



## REQUEST FOR COUNCIL ACTION

**MEETING DATE:** MAY 25, 2021

**TITLE:** APPROVAL OF A MEMORANDUM OF UNDERSTANDING WITH  
THE FLYING LEATHERNECK HISTORICAL FOUNDATION

*Marianna Marysheva*

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Interim City Manager

### RECOMMENDED ACTION

Approve and authorize the Interim City Manager to execute a Memorandum of Understanding with the Flying Leatherneck Historical Foundation for development within the Orange County Great Park.

### EXECUTIVE SUMMARY

The Flying Leatherneck Historical Foundation (FLHF) seeks a Memorandum of Understanding with the City (MOU) (Attachment 1), which provides a preliminary commitment to continue and expand due diligence efforts on the intended relocation of the Flying Leathernecks Aviation Museum from Miramar Marine Corps Air Station to the Orange County Great Park.

The Orange County Great Park Board of Directors directed staff to negotiate terms for an MOU at its April 27, 2021 meeting. Staff and FLHF have jointly proposed terms for the MOU establishing expectations and responsibilities over the proposed two-year term. The intended purpose is to identify all costs for the rehabilitation and conversion of the identified building (Attachment 2) into a museum space, relocation of the current museum inventory, and development of a fundraising, sponsorship and outreach plan.

The attached MOU is presented for review and consideration.

## **COMMISSION/BOARD/COMMITTEE RECOMMENDATION**

This item is scheduled for consideration by the Orange County Great Park Board of Directors on May 25, 2021.

## **ANALYSIS**

At its meeting on March 23, 2021, the OCGP Board directed staff to work with the FLHF to explore moving the museum to the OCGP. Staff and FLHF have been in discussions on a possible relocation plan for the Flying Leathernecks Aviation Museum from Miramar Marine Corps Air Station to the Orange County Great Park.

On April 27, 2021, after reviewing the preliminary findings, the Board directed staff to negotiate terms of an MOU with FLHF to formalize the relationship through negotiation of terms for an MOU. This process establishes expectations and responsibilities for the reestablishment of the Flying Leathernecks Aviation Museum at Hangar 296 in the Orange County Great Park.

The City, in consultation with FLHF, has prepared a proposed MOU, establishing a plan of action for the near term to identify funding needs and sources for the project. The proposed primary terms of the MOU include:

- Identification of Hangar 296 as the preferred site.
- City and FLHF will work collaboratively to develop a budget for:
  - A. Initial hangar renovation
  - B. Transportation of Museum collection from Miramar to the hangar
  - C. Interior and exterior improvements to complete the museum building
- City and Flying Leathernecks will work collaboratively to develop a fundraising plan, with respective roles and responsibilities, including but not limited to:
  - A. Funding that the City is able to advance
  - B. Outreach to federal and state legislative contacts
  - C. Sponsorships and naming right opportunities
  - D. Capital campaign including direct outreach and events
- The FLHF, or an entity of its formation, will be the owner/operator for the museum.

The MOU establishes a process for the City and FLHF's continued collaboration, as well as providing a formal declaration of the City's intent to reestablish the Flying Leathernecks Aviation Museum at the Great Park, and may assist FLHF with separate

private fundraising efforts it has been engaged in since the closure of the museum at Miramar on April 1, 2021.

Should the City Council approve the MOU, staff will provide updates to the Board and the public on these ongoing efforts on a regular basis.

### **ALTERNATIVES CONSIDERED**

The City Council could choose not to recommend that City Council approve the proposed MOU with the FLHF. The City Council could provide specific direction on the removal or modifications to the proposed terms or the inclusion of additional terms or performance schedules.

### **FINANCIAL IMPACT**

There is no financial impact from entering into the attached MOU. There will be costs associated with the completion of the due diligence studies for the building that will be funded from previously approved budget appropriations specifically for this purpose.

