

SKYDIVING OPERATING PERMIT

This Skydiving Operating Permit (“Permit”) is made on _____, 20 ____ between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter referred to as “County”) and _____ (hereinafter referred to as “Operator”). County and Operator are sometimes collectively referred to herein as the “parties” and singularly, a “party.”

RECITALS

WHEREAS, County is the owner and proprietor of the San Martin Airport (“Airport”), located in Santa Clara County, California; and

WHEREAS, it is of the utmost importance to the County that skydiving operations are conducted in as safe a manner as possible to protect life and property; and

WHEREAS, the County Board of Supervisors has adopted Airport Rules and Regulations (“Airport Rules”) to establish rules and regulations applicable to all users and tenants of the Airport, including Operator; and

WHEREAS, no person shall engage in parachute operations without approval by the County and in compliance with County and Federal Aviation Administration (“FAA”) regulations; and

WHEREAS, the Operator desires to skydive utilizing a Parachute Landing Area (“PLA”) on the Airport; and

WHEREAS, on June 21, 1982, the Board of Supervisors adopted the Santa Clara County Airports Master Plan Report which identifies the location for Fixed Based Operator (“FBO”) facilities on the portion of San Martin Airport property identified as the PLA, and the 2006 South County Airport Master Plan update also identifies the location for FBO facilities on the portion of the Airport property identified as the PLA; therefore, the PLA is interim in nature and shall only be available until such time the County is prepared to develop the PLA site for FBO facilities; and,

WHEREAS, the parties desire to enter into this Permit upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the promises, covenants and agreements of both parties as set forth below, the parties agree as follows:

PERMIT

1. Permitted Activity. Operator is granted authorization to conduct skydiving jumps at the Airport using the designated PLA subject to the terms and conditions of this Permit.
2. Term. The Permit term shall commence on _____ and shall terminate on _____ unless sooner terminated as provided for in this Permit.
3. Consideration. Operator shall pay to County a fee pursuant to the schedule of fees and charges adopted by the Board commensurate with the term of the Permit. Operator shall pay fee at the time of execution of this Permit. Payment shall be made to County of Santa Clara, Roads and Airports Department, 2500 Cunningham Ave., San Jose, CA 95148. Additional fees including but not limited to aircraft commercial operations and charter, aircraft and vehicle parking, and storage may apply for operations using other County facilities.
4. Uses, Purposes.
 - a. Authorization to Conduct Skydiving Jumps. Operator is granted authorization to conduct skydiving jumps at the Airport using the designated PLA. Operator shall conduct such operations in accordance with this Permit and subject to its limitations. Operator shall not have the privilege of using the Airport for any other purposes than specifically set forth in this Permit. This Permit and the authorization to conduct certain operations herein are valid only to the extent of the County's jurisdiction as landowner of the Airport. Acquisition of any other necessary permits or entitlements for use is the responsibility of Operator. Nothing contained in this Permit shall be construed as a relinquishment of any rights now held by the County.
 - b. Operator's Use of Airport and Airport Facilities. Operator is granted the use, in common with others authorized to use the same, of the Airport and all public facilities at the Airport which are now or may hereafter be provided by County for use in connection with the operation of Operator's aircraft to and from, and in, on, or about the Airport, including , but not limited to, taxiways, runways, aprons, navigational aids, and facilities related thereto; provided, however, County, by agreeing to such use, does not assume any obligation or liability to acquire, establish, install, or maintain any facilities or appurtenance not presently in existence and operation at the Airport nor to continue to maintain and operate all present facilities. Operator's use of the Airport and all public facilities at the Airport may include and contemplates any or all of the following:
 - i. The right to land, take off, fly over, taxi, push, tow, load, unload, service, and park Operator's aircraft in connection with Operator's operations and in accordance with the requirements established in the FAA Flight Standards District Office's memorandum dated December 9, 2009, attached as Exhibit B; and
 - ii. The right to land skydivers in connection with this permit in the area as depicted in Exhibit A.
5. Conditions of Operations. Operator is permitted to conduct skydiving operations subject to the following conditions.
 - a. Operator shall comply with all laws concerning the Airport and Operator's use of the Airport. Operator shall obtain and maintain any and all permits and licenses

which may be required in connection with the conduct of its operation. Operator shall not make any physical modifications to the Airport site, including but not limited to the PLA, without the prior written authorization of the County. Operator shall not place any signage on Airport property without prior County approval.

