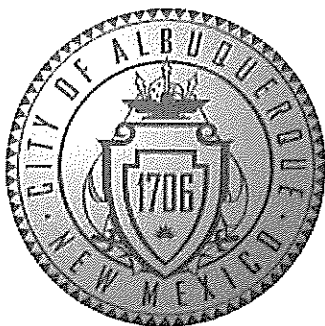


EC-25-326




Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

January 8, 2025

TO: Brook Bassan, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Lease Agreement for Agricultural use of a portion of Major Public Open Space between the City of Albuquerque and Southwest Soil Health, LLC.

The City has a fee simple interest in and manages that certain "Major Public Open Space" known as Alamo Farm. The City's mission in managing the Property is to maintain, protect and preserve the land as agricultural Open Space and wildlife habitat, thereby providing recreational and educational opportunities to the community with the least impact to the environment. The City desires to promote regenerative farming and wildlife cropping practices and/or habitat production on the Property.


The proposed Lease Agreement for the initial term is five (5) years with the option to extend the Lease for one (1) additional term of five (5) years, if tenant is in compliance with the lease and if properly exercised. The proposed annual fee is for three-hundred dollars (\$300.00) per acre at approximately thirty-seven point twenty-one (37.21) acres. The Leased area is therefore \$11,163.00 Annual Fee divided by twelve (12) equal, monthly payment of \$930.25 monthly fee. In lieu of making monthly monetary payments in the amount of the \$930.25, Lessee shall be responsible for providing general care and upkeep for Leased Area.

The Lease Agreement is forwarded to City Council for approval.

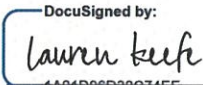
TITLE/SUBJECT OF LITIGATION: Lease Agreement for Agricultural use of a portion of Major Public Open Space between the City of Albuquerque and Southwest Soil Health known as the Alamo Farm.

Approved:

Approved as to Legal Form:

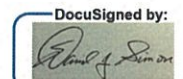

Samantha Sengel, EdD
Chief Administrative Officer

Date: 1/27/25

DocuSigned by:
 1/22/2025 | 1:50 PM MST
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Lauren Keefe
City Attorney

Recommended:

Initial


DocuSigned by:

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David Simon, Director
Parks and Recreation Department

Date: 1/22/2025 | 10:28 AM MST

Cover Analysis

1. What is it?

Lease Agreement for Agricultural to use a portion of major public open space between the City of Albuquerque and Southwest Soil Health, LLC.

2. What will this piece of legislation do?

It's the City's mission to manage the Property, maintain, protect and preserve the land as agricultural Open Space and wildlife habitat, while providing recreational and educational opportunities to the community with the least impact to the environment.

3. Why is this project needed?

To promote regenerative farming ("Regenerative Farming") and wildlife cropping practices and/or habitat production ("Wildlife Farming") on the Property.

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

There is no cost associated with this lease agreement.

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

The proposed Lease Agreement for the initial term is five (5) years with one (1) additional term of five (5) years. The proposed annual fee is \$300.00 per acre /approximately thirty-seven point twenty-one (37.21) acres for annual fee of \$11,163.00 or \$930.25 monthly fee. In lieu of making monthly monetary payments, Lessee shall be responsible for providing general care and upkeep.

6. What will happen if the project is not approved?

The Property will not be properly maintained, which is to protect and preserve the land as agricultural Open Space and wildlife habitat. Additionally, will not be providing recreational and educational opportunities to the community with least amount of impact to the environment.

7. Is this service already provided by another entity?

No

LEASE AGREEMENT
FOR AGRICULTURAL USE OF A PORTION OF MAJOR PUBLIC OPEN SPACE
BETWEEN THE CITY OF ALBUQUERQUE
AND
SOUTHWEST SOIL HEALTH, LLC

THIS AGRICULTURAL LEASE AGREEMENT (the “Lease”) is entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation (hereinafter “City”) as the licensor (“City”), and **Southwest Soil Health, LLC**, a limited liability company (“Lessee”). City and Lessee may be referred to herein each individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City has a fee simple interest in and manages that certain “Major Public Open Space” known as Los Poblanos Fields and the Open Space Visitor Center, (the “Property”); and

WHEREAS, the City and Southwest Soil Health, LLC, agree to observe and follow the Los Poblanos Resource Management Plan as set forth at <https://documents.cabq.gov/planning/UDD/LosPoblanosFieldsRMP.pdf>; and

WHEREAS the City’s mission in managing the Property is to maintain, protect and preserve the land as agricultural Open Space and wildlife habitat, thereby providing recreational and educational opportunities to the community with the least impact to the environment; and

WHEREAS, the City desires to promote regenerative farming (“Regenerative Farming”) and wildlife cropping practices and/or habitat production (“Wildlife Farming”) on the Property; and

WHEREAS “Regenerative Farming” describes farming and grazing practices that sustain and improve soil health, improve air quality, enhance ecosystem biodiversity, produce organic food, store carbon to mitigate the effects of climate change, and increase crop resilience, quality, and yield; and

WHEREAS “Wildlife Farming” describes the establishment, production, and maintenance of wildlife food plots and/or wildlife habitat plantings/enhancements.

