

RESOLUTION NO. 19-01-789

A RESOLUTION OF THE BOARD OF DIRECTORS
OF MOJAVE AIR AND SPACE PORT
AMENDING BOARD POLICY 400,
AIRPORT USES POLICY

Whereas, Mojave Air and Space Port (the "District"), a public entity, owns and operates an airport and spaceport that support a variety of uses;

Whereas, the District adopted a policy governing uses of its facilities, including leases, licenses, and contracts on February 6, 2018 ("Airport Uses Policy");

Whereas, the Board desires to amend the Airport Uses Policy;

Now, therefore, be it resolved that the Board of Directors of Mojave Air and Space Port as follows:

1. Board Policy 400, "Airport Uses," is amended as specified in Exhibit 1, attached hereto and incorporated herein by reference.
2. Except as expressly amended herein, the Airport Uses Policy is reaffirmed and readopted.

PASSED, APPROVED AND ADOPTED on January 15, 2019.



Andrew Parker, President

ATTEST:



Jim Balentine, Secretary

(SEAL)

EXHIBIT 1

BOARD POLICY 400 – AIRPORT USES

ARTICLE 1. USE

Section 4-1.01 **Authorized Uses**

District property, facilities, goods, services, and any other thing may be accessed and used pursuant to a lease, license, operations agreement, easement, or other written approval by an appropriate District official. Use by any other means is prohibited and subject to ejection from District property and any other remedies available by law.

Section 4-1.02 **Land Development Leases**

The Board may authorize leases for a term not to exceed fifty (50) years for the development of unimproved real property.

Section 4-1.03 **Long Term Leases**

The Board may authorize long term leases not to exceed thirty (30) years for the use of improved property.

Section 4-1.04 **Short Term Leases**

The General Manager may enter into leases of five (5) years or less for new customers and ten (10) years or less for established customers in a form established by the Board.

Section 4-1.05 **T-Hangar Leases**

T-Hangars may be leased as provided by the Board, and are to be used solely for aeronautical purposes, including storage of aircraft and aircraft parts.

Section 4-1.06 **Tie-down Agreement**

The General Manager may enter into license agreements for tie-downs in in a form established by the Board.

Section 4-1.07 **Licenses**

The Board may authorize licenses for intermittent or occasional use of District property. The General Manager may authorize licenses for the use of airport property when such use does not interfere with airport operations.

Section 4-1.08 **Sublease Agreements**

The General Manager may approve sublease agreements for tenants in good standing, up

to the length of the lease term.

Section 4-1.09 Operations Permit

Any work conducted on District property by someone not under lease or license will require an operations permit. The General Manager may approve Operations Permits in a form adopted by the Board.

Section 4-1.10 Right of First Refusal

The General Manager may approve Right of First Refusal (ROFR) agreements with customers. The customer shall pay a non-refundable fee equivalent to one-month rent for the property. Should the customer choose to execute a lease agreement prior to the end of the ROFR expiration date, the ROFR payment shall be applied to rent. Should the customer not execute a lease agreement prior to the end of the ROFR, the payment is forfeited.

Section 4-1.11 Lease Option

The General Manager may approve option agreements with a term of up to six (6) months. The customer shall pay a non-refundable fee equivalent to one month's rent for the property. Should the customer choose to execute a lease prior to the end of the option period, the payment shall be applied to rent. Should the customer not execute a lease agreement prior to the end of the option period, the fee is forfeited.

Section 4-1.12 Insurance and Indemnification

Agreements entered into by the District for use of District property shall contain provisions for naming the District as an additional or co-insured, as determined, on a policy or policies of insurance procured by the user of District property and indemnifying the District from costs, liability, and damages resulting from the user's activities; provided, when the user of District property is a California public agency, such agency shall not be required to provide a certificate of insurance.

Required insurance amounts are based on the activities conducted on District property, but with a minimum of \$1,000,000 per occurrence, \$3,000,000 aggregate, unless otherwise expressly authorized by the District.

Section 4-1.13 Assignment of Leases

If a tenant desires to assign a lease, and such assignment requires Board approval, the Board shall review the lease to determine if it conforms to the most recent rules and regulations of the District and to adjust the rent, if necessary, to conform to current rental rates of the District.