- b. Operator shall adhere to any and all applicable FAA regulations, including but not limited to:
 - i. Federal Aviation Regulation Parts 61, 65, 91, 105, and 119, as amended.
 - ii. Advisory Circular 90-66B, 91-45C, and 105-2E, as amended or replaced.
 - iii. 49 Code of Federal Regulations Part 830, as amended or replaced.
- c. Operator shall not use the Airport to commit any disorderly, obscene, indecent, dangerous, or unlawful act, or commit any nuisance on the Airport. Consumption of alcohol is prohibited on County property in connection with this permit.
- d. Operator shall cooperate with any reasonable request from County's Airport Manager regarding use of operations at the Airport.
- e. Skydiving shall be conducted only within the PLA, as identified in Exhibit A, and in accordance with Advisory Circular 105-2E, as amended. Operator must examine the condition of the PLA prior to conducting any skydiving operation to determine if it is safe. The County is not responsible to maintain the PLA for the purpose of landing skydivers. Operator may perform maintenance on the PLA with prior written approval by the County.
- f. Operator shall adhere to the FAA safety determination conditions dated December 3, 2009 and attached hereto as Exhibit B.
- g. Operator shall temporarily cease its use of the PLA to accommodate special activities permitted by the County at the Airport. County shall provide Operator notice of the special activity at least thirty days prior to the scheduled activity. County shall not schedule more than five single-day special activities in a twelve-month period.
- h. Operator shall not permit any employee, agent, client, contractor, subcontractor, representative, or any other person to travel across the runway or taxiways without proper flag and radio equipment powered up and tuned to the current Unicom frequency as the FAA or Airport Manager shall designate in writing. Operator shall identify all vehicles used within the Aircraft Operations Area (AOA) with markings and flagging in accordance with FAA requirements. Vehicles to be operated on the Airport by Operator must be licensed and operated by a person with a valid driver license.
- i. Operator shall prepare and submit an event plan to the Airport Manager for controlling spectators and vehicles associated directly or indirectly with its operations.
- j. Operator shall complete and submit Exhibit C, a list of all aircraft and vehicles that it intends to use as part of the permitted operation, upon execution of the
- k. Insurance. Permit. Operator shall submit a revised Exhibit C within seven days of adding or removing a vehicle or an aircraft from service.

- l. Operator shall require that its employees, agents, clients, contractors, subcontractors, and representatives comply with the requirements and conditions of this Permit.
- m. Operator shall prepare a plan detailing how it and its employees, agents, clients, contractors, subcontractors, and representatives will comply with the requirements of this Permit.
- n. Operator shall complete and submit Exhibit D, a list of all employees, agents, contractors, subcontractors, and representatives who will use the Airport in connection with Operator's business, which list shall be updated at least 3 business days before any such employee, agent, contractor, subcontractor, or representative first uses the Airport.
- o. Operator shall comply with all local laws and regulations, as may be amended from time to time, including without limitation the County's Airport Rules and Regulations, as may be amended from time to time. For purposes of compliance with the Rules and Regulations, the term "incident" is understood to include, without limitation, any failure to operate in the PLA as identified in Exhibit A, any failure to comply with the FAA safety determination conditions attached hereto as Exhibit B, any off-airport landing, any use of a cutaway parachute, or any occurrence involving damage to property and/or aircraft.

6. Insurance

- a. Duty to Maintain Insurance. Operator shall obtain insurance acceptable to County in company or companies acceptable to County, as described below. The required documentation of insurance shall be furnished to County upon the execution of this Permit. Such insurance shall cover acts and omissions of Operator and its employees, agents, clients, contractors, subcontractors, and representatives. To the extent Operator's insurance does not cover Operator's employees, agents, client's contractors, subcontractors, and representatives, Operator shall provide documentation showing that such employees, agents, clients, contractors, subcontractors, and representatives has obtained such insurance for itself and its employees, agents, contractors, subcontractors, and representatives in a form and from a company or companies acceptable to County.
 - i. Aircraft Liability Insurance. Aircraft liability insurance, including coverage for commercial general liability and non-owned aircraft, covering personal injury and property damage for all activities of Operator arising out of or in connection with this Permit using an occurrence policy form, with policy limits of not less than \$1,000,000 per occurrence. Such policy shall be endorsed with the following specific language:
 1. "The County of Santa Clara is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Permit."
 2. "This insurance provided herein is primary coverage to the County of Santa Clara with respect to any policy of insurance or self-insurance programs maintained by the County."
 3. "The policy shall not be canceled or materially changed without first giving the County of Santa Clara thirty (30) days' notice by certified mail."