### **REPORT PREPARED BY**

Joel Belding, Deputy Director

### **ATTACHMENTS**

1. Memorandum of Understanding between the City of Irvine and Flying Leatherneck Historical Foundation
2. Site Map

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“**MOU**”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2021 (the “**Effective Date**”), by and between the CITY OF IRVINE, a California municipal corporation and charter city (“**City**”), and FLYING LEATHERNECK HISTORICAL FOUNDATION, a California nonprofit public benefit corporation (“**FLHF**”), on the terms and provisions set forth below.

### RECITALS

A. FLHF is a non-profit organization which, prior to April 2021 was the caretaker organization for the U.S. Marine Corps Command (“U.S. Marine Corps”) aviation museum in Miramar, California. The FLHF was dependent on permission of the United States Marine Corps to oversee its collection of U.S. Marine Corps’ historical aviation artifacts, including airplanes, vehicles, archives, art and associated tools and materials (collectively, the “**FLHF Museum Inventory**”) to members of the public.

B. The FLHF Museum Inventory, which is owned and controlled by the United States Marine Corps, is currently in storage at the Marine Corps Air Station, Miramar, San Diego, California (the “**Miramar Storage Facility**”).

C. With encouragement of the U.S. Marine Corps, the FLHF seeks a new, permanent museum facility (a “**Permanent Museum**”) to display and utilize the FLHF Museum Inventory to members of the public.

D. City owns fee title or has a leasehold or sub-leasehold interest in certain real property that has been designated for development of a metropolitan park known as the “Orange County Great Park,” located in the City of Irvine, County of Orange, State of California (the “**Great Park**”).

E. City and FLHF have identified the building within the Great Park commonly known as Hangar 296 as a potential location for a Permanent Museum. A depiction of Hangar 296 is set forth in Exhibit “A”, which is attached hereto and incorporated herein by this reference.

F. City and FLHF now desire to enter into this MOU to (i) perform feasibility investigations, analysis and studies regarding the possible use of Hangar 296 as a Permanent Museum, and (ii) set forth the respective obligations of City and FLHF pursuant to and during the term of this MOU with respect to such feasibility analysis and studies.

G. City and FLHF view this MOU as a potential path to an agreement or agreements that, if approved by each of City and FLHF, would facilitate FLHF relocating the Museum Inventory to Hangar 296 with the purpose of establishing a Permanent Museum within Hangar 296.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. **Term.** This MOU shall commence as of the Effective Date and, unless earlier terminated pursuant to the terms of this MOU, shall remain and continue in effect for a period of two (2) years. Upon expiration of said initial two (2) year period, this MOU shall automatically terminate, although as set forth in Paragraph E of Section 9 below, City and/or FLHF might choose to terminate this MOU sooner, should events dictate that a Permanent Museum within Hangar 296 is not feasible. Notwithstanding the foregoing, the City Manager of City shall have the right, but not the obligation, to grant an administrative extension of this MOU for up to six months. It is the intent of the parties that should the feasibility analyses and studies exhibit positive indicators and acceptable progress, the parties will attempt to negotiate in good faith the terms of a more permanent agreement or agreements that would facilitate the establishment of a Permanent Museum within Hangar 296.

2. **Scope of MOU.** The roles and responsibilities of City and FLHF with respect to the performance of feasibility studies and analysis pursuant to this MOU are defined below:

A. **City's Obligations.** During the term of this MOU, City shall

1. Jointly with FLHF engage the United States Marine Corps with respect to the potential loan of the FLHF Museum Inventory for relocation to the Permanent Museum and potential relocation assistance.

2. City shall conduct engineering/structural studies and analysis regarding Hangar 296, including the availability of utilities (collectively, the "**City Studies and Analysis**").

3. Following City's completion of the City Studies and Analysis, City shall prepare a scope of work to bring Hangar 296 compliant with current City and State codes, including all utility connections and service (the "**Code Compliant Scope of Work**").

