



**CITY OF ALBUQUERQUE**  
Albuquerque, New Mexico  
Office of the Mayor

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

March 30, 2021

**TO:** Cynthia Borrego, President, City Council

**FROM:** Timothy M. Keller, Mayor *TK*

**SUBJECT:** Ground Lease and Development Agreement between the City of Albuquerque and Theia Group, Inc.

Attached for consideration and action by City Council is a copy of a Ground Lease and Development Agreement (“Agreement”) between the City of Albuquerque and Theia Group, Inc. (“TGI”). Council approval of the Agreement is sought to allow the City to contract with TGI, and to allow TGI to lease and develop 114.52 acres of Aviation Department property.

Holdover action is requested to allow for approval of this Agreement at the April 19, 2021, City Council meeting.

**Approved:**

*SNC*  
\_\_\_\_\_  
Sarita Nair  
Chief Administrative Officer

*4/1/21*  
\_\_\_\_\_  
Date

**Approved as to Legal Form:**

DocuSigned by: *Esteban A. Aguilar, Jr.* 3/31/2021 | 3:13:19 PM MDT  
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\_\_\_\_\_  
Esteban A. Aguilar, Jr.  
City Attorney

DocuSigned by: *Alan...* 3/31/2021 | 10:39 AM MDT  
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**Recommended:**

DocuSigned by: *Nyika Allen* 3/31/2021 | 9:30 AM MDT  
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Nyika A. Allen, C.M.  
Director of Aviation

DocuSigned by: *Richard...* 3/31/2021 | 7:16 AM MDT  
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Date

**Approved:**

DocuSigned by: *Kevin E. Noel* 3/31/2021 | 11:05 AM MDT  
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Kevin E. Noel  
Executive Budget Analyst

## **Cover Analysis**

### **1. What is it?**

A Ground Lease and Development Agreement (“Agreement”) between the City and Theia Group, Inc. (“TGI”) allowing TGI to lease and develop 114.52 acres (4,988,491 SF) of Aviation Department property (“Premises”).

### **2. What will this piece of legislation do?**

Council approval of this legislation will allow the City to enter into the Agreement with TGI. The Initial Term of the Agreement is thirty (30) years, followed by two (2) optional terms of ten (10) years each for a total of fifty (50) years.

The Agreement will allow TGI to lease and develop the Premises. Development of the Premises will consist of construction and operation of buildings and facilities for the design, development, manufacturing, and assembly of space craft and spacecraft related components, administrative functions, and on-site food, daycare, and other goods or services for employees of TGI. TGI may not conduct or permit any public commercial activity on or from the Premises without the City’s prior written consent.

In order to ensure expeditious development of the Premises, TGI must develop approximately 48 acres by 2025, 71 acres by 2027, 95 acres by 2029, and all remaining acres by 2031.

If the City determines that the above milestones are not met, the City can reclaim any undeveloped sections of the Premises, and adjust the amount of rent the City charges TGI going forward.

### **3. Why is this project needed?**

The Agreement will allow the Aviation Department to obtain revenue from existing land which has remained vacant since a runway closure in 2011. Obtaining revenue from the leasing of airport properties to offset airport costs is required by federal grant assurances, deed covenants, and airport revenue bond ordinances. Additionally, the Agreement contemplates construction of a massive privately funded development project which will begin this year, resulting in substantial economic and employment activity.

### **4. How much will it cost and what is the funding source?**

This is a revenue generating agreement. The City will incur incidental costs for periodic appraisals of the Premises.

**5. Is there a revenue source associated with this Plan? If so, what level of income is projected?**

TGI has agreed to the following rent structure:

- a. \$1,000,000 paid upon commencement (anticipated June 1, 2021) as total rent for the first two years of the Lease Term.
- b. \$1,000,000 paid June 1, 2022, as total rent for the third and fourth years of the Lease Term.
- c. Monthly rent beginning in June 2025, and on the first day of each calendar month thereafter, at the rate of twenty-five cents (\$0.25) per square foot per year for the entire leasehold Premises (\$103,927 per month; \$1,247,123 per year). The rent will be escalated at 2% per year for four years, and then will be set by appraisal.
- d. Periodic appraisals will occur in 2030, 2041, 2051 and 2061, at which time the rental rate and escalation rate shall be set for the next period, assuming that the land contains none of the Leasehold Improvements constructed by TGI.

**FISCAL IMPACT ANALYSIS**

TITLE: Ground Lease and Development Agreement between the City of Albuquerque and Theia Group, Ir R: O:  
 FUND: 611  
 DEPT: 700611

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2021	Fiscal Years 2022	2023	Total
Base Salary/Wages				-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property	-	-	-	-
Indirect Costs	-	-	-	-
<b>Total Expenses</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<input checked="" type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH				
<b>Total Revenue</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

These estimates do not include any adjustment for inflation.


\* Range if not easily quantifiable.

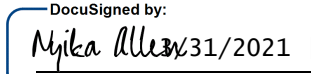
Number of Positions created

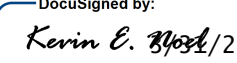
**COMMENTS: This was already budgtd for FY2021 and FY2022**

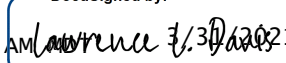
**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

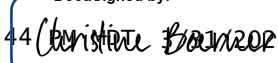
This will create major economic development momentum for the City of Albuquerque

PREPARED BY:  
 DocuSigned by:  
  
 3/31/2021 | 8:11 AM MDT  
 FISCAL ANALYST

APPROVED:  
 DocuSigned by:  
  
 3/31/2021 | 9:09 AM PDT  
 DIRECTOR

REVIEWED BY:  
 DocuSigned by:  
  
 3/31/2021 | 11:05 AM MDT  
 EXECUTIVE BUDGET ANALYST

DocuSigned by:  
  
 3/31/2021 | 1:44 PM MDT  
 BUDGET OFFICER (date)

DocuSigned by:  
  
 3/31/2021 | 2:12 PM MDT  
 CITY ECONOMIST

**Albuquerque International Sunport**  
**Ground Lease and Development Agreement**  
**Theia Group, Incorporated**

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**Albuquerque International Sunport**  
**Ground Lease and Development Agreement**

**Theia Group, Incorporated**

**This Ground Lease and Development Agreement** ("Agreement" or "Lease") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and the **Theia Group, Incorporated**, a corporation organized and existing under the laws of the state of Delaware ("Lessee" or "Tenant").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Lessee agree as follows:

**Section 1. Recitals.**

**1.1** City owns and operates through its Aviation Department the Albuquerque International Sunport ("Airport") as shown in **Exhibit A** attached hereto and incorporated herein, located in the County of Bernalillo, State of New Mexico; and

**1.2** City has approximately One Hundred Fourteen (114) acres of land on the Airport available for commercial development as shown in **Exhibit B** ("Premises") attached hereto and incorporated herein; and

**1.3** Lessee desires to lease the Premises from City for construction and operation of hangars, assembly facilities, office complexes, and other facilities to support the Allowable Uses of the Premises; and

**1.4** City desires to lease the Premises to Lessee to allow for the highest and best use of the property through orderly construction of improvements and facilities to stimulate job growth and economic development at the Airport; and

**1.5** City and Lessee have the right and power to enter into this Agreement.

**Section 2. Definitions.**

**2.1** "**Airport**" means the Albuquerque International Sunport, as shown in **Exhibit A**.

**2.2** "**Allowable Uses**" means the uses of the Premises allowed under this Agreement as follows: construction and operation of buildings and facilities for design, development, manufacturing, and assembly of space craft and spacecraft related components, administrative functions, and on-site food, daycare, and other goods or services for Lessee's employees. Lessee shall not conduct or permit any public



commercial activity of any nature on or from the Premises without City's prior written consent, which consent may be withheld in City's sole discretion. Public commercial activity is activity other than Allowable Uses involving the on-site sale or other provision of goods or services to the general public.

**2.3 "Aviation Department"** means the City of Albuquerque Aviation Department.

**2.4 "Commencement Date"** means the first day of the month following the Effective Date.

**2.5 "Construction Period"** means the period of time, as determined by mutual agreement between City and Lessee, in which construction of Lessee's Leasehold Improvements must be completed.

**2.6 "Development Guidelines"** means the rules and regulations of the Aviation Department governing the development of the Airport through implementation of the Albuquerque International Sunport Airport Layout Plan, Minimum Standards and Requirements for Commercial Aeronautical Activities, the Albuquerque International Sunport Rules and Regulations, design standards, sustainability standards, and other non-technical requirements.

**2.7 "Director"** means the City of Albuquerque Director of Aviation, or authorized representatives of the Director.

**2.8 "Effective Date"** means the date this Agreement is executed by City's Chief Administrative Officer.

**2.9 "Extraordinary Cost"** means any non-recurring expenditure or obligation of City that is allocable to the Premises including: a) any Operation and Maintenance Expense that is not a part of the normal and regular Operation and Maintenance Expenses, as determined by City, and b) any remediation costs or penalties incurred by City as a result of the release of any Contaminant from the Premises, except to the extent caused by an act or omission of City, its contractors, employees, agents, or City's tenants other than Lessee.

**2.10 "Leasehold Improvements"** means all items of improvement, including Lessee's commercial facilities, constructed and affixed to the Premises and all fixtures and equipment affixed thereto in such a manner, as determined by City, that they cannot be readily removed without damage to the remainder of the Leasehold Improvements.

**2.11 "Operation and Maintenance Expenses"** means those current expenses, paid or accrued by City, of operating, maintaining, and repairing the Premises. Such expenses shall include: a) the repair, maintenance, painting, striping, signing,

lighting, landscaping and replacement of the common use roadways and adjacent sidewalks; b) cleaning and removal of snow, ice, dirt, and trash from common use roadways and adjacent sidewalks; c) maintenance, repair and replacement of bumper guards or other traffic control systems; d) operation and maintenance of gates, fences, and measures necessary to restrict access to the Airport Operations Area ("AOA"); and e) the operation, maintenance, repair, and replacement of equipment used in the operation and maintenance of common use roadways and adjacent sidewalks, and of the utilities and facilities serving the same.

**2.12 "Premises"** means the land at the Airport composed of Tracts A-1-B, A-1-C, A-1-D, and A-1-E, as further described in **Exhibit B** attached hereto, and all Leasehold Improvements constructed or installed thereon.

**2.13 "Rules and Regulations"** means executive instructions, administrative instructions, Airport security requirements, access control procedures, minimum standards, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof.

**2.14 "Term"** means the Initial Term (as defined in Section 5) plus all Renewal Periods for which Lessee properly exercises its options.

**2.15 "Unavoidable Delays"** means delays caused by Force Majeure Events (see Exhibit G, General Conditions).

**Section 3. Premises.** City, for and in consideration of the rents and fees reserved in this Agreement and each of the covenants, conditions, and agreements set forth in this Agreement to be kept and performed by Lessee, hereby leases to Lessee for its exclusive use, and Lessee hires and takes from City upon the conditions, covenants, and agreements set forth in this Agreement, all of which Lessee accepts, the Premises, consisting of One Hundred Fourteen and 52/100ths (114.52) Acres or Four Million Nine Hundred Eighty-Eight Thousand Four Hundred Ninety-One Square Feet (4,988,491 SF), as shown in **Exhibit B**.

**3.1 Acceptance of Premises.** Lessee has inspected the Premises and accepts the Premises in its present condition and agrees to make any changes on the Premises necessary to conform to this Agreement. Lessee further agrees to make any changes required by federal, state, and local law applicable to Lessee's use of the Premises and to obtain necessary permits for its use. If applicable law requires the approval of a subdivision plat for the Premises, and no exemption is available to Lessee or City, such subdivision approval shall be obtained by Lessee at its own expense, provided that prior to Lessee submitting such plat for approval, Lessee shall first obtain City's review and approval thereof. City will coordinate and cooperate with Lessee in the platting process to accommodate Lessee's plans for the Premises, including without limitation creating

and configuring individual parcels and easements within the Land in accordance with Lessee's plans. City will not apply for or accept any new easements or other restrictions or conditions on the Premises in the platting process without the prior written consent of Lessee. In addition, Lessee may, from time to time, create and configure individual parcels and easements, vacate easements, and take other similar action with respect to the Premises to accommodate Lessee's uses as permitted under this Agreement, including replatting the Premises (only if required by applicable law and if no exemption is available to Lessee or City). City shall join in and otherwise cooperate with all such actions as reasonably requested by Lessee, at no cost to City.

**3.2 Lessee's Investigations.** Lessee hereby acknowledges that it has conducted all necessary due diligence and has independently determined that the Premises is suitable for the construction of its Leasehold Improvements and all uses permitted under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Lessee acknowledges that it has fully inspected the Premises in its present condition, and it is understood and agreed that the Premises is being accepted as is.

### **3.3 No Representation or Warranty by City.**

**3.3.1** Lessee acknowledges that City has made only those representations specifically set forth in this Agreement and has made no other representations or warranties concerning the suitability of the Premises for Lessee's Allowable Uses or for any other use, and that except as expressly provided in this Agreement, City shall have no obligation to repair, maintain, renovate, or otherwise incur any cost or expense with respect to the Premises or any Leasehold Improvements, utility lines or utility components, furnishings, fixtures, trade fixtures, or equipment constructed, installed, or used on, in, or otherwise benefitting the Premises.

**3.3.2** Lessee hereby confirms that it has made its own investigation of the costs of doing business under this Agreement, including the costs of constructing improvements to the Premises and the costs of furnishings, fixtures, trade fixtures, signs, inventory, and equipment needed to operate from the Premises, and that it is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement.

**3.3.3** All statements contained in this Agreement or otherwise made by City or anyone on its behalf concerning any measurement relating to the Premises or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by Lessee under or in connection with this Agreement.

**3.3.4** City shall not be liable to Lessee for any loss of business or damages sustained by Lessee as a result of any change in the operation or configuration of, or any

change in any laws, regulations, or procedures governing the use of the Airport by any governmental agency.

#### **Section 4. Use of Premises.**

**4.1 Limited Use.** Lessee is hereby granted the right to develop and use the Premises for the Allowable Uses as defined herein. Lessee agrees that it may not use the Premises for any other purpose without the City's prior written consent. Lessee further agrees to abide by the City of Albuquerque Aviation Department Airport Rules and Regulations, all applicable City ordinances, and all statutes, rules and regulations established by any federal, state or local government agency in connection with Lessee's occupancy and use of the Premises. City acknowledges and agrees that Lessee shall have the right to terminate this Agreement in the event the City of Albuquerque Zoning Department does not grant Lessee the right to use the Premises for the Allowable Uses.

**4.2 Orderly Development of Premises.** As consideration for this Agreement, Lessee agrees to expeditiously and orderly develop the Premises with Leasehold Improvements as described in Section 4.3 below, within ten (10) years of the Commencement Date. Within six (6) months following the Commencement Date, Lessee shall prepare and provide to City preliminary construction plans and specifications for the Premises (excepting approximately 19 acres identified on Exhibit B-1 as the "Future Expansion Area", reserved for construction of office complexes or other improvements approved by the City), and shall detail phases of construction for the entire Premises including but not limited to, specific sections of the Premises to be developed in stages, order of development of each specific section, estimated time frames for construction in each stage, and milestones associated with each stage. Orderly development means that Leasehold Improvements shall begin at the south end of the Premises and proceed to the north end of the Premises in such a manner to preclude intermediate sections of undeveloped property.

**4.3 Failure to Develop Premises.** Expeditious development of the Premises will require Lessee to develop 50% of the Premises within the first four years of the Agreement, 75% of the Premises within the first six years of the Agreement, and 100% of the Premises within the first eight years of the agreement with all such measurements, percentages, and requirements excluding the Future Expansion Area. In addition to City's termination rights provided in subsection 13.2 herein, if City determines that the above milestones are not met, City shall be entitled to reclaim any undeveloped sections of the Premises, including the Future Expansion Area. No later than eight years from the Commencement Date, Lessee shall prepare and provide to City preliminary construction plans and specifications with details as required in section 4.2 above for the Future Expansion Area. If the Future Expansion Area is not developed within the first 10 years of the Agreement, the City shall be entitled to reclaim the Future Expansion area. In the event the City reclaims any undeveloped sections of the Premises pursuant to this provision, the City shall accordingly reduce the amount of rent that City charges Lessee

going forward, based on the then current rental rate, and City shall notify Lessee of the updated rent amount in writing.