- ii. Workers' Compensation. Workers' Compensation Insurance with statutory limits as required by the Labor Code of the State of California. The policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to the County of Santa Clara by certified mail."
- iii. Automobile Liability. Automobile Liability Insurance covering bodily injury and property damage in an amount not less than \$1,000,000, combined single limit for each occurrence. Said insurance shall include coverage for owned, hired and non-owned vehicles. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to the County of Santa Clara by certified mail."
- b. Policy Obligations. Operator's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- c. Increase in Minimum Policy Limits. For insurance with no statutory limit policy limits shall be periodically increased at the request of the County.
- d. Certificate of Insurance. Operator shall furnish County with copies of such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the Permit, Operator shall furnish County with binders representing all insurance required by this Permit.
- e. Failure to Maintain Insurance. Proof of Compliance. Operator shall deliver to County, in the manner required for notices, copies of certificates of all insurance policies required by this Permit, together with evidence satisfactory to County of payment required for procurement and maintenance of the policy, within the following time limits:
 - i. Execution of Permit. Proof of insurance required under this Permit shall be provided upon execution of Permit.
 - ii. Renewals and Replacements. For any renewal or replacement of a policy already in existence, at least thirty (30) days before expiration or other termination of the existing policy.
 - iii. Failure to Procure and Maintain Insurance. Notwithstanding anything stated to the contrary herein, Operator fails or refuses to procure or maintain insurance as required by this Permit, or fails or refuses to furnish County with required proof that the insurance has been procured and is in force and paid for, County shall have the right, at the Director of Roads and Airports election and without notice, to immediately terminate this Permit. In the event the Director of Roads and Airports elects to terminate the Permit pursuant to this paragraph and Operator later obtains and provides evidence of the required insurance acceptable to County, this Permit may be reinstated at the sole discretion of the Director of Roads and Airports.

7. Indemnification.

Operator will indemnify, reimburse, hold harmless and defend County including, without limitation, County's employees, agents, contractors, subcontractors and representatives (collectively, "County"), from any and all liability, damages, loss, costs, and obligations, including, but not limited to, court costs and reasonable attorney's fees, arising out of any claim,

suit, judgment, loss or expense occasioned by, but not limited to, injury or death of any person or loss or damage to any property, that is suffered or sustained by Operator, including, without limitation, its employees, agents, contractors, subcontractors and representatives, or any person engaging in the sport of skydiving, or by any person in, on or about the Airport, from any cause whatsoever during the Term of the Permit. Operator's obligation under this Indemnification section will survive the termination or expiration of this Permit with respect to any claims or liabilities arising out of an injury or death to person or damage to property that occurred during the Term of the Permit and any holdover period. County shall have the right to approve legal counsel providing County's defense and such approval shall not be unreasonably withheld.

8. Defaults and Remedies.

- a. Operator's Default. The occurrence of any of the following shall constitute a default by Operator under this Permit:
 - i. Operator's failure to pay when due any fee required to be paid under this Permit if the failure continues for three (3) days after written notice of the failure from County to Operator.
 - ii. Operator's failure to perform any other obligation under this Permit if the failure continues for fifteen (15) days after written notice of the failure from County to Operator.
 - iii. Operator's failure to comply with Section 5 of this Permit.
 - iv. Conduct or behavior by operator and/or its employees, agents, clients, contractors, subcontractors, and representatives that demonstrates in the judgment of County that Operator is not able to comply with the requirements of Section 5 of this Permit.
- b. County's Remedies on Operator's Default. On the occurrence of a default by Operator, County shall have the right to terminate this Permit. Once County has terminated this Permit Operator shall cease all operations at the Airport. County shall have the right to pursue any remedies now or later available to County at law or in equity. These remedies are not exclusive but cumulative.
- c. Operator's Remedies on County's Default. Operator waives any right to terminate this Permit on County's default under this Permit. Operator's sole remedy on County's default is an action for damages or injunctive or declaratory relief.