4. Solicit design proposals for the refurbishment and upgrade of the exterior of Hangar 296 appropriate for a potential museum use, including all of the work in the Code Compliant Scope of Work, and the surrounding area consistent with the general Cultural Terrace plans.

5. Solicit interior design proposals for the potential use of Hangar 296 as a museum, including appropriate ancillary uses.

6. Negotiate in good faith with FLHF to prepare a financial feasibility budget that includes costs for the following tasks (the "**Renovation/Set-Up Budget**"):

a) Structural/engineering renovation work required to enable Hangar 296 to be utilized as a Permanent Museum

b) Transportation of the FLHF Museum Inventory from the Miramar Storage Facility to Hangar 296; and

c) Interior and exterior (non-structural) improvements necessary to enable Hangar 296 to be utilized as a Permanent Museum.

7. Negotiate in good faith with FLHF to prepare a fundraising plan that includes the following elements (the “**Fundraising Plan**”):

a) Financial assistance, if any, that the Irvine City Council, in its sole and absolute discretion, may determine to provide;

b) Outreach to federal and state legislative contacts;

c) Sponsorships and naming right opportunities for a Permanent Museum; and

d) A Capital campaign, including direct outreach and events.

8. Assist FLHF in developing contacts in Orange County, California for establishment of a volunteer corps that would assist with fundraising activities.

9. Assist FLHF with review and analysis of the “Environmental Restrictions” (as defined in Section 4 below).

**B. FLHF’s Obligations.** During the term of this MOU, FLHF shall:

1. Jointly with City engage the United States Marine Corps with respect to the potential loan of the FLHF Museum Inventory for relocation to the Permanent Museum and potential relocation assistance.

2. Prepare an initial staffing and equipment plan for operation of a Permanent Museum.

3. Negotiate in good faith with City to prepare a Renovation/Set-Up Budget.

4. Negotiate in good faith with City to prepare a Fundraising Plan.

5. Amend its organizational documents, including bylaws, as necessary to enable FLHF to lease or sublease real property and operate the Permanent Museum.

6. Collaborate with City regarding development of contacts in Orange County, California for establishment of a volunteer corps that would assist with fundraising activities.

7. Review and analyze Environmental Restrictions.

**3. Site Tours.** FLHF shall have the right to tour Hangar 296 for purposes of planning and fundraising (collectively, the “**Tours**”), pursuant to the terms of this Section 4.

(a) Tours shall be conducted at times acceptable to City, upon a written request made to City not less than seventy-two (72) hours’ prior to any proposed entry. A representative of City shall accompany FLHF and be present at any Tours of Hangar 296.

(b) In conducting its Tours at Hangar 296, FLHF and any potential donors, sponsors, volunteers or other similar personnel accompanying FLHF (any such person, an “**FLHF Visitor**”) shall: (i) not damage any part of Hangar 296 or any personal property owned or held by any third party; (ii) promptly repair any damage to Hangar 296 resulting directly or indirectly from the entry by FLHF or any FLHF Visitor from any such Tours; (iii) not injure or otherwise cause bodily harm to City, or its tenants, agents, guests, invitees, contractors and employees; and (iv) comply with all applicable laws.

(c) FLHF hereby indemnifies, defends, and holds harmless City and the Orange County Great Park Corporation and their respective officers, officials, members, employees, directors, agents, representatives, contractors, and volunteers (collectively, the “**City and City Personnel**”), and Hangar 296, free and harmless from and against any and all claims, damages, liabilities, demands, actions, liens, stop notices, losses, costs and expenses (including without limitation reasonable attorneys’ fees and court costs) arising from or as a result of the conducting of Tours, except to the extent caused by an indemnified party’s gross negligence, recklessness or intentional misconduct.

(d) FLHF’s obligations under this Section 3 shall survive the expiration or termination of this Agreement.

(e) Prior to commencing any Tour, each FLHF Visitor shall be required to sign a release and waiver in the form attached hereto and incorporated herein as Exhibit “B”.