**4.4 Termination of Use.** Pursuant to the terms and conditions of this Agreement, in the event that the Premises are not used for the Allowable Uses, for a period of one hundred eighty (180) days following issuance of a certificate of occupancy, City may terminate this Agreement following notice pursuant to Section 13.2 and compel Lessee to vacate the Premises and to remove all Lessee improvements, equipment and personal property. Reconstruction of Leasehold Improvements are considered Allowable Uses for purpose of this section.

**4.5 Local Hiring and Purchasing.** Lessee agrees to use reasonable efforts to hire qualified applicants residing in the City where such applicants possess qualifications for such positions equal to or greater than the qualifications of other applicants who might exist at the time of hiring. Lessee further agrees to use reasonable efforts to expend costs of labor, services, materials and supplies in connection with the Premises with vendors based within Bernalillo County, New Mexico. Lessee agrees to require that its construction General Contractor track local hiring and purchasing, and use all reasonable efforts to achieve goals, if possible, of no less than fifty-one percent (51%) local subcontractors for any work in connection with construction of the Leasehold Improvements, and no less than fifty-one percent (51%) of construction labor expenses to go to local subcontractors.

**Section 5. Term.** The initial term of this Agreement ("Initial Term") shall be for a period of thirty (30) years beginning on the Commencement Date and ending the day before the thirtieth (30<sup>th</sup>) anniversary of such date, unless earlier terminated pursuant to this Agreement.

**5.1 Option to Renew.** Following the expiration of the Initial Term, Lessee shall have the option to renew this Agreement for two (2) additional ten (10) year periods ("Renewal Periods"). Lessee must notify City in writing of its intent to exercise its option to renew at least twelve (12) months prior to the end of the Initial Term, or at least twelve (12) months prior to the end of the first Renewal Period, as applicable. Such renewals shall be granted provided that Lessee is, at both the time of the exercise of the option to renew and at the start of the applicable Renewal Term, (i) current in its rent payments to City as required by Section 6.1, and (ii) not in material breach of any other payment, condition, covenant, or agreement set forth in this Agreement and beyond any applicable cure period.

**5.2 Holding Over.** Holding over by Lessee following the expiration of this Agreement, whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy and shall be on the same terms and conditions in effect on the expiration date of this Agreement; provided, however, that the monthly rent during such tenancy shall

be equal to one hundred fifteen percent (115%) of the monthly rent paid by Lessee during the last month of the expired term.

## **Section 6. Rents and Fees.**

**6.1 Rent.** As consideration for the rights granted to Lessee for use of the Premises pursuant to this Agreement, Lessee agrees to pay City as follows:

**6.1.1** No later than the Commencement Date, the sum of One Million Dollars (\$1,000,000) as total rent for the first two years of the Lease Term.

**6.1.2** No later than first anniversary of the Commencement Date, the sum of One Million Dollars (\$1,000,000) as total rent for the third and fourth years of the Lease Term.

**6.1.3** Beginning on the fourth anniversary of the Commencement Date, and on the first day of each calendar month thereafter, Lessee shall pay monthly rent in advance and without invoice at the rate of twenty-five cents (\$0.25) per square foot per year for the entire leasehold Premises, comprising approximately 114 acres of land, subject to reduction pursuant to paragraph 4.3.

The rent shall be absolutely net meaning that Lessee is responsible for the payment of any real estate/property taxes and development fees, insurance, all land and building/property maintenance, and all utilities.

**6.1.4 Annual Rent Adjustment.** Beginning on the fifth anniversary of the Commencement Date, and at each successive one (1) year period thereafter through the eighth year of the Initial Term, the Rent payable to City will be increased by Two Percent (2%).

**6.1.5 Periodic Rent Adjustment.** At the ninth (9<sup>th</sup>) and twentieth (20<sup>th</sup>) anniversaries of the Commencement Date, and at the beginning of the first and second Renewal Periods, if applicable ("Adjustment Dates"), the fair market rental rate and escalation method for the entire leasehold will be determined at the outset of each period, as applicable, based on an appraisal of fair market rental value of the leasehold, assuming the land is vacant with utility access to the perimeter of the Premises, but contains none of the Leasehold Improvements constructed by Lessee. A Periodic Rent Adjustment shall not be less than the fair market rental value set at the Commencement Date or by a previous Periodic Rent Adjustment.

**6.1.6. Appraisal Process.** At least nine (9) months prior to an Adjustment Date, City and Lessee shall determine the fair market value of the Premises land to be used to determine the fair market rental rate by the procedures described below.

Step 1: City Appraisal. City shall select a MAI appraiser. City shall pay the fees and expenses of the appraiser it selects, to prepare an appraisal report in accordance with this section (the "City Appraisal"). If Lessee accepts the appraisal results and provides written notice of acceptance to City within thirty (30) calendar days of City providing the City Appraisal to the Lessee, the rent shall be adjusted accordingly.

Step 2: Lessee Appraisal. If the Lessee rejects City's appraisal in Step 1 above or otherwise fails to notify City of acceptance of appraisal results set forth in Step 1 above, Lessee shall promptly select a MAI appraiser to prepare a second appraisal ("Challenge Appraisal"). Lessee shall pay the fees and expenses of the appraiser it selects. A copy of the completed Challenge Appraisal shall be made available to the Director no later than sixty (60) calendar days following delivery of the City Appraisal to the Lessee, and the Director shall immediately fix the time and place for a conference ("Appraiser Conference") between City and the Lessee and the two appraisers that were selected. At the Appraiser Conference, City and Lessee shall attempt to reach an agreement on the rent. If City and Lessee reach an agreement, the rent shall be adjusted accordingly. If Lessee fails to provide the completed Challenge Appraisal within the period established in this Step 2, then the rent shall be adjusted in accordance with the City Appraisal.

Step 3: Third Appraiser. If Lessee and City fail to reach an agreement in Step 2, the two appraisers shall select another MAI Appraiser ("Third Appraiser") within ten (10) days following the Appraiser Conference. If the parties' respective appraisers do not reach an agreement on the selection of a Third Appraiser, the Director, after consultation with Lessee, shall appoint the Third appraiser. The City and Lessee shall each pay 50% of the fees and expenses of the Third Appraiser. The Third Appraiser will be allowed access to the City Appraisal and Challenge Appraisal reports, will prepare a third appraisal, and shall simultaneously submit a copy of the third appraisal to the City and Lessee. If the third appraisal is no greater than the higher and no less than the lower of the two values established by the City Appraisal and the Challenge Appraisal, the third appraisal shall be used to establish the rent commencing on the applicable Adjustment Date. If the third appraisal falls outside the range established by the City and Challenge appraisals, the Rent commencing on the applicable Adjustment Date shall be established by the appraisal of whichever party is closest to the Third Appraisal.

**6.1.7. Retroactive Application.** In the event the periodic adjustment of the rent is not completed prior to the Adjustment Date, Lessee shall continue to pay the rent as set by the annual rent adjustment as described above, and if rent is thereafter fixed in a different amount, such new rent shall take effect retroactively back to the pertinent Adjustment Date. Lessee shall promptly pay to City that sum, if any, which has accrued as a result of such retroactive application. If a rental reduction occurs, City shall provide a rent credit to Lessee's account equal to the sum which has accrued as a result of a retroactive application.

**6.2 Airport Identification ("ID")/Access Media Fees.** Lessee shall pay

to City, all fees assessed for the issuance of an Airport ID/Access card/keys. Lessee shall also pay, as required, replacement fees for Airport ID/Access cards/keys lost, stolen, or unreturned to City.

**6.3 Extraordinary Cost Fee.** Lessee agrees to pay to City, an Extraordinary Cost fee if Lessee fails to perform any of its obligations pursuant to this Agreement, for a period of thirty (30) days following written notice of non-performance from City, and City performs such obligation of Lessee. City's shall have the right but not the obligation hereunder to perform such unperformed Lessee obligations. Extraordinary Costs include all costs of City that are allocable to the Premises including, but not limited to: a) any operation and maintenance expense that is not a part of the normal and regular Operation and Maintenance Expenses, as determined by City, and b) any remediation costs, attorney fees, or penalties incurred by City as a result of the release of any contaminant by Lessee or its invitees or contractors. Lessee further agrees that if its failure to perform any of its obligations pursuant to this Agreement endangers public safety or operations at the Airport, including the Premises, and City so states in its notice of non-performance to Lessee, City may perform such obligation of Lessee at any time following such notice, without waiting for the expiration of the above-referenced thirty (30) day period, and may charge Lessee for all costs of such performance as an Extraordinary Cost. Extraordinary Costs do not include rents and fees identified in subsections 6.1, 6.3, and 6.5.

City shall invoice Lessee for its Extraordinary Cost Fees on or about the tenth (10th) day of the month immediately following the month in which such fees were incurred. Lessee shall pay such fees within thirty (30) days of the date of the invoice, unless otherwise specifically provided for in this Agreement. The Extraordinary Cost fee shall include City's costs related to City's performance of Lessee's obligations, plus ten percent (10%) of such cost for administrative overhead.

**6.4 Miscellaneous Fees.** Within thirty (30) days following receipt of invoice from City, Lessee shall pay to City additional fees in the event of any of the following:

**6.4.1** If City has paid any sum or sums, or has incurred any obligation or expense, for which Lessee has agreed to pay or reimburse City.

**6.4.2** If City is required or elects to pay any sum or sums, or incurs any obligation or expense, because of the failure, neglect, or refusal of Lessee to perform or fulfill any of the terms, conditions, or covenants required of it hereunder.

**6.4.3** If City provides any services to Lessee other than those expressly provided for in this Agreement following Lessee's written request for such services and agreement as to the cost of the services.

**6.5 Rents and Fees Prorated.** If the expiration of the Term, or earlier



termination of this Agreement occurs on a date other than the first or last day of a calendar month, rents and fees shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

**6.6 Place of Payment.** Lessee shall deliver payments of rents and fees to the office of the Director or at such other place as may be designated by City from time to time. Payment shall be made payable to the order of the "City of Albuquerque."

**6.7 Late Payment Fees.** If rents and fees required by this Agreement are not received by City on or before the date specified in this Agreement, Lessee shall pay an interest charge to City of one and one-half percent (1½%) per month (eighteen (18%) annually) for each month or partial month that any payment due is not paid. In addition, Lessee shall pay an administrative fee to City of Fifty and 00/100 Dollars (\$50.00) for each monthly late payment notice sent to Lessee by City.

**Section 7. Provisions Incorporated by Exhibits.** All of the exhibits attached hereto are incorporated and made part of this Agreement as though set forth fully herein. Throughout the term of this Agreement, Lessee (identified also as "Tenant" in exhibits) shall comply with the provisions of the exhibits as follows:

**7.1 Exhibit C: Security Deposit Provisions.** A security deposit shall not be required for the first four years of the Term. Prior to the fourth anniversary of the Commencement Date, Lessee shall deposit at the office of Director cash or cash equivalent, or an Irrevocable Letter of Credit ("LOC") Performance Bond ("Bond") issued exclusively to the City conforming to the requirements of Exhibit C in the amount of \$225,000. The City may increase the amount of the security deposit periodically to approximate an amount equal to rent for two (2) months.

**7.2 Exhibit D: Insurance and Indemnity Provisions.** Insurance with limits required by this Agreement are as follows, and shall conform to the requirements provided in Exhibit D.

**7.2.1 Aircraft Liability Insurance.** Before engaging in any activities covered by aircraft liability insurance, Lessee shall have liability limits in amounts not less than **Five Million and No/100 Dollars (\$5,000,000.00)**.

**7.2.2 Commercial General Liability Insurance.** Lessee and Lessee's contractors and sublessees shall have liability limits in amounts not less than **Two Million and No/100 Dollars (\$2,000,000.00)**.

**7.2.3 Commercial Automobile Liability Insurance.** Lessee and Lessee's contractors and sublessees shall have automobile liability limits in amounts not less than **One Million and No/100 Dollars (\$1,000,000.00)**. If Lessee is required

to have airfield ground vehicle access, Lessee shall provide **Five Million and No/100 Dollars (\$5,000,000.00)** in coverage.

**7.2.4 All Risk Property Coverage.** Lessee shall be solely responsible for obtaining insurance policies that provide all risk property coverage in an amount not less than one hundred percent (100%) of the full replacement value of Leasehold Improvements and all personal property situated on the Premises. The replacement value of Leasehold Improvements and property shall be re-established at intervals of not more than three (3) years, following the end of the Construction Period, by an independent qualified appraiser employed by Lessee and approved by City.

The insurance policies required shall also provide coverage for the construction of temporary facilities should the Premises be damaged or destroyed to such an extent that it shall be untenable.

**7.2.5 Builders Risk Insurance.** During any period of construction or reconstruction by Lessee, Lessee shall carry, or shall require its contractor to carry, a policy of Builders Risk Insurance in an amount not less than one hundred percent (100%) of the full insurable value of the construction or reconstruction of Lessee's Leasehold Improvements.

**7.2.6 Workers' Compensation and Employers Liability Insurance** as required by New Mexico Law.

**7.3 Exhibit E: Environmental Provisions.**

**7.4 Exhibit F: Airport Security Provisions.**

**7.5 Exhibit G: General Conditions.**

## **Section 8. Operational Requirements.**

**8.1 Utilities.** All utility services to the Premises shall be separately metered and Lessee shall be responsible for initiating all such services, including payment of any required deposits, and shall cause bills to be sent directly from utility providers to Lessee. Lessee shall promptly pay for all such services when due. During the Term, City shall not be liable to Lessee for any interruption in or curtailment of any utility service. City shall not be liable for damages of any kind for any such interruption, nor shall such interruption in any way be construed as cause for rents and fees to abate or operate to release Lessee from any of its obligations hereunder, except that, if the interruption is caused solely by the act or omission of City and the interruption continues for more than seventy-two (72) hours, rents and fees will be abated for the duration of the interruption. Under no circumstances shall City be responsible for consequential damages claimed by Lessee arising out of or relating to the outage, including but not limited to interruption of business

operations, spoiled goods, and lost profit. All easements necessary for utility purposes shall be subject to the City's granting and approval.

**8.2 Refuse Disposal and Storage.** Lessee shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate, sanitary handling and disposal away from the Airport of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with, Lessee's use of the Premises. Such arrangements shall include, but not be limited to, the procurement, placement, and use of suitable receptacles consistent with other first-class facilities of the same type in Albuquerque, New Mexico.

Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Lessee shall keep all garbage and recyclable materials in receptacles compliant with the generally applicable requirements of the City Zoning and Environmental Health Departments. Lessee shall not allow boxes, cartons, barrels, or other similar items to remain within view of public areas.

Lessee shall not store or permit to be stored any materials, parts, or vehicles in, on or about the Premises that are not incidental to Lessee's operations at the Premises. Director shall have discretion to limit, modify, relocate, or require removal of any materials, parts or vehicles stored on the Premises that Director reasonably determines are not incidental to those operations. Director may inspect the Premises from time to time for storage of such items throughout the Term. Director shall provide Lessee with written notification in the event Lessee is storing such unapproved trash, garbage, materials, or items in, on or about the Premises. Lessee shall have two (2) business days to remove from the Premises any such unapproved items that are identified in Director's written notification.