9. Notices.

- a. Notices. All notices (including requests, demands, approvals, or other communications) under this Permit shall be in writing.
 - i. Method of Delivery. Notice shall be sufficiently given for all purposes all follows:
 1. When personally delivered to the recipient, notice is effective on delivery.
 2. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

3. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 4. When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 5. When sent by email to the last email address known to the party giving notice, notice is effective on delivery.
- b. Refused, Unclaimed, or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- c. Address: Addresses for purpose of giving notice are set forth below:

COUNTY: Eric Peterson
 Director, County Airports
 2500 Cunningham Avenue
 San Jose, CA 95148
 Phone: 408-918-7700
 Fax: 408-929-8617
 Email: Eric.Peterson@rda.sccgov.org

OPERATOR: _____

10. Miscellaneous Provisions.

- a. Joint and Several Obligations. If Operator consists of more than one person, the obligation of all such persons is joint and several.
- b. Captions. The captions of the various articles and sections of this Permit are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content, or intent of this Permit or any part or parts of this Permit.
- c. Exhibits, Addenda. All exhibits and addenda to which reference is made in this Permit are incorporated in the Permit by the respective references to them.
- d. Merger. This Permit is intended both as the final expression of the Permit between the parties hereto with respect to the included terms, and as a complete and exclusive statement of the terms of the Permit. No modification of this Permit shall be effective unless and until such modification is evidenced by a writing signed by both parties. No promise, representation, warranty or covenant not included in this Permit has been or is relied on by either party. Each party has relied on his or her

own examination of this Permit, the counsel of his own advisors, and the warranties, representations, and covenants in the Permit itself. This Permit shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Permit. The failure or refusal of either party to read the Permit or other documents, or to obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

- e. Applicable Law and Forum. This Permit shall be constructed and interpreted according to California law and any action to enforce the terms of this Permit or for breach thereof shall be brought and tried in the County of Santa Clara.
- f. Compliance with Safety Determination. The County shall adhere to the FAA safety determination conditions dated December 3, 2009 and attached hereto as Exhibit B.
- g. Time of Essence. Time is and shall be of the essence of this Permit and each and every provision contained in this Permit.
- h. No Discrimination. Operator shall comply with all applicable federal, state and local laws, rules and regulations relating to non-discrimination in employment and service because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition and handicap. Operator shall (1) furnish its services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service provided that Operator may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- i. Assignment. This Permit is non-transferable and shall not be assigned.
- j. Non Exclusive Right. Nothing contained in this Permit creates an exclusive right to conduct skydiving at the Airport and the County may, at its sole discretion, enter into other Permits for skydiving operations at the Airport.
- k. No Right in Real Property. This Permit shall not be construed as any interest in Airport property nor does it convey any right.
- l. Construction of Permit; Severability. To the extent allowed by law, the terms, conditions, provisions and agreements in this Permit shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. County and Operator agree that in the event any term, condition, provision or agreement in this Permit is held to be invalid or void by court of competent jurisdiction, the invalidity of any such term, condition, provision or agreement shall in no way affect any other term, condition, provision or agreement in this Permit.
- m. In the event that County in its sole and absolute discretion determines that this Permit, any provision contained herein, or any performance under the Permit may cause a violation of any agreement between County and the United States, County shall have the unilateral right to modify or terminate this Permit.

- n. No Third Party Beneficiary Status. The provisions of this Permit are for the sole benefit of the County and Operator and will not be construed as conferring any rights on any third party including, but not limited to, third party beneficiary rights. Operator acknowledges that it is not a third party beneficiary of any agreement between the County and the United States regarding the Airport, including but not limited to grant assurances.
- o. Relationship. The parties intent by this Permit to establish the relationship of County and Operator only, and do not create a partnership, joint venture, joint enterprise, or any business relationship other than that of County and Operator.
- p. Standards of Consent. Unless a different standard is expressly set forth herein, any time County's consent is required or a determination is to be made by County, County may make such determination of grant or withhold such consent in its sole and absolute discretion.