**4. Pre-Existing Environmental Conditions.** FLHF acknowledges that commencing in the 1940’s, the Great Park was operated for over fifty (50) years as a military base, including as a “Master Jet Station.” Throughout its operational years, the mission of the Master Jet Station involved the operation and maintenance of military aircraft and ground-support equipment. A by-product of these activities was the generation of “Toxic Materials” (as defined below) at various locations. Since the late 1980’s, the California Department of the Navy (“DON”), which oversees both the United States Navy and Marine Corps, has undertaken environmental investigations, analysis, testing, and remediation activities in the Great Park to address past releases of Toxic Materials.

FLHF acknowledges and agrees that there are numerous environmental documents pertaining to the Great Park and Hangar 296, and the adjacent real property, including with respect to the presence of Toxic Materials. Many of such documents are a matter of record; however, certain documents are available only upon request to the appropriate regulatory agencies, including the Department of Toxic Substances Control, the California Regional Water Quality Control Board, and the DON. FLHF acknowledges

and agrees that with respect to the Tours FLHF shall be bound by the terms, reservations, easements, covenants, conditions, restrictions and agreements set forth in such documents as they relate to Hangar 296, and this Agreement and FLHF's right to enter Hangar 296 and conduct Tours shall be subject to and subordinate to such documents and restrictions, and any amendments thereto as may be made from time to time, and/or other remedial or related requirements as may be imposed on Hangar 296 (collectively, the "**Environmental Restrictions**"). As used in this Agreement, the term "**Toxic Materials**" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, without limitation, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substances Account Act), (iii) defined as a "hazardous material" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) formaldehyde, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) ("RCRA"), or (xii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

**5. Insurance.** Without limiting FLHF's indemnification obligations under this Agreement, prior to FLHF conducting any Tours, FLHF shall procure and maintain, at its sole cost and for the remaining duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with such Tours by FLHF or any FLHF Visitor.

**A. Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for liability arising out of FLHF conducting any Tours. Such insurance shall be endorsed to:

- (1) Name the City and City Personnel as additional insureds for claims arising out of FLHF's conducting of any Tours.



- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

**B. Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of FLHF providing any service in the performance of this Agreement. Such insurance shall be endorsed to waive the insurer's right of subrogation against the City and City Personnel.

**C. Evidence of Insurance:** FLHF shall provide to City a Certificate(s) of Insurance evidencing such coverage, together with copies of the required policy endorsements, no later than five (5) business days prior to commencement of any Tours and at least fifteen (15) business days prior to the expiration of any policy. Statements on an insurance certificate will not be accepted in lieu of the actual endorsements required. Once obtained pursuant to the requirements of this Agreement, coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

**D. Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by City.

**6. No Predetermination of City Discretion.** City and FLHF acknowledge and agree that nothing in this MOU in any respect does or shall be construed to affect or prejudice the exercise of City's discretion concerning the consideration of any subsequent agreement or lease regarding the potential operation of Hangar 296 as a Permanent Museum, and/or any submittal by FLHF with respect to the operation of a Permanent Museum. Neither City nor FLHF intend this MOU to be a property conveyance or the rehabilitation or development of improvements thereon. City and FLHF acknowledge and agree that they have not agreed upon the essential terms of the subject matter of a property conveyance or development/rehabilitation transaction, and that such essential terms will be the subject matter of further negotiations. Notwithstanding any activities, studies or analysis to be made by City or FLHF hereunder, and/or any authorization by the City Manager to extend the term of this MOU, City and FLHF acknowledge and agree that any subsequent agreement or conveyance document would not be effective until it has been considered and formally approved by the City Council and thereafter has been executed by authorized representatives of each of City and FLHF. Notwithstanding anything in this MOU to the contrary, neither City nor FLHF intend by this MOU to commit to a definite course of action with respect to a Permanent Museum, a subsequent agreement, or a conveyance document. City retains full discretion with respect to a Permanent Museum, any subsequent agreement, and any conveyance document, any determination pursuant to the California Environmental Quality Act ("**CEQA**") with respect to a Permanent Museum or conveyance document, and any mitigation measures or alternatives to a Permanent Museum or conveyance document pursuant to CEQA,

including a decision not to proceed with a Permanent Museum, and/or a conveyance document.