**8.3 Maintenance of Premises.** Lessee shall, at its sole cost and expense, maintain the Premises in a first-class manner pursuant to the provisions of this Agreement and in accordance with all applicable laws and regulations, whether now or hereafter enacted. Lessee shall:

**8.3.1** At all times maintain the Premises in a clean, safe, and orderly condition and appearance including all Leasehold Improvements, landscaping, and personal property of Lessee;

**8.3.2** Be solely responsible for the provision of any janitorial service, cleaning service, or necessary pest control service at the Premises;

**8.3.3** Maintain the Premises and all approved Leasehold Improvements thereon, including but not limited to all preventative maintenance and painting, all structural repairs, replacements, and rebuilding, necessary to keep the Premises in the condition existing at the time the Leasehold Improvements were completed, excepting reasonable wear and tear not adversely affecting the structural integrity, or the efficient

and proper utilization, or appearance of the Premises;

**8.3.4** Be responsible for all snow and ice removal, and all preventative maintenance, repairs, and repainting of parking lots, driveways, walkways, and travel lanes within the Premises or that are part of the Leasehold Improvements;

**8.3.5** Allow City or its authorized agents at any time, upon not less than one (1) business day's prior written notice, to enter upon the Premises during normal business hours to determine if the maintenance required pursuant to this Section is being performed to the satisfaction of City. City and its agents will not generally have access during these inspections to any sensitive compartmented information facilities ("SCIFs"), which are any specially-enclosed areas within the Premises intended to store or process sensitive and confidential information or technology. Access to SCIFs shall only be provided to the City on a need to know basis, shall only occur upon execution by the City of a non-disclosure agreement (which agreement shall specify the basis for exemption from disclosure by the City under the New Mexico Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978 ("IPRA")) and shall be in compliance with any applicable government security clearance rules. If City determines that the maintenance is not satisfactory in accordance with the requirements of this Agreement, City shall notify Lessee in writing. If Lessee does not perform the required maintenance within thirty (30) days after receipt of such written notice, City, or its agents, shall have the right to enter upon the Premises and perform the maintenance. The cost for the performance of any such maintenance by City, plus ten percent (10%) for administrative fees, shall be borne by Lessee. Any maintenance required in an emergency to avoid imminent harm to the Premises, its contents, or any person shall be performed immediately by Lessee, or City may (but shall not be obligated to) perform such maintenance at Lessee's expense and without need of written notice.

**8.4 Deliveries.** In the event Director verbally notifies Lessee, Lessee's on-site facility manager, or a qualified supervisor of an emergency situation at the Airport requiring the curtailment of deliveries to the Premises, Lessee shall immediately curtail deliveries to the Premises until such time that the emergency situation has been resolved and City provides follow-up notice thereof.

**8.5 Signs.** Any advertising sign, pylon, identification sign, symbol, poster, or other similar device, regardless of content, shall comply with City laws and FAA regulations and shall not be erected, maintained, or displayed on the Premises or elsewhere at the Airport, without the prior written consent of Director. Lessee shall submit detailed drawings of all proposed signs at the Premises, which include height, location, dimensions, materials, and colors to Director for approval. Director shall approve or disapprove within ten (10) business days after submission.

## **8.6 Hazardous Use.**

**8.6.1 Lessee's Activities.** Lessee agrees to use reasonable efforts to ensure that there shall be no operations performed on the Premises, and no improvements, changes, alterations, additions, maintenance, or repairs shall be made to the Premises, which might be unreasonably hazardous to any person or property. Further, Lessee shall not do or permit to be done any act or thing upon the Premises which, in the opinion of City, may constitute or have the likelihood of resulting in a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement; provided, however, that nothing herein shall preclude Lessee from bringing, keeping, or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in the performance of its business, or the normal operations contemplated herein.

**8.6.2 Notice to Director and Corrective Action.** In the event Lessee discovers or creates a hazardous or potentially hazardous condition on the Premises or on the Airport, Lessee shall give immediate verbal notice to Director and, if required and/or appropriate pursuant to applicable law and regulations, to the New Mexico Environment Department.

**8.7 Noise, Odors, and Annoyance.** Lessee shall use reasonable efforts to conduct its operations in an orderly and proper manner and not commit any nuisance on the Premises or unreasonably annoy, disturb or be offensive to other users of the Airport and Air Force Base, and shall take all reasonable measures, using the most practicable devices and means, to eliminate any unusual, noxious, or objectionable noise, gases, vapors, odors, or vibrations, and to maintain the lowest reasonable sound level in its operations.

**8.8 Director's Right to Object.** Director shall have the right to raise objections to conditions of the Premises or Lessee's and sublessees' or either of their contractors', employees', agents', or invitees' practices and conduct in material violation of this Agreement, including, but not limited to objections to all matters identified in this Section, and Lessee shall cause any such violations to be remedied promptly at no expense to the City.

**Section 9. Construction of Leasehold Improvements.** Lessee, at its sole risk and expense, shall completely construct its Leasehold Improvements in strict compliance with the Aviation Department Development Guidelines and this Section, and shall obtain necessary permits, licenses, and approvals from City's building officials or other governmental agencies as required for such construction.

**9.1 Approval by Director.** Lessee shall submit to Director, complete plans and specifications for all Leasehold Improvements that Lessee intends to make to the Premises and shall obtain written approval for same from Director prior to beginning construction and installation, which written approval shall not be unreasonably withheld. Director's review and approval shall involve confirmation of architectural and aesthetic

components of the proposed plan, as well as confirmation that the planned Leasehold Improvements comply with all applicable laws, statutes, regulations, and City ordinances, and Director shall be entitled to reject designs submitted and require Lessee to re-submit designs until approval by Director is given. Director shall have the right to require Lessee submit additional information and documentation in support of the proposed plans and specifications. First-class standards of design and construction are required, and all Leasehold Improvements shall conform to the Aviation Department Development Guidelines, and all applicable laws and shall be constructed in conformance with sound and accepted industry standards and practices. City agrees to act promptly upon requests for approval of plans and specifications and modifications thereto.

Any review or approval by Director of Lessee's plans, or any inspection by City of the Leasehold Improvements work or materials, shall not be deemed to constitute a waiver or release by City of any obligation or responsibility of Lessee under this Agreement, or an assumption of any risk or liability by City with respect thereto; and Lessee shall make no claim against City on account of such review, approval, or inspection. City reviews, approvals, and inspections shall not constitute assumption by City of any responsibility for the adequacy of the design or construction. Such responsibility shall remain totally with Lessee and Lessee's architects, engineers, and contractors. Lessee shall only engage the services of a contractor properly licensed by the State of New Mexico to construct all Leasehold Improvements authorized under this Agreement, or otherwise in compliance with New Mexico law.

**9.2 Construction Plans and Specifications.** No Leasehold Improvements of any kind shall be erected, placed, assembled, constructed, or permitted on the Premises until preliminary and final plans showing the type of use, location, size, and design are prepared by an architect and/or engineer licensed to practice in the State of New Mexico and the plans have received approvals as necessary from City, state, and federal agencies, including the review and approval of Director as required under paragraph 9.1. Prior to the preparation of preliminary plans, Lessee shall contact Director to schedule a pre-project meeting to brief City staff on the proposed Leasehold Improvements.

**9.2.1 Preliminary Construction Plans.** Within one hundred eighty (180) days following the Commencement Date of this Agreement, Lessee must deliver to Director for approval, four (4) sets of preliminary construction plans and specifications for construction of the initial Leasehold Improvements, prepared and stamped by an architect or engineer licensed to practice in the State of New Mexico.

Such preliminary plans shall show the full extent of the Leasehold Improvements to be constructed, including but not limited to, grading, drainage, landscaping, paving, signs, structural details, and utility locations, showing the relationship of the proposed Leasehold Improvements to all adjacent Airport parcels, public roadways, or service roadways. Civil engineering plans shall include drawings submitted on a scale not smaller than one (1)

inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no event shall the scale be smaller than one sixteenth (1/16) inch equal to one (1) foot. Plans shall include complete specifications in sufficient detail for Director to determine compatibility with the Aviation Department Development Guidelines, and the overall objectives for the aesthetic character and quality of the Leasehold Improvements. Architectural submittals shall include an accurate architectural perspective color rendering, including the proposed exterior color, scheme, style, materials, and wording and placement of all signs.

Within thirty (30) days following receipt thereof, Director shall review such preliminary plans, and transmit to Lessee written approval or rejection thereof, in whole or in part. In the event of rejection, within fifteen (15) days following receipt of the rejection notice, Lessee shall amend such plans to comply with the items set forth in the rejection notice and re-submit them to Director for approval. Director shall notify Lessee within ten (10) days thereafter of his decision regarding the revised plans.

Lessee agrees that City may use all plans and specifications submitted by or on behalf of Lessee, for purposes relevant to and consistent with this Agreement, but for no other purposes, whatsoever.

**9.2.2 Final Construction Plans and Construction Schedule.** Within sixty (60) days following Lessee's receipt of Director's approval of the preliminary plans, Lessee must deliver to Director for approval four (4) sets of final construction plans and specifications for construction of the Leasehold Improvements, together with a schedule for construction. Such schedule for construction shall indicate a date on which the construction of Lessee's Leasehold Improvements must commence, which date shall be no later than sixty (60) days following Director's approval of the final construction plans. The Director will approve or reject (specifying reason for rejection in writing) the final construction plans and schedule within fifteen days of delivery of the plans and schedule.

In the event Lessee fails to submit its final plans and specifications and its schedule for construction within the required sixty (60) day period following approval of Lessee's preliminary plans, City shall be entitled to terminate this Agreement by sending Lessee a written "Notice of Termination." Termination of this Agreement shall take effect thirty (30) days following Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination. If, however, Lessee has submitted its final plans and specifications and its schedule of construction to Director prior to the end of the thirty (30) day period, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

Lessee's final construction plans and specifications shall substantially conform to the preliminary plans previously approved by Director and shall be submitted to Director prior to submitting the plans to other applicable agencies. Director's approval of the final plans shall not infer approval by other City or controlling agencies. Following approval of the

final plans by Director, Lessee has full responsibility for obtaining all other required approvals and permits for the Leasehold Improvements.

**9.2.3 Modification of Final Plans.** Any material deviation from the approved final plans and specifications arising out of the requirements of and following the review by the City of Albuquerque Code Enforcement Division, the New Mexico Environment Department, the City of Albuquerque Planning Department, Albuquerque Fire Department, or other governmental agencies having jurisdiction which change the purpose, configuration, or scale of the project, shall be submitted by Lessee to Director for approval prior to construction.

**9.2.4 Failure to Diligently Pursue Construction Schedule.** In the event Lessee fails to commence and diligently pursue completion of construction of its Leasehold Improvements pursuant to its approved schedule for construction, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect thirty (30) days following Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination. If, however, Lessee diligently pursues completion of construction prior to the end of the thirty (30) day period, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

**9.3 Permits, Licenses, and Approvals.** Lessee shall, at its sole expense, obtain all necessary permits, licenses, and approvals required for construction of the Leasehold Improvements on the Premises from City, state, and federal agencies. These shall include, but not be limited to:

**9.3.1** Permits, licenses, and approvals of: a) the City of Albuquerque Planning Department, Albuquerque Fire Department, and the City of Albuquerque Building Safety Division, and b) the National Board of Fire Underwriters or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions; and

**9.3.2** Permits, licenses, and approvals for compliance with the necessary storm water management, sediment, and erosion control requirements pursuant to the regulations of the New Mexico Environment Department; and

**9.3.3** Submittal of a Notice of Intent ("NOI") to the Environmental Protection Agency ("EPA") prior to the start of site development and construction and shall provide, implement, and be responsible for, a Storm Water Pollution Prevention Plan ("SWPPP") during all phases of the work. Lessee shall provide a copy of the NOI to City prior to the start of any work at the site. Upon completion of the construction, Lessee will be responsible for submitting a Notice of Termination ("NOT") to the EPA, and will provide a copy of the NOT to City; and



**9.3.4** City's approval of Lessee's "Spill Prevention Controls and Countermeasures Plan," if applicable.

**9.4 Notice to Proceed, Insurance, Construction Bonds, Escrow Deposits, Licenses, and Permits.** Director's approval of Lessee's final plans and specifications and schedule for construction shall constitute Lessee's notice to proceed with construction of Leasehold Improvements, provided that all the following requirements have been satisfied:

**9.4.1** Lessee has delivered to Director for approval, and Director has approved, certificates of insurance for coverage evidencing Lessee's construction contractor's a) "all risk" type builders' risk insurance coverage and workers' compensation insurance coverage, and b) compliance with the applicable insurance exhibit provisions. Lessee shall ensure that its construction General Contractor(s) obtain(s) and maintain(s) General Liability, Auto, and any required Workers' Compensation Insurance, and Lessee shall contractually require that its General Contractor(s) ensures that all construction subcontractors also obtain and maintain such insurances, consistent with Exhibit D. All General Liability and Auto insurances shall name the City as an additional insured; and

**9.4.2** Lessee's construction contractor shall ensure that all subcontractors with contracts whose value is greater than \$50,000 have duly executed a Labor and Materials Payment Bond and Performance Bond with a surety authorized to do so in the State of New Mexico, in an amount sufficient to cover the value of their subcontract agreement. Lessee shall provide City with a true copy of such executed bonds. The Bonds shall name the City as an obligee thereunder. Lessee shall be solely responsible for payment and pay promptly, as due, all persons supplying labor and materials to such contractor for all elements of such construction of Leasehold Improvement on the Premises. Lessee shall keep the Premises free and clear of all mechanics liens resulting from any construction thereto by or on behalf of Lessee and shall permit no lien or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Lessee may contest the correctness or validity of any such lien, but Lessee shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien, or attorneys' fees; and

**9.4.3** Lessee shall maintain an ongoing escrow account during construction phases with sufficient deposits to provide security for six months of upcoming construction expenses for materials, labor, and equipment. Upon request of the Director, City shall have the opportunity to review and verify that the escrow account contains sufficient deposits. Lessee considers such escrow information to be proprietary and confidential, and City shall access and use such information in a limited manner only for the purposes provided in this paragraph and shall not retain copies of any of Lessee's escrow information following its review. The escrowed funds shall not be used for other purposes without consent of the City.

**9.4.4** Lessee's construction contractor has duly executed a Labor and Materials Payment Bond and a Performance Bond with a surety authorized to do so in the State of New Mexico, securing contractor's performance of its obligations relating to the construction of the Leasehold Improvements, in an amount equal to the value of the construction which the contractor will self-perform and not subcontract, and naming the City as an obligee thereunder; and

**9.4.5** Lessee has obtained at its sole expense all necessary licenses and permits required for construction of Leasehold Improvements on the Premises; and

**9.4.6** Lessee shall submit to Director a copy of all building permits issued to Lessee by the City of Albuquerque Building Inspection Division; and

**9.4.7** Lessee shall notify Director of Lessee's intention to commence construction of the Leasehold Improvements at least forty-eight (48) hours before commencement of such work or delivery of any material to be used in such work at the Premises.

**9.5 Contractor Indemnification.** Lessee shall include in all construction contracts entered into in connection with the construction of the Leasehold Improvements, a provision requiring the contractor and subcontractors to indemnify, hold harmless, defend and insure Airport, City, and their directors, officers, councils, employees, from and against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction work, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of the indemnified parties. All construction contracts shall require contractor and subcontractors to agree that any collection action shall be against Lessee and Lessee's leasehold rights only, and not the City or the City's interest in the Premises.

**9.6 Coordination of Construction.** Lessee shall cooperate with the Aviation Department in the construction of the Leasehold Improvements. Lessee agrees that all construction and installation of said Leasehold Improvements at the Airport shall be accomplished without interfering with other users of the Airport. Lessee shall be responsible for obtaining and paying for any temporary utilities needed during construction of the Leasehold Improvements. Lessee, its construction contractor, and construction contractor's subcontractors shall at all times keep the construction sites and surrounding areas clean, orderly, safe, free of accumulated construction debris, and waste materials, and shall be solely responsible for removal of all construction debris, and waste materials to a suitable licensed landfill off the Airport.