IN WITNESS WHEREOF, the parties to this Permit have duly executed this Permit on the date set forth above.

County: The County of Santa Clara, a political subdivision of the State of California

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy County Counsel

Operator: By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

**EXHIBIT A
SAN MARTIN AIRPORT
PARCHUTE LANDING AREA**

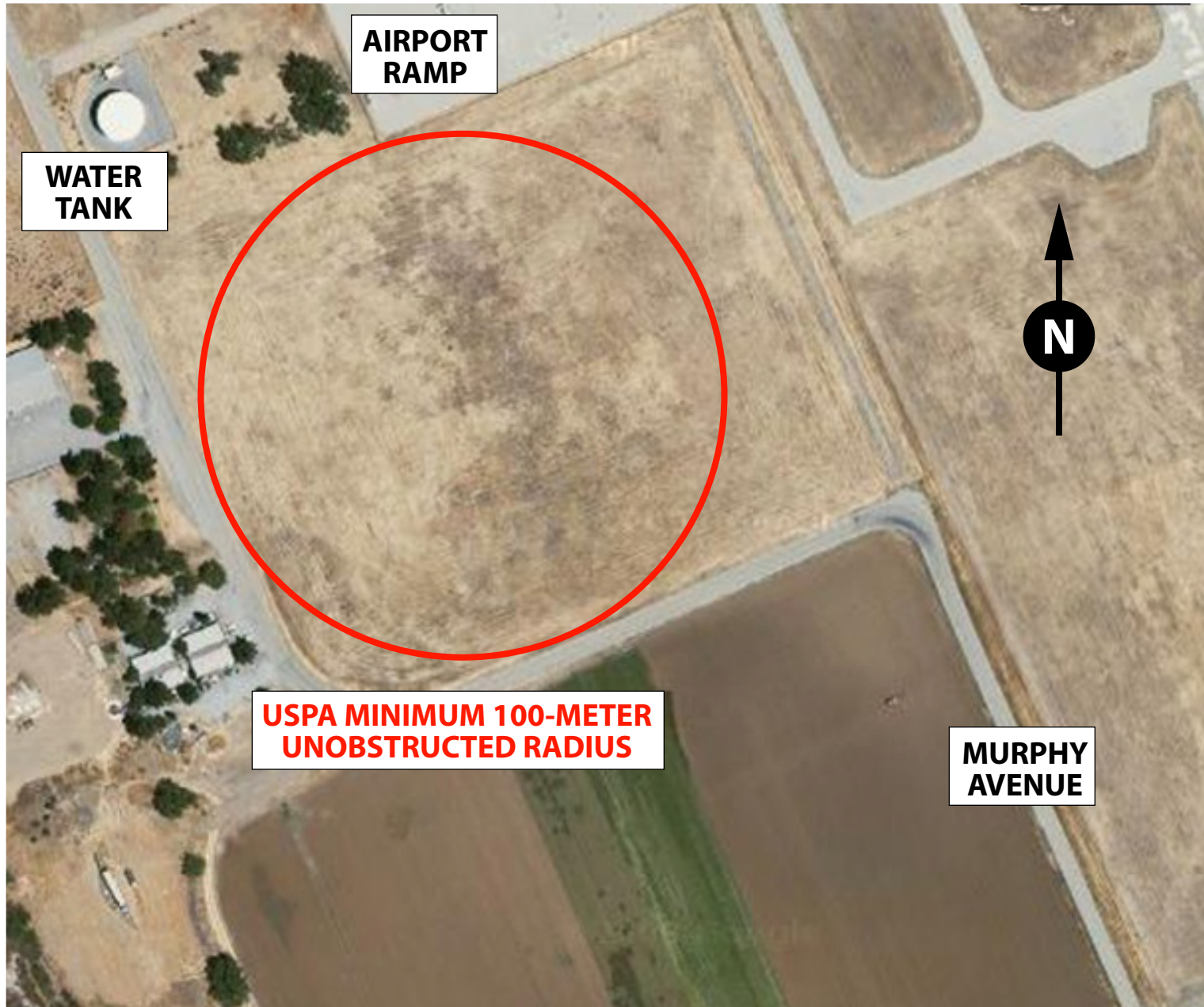


EXHIBIT B



Federal Aviation Administration

Memorandum

Date: December 9, 2009

To: Tony Garcia, Compliance Program Manager, AWP-620.1

From: John R. Howard, Manager, San Jose FSDO

Prepared by: Terje Kristiansen, FLM – GA Unit X 126

Subject: Safety Determination of South County Airport of Santa Clara County, California