**7. Assignment.**

FLHF may not assign, hypothecate, encumber, or otherwise transfer (voluntarily or involuntarily) this MOU or any of its rights or obligations hereunder (whether in whole or in part) (each, an “**Assignment**”) without the prior written approval of the City Manager, which approval may be given or withheld in the City Manager’s sole and absolute discretion. Any Assignment City has approved shall not be effective unless and until FLHF submits a signed assignment and assumption agreement in a form and with content reasonably approved by the City Attorney of City.

**8. Real Estate Commissions.**

Each party represents and warrants to the other party that the representing party has not engaged a broker, agent, or finder in connection with this transaction. Each party agrees to defend, indemnify, and protect and hold the other party harmless from any such claims contrary to the representation or warranty of the applicable party in the preceding sentence.

**9. General Provisions.**

**A. Legal Actions; Governing Law; Service of Process.**

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover actual damages for any default, or to obtain any other remedy consistent with the purposes of this MOU; provided, however, that Paragraph C of this Section 9 of this MOU shall supersede any conflicting provisions of this Paragraph A. Such legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county. The laws of the State of California shall govern the interpretation and enforcement of this MOU. In the event that any legal action is commenced by FLHF against City, service of process on City shall be made by personal service upon the City Manager of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against FLHF, service of process on FLHF shall be made by personal service upon FLHF or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

**B. Rights and Remedies are Cumulative.**

Except as otherwise expressly stated in this MOU, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**C. Specific Performance as FLHF's Exclusive Remedy.**

Subject to FLHF's right to terminate this MOU in accordance with the terms of Paragraph E of this Section 9 FLHF's exclusive remedy for an uncured City default under this MOU is to institute an action for specific performance of the terms of this MOU, and in no event shall FLHF have the right, and FLHF expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from City in the event of a default by City under this MOU or any action related to this MOU.

**D. Attorney's Fees.**

In the event any action is taken by either party to this MOU to enforce this MOU, the prevailing party shall be entitled to recover from the other party its actual attorneys' fees and costs. The parties' rights and obligations under this Section 9 shall survive the expiration or termination of this MOU.

**E. Termination Rights.**

Notwithstanding the term hereinabove set forth, either party may terminate this MOU if the other party has materially defaulted in its obligations herein set forth, and the terminating party has provided the defaulting party with written notification of such determination, and the defaulting party has refused or failed to cure same prior to the expiration of the cure period below. The written notification shall set forth the nature of the actions required to cure such default if curable. The defaulting party shall have ten (10) days from the date of the written notification to cure such default. If such default is not cured within the ten (10) days, the termination shall be deemed effective. For purposes of this paragraph, the parties hereby acknowledge that time is of the essence. Each party shall also have the right to terminate this MOU in the event that City or FLHF determines that use of Hangar 296 as a Permanent Museum is infeasible based on financial and/or environmental considerations, or not in the public interest.

**F. Indemnity.**

FLHF shall indemnify, protect, defend and hold harmless City and City's elected officials, officers, employees, representatives, members, and agents from and against any challenges to this MOU, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from FLHF's acts, errors, or omissions with respect to its activities and obligations hereunder, excluding any such losses arising from the sole negligence or sole willful misconduct of City. This indemnity obligation shall survive the termination of this MOU. City shall have sole discretion in selecting its defense counsel.