**9.7 Delay in Completion.** The construction of the Assembly Building (shown on Exhibit B-1) on the Premises must be completed within the Construction Period as

outlined in Lessee's schedule for construction approved by Director. Completion of construction of the Assembly Building following the Construction Period shall be subject to assessment of liquidated damages in the amount of One Hundred and 00/100 Dollars (\$100.00) per day, payable to City by Lessee, for each day completion of construction is delayed by other than an Unavoidable Delay. It is expressly agreed that liquidated damages payable under this provision do not constitute a penalty and that the parties, having negotiated in good faith for such specified liquidated damages, and having agreed that the amount of such liquidated damages is reasonable, are estopped from contesting the validity or enforceability of such liquidated damages. Assessment of liquidated damages under this provision shall not release Lessee from any further obligations or liabilities pursuant to this Agreement. To avoid liquidated damages, any delay in the completion of the construction of the Leasehold Improvements beyond the time allowed must be approved, in advance, in writing, by Director.

**9.8 Certificate of Occupancy.** Within ten (10) days following the completion of the construction of any Leasehold Improvements, Lessee shall submit a copy of the "Certificate of Occupancy" or equivalent approval of construction to Director. Within ten (10) days following receipt of the Certificate of Occupancy, Director may schedule an inspection of the Leasehold Improvements to be accompanied by Lessee for purposes of confirming compliance with the final plans and any subsequent modifications to the final plans.

**9.9 As-Built/Certified Drawings.** Within sixty (60) days following receipt of a Certificate of Occupancy, Lessee shall furnish to City, one (1) set of original reproducible record drawings on reproducible mylar sheets (thirty-six (36) inches by forty-eight (48) inches) showing the "as-built" Leasehold Improvements, and one (1) set of first-generation plain bond photo copy. Certified drawings shall be dated and stamped by the engineer or architect of record. A complete set of digital drawings in a format sufficient for use by the City as agreed upon by the Parties, reflecting the same information as the certified drawings, shall be delivered at the same time. Delivery of the digital drawings shall be by means of a device or mechanism acceptable to City, along with necessary printing/plotting information to allow City to reproduce drawings as originally designed. If Lessee fails to provide said "as-built" drawings after a 30-day notice and failure to cure, City may hire a registered architect or registered engineer to provide the same and shall recover the cost of the said drawings, plus a ten percent (10%) overhead administrative fee, from Lessee. Upon request of City, Lessee shall inspect the Leasehold Improvements jointly with City to verify compliance with the "as-built" drawings. Notwithstanding any of the foregoing, Lessee will only be required to provide details other than locations in the "as built" drawings of any SCIFs or other Improvements information that Lessee deems sensitive or classified upon expiration or earlier termination of this Agreement.

**9.10 Alterations to Premises.** Lessee shall not add to, alter, modify, repair, remove, or replace any of the Leasehold Improvements which are visible to the public (collectively, an "Alteration") without the prior written approval of City, which approval

shall not be unreasonably withheld, conditioned, or delayed. Director shall approve or disapprove within ten (10) business days after submission. City approval shall not be required for Alterations inside the buildings on the Premises; provided however, Lessee shall provide the Director with copies of all development applications for such Alterations prior to or contemporaneously with submitting any development applications for approval. Except as otherwise set forth in this Lease, all Alterations and any personal property and fixtures installed by Lessee shall be and remain the property of Lessee during the term of this Lease. All Alterations conducted by Lessee shall be conducted in accordance with all applicable laws. Lessee shall have no right and no obligation to remove an Alteration, but shall have the right, subject to Lessee not then being in default under this Lease, to remove any of Lessee's personal property, at the expiration, or earlier termination of the Lease. Notwithstanding anything to the contrary herein, and whether or not Landlord's approval is required therefor, Lessee shall provide to Landlord, within thirty (30) days of completion of the installation of any Alterations, as built plans showing the Alteration, and any modifications thereto, for Landlord's records.

**9.11 Removal of Unapproved Leasehold Improvements.** Leasehold Improvements made on the Premises without Director's written approval as required, or portions of the Leasehold Improvements that are not constructed as indicated and specified on approved plans will be considered to be unapproved Leasehold Improvements constructed in violation of the provisions of this Agreement. Unapproved Leasehold Improvements shall be removed by Lessee, at Lessee's sole cost and expense, immediately if they pose a safety issue, or otherwise within ninety (90) calendar days following Lessee's receipt of written notice to do so from Director.

**9.12 Real Time Crime Center.** If Lessee installs security cameras on its premises, Lessee agrees to cooperate in establishing camera links to the Albuquerque Police Department Real Time Crime Center to the extent feasible with respect to external cameras located on the Premises.

**Section 10. Ownership of Leasehold Improvements.** All Leasehold Improvements constructed on the Premises by Lessee, shall be owned by Lessee until expiration or earlier termination of this Agreement. Lessee shall not, however, remove any of the Leasehold Improvements from the Premises, nor waste, destroy, demolish, or alter any of the Leasehold Improvements on the Premises except as permitted pursuant to this Agreement. Unless specifically rejected by the City, all Leasehold Improvements on the Premises at the expiration or earlier termination of this Agreement, shall automatically, without compensation to Lessee, become the property of City, free and clear of any and all rights to possession and all claims to or against them created by Lessee.

Notwithstanding the above, all personal property installed, erected, or placed by Lessee in, on, or about the Premises shall be, and shall remain the property of Lessee, except as otherwise provided herein. Lessee shall have the right at any time during the Term to

remove any or all of such personal property subject to Lessee's obligation to repair damage resulting from such removal.

## **Section 11. Damage or Destruction of Premises.**

**11.1 Lessee's Responsibility for Repair and Restoration.** If at any time during the Term, the Leasehold Improvements constructed by Lessee upon the Premises, or any part thereof, shall be damaged or destroyed by fire or other occurrence, including an occurrence for which insurance coverage was not obtained or obtainable, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessee, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence, to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, including temporary repairs and work necessary to protect the Leasehold Improvements from further damage, subject to such changes or alterations as may be approved by City.

**11.2 Conditions for Repair and Restoration.** The conditions under which the repair and restoration of the Leasehold Improvements are to be performed and the method of proceeding with and performing same shall be governed by the provisions contained in this Agreement, as applicable. The cost of the repair and restoration for which Lessee shall be responsible shall include any applicable permitting fees and the reasonable fees of an architect or engineer, if any, employed by City for the purpose of reviewing Lessee's plans and specifications to ensure that the repair and restoration conforms therewith, and such other reasonable costs as may be incurred by City in connection with such repair and restoration.

**11.3 Payment of Insurance Proceeds.** All proceeds paid on account of such damage or destruction of the Leasehold Improvements under the policies of insurance required, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof ("Insurance Proceeds"), shall be applied to the payment of the cost of the repair and restoration of the Leasehold Improvements, and shall be paid out to or for the account of Lessee from time to time as such repair and restoration progresses. Any excess proceeds remaining upon completion of the repair and restoration shall be the property of Lessee.

**11.4 Insufficient Insurance Proceeds.** If the Insurance Proceeds are not sufficient to pay the entire cost of the repair and restoration of the Leasehold Improvements, Lessee shall supply the amount of any such deficiency and apply the same to the payment of the cost of the repair and restoration. Under no circumstances shall City be obligated to make any payment, reimbursement, or contribution towards the cost of the repair and restoration, unless such damage was caused by the City, its employees, agents, or contractors.

**11.5 Lessee's Obligation Continues.** In no event shall Lessee be entitled to any abatement, allowance, reduction, or suspension of rents or fees because part or all of the Leasehold Improvements upon the Premises become untenable or unusable owing to partial or total damage or destruction thereof. No such damage or destruction shall affect in any way the obligation of Lessee to pay the rents and fees required, nor release Lessee from any obligation imposed upon Lessee in this Agreement, except as otherwise provided below.

**11.6 Failure to Commence Repair and Restoration.** City may terminate this Agreement, if the repair and restoration of the Leasehold Improvements has not commenced within one hundred twenty (120) days following the damage or destruction, or if the repair and restoration, after commencement, does not proceed expeditiously. Repair and restoration shall be deemed commenced when the plans and specifications therefor have been submitted to Director for approval, provided, however, if Lessee reasonably demonstrates to satisfaction of City that any delay is caused by Unavoidable Delays or by complications in designing specialized aspects of the facility that cannot be completed within one hundred twenty (120) days, then City shall grant an appropriate extension of the time for commencement or completion of such repair and restoration. If City elects to terminate this Agreement pursuant to this subsection, the Insurance Proceeds received by or payable to Lessee shall be first used to satisfy Lessee's mortgage obligation related to the Leasehold Improvements on the Premises, if such mortgage obligation shall have received prior approval from City, with the balance of such Insurance Proceeds being paid by Lessee to City. However, if Lessee's mortgage obligation related to the Leasehold Improvements on the Premises did not receive prior approval from City, the total amount of Lessee's Insurance Proceeds actually received by Lessee shall be paid by Lessee to City, and/or the Lessee may file an interpleader with respect to the Insurance Proceeds.

**11.7 Exception to Repair and Restoration.** If the Leasehold Improvements constructed by Lessee at the Premises are damaged or destroyed by casualty during the last two (2) years of the Term or of any Renewal Period, and the cost of repairing, restoring, replacing, or rebuilding exceeds seventy-five percent (75%) of the replacement value of the Leasehold Improvements constructed by Lessee at the Premises, Lessee may terminate this Agreement by providing written notice of termination to City within ninety (90) days after the occurrence of the damage or destruction.

If Lessee elects to terminate this Agreement pursuant to this subsection, any such notice of termination shall be accompanied by payment to City of (1) the total amount of Insurance Proceeds remaining following Lessee's payment to satisfy its mortgage obligations related to the Leasehold Improvements on the Premises, if such mortgage obligation shall have received prior approval from City, provided, however, if Lessee's mortgage obligation related to the Leasehold Improvements on the Premises did not receive prior approval from City, Lessee shall pay to City the total amount of such Insurance Proceeds Lessee actually receives and/or may file an interpleader with respect

to the Insurance Proceeds; and (2) the total amount of Premises rent for the unexpired Term of this Agreement.

**11.8 Damage caused by City.** If the damage is caused by the City (or its employees, contractors, or agents), the City shall be responsible to reimburse Lessee for any reconstruction, repair, or replacement costs not covered by applicable insurance proceeds that Lessee was required to obtain under this Lease. Further, Lessee shall receive a pro rata abatement of the rents and fees due based only on the reduction of usable building square feet in the Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed. Thereafter, the rents and fees due shall be calculated without regard to the period of time that the fee was reduced.

**Section 12. Economic Development.** The Lessee intends to pursue certain economic development opportunities for development allowed by this Agreement. Nothing in this Agreement shall be construed to prohibit Lessee from pursuing any and all economic development benefits with municipal, county, state, or federal governmental entities at any time during the Term, including but not limited to the issuance of industrial revenue bonds. The Aviation Department agrees to reasonably cooperate with such efforts by Lessee, in its role as lessor under this Agreement and owner of the Premises only. Nothing in this Agreement changes the City's procedures and review of any economic development applications that Lessee may make to the City in the future. The parties recognize that no economic development benefits will be paid from the Aviation Department's funding and that all such initiatives must comply with federal grant assurances and City bond ordinance requirements.

### **Section 13. Termination of Agreement.**

**13.1 Termination by City: 15-Day Cure Period.** This Section shall govern Lessee's failure to comply with the following obligations as set forth herein ("Events of Default"):

- 13.1.1** Pay rents and fees,
- 13.1.2** Provide and maintain a security deposit, or
- 13.1.3** Provide and maintain insurance pursuant to the terms of Section 7 and Exhibit D.

In the event Lessee fails to comply with any or all of the aforementioned subsections for a period of fifteen (15) days following receipt of City's written notice of an Event of Default, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of

Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully cured all Events of Default identified in the fifteen (15) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

**13.2 Termination by City: 30-Day Cure Period.** Except for Events of Default, if Lessee fails to comply with any covenant or provision of this Agreement for a period of thirty (30) days following receipt from City of written Notice of Non-Compliance, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully cured all Events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. If compliance reasonably requires more than thirty (30) days to achieve, Lessee shall not be considered to be in default if it commences to cure within thirty (30) days of the notice and diligently pursues the same. This provision is not intended to restrict City's ability to seek damages or specific performance of the Lessee's obligations under this Agreement, after written notice as described herein.

**13.3 City's Non-Waiver.** City's performance of all or any part of this Agreement for or during any period or periods following a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Lessee, shall not be deemed a waiver of any rights on the part of City to terminate this Agreement for failure by Lessee to perform, keep or observe any of the terms, covenants or conditions herein contained, and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Lessee.

**13.4 Termination by Lessee: 30-Day Cure Period.** Lessee shall be entitled to terminate this Lease if City fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination, City has fully cured all Events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. If compliance reasonably requires more than thirty (30) days to achieve, City shall not be considered to be in default if it commences to cure within thirty (30) days of the notice and diligently pursues the same. This provision is not intended to restrict Lessee's ability to seek damages or specific performance of the City's obligations under this Agreement, after written notice as described herein.



**13.5 Lessee's Non-Waiver.** Lessee's performance of all or any part of this Agreement for or during any period or periods following a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any rights on the part of Lessee to terminate this Agreement for failure by City to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by City and shall not be construed to be or act as a waiver by Lessee of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by City.

## **Section 14. Condemnation.**

**14.1 Opposition to taking.** If municipal public projects are necessary in and around the Premises, the City will negotiate with Lessee regarding how those may be appropriately accommodated and compensated pursuant to law.

**14.2 Partial Taking.** In the event less than all of the Premises is taken or condemned by any competent authority such that Lessee may reasonably continue its operations thereafter, this Agreement shall remain in full force and effect with a reduction of rents and fees, if appropriate, commensurate with the reduced useable area of the Premises, upon the date of such partial taking. City and Lessee may independently pursue damages to which each is legally entitled for any such taking directly with such authority.

**14.3 Total Taking.** In the event the entire Premises is taken or condemned by any competent authority such that the Premises are unusable for the continuation of Lessee's operations thereafter, then this Agreement shall terminate as of the date of the total taking.

**14.4 Termination of Agreement.** Termination of this Agreement because of condemnation shall be without prejudice to the rights of either City or Lessee to recover from the condemning authority, compensation and damages for the injury and loss sustained by either party as a result of such total taking. Lessee shall have the right to make a separate claim against the condemning authority for compensation as allowed by law.

**Section 15. Depreciation and Investment Credit for Federal Income Tax Purposes.** In order to preserve the tax-exempt status of City Airport Bonds, it is a condition of this Agreement that Lessee, its successors and assigns in interest under this Agreement hereby agrees that for federal income tax purposes, a) it shall not claim depreciation or any investment credit, and b) it shall make and file an irrevocable election not to claim depreciation or an investment credit, with respect to the Premises furnished by City. Lessee agrees to send a copy of its election to the office of Director. Nothing contained herein to the contrary shall prevent Lessee from claiming a depreciation or

investment credit with respect to Lessee's Leasehold Improvements or other expenditures made by Lessee.

**Section 16. Approvals, Consents, and Notices.** All approvals, consents, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, by personal delivery, or by electronic mail with confirmation of delivery. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation Albuquerque International Sunport
Certified Mail:	PO Box 9948 Albuquerque, New Mexico 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
Email:	

Lessee:	Theia Group, Incorporated
Lessee Official:	Reid Gorman
Certified Mail and Personal Delivery:	1455 Pennsylvania Avenue NW, Suite 800 Washington DC 20004
Telephone:	202-289-8800
Email:	legal@theiagroupinc.com

With copy to:

Rodey, Dickason, Sloan, Akin & Robb, P.A.  
Attn: Jenica L. Jacobi  
201 Third Street NW, Suite 2200  
Albuquerque, New Mexico 87102  
505.768.7222  
JJacobi@rodey.com

If approval, consent, or notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such approval, consent, or notice shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the electronic mail, unless provided otherwise in this Lease.