Section 4-1.14 District Right of First Refusal

Upon expiration of a lease for which the District has a right of first refusal (ROFR), the District shall use best efforts to exercise its ROFR to acquire the property in accordance with law. If the District does not exercise its ROFR, the lease with the new tenant shall be at the then District rental rate for like leases.

Section 4-1.15 **Improvements and Fixtures**

Upon the expiration or termination of a lease, improvements, additions, alterations, and fixtures (excluding trade fixtures and equipment) shall become property of the District without any further payment or consideration. The District, in its sole discretion, may require a tenant to remove improvements, additions, alteration, and/or fixtures at the tenant's sole cost and expense, and repair any damage as a result of such removal. All improvements, additions, alterations, and fixtures shall be kept free of liens and shall not be used as security in any loan arrangements without District prior written consent. All improvements, additions, alterations, and fixtures installed in or attached to the property by a tenant must be in good condition when installed or attached.

Section 4-1.17 **Fees and Impounding**

The District charges the following categories of fees for access to property:

- (a) Ground-based lease fees
- (b) Building lease fees
- (c) Hangar lease fees
- (d) Aircraft storage fees
- (e) Aircraft parking fees
- (f) Wash rack fees

The rates are set by the Board and published on the District's website. An aircraft owner or agent failing to pay a fee duly charged for aircraft owned or controlled by the owner or agent shall have such aircraft subject to impoundment until such fees are paid.

ARTICLE 2. PROJECTS

Section 4-2.01 **Contracts**

(a) Contracts entered into by the District shall contain provisions required by state and federal law and regulation. Contract documents shall be reviewed by District Counsel to ensure compliance with such laws and regulations. Reference is particularly made to the Davis-Bacon Act (40 USC SS 276(a) et seq.) and to the Energy Policy and Conservation Act (42 USC SS 6201 et seq.).

(b) The Secretary shall publish and post notices required by such laws and regulations.

Section 4-2.02 **Public Works**

(a) Public works contracts shall be awarded to bidders whose bid is in the best interest of the District considering factors such as cost, experience, and availability.

- (1) Public works contracts valued at \$50,000 or less may be awarded by the General Manager.
- (2) The General Manager shall require at least two bids for public works contracts valued between \$50,000 - \$200,000, and may award the contract to the party submitting the bid in the best interest of the District.
- (3) Public works that cost \$200,000 or more shall be let for public bid and awarded by the Board, unless otherwise determined by the Board.

(b) Contracts shall include provisions regarding prevailing wages, working conditions, subcontractors, insurance, and other customary provisions. Contracts of \$25,000 or more shall require a payment bond for 100% of the contract amount, and a performance bond as stated in the bid documents. Bids shall include a bid bond in an amount set by the District.

Section 4-2.03 **Procurement for Emergency Repairs**

(a) Labor and material necessary for emergency repair or replacement of public facilities of the District damaged by unanticipated calamity may be taken without giving notice for competitive bids if provisions of this Section are followed.

(b) The General Manager may authorize the procurement of labor or material without bidding to make emergency repairs or replacements when a meeting of the Board of Directors cannot be commenced to authorize emergency action in a timely manner. The General Manager shall report to the Board of Directors within seven (7) days of the emergency or at the next regular meeting scheduled within fourteen (14) days after the action.

Section 4-2.04 **General Manager Authority**

The General Manager is authorized to enter into contracts for the procurement of goods, services, or works on behalf of the District that have been authorized in a Board-approved budget. At the next regularly scheduled Board meeting, the General Manager shall report any contracts executed under this section. This provision shall be void, unless reauthorized by the Board, upon the hiring of a new General Manager.

ARTICLE 3. WORKS OF ART

Section 4-3.01 **Purpose**

This section shall govern the application for and placement of works of art at Mojave Air & Space Port.

Section 4-3.02 **Definitions**

“Applicant” means the person who submits an Application to place art work at Mojave Air & Space Port.

“Application” means that form prescribed by the District to be completed and submitted by the Applicant for the placement of works of art at Mojave Air & Space Port.

“Art work” and “work of art” have the same meaning and are used interchangeably herein.

