of people will be there. He felt when you spread it out and do away with the green area instead of going up and allowing more green area, there will be the same number of cars whether the project is built under the present regulations or the proposed change. The developers of the project will have a tremendous amount of expense because we decided to change in the last couple of months. Mapoles said the reason for his motion is it seems to be the best of the two solutions.

Lundin said the project meets all the zoning requirements, all the traffic will be there, what we are talking about is 15 ft. in height difference. He agreed with Crossman on his concerns but the only thing the Board can do is address the height of the building, the zoning is correct in place, the Board has no control over that, the developer has complied with all the requirements so we are talking about 15 ft. in height whether they spread it out or go up with more green space.

Kessler said that is not how he understood it, the present Zoning Ordinance states five stories, the issue he brought up months ago reduced it down to 35 ft. which would be three stories. He said the developers proposal was five stories plus a parking garage plus a roof. Hewatt noted the developer now proposes four stories plus a parking garage. The developer confirmed the proposal is now parking and four habitable floors.

Hewatt said they hit on some issues that concern her on sewer and water. She said the county has gone forward with continuing engineering work on a plan to bring water from north of Yellow River down to service the entire peninsula. Your area however is with E.C.U.A. so that's not a part of the plan, we are having difficulties with some of the local water systems because the cost will be more. If the county does this you will be paying more for water, if we don't do it you won't have water. She said the second thing she and Kessler have been talking about for several years is that at some point we

CERTIFIED A TRUE AND CORRECT COPY
MARY M. JOHNSON
CLERK CIRCUIT COURT

By Patsy Albritton
9-25-96 **DEPUTY CLERK**

AIRSPACE AGREEMENT

ITEM/SEGMENT NO.: 58002-2401
MANAGING DISTRICT: Three
F.A.P. NO.: 042-0101-029
STATE ROAD NO.: 8 and I-10
COUNTY.: Santa Rosa
PARCEL NO.: Rest Area--West Bound Lane

THIS AGREEMENT, made this _____ day of _____, between
Santa Rosa County, Florida at 6865 Caroline Street, Milton, Florida 32570-4978
(Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency
of the State of Florida (State).

WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of _____ which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace above or below gradeline of the property described in Exhibit "A", attached and made a part hereof for the following purpose: A Blue Angel A-4 Aircraft display on
the ground of the westbound rest area on I-10 in Santa Rosa County.

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of Twenty (20) Years beginning with the date of this Agreement. One renewal of this Agreement may be made for N/A. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each month quarter year on or before the first day of each rent payment period, N/A plus applicable sales tax. When this Agreement is terminated, any unearned portion of any rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: N/A

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Display Aircraft for public viewing.

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

7. Termination

- a. This Agreement may be terminated by either party without cause upon 24 hours (24hr) days prior written notice to the other party.
- b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.
- c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.
- d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.
- e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.
- f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

9. Miscellaneous

- a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.
- b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:
1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

LESSEE (Company Name, if applicable)

By: _____
Name: _____
Title: _____
Attest: _____ (Seal)
Name: _____
Title: _____

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary
Name: James T. Barfield, P.E.
Attest: _____
Name/Title: Krissy Cook, Administrative Secretary
Legal Review:

District Counsel
Name: Scott Calais, Asst. District Counsel

ADDENDUM TO AIRSPACE AGREEMENT

This is an Addendum to that certain Airspace Agreement between the State of Florida Department of Transportation (“Department”) and _____ (“Lessee”), dated ___ of _____, 2016 (“Agreement”). In addition to the provisions contained in the Agreement, the following terms and conditions shall be deemed to part thereof pursuant to Paragraph 9(d) of the Agreement.

Lessee agrees to the following requirements and conditions:

1. All work, labor, materials and equipment shall be subject to inspection by the Milton Operations Engineer (“FDOT Engineer”) and shall meet Department standards. The FDOT Engineer shall be notified forty-eight (48) hours prior to beginning any work related to ongoing maintenance of the display by the Lessee and again immediately upon completion of the work. If a road closure is necessary during any maintenance related activities, the FDOT Engineer shall be notified ten (10) working days prior to the proposed closure, said closure to be subject to approval by the Department. Any lane closure restrictions shall comply with the District Lane Closure Process. The contact information for the FDOT Engineer is:

FDOT Milton Operations Center
6025 Old Bagdad Highway
Milton, Florida 32583
(850) 981-3000
2. All Department property shall be restored to its original condition so far as is practical, in keeping with Department specifications, and in a manner satisfactory to the Department.
3. All utilities shall conform to the Department’s Utility Accommodations Manual in effect the date this Agreement is executed.
4. Whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration or relocation of all, or any portion of said highway as determined by the District Director of Transportation Operations, any or all of facilities and appurtenances authorized hereunder shall be immediately removed from said highway or reset or relocated thereon as required by the District Director of Transportation Operations and at the expense of the Lessee unless reimbursement is authorized by separate agreement.
5. It is agreed that in the event the relocation of said display is scheduled to be done simultaneously with any Department construction work, the Lessee will coordinate with the Department before proceeding, shall cooperate with the Department’s contractor to arrange the sequence of work so as not to unnecessarily delay the work of the Department’s contractor, defend any legal claims of the Department’s contractor due to delays caused by the Lessee’s failure to comply with the approved scheduled, and shall

comply with all provisions of the laws and rules of the Department. The Lessee shall not be responsible for delays beyond its normal control.

6. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the State's right, title and interest in the land to be entered upon and used by the Lessee, and the Lessee will, at all times, assume all risk of and indemnify, defend, and save harmless the State of Florida and the Department from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by the Lessee of the aforesaid rights and privileges, including legal actions brought by third parties for any cause as a result of the display being maintained.
7. During maintenance, all safety regulations of the Department shall be observed and the Lessee must take measures, including placing and display of safety devices, that may be necessary in order to safely conduct the public through the project area in accordance with the Federal manual on Uniform Traffic Control Devices (MUTCD), as amended, and the Department's most current version of Roadway and Traffic Design standards.
8. The Lessee, at the Lessee's sole expense, shall remove the display within twenty-four (24) hours of initial notice to remove, at the discretion of the Department if, during any routine or non-routine inspection, the display is considered to pose an imminent threat to public safety, as determined by the FDOT Engineer.
9. This Agreement shall not be recorded in the public records of any city, county or other governmental entity.
10. Paragraph 9(g) of the Agreement is hereby removed.

LESSEE:

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest: _____

Printed Name: _____

Title: _____

DEPARTMENT:

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

JAMES T. BARFIELD, P.E.

District Three Secretary

Date: _____

Attest: _____

Executive Secretary (Seal)

Department Legal Review:

Office of the General Counsel