WHEREAS the City manages the Property for low-impact recreation and education for the general public; and

WHEREAS, because of its specialized skills and expertise, Lessee has been selected by the City to be granted the right to occupy and use a portion of the Properties for Regenerative Farming; and

WHEREAS, the Property is comprised of a number of farming tracts; and

WHEREAS, Lessee is interested in leasing from City, and City is willing to Lease to Lessee a portion of the Property for the purpose of Regenerative Farming pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Lease and subject to the terms and conditions hereof, City and Lessee hereby agree as follows:

I. GRANT OF LEASE.

A. THE LEASED AREA. Subject to the terms, conditions, covenants, and reservations contained herein, City hereby leases to Lessee the tract of land within the Property identified as “Field No. “5” at Los Poblanos Fields and “Field No.(s) 3 through 5” at the Open Space Visitor Center all as is more specifically specified, depicted, and described on **Exhibit A**, attached hereto and made a part hereof (the “Leased Area”). Nothing herein is intended to grant to Lessee any real property interest or leasehold interest in or to the Leased Area or the Property. Nothing herein grants Lessee the exclusive right to occupy or use any other area of the Property, including but not limited to the gazebo area situated near fields 7 and 8 (“Gazebo”). In the event that Lessee desires to use the Gazebo, Lessee may do so only with the advance, written permission of City.

B. TERM, RENEWAL, HOLDING OVER, TERMINATION.

1. Initial Term. This Lease will not be binding upon the Parties until it is approved by the Albuquerque City Council, signed by Lessee and signed by the Chief Administrative Officer or authorized designee. The Lease shall be effective March 4, 2025 (the “Effective Date”) and shall have an initial term of five (5) years from the Effective Date (“Initial Term”).

2. Renewal. Subject to approval of the City, Lessee shall have the option to extend this Lease for one (1) additional term (“Renewal Term”) of five (5) years upon the same terms and conditions of the original Lease and subject to the following:

a. In order to exercise an Option to Extend under this provision, Lessee shall be required to provide written notice of Lessee’s desire and intention to exercise its Option to Extend to City no less than sixty (60) days prior to the expiration of the Initial Term. Lessee’s exercise of the Option to Extend

shall be contingent upon Lessee not being in default either at the time of exercise or the start of the Renewal Term; and

b. If Lessee fails to exercise the Option to Extend within the time period established and pursuant to the requirements as set forth in this provision, then the Option to Extend for the Renewal Term shall be waived by Lessee; and

c. Each exercise of Option to Extend by Lessee shall be subject to the approval of the City.

3. Termination.

a. *Termination For Cause.* If, through any cause, either Party shall fail to fulfill in a timely and proper manner its material obligations under this Lease or if either Party shall violate any of the material covenants, agreements, or stipulations of this Lease, the non-defaulting Party shall thereupon have the right to terminate this Lease by giving written notice to the defaulting Party of such termination and specifying the effective date thereof at 60 days, in which event this Lease and the rights hereunder shall automatically terminate upon the termination date specified in the notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease.

b. *Termination For Convenience.* City may terminate this Lease at any time by giving at least ninety (90) days' notice in writing to Lessee. In the event that the Lease is terminated for convenience pursuant to this Section I, paragraph B(3)(b), the City and Lessee shall have no further rights, obligations, or liabilities as between the City and Lessee as provided in this Lease, and all future payment obligations and liabilities in this Lease will cease upon the date of termination, except as otherwise provided in this Lease, including, without limitation, as to liabilities expressly stated to survive termination of the Lease.

C. ANNUAL FEE; NON-MONETARY CONSIDERATION.

1. The annual fee for the rights granted under this Lease is THREE HUNDRED DOLLARS AND 00/100 (\$300.00) per acre. The Leased Area is a total of approximately thirty-seven point twenty-one (37.21) acres and the annual fee for the Leased Area is therefore ELEVEN THOUSAND ONE HUNDRED SIXTY THREE DOLLARS 00/100 (\$11,163.00) ("Annual Fee") and when divided into twelve (12), equal, monthly payments for the duration of the Term, the monthly fee is NINE HUNDRED AND THIRTY AND 25/100 (\$930.25) (the "Monthly Fee"). In lieu of making monthly, monetary payments in the amount of the Monthly Fee, Lessee shall be responsible for providing general care and upkeep for and of the Leased Area and shall provide at Lessee's expense Regenerative Farming services and Community Programming (defined below) on

the Leased Area pursuant to the specifications set forth herein and as more specifically defined and described in Section II of this Lease and as specified in **Exhibit B, Scope of Services in Lieu of Fee**, attached hereto and made a part hereof, as non-monetary consideration in exchange for the use and occupation of the Leased Area (collectively, the “Services in Lieu of Fee”), which Services in Lieu of Fee shall be of a value equal to or exceeding the Monthly Fee.