Section 4-3.03 Application

(a) A person interested in placing a work of art at Mojave Air & Space Port shall submit an Application to the District. The Application shall include, in addition to the information required by the form, an accurate depiction of the art work to be installed and a site plan showing the location of the art work, complete with necessary and appropriate accessories to complement and protect the art work.

(b) If the Application is approved, the Applicant shall deposit with the District a fee, in an amount set by the District, sufficient to ensure the art work, once commenced, is completed. Upon completion of the art work, the deposit shall be returned to the Applicant, less any reasonable costs incurred by District to ensure completion of the art work.

(c) If the work of art is to be placed on a building or structure owned by a person other than the District, the Applicant shall submit written proof that the owner of the building or structure has agreed to and approved the placement of the work of art on the building or structure.

Section 4-3.04 Guidelines

Guidelines for the approval and maintenance of works of art shall include, but are not limited to, the following criteria:

- (a) The art work shall be clearly visible and accessible to the public.
- (b) The composition of the art work shall be of permanent type materials in order to be durable against vandalism, theft and weather.
- (c) The art work shall be composed such that it requires a low level of maintenance.
- (d) The art work shall be related in terms of scale, material, form and content to immediate and adjacent buildings and landscaping so that it complements the site and surrounding environment.
- (e) The art work shall be designed and constructed by persons experienced in the production of such art work.
- (f) The art work shall be a permanent, fixed asset to the property.
- (g) The art work shall be maintained by the Applicant in a neat and orderly manner acceptable to the District.

Section 4-3.05 Maintenance

- (a) The Applicant shall be responsible for maintaining the art work in a neat and

orderly manner acceptable to the District. If the Applicant fails to maintain the art work in a manner acceptable to the District, the District may either maintain or remove the art work.

(b) The Applicant shall place a deposit with the District, in an amount set by the District, to be used for maintenance of the art work if the Applicant fails to maintain the art work in a manner acceptable by District. The District shall keep the deposit unless and until the art work is permanently removed from Mojave Air & Space Port, after which it shall refund the deposit less any reasonable costs incurred by the District in maintaining the art work.

(c) If the deposit made by the Applicant is not sufficient to cover the costs of maintaining and/or removing the art work, the Applicant shall reimburse to the District the costs it incurs in excess of the deposit.

Section 4-3.06 **District's Rights**

(a) The Board shall, in its sole discretion, approve or reject Applications to place works of art at Mojave Air & Space Port.

(b) The District has the right to have a work of art maintained or removed if, in its sole discretion, the work of art is not being maintained in a manner acceptable to the District.

Section 4-3.07 **Static Aircraft Display**

Any static display of aircraft is subject to approval of, and upon such terms and conditions, as determined by the District.

ARTICLE 4. CEQA

Section 4-4.01 **General**

District projects shall be undertaken with due regard for the environmental consequences as required by this Policy and applicable state and federal law.

Section 4-4.02 **Adoption of Guidelines**

The District adopts and incorporates by reference the guidelines promulgated by the Secretary of Resources (hereinafter "State Guidelines") for local agencies to satisfy the California Environmental Quality Act (CEQA), except as otherwise provided herein.

Section 4-4.03 **Delegation of Responsibilities**

- (a) The General Manager, or designee, shall:
- (1) Determine whether the District is a lead agency or responsible agency;
 - (2) Determine whether an activity is exempt or a project subject to review;
 - (3) Conduct an initial study;
 - (4) At the direction of the Board, prepare or cause a negative declaration or

- environmental impact report (EIR) to be prepared;
 - (5) Respond to public comments;
 - (6) Provide required notices; and
 - (7) Respond to requests for consultation by lead agencies.
- (b) The Board shall:
- (1) Review an initial study to determine if a negative declaration or EIR is appropriate;
 - (2) Consider, approve, and certify the negative declaration, draft and final environmental impact report prior to approving a project; and
 - (3) Make findings as required by law.

ARTICLE 5. FEDERAL FUNDS OBLIGATIONS

Section 4-5.01 General

The District is obligated to follow the rules and guidelines set forth by the FAA when accepting federal funds. The FAA requires contractors include Disadvantaged Business Enterprise (DBE) subcontractors when bidding on federally-funded projects. Bidders and contractors shall comply with all applicable FAA DBE requirements.