On December 3, 2009, personnel from the San Jose FSDO accomplished a safety review of the proposed parachute drop zone at the South County Airport of Santa Clara County. Operations Inspectors Matthew Hill and Paul King conducted the evaluation with Jeff Bodine, representing Garlic City Skydiving and W. Carl Honaker, Director (Santa Clara) County Airports also attending on site. Mr. Raciore Cavole from the San Francisco Airport District Office was invited but was unable to attend.

Based upon the results of the December 3, 2009, safety review it has been determined that the proposed drop zone on the South County Airport of Santa Clara County could be supported from a safety standpoint if the nine (9) conditions stipulated (attached) were agreed to by Mr. Garcia, Mr. Bodine, and Mr. Honaker.

**Original Signed by
John R. Howard**

Attachment: Required conditions that must be agreed to by Mr. Tony Garcia, Mr. Jeff Bodine, and Mr. W. Carl Honaker

The required conditions relating to safety at the South County Airport of Santa Clara County during parachute jump activities are (the specified conditions do not limit the use of the drop zone based upon the runway in use at the time of the parachute operations):

1. All jumps must be conducted in full compliance with 14 CFR Part 105.
2. A NOTAM must be established and published through the appropriate aeronautical entity to advise all airport users of the parachute jump activities.
3. Radio contact between the jump aircraft and NORCAL or Oakland ARTCC must be established and maintained throughout the jump activity.
4. The jump aircraft pilot will communicate with NORCAL or Oakland ARTCC and visually scan the area to ensure aircraft are not entering or maneuvering within the traffic pattern prior to authorizing jumpers to depart the aircraft.
5. Radio transmissions will be conducted by the jump aircraft on the South County Airport of Santa Clara County advisory frequency 122.70 (CTAF/UNICOM) to alert anyone in the area that jump activities are in progress.
6. Jumpers will be briefed to maintain directional control at all times and remain clear of the runway and stay within the designated drop zone area.
7. Airport management will ensure the Airport Facility Directory and San Francisco Sectional charts are updated to indicate (by parachute symbol depiction) that a designated Parachute Drop Zone has been established at the South County Airport of Santa Clara County.
8. Airport management will ensure the advisory information is updated to advise all who utilize South County Airport of Santa Clara County that a Parachute Drop Zone has been established and its location on the airport.
9. Airport management will advise all aircraft operators based at South County Airport of Santa Clara County of the establishment and location of a Parachute Drop Zone at the airport.

Note: In the interest of aviation safety the San Jose FSDO further recommends strongly that Garlic City Skydiving officials notify all flight schools, flying clubs, and FBO's within a 30 NM radius of South County Airport of Santa Clara County at least 14 days prior to the official establishment of the drop zone and the imminent skydiving activities. This advance notice will allow operators to train and brief inexperienced pilots how to behave near drop zones with respect to arrivals, touch and go, and departure procedures.

EXHIBIT C

Exhibit C: Vehicle Identification Aircraft:

Tail Number Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

Tail Number Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

Tail Number Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

Automobiles and other vehicles:

License/ST Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

License/ST Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

License/ST Manufacture Model Color Year

Registered Owners Name Address

City ST Zip Phone Email

EXHIBIT D

Exhibit D: Employee List

Operator shall submit a complete Exhibit D thirty days prior to the start-up of operations at the airport. After start-up, Operator shall continuously update Exhibit D to add any additional employees, agents, contractors, subcontractors, or others. Updates to Exhibit D must be submitted in writing not less than three days prior to any activities related to Operator by the additional employees, agents, contractors, subcontractors, or others.

1. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

2. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

3. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

4. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

5. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

Exhibit D: Employee List

6. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

7. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

8. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

9. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

10. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

Exhibit D: Employee List

11. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

12. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

13. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

14. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email

15. Employee Agent Contractor Subcontractor Representative Other _____

First Name Last Name Title

Phone Email