**Section 17. Reasonableness.** The Parties intend to act in a cooperative manner with respect to this Agreement and their respective activities in and around the Premises. Unless a provision of this Lease explicitly indicates a decision in in one party’s sole discretion, each party’s acts and decisions toward one another will be subject to a reasonableness standard.

**Section 18. Savings.** City and Lessee acknowledge that they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary to form a full and complete understanding of all rights and obligations herein. City and Lessee further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party’s preparation of all or part of this Agreement.

**Section 19. Administration of Agreement.** The Chief Administrative Officer of the City of Albuquerque or their authorized representative shall administer this Agreement for the City of Albuquerque.

**Section 20. Approval and Signing of Agreement.** This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the Chief Administrative Officer of the City of Albuquerque. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**IN WITNESS WHEREOF,** City has caused this Agreement to be executed by its Chief Administrative Officer, and Lessee has caused the same to be executed by its appropriate and authorized officers.

**City of Albuquerque:**

By: \_\_\_\_\_  
**Sarita Nair**  
**Chief Administrative Officer**

Date: \_\_\_\_\_

**Recommended:**

By: \_\_\_\_\_  
**Nyika A. Allen, C.M.**  
**Director of Aviation**

Date: \_\_\_\_\_

**Lessee: Theia Group, Incorporated**

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

Date: \_\_\_\_\_

**Acknowledgments**

**State of New Mexico**            )  
  ) **ss.**  
**County of Bernalillo**         )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by **Sarita Nair, Chief Administrative Officer**, City of Albuquerque, a New Mexico municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**Acknowledgments**

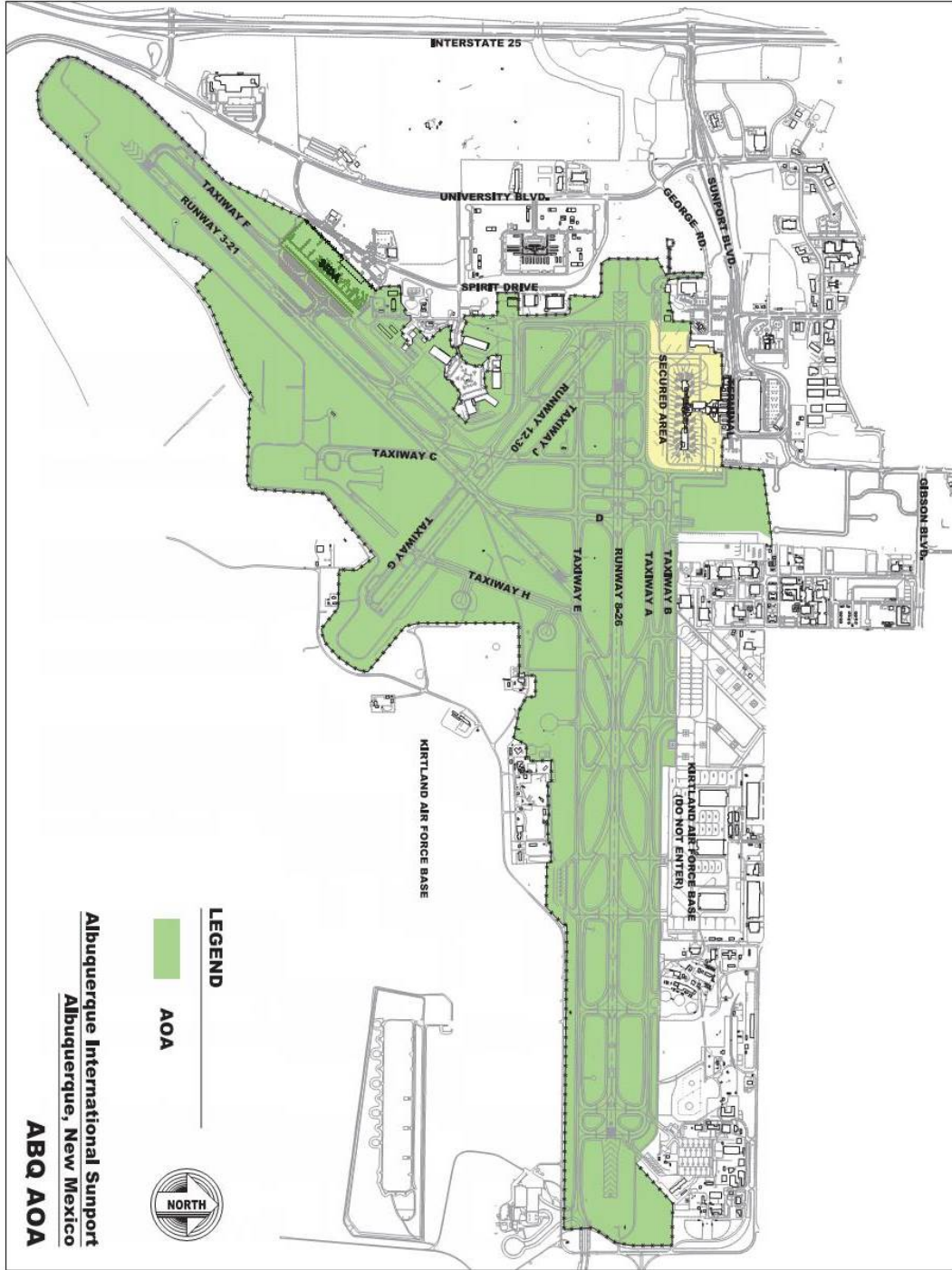
**State of New Mexico**            )  
  ) **ss.**  
**County of Bernalillo**         )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, **Theia Group, Incorporated**, a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

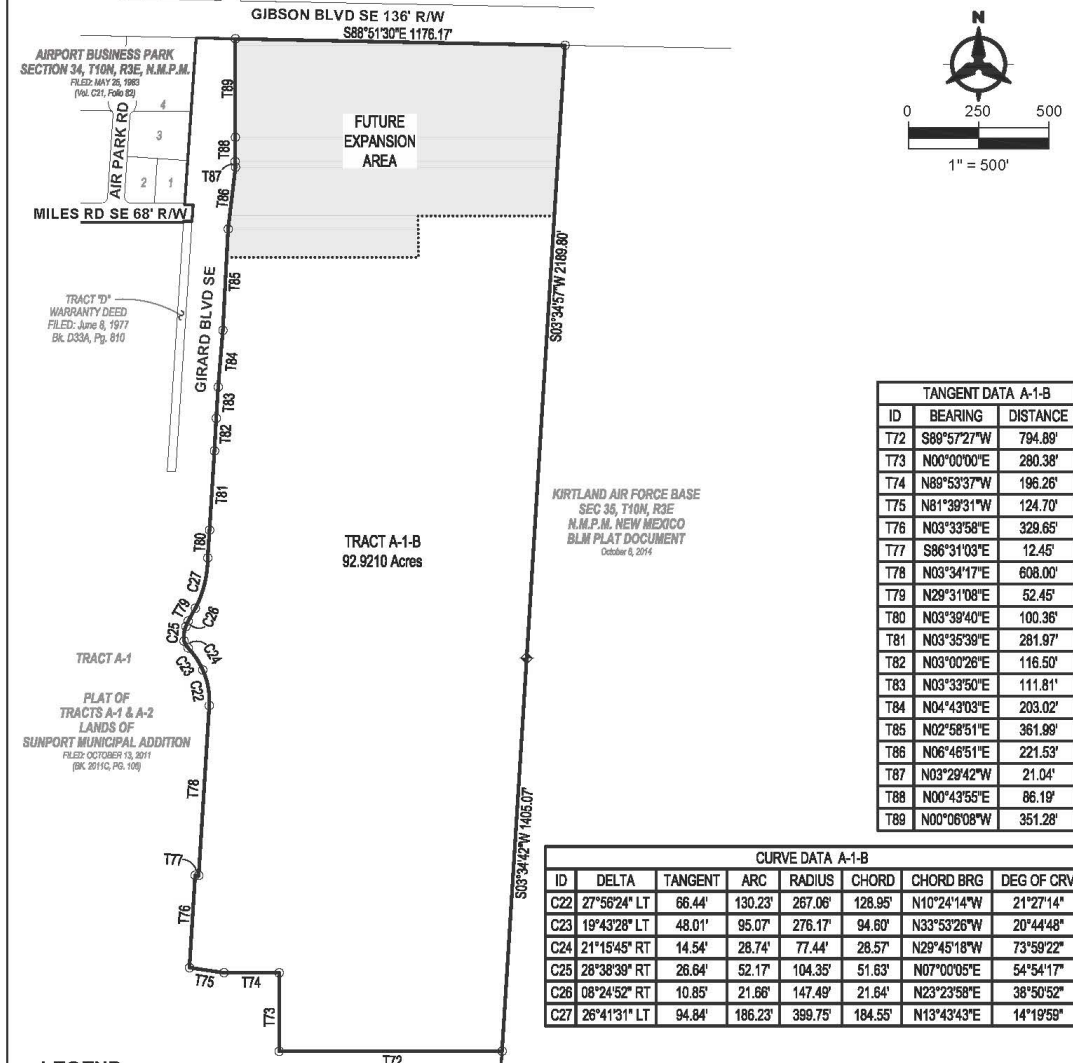
My Commission Expires:  
\_\_\_\_\_

# Exhibit A Airport





# PROPOSED LEASE PARCEL TRACT A-1-B



TANGENT DATA A-1-B		
ID	BEARING	DISTANCE
T72	S89°57'27"W	794.89'
T73	N00°00'00"E	280.38'
T74	N69°53'37"W	196.26'
T75	N61°39'31"W	124.70'
T76	N03°33'58"E	329.65'
T77	S86°31'03"E	12.45'
T78	N03°34'17"E	608.00'
T79	N29°31'08"E	52.45'
T80	N03°39'40"E	100.36'
T81	N03°35'39"E	281.97'
T82	N03°00'26"E	116.50'
T83	N03°33'50"E	111.81'
T84	N04°43'03"E	203.02'
T85	N02°58'51"E	361.99'
T86	N06°46'51"E	221.53'
T87	N03°29'42"W	21.04'
T88	N00°43'55"E	86.19'
T89	N00°06'08"W	351.28'

CURVE DATA A-1-B							
ID	DELTA	TANGENT	ARC	RADIUS	CHORD	CHORD BRG	DEG OF CRV
C22	27°56'24" LT	66.44'	130.23'	267.06'	128.95'	N10°24'14"W	21°27'14"
C23	19°43'28" LT	48.01'	95.07'	276.17'	94.60'	N33°53'26"W	20°44'48"
C24	21°15'45" RT	14.54'	28.74'	77.44'	28.57'	N29°45'18"W	73°59'22"
C25	28°38'39" RT	26.64'	52.17'	104.35'	51.63'	N07°00'05"E	54°54'17"
C26	08°24'52" RT	10.85'	21.68'	147.49'	21.64'	N23°23'58"E	38°50'52"
C27	26°41'31" LT	94.84'	186.23'	399.75'	184.55'	N13°43'43"E	14°19'59"

- LEGEND**
- ◆ FOUND 3.25" BLM BRASS CAP \*T10N R3E S34 AP2W 2013
  - CALCULATED POINT ON BOUNDARY

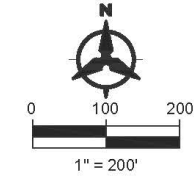
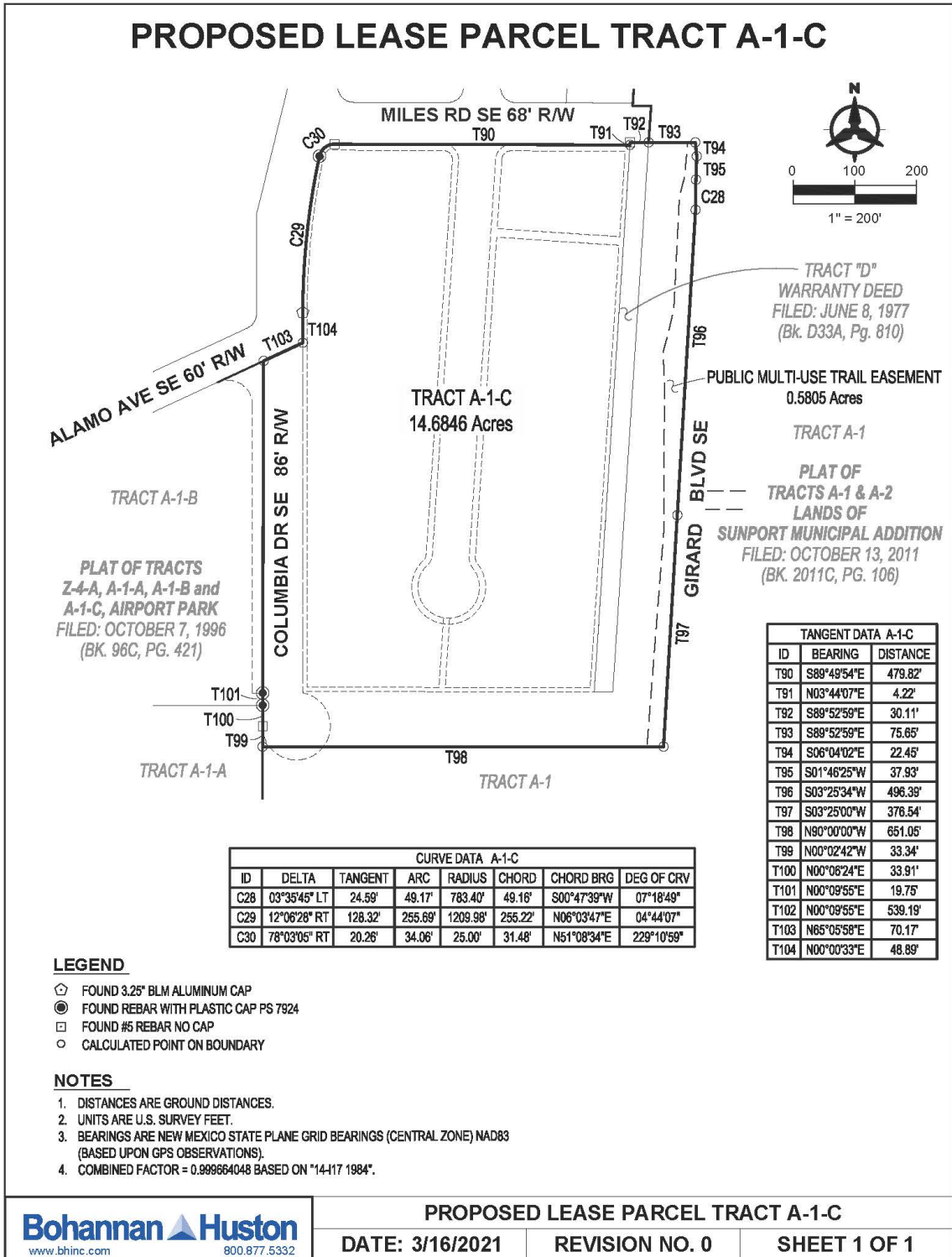
- NOTES**
1. DISTANCES ARE GROUND DISTANCES.
  2. UNITS ARE U.S. SURVEY FEET.
  3. BEARINGS ARE NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE) NAD83 (BASED UPON GPS OBSERVATIONS).
  4. COMBINED FACTOR = 0.999664048 BASED ON \*14-L-17 1984\*.