**G. Notices, Demands and Communications Between the Parties.**

Formal notices, demands, and communications between City and FLHF shall be given by any of the following methods: (i) personal service with a receipt obtained, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) or by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City: City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92606  
Attn.: City Manager

With a copy to: Rutan & Tucker, LLP  
18575 Jamboree Road  
Irvine, CA 92612  
Attn: City Attorney

To FLHF: Flying Leatherneck Historical Foundation  
9400 Activity Road  
San Diego, CA 92126  
Attn: Victor Bianchini, Board Chair

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by formal notice given in accordance with this Paragraph G.

#### **H. Implementation of MOU**

City shall maintain authority to implement this MOU through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to make approvals, waive provisions and/or enter into certain amendments of this MOU on behalf of City so long as such actions do not materially or substantially change the substantive business terms of this MOU, or add to the costs incurred or to be incurred by City as specified herein. Such amendments may include extensions of time to perform, provided the cumulative amount of such extensions shall not exceed six (6) months. All other material and/or substantive approvals, waivers, or amendments shall require the consideration, action and written consent of the City Council.

#### **I. Nonliability of City Officials and Employees; Nonliability of FLHF Officials and Employees.**

No member, official, employee, or contractor of City shall be personally liable to FLHF in the event of any default or breach by City or for any amount which may become due to FLHF or on any obligations under the terms of the MOU.

No member, official, employee, or contractor of FLHF shall be personally liable to City in the event of any default or breach by FLHF or for any amount which may become due to City or on any obligations under the terms of the MOU; provided, however, that the foregoing shall not in any way affect any rights City may have hereunder to recover directly from FLHF any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, intentional misrepresentation or bad faith waste.

**J. Enforced Delay; Extension of Times of Performance.**

In addition to specific provisions of this MOU, performance by either party (who is not then otherwise in material default) shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes, acts of the public enemy, terrorism, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of City or any other public or governmental agency or entity (except that any act or failure to act of City shall not excuse performance by City) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform, for up to a maximum cumulative period of ninety (90) days. Notwithstanding the foregoing, inability to secure satisfactory financing, or market and economic conditions shall not entitle FLHF to an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of knowledge of the commencement of the cause. In addition, times of performance under this MOU may be extended by mutual written agreement by City and FLHF.

**K. Interpretation.**

The terms of this MOU shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this MOU or any other rule of construction which might otherwise apply. The Section and Paragraph headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this MOU.

**L. Entire Agreement, Waivers, and Amendments.**

This MOU integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this MOU must be in writing and signed by the appropriate authorities of the party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of City and FLHF. Without limiting the foregoing, the parties understand that the results of this MOU may lead to future agreements or obligations which shall only become valid (if at all) upon full execution of such future agreements.

**M. Counterparts.**

This MOU may be executed in counterparts, each of which, after all the parties hereto have signed this MOU, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**N. Successors.**

Subject to the limitations on Assignments above, this MOU shall be binding upon and shall inure to the benefit of the permitted successors of each of the parties hereto.

**O. Further Assurances.**

The parties hereto each agree, without further consideration, to execute such other and further documents, and to perform such other and further acts, as may be reasonably necessary or proper in order to consummate the transaction set forth in and contemplated by this MOU.

**P. Severability.**

In the event any section or portion of this MOU shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the parties as to all provisions set forth in this MOU.

**Q. Time is of the Essence.**

Time is of the essence for each of the parties' obligations under this MOU.

[Signatures contained on following page]

IN WITNESS WHEREOF, City and FLHF have executed this MOU on the respective dates set forth below.

("City")

**CITY OF IRVINE**, a California municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Marianna Marysheva, City Manager

ATTEST:

By: \_\_\_\_\_  
Carl Petersen, City Clerk

APPROVED AS TO FORM:  
RUTAN AND TUCKER, LLP

Jeffrey T. Melching  
Jeffrey T. Melching, City Attorney

("FLHF")

**FLYING LEATHERNECK HISTORICAL FOUNDATION**, a California nonprofit public benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

**Exhibit "A"**

**DEPICTION OF LOCATION OF HANGAR 296**





**Exhibit “B”**

FORM OF RELEASE AND WAIVER

[See following document]