**Bohannon & Huston**  
www.bhinc.com 800.877.5332

PROPOSED LEASE PARCEL TRACT A-1-B		
DATE: 3/16/2021	REVISION NO. 0	SHEET 1 OF 1

Tue, 16-Mar-2021 - 10:04:am, Plotted by: DCORDOVA  
P:\20210308\SURVEY\02\_OFFICE\04\_EXHIBIT\TRACT\_A-1-B.dwg

# PROPOSED LEASE PARCEL TRACT A-1-C



TRACT "D"  
WARRANTY DEED  
FILED: JUNE 8, 1977  
(Bk. D33A, Pg. 810)

PUBLIC MULTI-USE TRAIL EASEMENT  
0.5805 Acres

TRACT A-1

PLAT OF  
TRACTS A-1 & A-2  
LANDS OF  
SUNPORT MUNICIPAL ADDITION  
FILED: OCTOBER 13, 2011  
(BK. 2011C, PG. 106)

PLAT OF TRACTS  
Z-4-A, A-1-A, A-1-B and  
A-1-C, AIRPORT PARK  
FILED: OCTOBER 7, 1996  
(BK. 96C, PG. 421)

TANGENT DATA A-1-C		
ID	BEARING	DISTANCE
T90	S89°48'54"E	479.82'
T91	N03°44'07"E	4.22'
T92	S89°52'59"E	30.11'
T93	S89°52'59"E	75.65'
T94	S06°04'02"E	22.45'
T95	S01°46'25"W	37.93'
T96	S03°25'34"W	496.39'
T97	S03°25'00"W	376.54'
T98	N90°00'00"W	651.05'
T99	N00°02'42"W	33.34'
T100	N00°08'24"E	33.91'
T101	N00°09'55"E	19.75'
T102	N00°09'55"E	539.19'
T103	N65°05'58"E	70.17'
T104	N00°00'33"E	48.89'

CURVE DATA A-1-C							
ID	DELTA	TANGENT	ARC	RADIUS	CHORD	CHORD BRG	DEG OF CRV
C28	03°35'45" LT	24.59'	49.17'	783.40'	49.16'	S00°47'39"W	07°18'49"
C29	12°06'28" RT	128.32'	255.69'	1209.98'	255.22'	N06°03'47"E	04°44'07"
C30	78°03'05" RT	20.26'	34.06'	25.00'	31.48'	N51°08'34"E	229°10'59"

**LEGEND**

- ⊙ FOUND 3.25" BLM ALUMINUM CAP
- FOUND REBAR WITH PLASTIC CAP PS 7924
- FOUND #5 REBAR NO CAP
- CALCULATED POINT ON BOUNDARY

**NOTES**

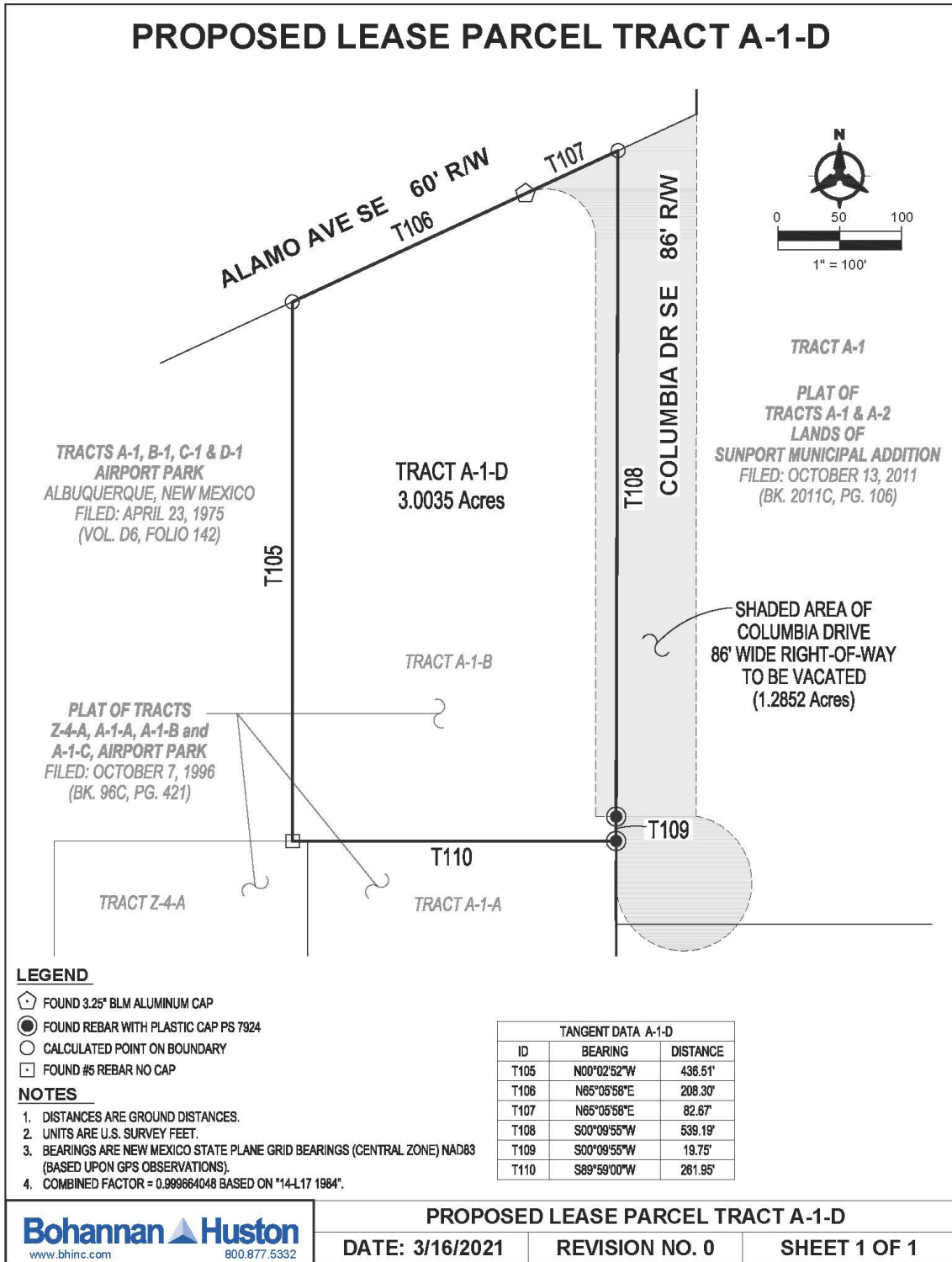
1. DISTANCES ARE GROUND DISTANCES.
2. UNITS ARE U.S. SURVEY FEET.
3. BEARINGS ARE NEW MEXICO STATE PLANE GRID BEARINGS (CENTRAL ZONE) NAD83 (BASED UPON GPS OBSERVATIONS).
4. COMBINED FACTOR = 0.999664048 BASED ON "14-117 1984".

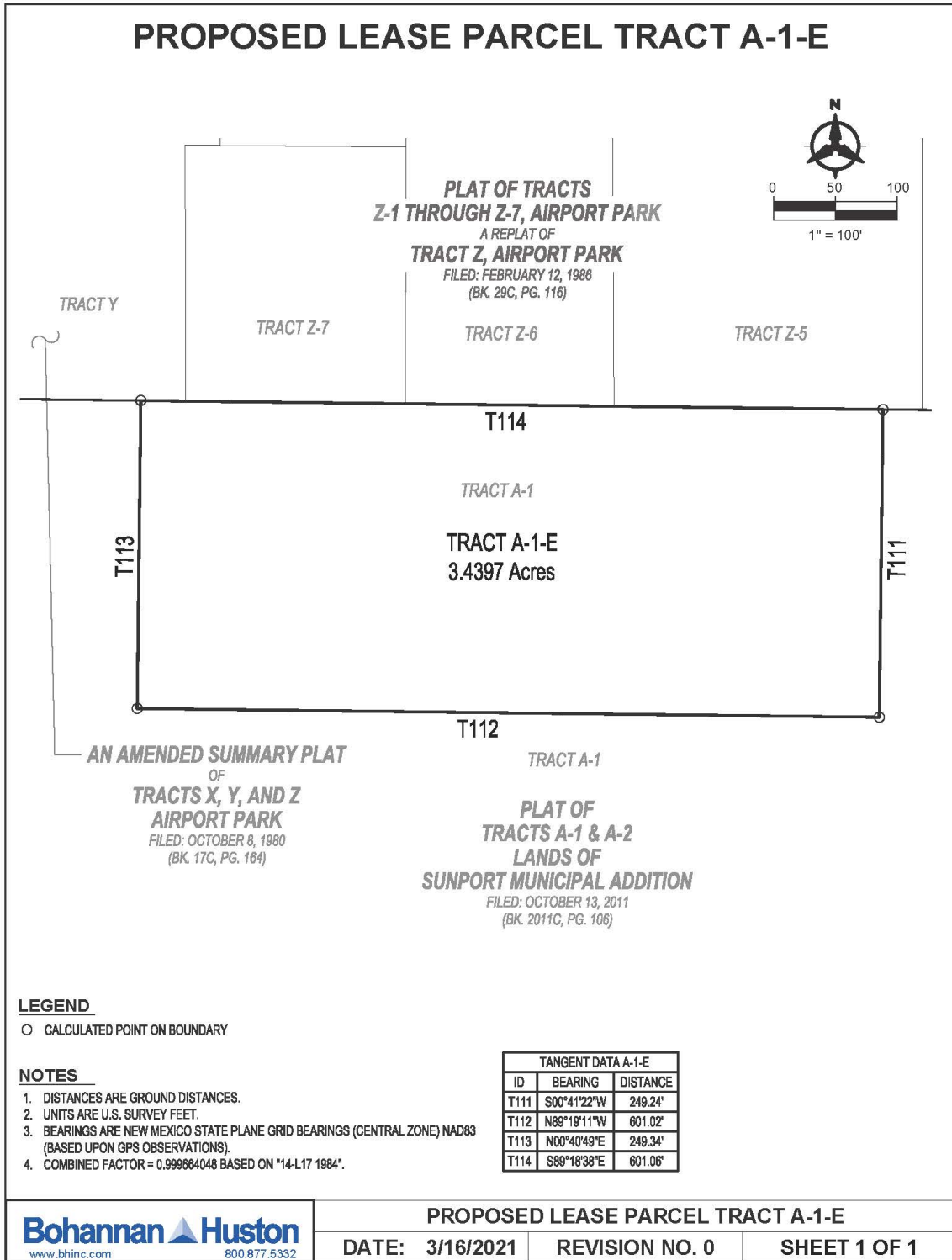
 www.bhinc.com 800.877.5332	<b>PROPOSED LEASE PARCEL TRACT A-1-C</b>		
	DATE: 3/16/2021	REVISION NO. 0	SHEET 1 OF 1

Tue, 16 Mar 2021 10:17:am, Plotted by: DCORDOVA  
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# PROPOSED LEASE PARCEL TRACT A-1-D





## Exhibit C

### Security Deposit Provisions

**1. Purpose of Security Deposit.** The cash, cash equivalent, irrevocable letter of credit ("LOC") or security bond ("Bond") will be held by City as security ("Security Deposit") for the full and faithful performance of all the terms, covenants and conditions to be performed by Tenant under this Agreement.

**2. Form of Security Deposit.** Any Bond or LOC shall be in a form substantially the same as attached hereto and incorporated herein. The Bond shall be made payable on demand to the City of Albuquerque. The LOC shall be made to the order of the City of Albuquerque.

The LOC or Bond shall expressly permit partial payment and shall be issued exclusively to City of Albuquerque. The LOC or Bond shall allow presentment of claims by City by mail and shall not restrict such presentment to in-person appearances at a particular place. If a Bond is provided, such Bond shall be issued with City of Albuquerque as obligee by a surety licensed to conduct business in the State of New Mexico that has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing the Security Deposit shall provide that it shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement and shall allow City to make a partial draw on such Security Deposit. In the event of a partial draw, Tenant shall immediately reinstate the Security Deposit to the full amount required. Documents establishing the continuation or replacement of a LOC or Bond shall be received by the Aviation Department no less than thirty (30) days prior to the expiration of the existing LOC or Bond. If payments required by Tenant under the terms of this Agreement are not made in accordance with the payment provisions set forth, City shall have the right to forfeit, take, and use as much of such security deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. The LOC or Bond shall be released by City within sixty (60) days following expiration or termination of this Agreement, provided Tenant has fully performed.

City shall not be required to place cash Security Deposits in interest-bearing accounts; however, should City elect to do so, City shall be entitled to all interest earned from such account as compensation for handling such account. City shall not be required to keep cash Security Deposits in separate accounts.

At any time this Agreement requires the return of the Security Deposit, such provision shall be deemed to require the return of all deposits held by City under the terms of this Agreement, and the release of any supporting rights and documentation, including Uniform Commercial Code security interests and control agreements.

**Performance Bond**  
*(sample format)*

**Bond No.** \_\_\_\_\_

**Know All Men By These Present,** that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**Whereas,** the above bonded Principal has signed an Operating Agreement ("Agreement") with the City of Albuquerque, dated \_\_\_\_\_.

**Now, Therefore,** the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of \_\_\_\_\_ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section \_\_\_ of the above referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

In Witness Whereof, the Principal and Surety have hereunto set their Bonds and seals this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

Attest:  
\_\_\_\_\_

Principal  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:  
\_\_\_\_\_

Surety  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ of the \_\_\_\_\_ who is personally known to me, appeared before me this day and acknowledged that he/she signed, sealed and delivered the foregoing instrument as his/her free and voluntary act as \_\_\_\_\_ of the \_\_\_\_\_, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Irrevocable Letter of Credit**  
*(sample format)*

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

City of Albuquerque  
Aviation Department  
Albuquerque International Sunport  
P. O. Box 9948  
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of:  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the account of

**[Name of Tenant]** available by your draft at sight when accompanied by:

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that **[Name of Tenant]** has failed to perform the terms, covenants and conditions to be performed as required by the **[Exact Title of the Agreement]** ("Agreement") dated \_\_\_\_\_.

**This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.**

Drafts under this credit must bear upon their face the words:

Drawn under \_\_\_\_\_ Bank \_\_\_\_\_  
Letter of Credit No. \_\_\_\_\_ Dated \_\_\_\_\_.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before \_\_\_\_\_.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

\_\_\_\_\_  
[name of bank]  
By: \_\_\_\_\_  
Authorized Signature

## **Exhibit D Insurance and Indemnity Provisions**

### **1. Insurance**

**1.1 General Requirements.** For the term of this Agreement Tenant shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Tenant will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII or its equivalent, or as approved by City, covering all operations under this Agreement, whether performed by it or its agents. Various types of required insurance may be written in one or more policies.

When requested by City, Tenant shall allow City to review in the presence of Tenant's insurance representatives any or all policies of insurance for the insurance coverage required herein. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided below.

Tenant shall not violate the terms or prohibitions of insurance policies required to be furnished by Tenant. Tenant shall promptly notify City of any claim or loss at the airport exceeding the amount of the deductible under any liability insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

**1.2 Additional Insured.** With respect to all coverage required other than workers' compensation, the City shall be a certificate holder and endorsed as an additional insured or loss payee. All coverage afforded shall be primary and non-contributory with respect to operations provided. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to and shall not make City a partner or joint venturer with Tenant in its operations on the Airport.

Coverage for an additional insured shall **not** be limited to its vicarious liability, and coverage shall extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Tenant, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

**1.3 Insurance Certificates and Endorsements.** Before commencing the Services and on the renewal of all coverage, Tenant shall furnish to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119-1048, all necessary certificates and additional insured endorsements in form satisfactory to the City showing that it has complied with this Section. All insurance certificates shall provide that thirty (30) days written notice, seven (7) days in the case of War & Allied Perils, ten (10) days for non-payment of premium, be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. Acceptance of the Certificates of Insurance and endorsements by City shall not relieve Tenant of any of the insurance requirements set forth herein, nor decrease the liability of Tenant. Neither Tenant nor any contractors, assignees or other transferees of Tenant shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director.

Tenant agrees to provide written notice to the City of any material changes in coverage including cancellation and non-renewal as soon as possible.

**1.4 General Insurance Specifications.** The types of insurance required in this Agreement must meet the following specifications:

**1.4.1 Aircraft Liability Insurance.** Tenant shall procure and maintain policies of insurance for aircraft liability in an amount not less than as required by this Agreement for bodily injury and property damage including passengers, which shall include but not necessarily be limited to all of the following coverages: Contractual Liability, Hangar Keepers Legal Liability, Motor Vehicle Liability within the confines of the Airport, Mail and Cargo Legal Liability, and Fueling and Refueling (if such operations are conducted by Tenant). Such coverage shall include War & Allied Perils.

**1.4.2 Commercial General Liability Insurance.** The Tenant shall procure and maintain policies of insurance for aviation commercial general liability in an amount not less than as required by this Agreement including bodily injury and property damage, Premises, Products, Completed Operations, Mobile Equipment, Independent Contractors, Personal and Advertising Injury and Contractual Liability. Such coverage shall include War & Allied Perils.

**1.4.3 Commercial Automobile Liability Insurance.** The tenant shall procure and maintain policies of insurance for commercial automobile liability in an amount not less than as required by this Agreement covering owned, non-owned and hired autos for bodily injury and property damage arising from activities on, or operations with respect to Airport premises, both on and off work.

**1.4.4 Reserved.**

City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment, statutory requirements, and inflationary trends.

The liability insurance required in paragraphs 1-3 above must:

- a) be written on an occurrence basis;
- b) include coverage for Tenant's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provisions of this Agreement; and
- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

**1.4.5 Workers' Compensation and Employers Liability Insurance.** Tenant shall comply with the provisions of the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law. Tenant shall procure and maintain during



the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

With respect to Workers' Compensation Insurance, if Tenant elects to be self-insured, Tenant shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Tenant shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Tenant hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Tenant's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Tenant are not City employees for any purpose.

**1.4.6 Commercial Property Insurance** in an amount equal to the replacement cost of Tenant's improvements and all of Tenant's personal property situated on the Tenant's Premises.

**1.4.7 Builders Risk Insurance** during any period of construction or reconstruction for which Tenant contracts. Tenant shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

**1.5 Minimum Insurance.** The insurance requirements of this Agreement shall be the greater of (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Tenant under this Agreement.

**1.6. Self-Insurance Retention.** In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Tenant shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total self-insurance retentions.

**1.7 Owner-controlled insurance program.** For any insurance required of Tenant's contractors or sublessees, such coverage may be provided through multiple policies, and/or Tenant may provide such coverage through an owner-controlled insurance program through its own insurer.

## **2. Indemnification**

**2.1 General Indemnification.** Tenant agrees to defend, indemnify and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any

injury, including death, at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Tenant, its agents, its contractors, its employees, or its invitees arising out of the operations of Tenant under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents. The indemnification obligations set forth in this paragraph shall not be limited to only claims covered by insurance.

**2.2 Environmental Harm Indemnification.** Without limiting any provisions of this Agreement, Tenant shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

**2.2.1** any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Tenant or its agents;

**2.2.2** the presence, disposal, or release of Hazardous Substances by Tenant or its agents at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;

**2.2.3** any bodily injury (including wrongful death), property damage, or personal injury arising out of or related to the use of Hazardous Substances by Tenant at the Airport;

**2.2.4** any violation by Tenant of any Environmental Laws.

Tenant's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement. Tenant's obligations set forth in this paragraph and its subparagraphs shall not be limited to only those claims covered by insurance.

**2.3 Limitations.** To the extent, if at all, NMSA 1978 § 56-7-1 is applicable to this Agreement, these Insurance and Indemnity Provisions shall not extend to or be construed to require Tenant to defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury or damage to persons or property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

**2.4 Scope of Indemnification.** In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from acts of negligence, error, omission, or willful misconduct or arising out of the operations of Tenant, its agents, servants, contractors, employees or invitees on or relating to the Premises, Tenant shall (1) investigate or cause the investigation of incidents involving such injuries; (2) negotiate or cause to be negotiated all claims made as may be deemed expedient by Tenant, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Tenant pursuant to this Section; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws,

utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City arising out of any legal or administrative proceeding defended or caused to be defended by Tenant as aforesaid, including but not limited to costs associated with the preparation for such proceedings; b) any interest accruing up to the date of payment by Tenant; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation (whether formal or informal), and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred by City in the event that Tenant fails to provide the defense and indemnification required herein. Tenant shall under no circumstance settle such claims with the terms of such settlement imposing any obligations or liability on or in any way having a potential negative impact on the reputation of the City without first obtaining City's approval thereto.

By way of further clarification, the indemnifications provided for in this Paragraph 2 do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

**2.5 Miscellaneous.** City shall, promptly upon receipt, give Tenant every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. City shall cooperate in Tenant's defense of any claim, including preserving evidence and providing information, witnesses, and documents to Tenant in its possession regarding the demand or claim. Tenant shall keep City apprised of and shall provide regular updates regarding the status of any such claims or proceedings and Tenant's actions in pursuit of the defense or resolution thereof. In the event City shall fail to comply with its obligations pursuant to this Section and to the extent that such failure results in prejudice to Tenant in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Tenant of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Tenant from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Tenant indemnified City. In the event Tenant is named in a suit arising out of the negligent or intentional acts or omissions of the City, its employees, contractors, or agents, City and Tenant will reasonably cooperate with each other to seek dismissal or a joint defense strategy that minimizes defense costs, provided the City's and Tenant's interests are aligned, and provided nothing herein shall prevent either party from making a good faith defense or claim against the other for comparative negligence.

**3. Non-liability of City.** City shall not in any event be liable for any acts or omissions of Tenant or any subtenant or either of their respective agents, servants, employees, independent contractors or invitees, or for any condition resulting from the operations or activities of Tenant, Tenant's agents, servants, employees, or independent contractors working for, or on behalf of, Tenant.

City shall not be liable for Tenant's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

## **Exhibit E Environmental Provisions**

**1. Definitions.** The following words and phrases, wherever used in the Agreement and this Exhibit E, shall have the following meanings:

**1.1 "Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, ordinances, regulations, rules, policies, procedures, or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, without limitation.

**1.2 "Hazardous Substances" or "Contaminants"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.

**1.3 "Remediation Equipment"** means all equipment used or useful in connection with corrective action, including but not limited to groundwater monitoring, extraction, sparging wells, piping, and equipment.

**2. Compliance with Environmental Laws.** In connection with its operations or any other activity at the Airport, Tenant shall at all times and in all respects comply with all applicable environmental laws including Federal, State and local laws, ordinances, and regulations pertaining to Hazardous Substances and which are applicable to the Premises and Tenant's operations at the Airport. Upon expiration or earlier termination of the Agreement, Tenant shall cause all Hazardous Substances introduced to the Premises and the Airport by Tenant any subtenant or either of their respective contractors, agents, or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable Environmental Laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

**3. Waste Disposal.** Tenant shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Tenant shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material and shall immediately notify City's Aviation Department if a governmental agency

approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 2 above or Section 4 below of this Exhibit E.

#### **4. Federal Stormwater Regulations.**

**4.1** Notwithstanding any other provisions or terms of this Agreement, Tenant acknowledges that the Airport is subject to all applicable Federal, state, and local stormwater regulations. Tenant further acknowledges that it is familiar with these stormwater regulations; that it may conduct or operate from time to time aircraft, vehicle, or ground support equipment maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, deicing activities, or other activities as defined in the federal stormwater regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

**4.2** Notwithstanding any other provisions or terms of this Exhibit E or the Agreement, including Tenant's right to quiet enjoyment, City and Tenant both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Tenant acknowledges that it may be necessary to undertake measures to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Tenant as defined in the federal stormwater regulations, by implementing and maintaining best management practices.

**4.3** Tenant acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Tenant agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Tenant to participate in the development of the terms of the Stormwater Permit and follow the procedures provided below in subsection 4.4 of this Exhibit E.

**4.4** City shall provide Tenant with written notice of those Stormwater Permit requirements that Tenant shall be obligated to perform from time to time with respect to the Premises, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or "Best Management Practices"; corrective actions to identified findings or noted violations as a result of an inspection; and maintenance of necessary records. Such written notice shall include applicable deadlines. Tenant within twenty (20) days of receipt of such written notice, shall notify City in writing if it disputes any of the Stormwater Permit requirements it is being directed to undertake. If Tenant does not provide such timely notice, it is deemed to assent to undertake such requirements. If Tenant provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Tenant agree to negotiate a prompt resolution of their differences. Tenant agrees that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

**4.5** Subject to the dispute resolution provision of subsection 4.4 of this Exhibit E above, Tenant agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Tenant, those Stormwater Permit requirements for which it has received written notice from City. Tenant warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Tenant. Tenant agrees that time is of the essence.

**4.6** City and Tenant agree to provide each other upon request with any non-privileged information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

**4.7** Tenant agrees that the terms and conditions of City's Stormwater Permit may change from time to time. City will notify Tenant and provide Tenant with an opportunity to confer with City on any proposed changes to City's Stormwater Permit.

**4.8** Tenant agrees to participate, to the extent reasonably possible, in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

**4.9** All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

**5. Prior Written Consent.** Tenant shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees without providing notice to the Aviation Department Environmental Manager. City may require removal of a Hazardous Substances unless Tenant demonstrates to City's reasonable satisfaction that such Hazardous Substance is necessary or useful to Tenant's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Substance brought upon, used, or kept in or about the Premises. City hereby consents to the presence of (i) Retail Motor Vehicle Fuels, (ii) retail packages of motor oil and other lubricants, automotive antifreeze/coolant, cleaning compounds, and other ordinary household and automotive products, and (iii) such office supplies, cleaning compounds and other substances used and stored in accordance with applicable law as may be necessary or useful in the conduct of Tenant's business operations on the Premises.

**6. Liability and Remediation.** If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of a Hazardous Substance on the property caused or permitted by Tenant results in Contamination of the Premises, or if Contamination of the Premises by such Hazardous Substance otherwise occurs for which Tenant is legally liable to City for damage resulting therefrom, Tenant shall indemnify, defend and hold City harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses (including but not limited to, diminution in value of the Premises and sums paid in settlement of claims, reasonable attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such Contamination. This indemnification of City by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of such Hazardous Substance present in the soil or ground water on or under the Premises.

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused or permitted by Tenant results in any Contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to remediate the release on the Premises to the extent required by government agencies having jurisdiction. Tenant shall not have any liability to City for any environmental, investigatory, monitoring, or cleanup costs except as ordered by a federal, state, or local agency of competent jurisdiction. In the event such an order is issued, City shall immediately notify Tenant and provide it the opportunity to negotiate with the acting government authority and enter the Premises to conduct investigatory,

monitoring, or cleanup work. In the event Tenant is responsible for any investigatory remediation or cleanup work on the Premises after expiration or earlier termination of this Agreement, Tenant shall have the right to enter the Premises for performance of such obligation. In no event shall City be responsible for any damages or costs of Tenant.

The indemnification required by these provisions shall not apply to any Hazardous Substance existing on, under or about the Premises prior to the date of full execution of this Agreement. However, the Parties recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Substance on, under or about the Premises as of the date of full execution of this Agreement. The parties agree that, as of the date of full execution of this Agreement, they are not aware of the existence of any Hazardous Substance on, under or about the Premises.

**7. Notices.** Tenant shall immediately notify City in writing of any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws related to its operations on the Premises. Except as otherwise provided below, Tenant shall also provide City as promptly as possible, and in any event within ten (10) business days after Tenant first receives or sends the same, with copies of all claims, reports, complaints, notices, or warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

**8. Environmental Notices; Indemnification Notices.** Tenant shall provide City with a copy of any written release notices or reports that Tenant is required to submit to any environmental agency with respect to releases of any and all Hazardous Substances or Contaminants at the Premises during the Term. Tenant shall immediately provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Tenant each shall promptly provide the other with a copy of 1) any claim or demand for corrective action that any environmental agency issues and 2) any other claim giving rise to either party's indemnification obligations herein.

**9. City's Right of Entry.** During the Term, Director, or those authorized by Director, shall have the right of entry to test and determine the extent of any Hazardous Substance Contamination of the Premises. Entry for this purpose shall be with advance notice, at reasonable times, except in case of emergency, and shall not unreasonably interfere with Tenant's use of the Premises.

**10. Tenant's Corrective Action Obligation.** Tenant shall undertake corrective action to remove Contaminants released by Tenant, its agents, employees, contractors, or representative during Tenant's occupancy of the Premises, if and to the extent required by any environmental agency. Tenant shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action, subject to environmental agency requirements and approval, provided, however that Tenant may contest and appeal any environmental agency decision or directive. Tenant shall have no further obligations for corrective action under this Agreement following receipt by Tenant and City of a "No Further Action" letter or equivalent written directive, if applicable, from the appropriate regulatory agency(ies) indicating that no further corrective action is required to satisfy applicable law and regulations.

**11. Tenant's Environmental Access Right.** In the event Tenant's Remediation Equipment remains on the Premises following the expiration or earlier termination of this Agreement, Tenant

and its representatives and contractors will have the right of access to the Premises during normal business hours and business days, to install additional Remediation Equipment; to maintain, modify, monitor, operate, or repair Tenant's Remediation Equipment; and to verify with the applicable environmental agency that Tenant's corrective action has been completed. Tenant or its representative or contractor shall provide City written notice of its intent to exercise its access right at least two (2) business days prior to exercising such right. Tenant will attempt to minimize, to the extent reasonably possible, any interference with the operation of any business conducted at the Premises, except in the case of an emergency as determined by Tenant. In conducting its operations at the Premises following the expiration or earlier termination of this Agreement, City shall attempt to minimize, to the extent reasonably possible, any interference with Tenant's corrective action. The access right will terminate when the applicable environmental agency issues a letter to Tenant stating that, based on certain assumptions and conditions, no further corrective action will be necessary and Tenant removes its existing Remediation Equipment. If, however, following the environmental agency's issuance of such letter, the environmental agency requires Tenant to perform further corrective action, then the access right provided herein will resume.

**12. Post Termination Restoration of Affected Areas.** If Tenant is required to perform corrective action to remove Contaminants, Tenant shall restore the areas at the Airport containing or impacted by such Contaminants ("Affected Areas") as closely as reasonably possible to the state that the Affected Areas were in when Tenant, its employees, agents, or contractors first entered upon the Affected Areas following execution of this Agreement, unless the restoration is prohibited by applicable law.

**13. Holdover Tenancy.** In the event Tenant requires possession of the Affected Areas in excess of thirty (30) days following the expiration or earlier termination of this Agreement in order to install Remediation Equipment, or perform any corrective action that would materially impair ingress, egress, parking, business operations, or City's redevelopment of the Airport, or if a law, governmental order, or court order requires Tenant to be in possession of the Affected Areas after such thirty (30) day period, this Agreement will not be considered to be renewed. Instead, Tenant will be considered to be in possession of the Affected Areas under a month-to-month holdover tenancy until Tenant can surrender the Affected Areas to City in a condition that will not materially impair City's redevelopment or use of the Affected Areas. For each month during such holdover tenancy, Tenant shall perform and be bound by all terms, conditions, and covenants contained in this Agreement.



## **Exhibit F**

### **Airport Security Provisions**

**1. Compliance.** Throughout the term of this Agreement, Tenant and its employees shall strictly comply with the Airport Security Plan and all other Airport security regulations, as from time to time may be adopted or required by the federal Transportation Security Administration ("TSA") or other governmental agencies. If a breach of the Airport Security Plan or such other Airport security regulation occurs as a result of the acts or omissions of Tenant and its employees in any manner or form at any time during the term of this Agreement, Tenant shall immediately remedy such breach or assist City, TSA, or other governmental agencies in remedying such breach, regardless of the circumstances.

**2. Airport Security Access Media (Airport ID Card, Keys and/or Key Fobs) ("Access Media").** As a requirement for the execution of this Agreement by Tenant, and in order to perform the duties and obligations pursuant to the terms of this Agreement, the Tenant and their employees shall be required to obtain Access Media. Individuals who have been convicted of certain categories of crimes during the past ten (10) years will not be issued Access Media. In addition, individuals who have been charged with any of these crimes will not be issued any Access Media until disposition of the charges has been resolved to the Director's satisfaction. Tenant and its employees may not begin any work of any nature until the required Access Media has been issued. All persons who are issued an Airport ID must display it at all times while at the Airport.