# City of Irvine

## Orange County Great Park

### Release, Waiver, Assumption of Risk and Indemnity Agreement

#### Participant Information

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

Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Phone: \_\_\_\_\_

**BY SIGNING THIS FORM, YOU ARE WAIVING CERTAIN RIGHTS ON BEHALF OF YOURSELF. PLEASE READ CAREFULLY.**

I have been granted permission to participate in a site visit of City of Irvine property located in the Orange County Great Park. I understand and acknowledge that this site visit involves certain activities, including, but not limited to the following: (i) riding in a vehicle leased by the City of Irvine to and from the site(s) (if applicable), (ii) walking through dirt, debris, and/or uneven surfaces, and (iii) walking through and around buildings and other structures utilized in prior decades by the United States military, which buildings and structures may contain asbestos, polychlorinated biphenyls, formaldehyde or other hazardous materials or may otherwise be structurally unsound (with the activities in clauses (i) (if applicable), (ii), and (iii) collectively referred to hereinafter as the "Site Visit Activities").

By signing this Release, Waiver, Assumption of Risk and Indemnity Agreement, I understand and acknowledge that participation in the site visit, including the Site Visit Activities may involve the risk of serious injury which may result not only from my own actions, but also the actions, inactions or negligence of others, the conditions of the buildings, structures, sites, equipment or areas where the site visit is/are being conducted, or the nature of the site visit itself. I understand and acknowledge that I am voluntarily participating in the site visit with knowledge of the dangers involved, and agree to accept and assume any and all risks of personal injury, wrongful death, property damage or other loss from participation in the Site Visit Activities.

I, on behalf of myself and my heirs, successors and assigns, agree to hold harmless, release, indemnify, and defend the City of Irvine, and the Orange County Great Park Corporation, and their respective officers, employees, agents, representatives, sponsors, volunteers, successors, and assigns from any and all liabilities, losses, damages, claims, costs, demands or causes of action arising out of or related to my participation in the site visit and the Site Visit Activities, howsoever caused, whether caused by action, inaction or active or passive negligence, and whether caused by the City of Irvine, myself or any other individual or entity. The above indemnification shall survive the termination or completion of the site visit.

I, on behalf of myself and my heirs, successors and assigns, hereby expressly waive all rights under section 1542 of the California Civil Code, which provides as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

I hereby acknowledge that by signing this Release, Waiver, Assumption of Risk and Indemnity Agreement, I waive my right to any and all such unknown claims and those of my heirs, successors and assigns.

\_\_\_\_\_ **Participant Initials**

I, on behalf of myself, and my heirs, successors and assigns further expressly agree that this Release, Waiver, Assumption of Risk and Indemnity Agreement is intended to be as broad and inclusive as is permitted by the laws of the State of California and that if any portion in this Release, Waiver, Assumption of Risk and Indemnity Agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I hereby further acknowledge that I am not hereby or otherwise permitted to take soil or other samples or to perform any invasive inspections during my site visit without obtaining the prior written approval of the Irvine City Manager or his or her designee.

\_\_\_\_\_ **Participant Initials**

**I HAVE CAREFULLY READ THIS RELEASE OF LIABILITY, WAIVER, AND ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT AND UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS DOCUMENT RELIEVES THE CITY OF IRVINE AND OTHERS FROM LIABILITY FOR PERSONAL INJURY, WRONGFUL DEATH AND PROPERTY DAMAGE AND SIGN IT VOLUNTARILY.**

I hereby certify that I am over the age of 18.

**Signature of Participant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signed in the Presence of:**

\_\_\_\_\_  
**Name of City Representative**

\_\_\_\_\_  
**Title of City Representative**

**Signature:** Jeffrey T. Melching  
Jeffrey T. Melching (May 13, 2021 09:36 PDT)

**Email:** jmelching@rutan.com



Great Park Blvd

Skyhawk

Marine Way

Hangar 296