All persons applying for Airport Security Access Media must pass a 10-year FBI fingerprint-based Criminal History Records Check ("CHRC"), a Security Threat Assessment ("STA"), and attend a security/ramp driving training class sponsored by the City before such Access Media will be issued. In conjunction with Tenant's right and privilege to use the Airport, unescorted access may be authorized for Tenant and its employees via Electronic key Fob controlled doors and gates to the Airport Operations Area ("AOA"), the Airport's Security Identification Display Area ("SIDA"), and all secured areas of the Airport.

All Access Media issued to Tenant and its employees/contractors are the property of City. Tenant shall be obligated to return to City all Access Media in the event of: a) the termination of this Agreement, or b) the termination of employment or resignation of Tenant's employee/contractor, or c) the suspension of Tenant employee/contractor. Tenant requesting Access Media shall be fully responsible for the replacement cost of all lost, stolen, or non-returned Access Media.

City reserves the right to confiscate or suspend any Access Media of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542, or for a violation of the Airport Security Plan or other Airport security regulations, as from time to time may be promulgated. In addition, City, TSA, or other governmental agencies as may be authorized, shall have the right to search any person, including Tenant and its employees who have been issued an Airport ID/Access card.

**3. Security Measures.** Tenant shall implement and maintain, and shall cause its personnel (employees and contractors) to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Airport:

**3.1** During all hours, access points to secure areas of the airport shall be secured and locked.

**3.2** Tenant's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

**3.3** Tenant shall restrict the activities of its personnel who are authorized to be on the AOA to the portion of those areas in which Tenant is authorized to operate.

**3.4** Tenant is responsible for ensuring that all of its personnel attend Airport Security Training, that they comply with all Airport security requirements and access control procedures outlined in the training, and, because security requirements and access control procedures change, that Tenant's personnel are made aware of, and comply with, all changes to Airport security requirements and access control procedures of which the Tenant is made aware.

**3.5** Tenant shall not allow any non-badged person under its control to enter the AOA unless that person is properly escorted at all times.

**3.6** Tenant shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Tenant's personnel.

**3.7** Tenant shall immediately notify the aviation police of any suspicious activity observed on the AOA of the Airport.

**3.8** Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Airport Security Coordinator.

#### **4. Payment of Fees and Fines.**

**4.1** Tenant agrees to pay City for any and all applicable Airport Security Access Media fees incurred in connection with Tenant's use of the Airport.

**4.2** Tenant further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Tenant's failure to abide by the security measures described herein, provided however, Tenant shall have the right, to the extent allowed pursuant to federal regulations, to defend against such agency action.

**5. Compliance with Revisions.** Director or their designated representative will periodically evaluate the procedures set forth in this Section, and make revisions as required to comply with federal regulations. Failure of Tenant or Tenant's personnel to fully comply with the procedures set forth in this Section or as later revised, shall be sufficient grounds for City to immediately take any necessary corrective measures until security acceptable to City is restored.

## **Exhibit G General Conditions**

**1. Maintenance of Premises.** During the term of this Agreement, it shall be Lessee's obligation, without cost to City, to maintain and provide for ordinary upkeep and repair of the Premises and all Leasehold Improvements and landscaping. In addition, Lessee shall, at Lessee's sole discretion, maintain, repair, and when necessary, replace all personal property, trade fixtures, equipment, and other Leasehold Improvements placed or installed on the Premises by Lessee.

Lessee shall at all times keep the Premises neat, orderly, sanitary, and presentable. Lessee shall provide for snow and ice removal, and cause to be removed at Lessee's own expense from the Premises all safety hazards and all waste, garbage, debris, and rubbish, collectively referred to herein as "Refuse," and agrees not to deposit same on any part of Airport. City shall be entitled to remove Lessee's Refuse from the Premises and charge Lessee a reasonable fee if Lessee fails to remove such Refuse within five (5) business days after receiving written notice from City of improper disposal.

**2. Surrender of Premises.** Lessee covenants and agrees that upon expiration or earlier termination of this Agreement, Lessee will peaceably surrender possession of the Premises in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Premises. Lessee will leave with the Premises all operation and maintenance manuals pertaining to the Premises and all Leasehold Improvements. City shall not be required to give notice to quit possession at the expiration of the Agreement.

**2.1 Removal of Personal Property.** Upon expiration or earlier termination of this Agreement, Lessee shall immediately, remove any and all non-permanent equipment, trade fixtures, materials, supplies, and other personal property on or about the Premises, subject to any valid lien that City may have thereon for unpaid rents and fees, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of this Agreement.

**2.2 Ownership of Property Not Removed.** In the event Lessee fails to remove its personal property, City shall have the options of: a) removing Lessee's personal property at Lessee's expense but only in the event Lessee takes possession of such personal property immediately upon such removal; or b) if Lessee refuses to take possession of Lessee's personal property within forty-five (45) calendar days, taking title to Lessee's personal property in lieu of Lessee's removal.

In the event City takes title to such personal property, City shall be entitled to all proceeds of sale of such Lessee personal property as liquidated damages for the breach of Lessee's covenant to remove.

**3. Title to Land.** Fee simple title to the Land is and shall remain vested in City. Nothing contained in this Agreement or any action or inaction by City shall be deemed or construed to mean that City has granted to Lessee any right, power, or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, charge or other encumbrance upon the fee simple title of City in the Land.

**4. Compliance with Law.** Lessee shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, contractors, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable regulations, ordinances, and laws of any city, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Lessee shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Lessee or Lessee's operations and activities under this Agreement.

**5. Rules, Regulations and Procedures.** Lessee shall observe and obey all lawful and applicable executive instructions, administrative instructions, Airport security requirements, access control procedures, minimum standards, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof or during any Renewal Period.

**6. Non-Discrimination.**

**6.1 State and Local Compliance.** Lessee agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance.

**6.2 Federal Compliance.**

**6.2.1 General Civil Rights Provision.** Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates Lessee for the period during which the property is used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**6.2.2 Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (herein this subsection referred to as the "Contractor") agrees as follows:

**(1) Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and

Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**(3) Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**(4) Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to **(a)** Withholding payments to the Contractor under the contract until the Contractor complies; and/or **(b)** Cancelling, terminating, or suspending a contract, in whole or in part.

**(6) Incorporation of Provisions:** The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**6.2.3. Title VI Clauses for Lease of Real Property.** Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person

on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below.

#### **6.2.4. Title VI List of Pertinent Nondiscrimination Acts and Authorities.**

During the performance of this Agreement, Lessee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, to the extent applicable; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take

reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**7. Disability Laws and Accessibility Requirements.** Lessee shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Lessee constructs on the Premises, Lessee agrees to meet all the requirements of the ADA applicable to Lessee.

**8. Agreement Subject to Avigation Priority.** Lessee's right to use the Premises for the purposes as set forth in this Agreement shall be secondary to and subordinate to the operation of the Airport. Lessee acknowledges that due to the location of the Premises at the Airport, there may be an impact to the use of the Premises as a result of the noise, vibrations, odors, vapors, fumes, smoke, dust, particulates, and other interference caused by Airport operations. Lessee hereby waives any and all rights or remedies against City arising out of any noise, vibrations, odors, vapors, fumes, smoke, dust, particulates, and other interference that is caused by the operation of the Airport. City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in and through the airspace above the surface of the Premises together with the right to cause in said airspace such noise, vibrations, odors, vapors, fumes, smoke, dust, particulates and other interference as may be inherent in the present and future operation of aircraft.

Lessee further acknowledges that its use of the Premises, in relation to the avigation priority as referenced in this subsection, is reserved upon and subject to certain conditions and restrictions including Lessee's limitations: a) to cause electrical, electronic or other interference with radio, radar, microwave or other similar means of communications between the Airport and any aircraft; b) to adversely affect or impair the ability of operators of aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or c) to cause glare in the eyes of operators of aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing upon, taking off from, maneuvering about or operating of aircraft on, above and about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Lessee shall be permitted to construct and maintain such improvements and to utilize all lighting, finishes and building materials as shall have been submitted to and approved by City.

**9. Subordination to Agreements with the U.S Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, to the accommodation of the adjacent United States Air Force base, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts.

The Premises are, and this Agreement is, subject to and subordinate to the terms of that certain deed from the United States of America to City dated December 15, 1962, and filed for record on

December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof. The City represents that this Agreement is in compliance with all covenants and restrictions of that certain deed.

**10. Other Subordination.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by City in the Airport; except as specifically provided in this Agreement; or impairing, exercising, or defining governmental rights and the police powers of City. This Agreement is subject to and subordinate to any and all City Ordinances codified in the Revised Ordinances of City of Albuquerque, New Mexico, 1994. This Agreement is subject to and subordinate to any and all bond ordinances adopted by City authorizing the issuance and sale of Airport Revenue Bonds and any successor bond ordinance(s) that may be enacted by City with respect to future series of bonds.

**11. No Exclusive Rights.** Nothing herein contained shall be deemed to grant to Lessee any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) and FAA Advisory Circular 150/5190-6 or the most recent versions thereof for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Exclusive Use of Space leased to Lessee under the provisions of this Agreement.

**12. Economic Non-Discrimination.** In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Lessee agrees: (1) to furnish said services on a fair, equal, and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

**13. City's Right to Enter.** City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances and with as little interruption of Lessee's operations as possible, to enter upon the Premises, accompanied by an authorized Lessee representative if practicable, to inspect such space to determine whether Lessee is in compliance with the terms and conditions of this Agreement, including inspection for safety, environmental, fire protection, or security purposes. Provided, however, City's right of entry into SCIF areas of the Premises shall be on a need to know basis, shall only occur upon execution by the City of a non-disclosure agreement (which agreement shall specify the basis upon which the agreement meets the criteria for an exemption under IPRA), and such entry and access shall be in compliance with applicable government security clearance rules. Lessee further agrees to make any and all corrections of violations observed by City as a result of this inspection; however, in no event shall Lessee be required to correct any violations that precede the Effective Date.

The failure of City to inspect or monitor or give Lessee notice of a default or a notice of a hazardous or unsafe condition with respect to Lessee's operations under this Agreement shall not release Lessee from its liability to perform its obligations under this Agreement or impose any liability on City.



**14. Amendment and Waiver.** This Agreement may be amended in writing as allowed by City Ordinance, except that Director shall have the authority to waive requirements and prohibitions or otherwise modify this Agreement by written supplement signed by the parties, to address changes in circumstances which will benefit the parties and the traveling public, provided that such modifications are non-discriminatory, and do not extend the term of the Agreement or modify rent and fee provisions. No custom or practice, or waiver of default, which may evolve between the parties in the administration of the terms of this Agreement, may be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

**15. Relation to Other Lease and Lessees.** This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between City and any other lessee at the Airport. The fact that such other agreement contains provisions which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

**16. Assignment and Subletting.** Lessee shall have the right to assign, sublet, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement with the prior written approval of City, which approval shall not be unreasonably withheld or delayed, provided that any such transfer would be subject to all terms of the Agreement. Lessee shall have the right to mortgage, pledge, or assign the Leasehold Improvements and its rights under this Agreement to a lender of the Lessee with the prior written approval of the City. The City will respond to requests for lender approvals within ten business days. City execution of estoppels or other documents in favor of a lender shall evidence City approval of such lender.

**17. Financial Responsibility.**

**17.1 Taxes, Licenses, Debts.** Lessee shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Lessee's operations on the Premises, and acquire and keep current all licenses, municipal, state, or federal, required as the result of Lessee's operations on the Premises pursuant to this Agreement, and shall not allow any of said taxes, excises, or fees to become delinquent. Lessee shall pay promptly when due all bills, debts and obligations incurred in connection with its operations or activities on the Premises and shall not permit them to become delinquent; provided however, Lessee may contest the amount or validity of, and may compromise, any such bills, debts, and obligations in good faith.

**17.2 Liens.** Lessee shall not permit any judgment, execution or mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Premises by reasons of work, labor performed, or materials or equipment furnished to Lessee.

**18. Construction Inconvenience.** Lessee agrees that from time to time during the term of this Agreement, the Aviation Department and City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure, and facilities on the Airport ("Airport Construction"), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Lessee agrees that it shall not hold the Aviation Department or City, including its officers, agents, employees and representatives, liable for

damages of any nature whatsoever, including all damages arising out of or caused by inconveniences and/or interruptions of its business activities at the Airport, loss of business, and personal injury, including death, and property damage due to the Airport Construction, unless such damages are caused in whole or in part by the negligence or other fault of the Aviation Department or City or its officers, agents, contractors, employees and representatives. Lessee acknowledges receipt of adequate consideration by City in support of this waiver. Notwithstanding the above, City will provide aircraft and roadway access to the Premises during Airport Construction.

**19. Non-Liability of Agents and Employees.** City shall not in any event be liable for any acts or omissions of Lessee, its agents, or personnel, or independent contractors, or for any condition resulting from the operations or activities of Lessee, Lessee's agents, personnel, or independent contractors either to Lessee or to any other person.

**21. No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture, or association or to make Lessee the general representative or agent of City for any purpose whatsoever.

**22. Force Majeure.** Except as expressly provided in this Agreement, neither City nor Lessee shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rents and fees hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, pandemics or epidemics, acts of a public enemy, acts of terrorism or threatened acts of terrorism, weather conditions or the results of acts of nature, riots, rebellion, sabotage or other causes similar to those enumerated for which it is not responsible or which are not within its reasonable control ("Force Majeure Events").

**23. Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules, and regulations of the City of Albuquerque.

**24. Forum Selection.** City and Lessee agree that the state and federal courts residing in Bernalillo County, New Mexico, will have exclusive jurisdiction and venue over any claim arising from this Agreement, and consent to the exclusive jurisdiction of such courts.

**25. Ethics.**

**25.1 Conflict of Interest.** Upon execution of this Agreement, or within five (5) days following the acquisition of any interest in this Agreement during the term of this Agreement, Lessee shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Lessee or in any contract, Agreement, or agreement between City and Lessee, or in any franchise, concession, right, or privilege of any nature granted by City to Lessee in this Agreement or otherwise.

**25.2 Fair Dealing.** Lessee covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in

this Agreement, and this Agreement is entered into by Lessee without collusion on the part of Lessee with any person or firm, without fraud and in good faith. Lessee also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be, offered or given by Lessee or any agent or representative of Lessee to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**25.3 Board of Ethics and Campaign Practices.** Lessee agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining to this Agreement whenever such records or information are within Lessee's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Lessee reserves the right to make good faith objections to production of privileged or confidential information and documents and agrees to work in good faith with the Board to resolve such objections. Lessee further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. If applicable, Lessee agrees to require that all subcontractors employed by Lessee for services performed for this Agreement shall agree to comply with the provisions of this subsection. Lessee and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this subsection.

**26. Audits and Inspections.** The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994 and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter. Lessee reserves the right to make good faith objections to production of privileged or confidential information and documents and agrees to work in good faith to resolve such objections.

**27. Contract Interpretation.**

**27.1 Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

**27.2 Non-waiver of Rights.** No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.

**27.3 Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**27.4 Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

**27.5 Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

**27.6 Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

**27.7 Exhibits, Certificates, Documents Incorporated and Attachments.** Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**27.8 Cross References.** References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

**28. Public Records.** The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Lessee for any disclosure of Public Records pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions, or other legal requirement.

**29. Successors.** All covenants, stipulations, and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

**30. Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

**31. Access.** Subject to applicable city, state and federal rules and regulations, Lessee shall have for itself and its invitees, agents, and contractors, reasonable rights of access to and from the Premises.

**32. Quiet Enjoyment.** Upon payment of rents and fees, and performance of the covenants and agreements by Lessee, and subject to the terms and conditions of this Agreement, Lessee shall peaceably have and enjoy the Premises and all of the rights, privileges and appurtenances granted herein.