2. Within thirty (30) days of the end of each calendar year in the Initial Term hereof (and if applicable, the Renewal Term), Lessee shall furnish City with an annual report confirming the Lessee’s performance of its Services in Lieu of Fee for the Initial Term or Renewal Term year (as applicable) having a value equal to or exceeding the Monthly Fee (“Report”), which Report shall include or attach all supporting statements, records, data, and information pertaining to (i) the performance of Regenerative Farming (including Wildlife Farming) and related activities, (ii) “Community Programming,” which shall include public programs that support education and low-impact recreation, of the nature and in the amount as agreed upon pursuant to **Exhibit B, Scope of Services in Lieu of Fee**, (iii) other activities related to the general upkeep of the Leased Area, and (iv) regarding any other matter covered by this Lease as specified by City. Lessee may be subject to an additional two (2) assessments per year in order to evaluate regenerative or wildlife farming practices, and Lessee may be obligated to share detailed information about management practices on Leased Area. Except as otherwise authorized by City, such Report(s) and supporting records required by this provision shall be maintained by Lessee for at least a period of four (4) years after termination of this Lease.

3. In the event that Lessee fails to fully perform the required Services in Lieu of Fee, fails to submit a required Report and supporting documentation, and/or the City determines that the annual submission from Lessee does not support a determination that the Services in Lieu of Fee as performed by Lessee have a value that meets or exceeds the value of the Monthly Fee, City shall have the right to demand payment of a monetary fee for that portion of the Monthly License Fee value that is not offset by the performed Services in Lieu of Fee.

D. PURPOSE AND PERMITTED USES OF LEASED AREA.

1. **The Purpose.** The purpose of this Lease (the “Purpose”) is to enhance and facilitate the conservation and restoration of the Property with particular focus on the transition to Regenerative Farming including a minimum required amount of Wildlife Farming on the Leased Area, as well as to provide Community Programming.

a. The Leased Area shall be used by Lessee for the Purpose in compliance with the requirements of the City’s Open Space Division and in pursuit and furtherance of the City’s goals of the transition to Regenerative Farming and Wildlife Farming and promoting the health, safety, and general welfare of the people of New Mexico.

b. Lessee shall operate and maintain the Leased Area in a safe, sanitary, and operable condition.

c. Lessee shall not:

i. Use, occupy, or permit the Leased Area to be used or occupied for any unlawful purposes or for purposes not specified in this License.

ii. Use, occupy, or permit the Leased Area or any part of the Leased Area to be used or occupied, or do or permit anything to be done in or on the Leased Area in any manner which will: (a) cause or be likely to cause structural damage to the Leased Area or any part thereof, or adversely affect the ecology, water quality, drainage or irrigation of, on or relating to the Leased Area; (b) constitute waste or a public or private nuisance; or (c) cause the cancellation of any insurance policies related to the Leased Area.

iii. Allow smoking on the leased Area at any time by any person in non-designated areas or allow any activity otherwise prohibited by City ordinances.

iv. Allow political activities or campaigning by candidates for any elected office on the Leased Area, except as allowed.

v. Construct, modify, change, or alter the Leased Area or any improvement thereupon or therein. Notwithstanding the foregoing, provided Lessee obtains prior written consent of City, Lessee may erect temporary structures in the Leased Area.

vi. Lessee shall not perform any activity that is not permitted by existing allowable use as outlined in the City Integrated Development Ordinance, Open Space Ordinance, Los Poblanos Field RMP, and Major Public Open Space Facilities Plan. If Lessee seeks to perform an approved activity, they shall obtain a special use permit and all additional required permits specific to said activity.

d. All property kept, stored, or maintained by Lessee within the Leased Area shall be there at Lessee's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, hoses, or irrigation equipment, or by theft, or from any other cause, no part of said loss or damage is to be charged to or borne by the City, unless, and then only to the extent due to the negligence or willful misconduct of the City and its employees, agents, or contractors. Lessee shall be solely responsible for obtaining and paying for insurance covering Lessee's personal property in and on the Leased Area, operations losses, and liability insurance.

Lessee shall not be insured for such losses by the City nor entitled to make loss claims under the insurance coverage of the City.

2. Acceptance of Leased Area by Lessee.

Lessee acknowledges and agrees that Lessee has examined the Leased Area, the zoning designation for the Leased Area, the easements, licenses, and covenants of record applicable to the Leased Area, and the availability and entitlement of water for irrigation of the Leased Area, and has determined by its own independent evaluation that the Leased Area is suitable and usable for the purposes, uses, and activities intended by Lessee and set forth in this Lease.

a. Lessee Acknowledgements Regarding the Leased Area. In accepting the Leased Area, Lessee specifically acknowledges that it understands the following:

- i. City makes no guarantee, impress or implied, that the Leased Area, including any improvements now or hereafter placed or located on the Leased Area, will be suitable or usable for the Purpose of this Lease and the Leased Area, or that the Leased Area, including its surface and subsurface, is suitable or usable for the construction or maintenance of improvements of the type, kind, design, or construction associated with the Purpose; and
- ii. Lessee understands that subject to availability from MRGCD, City will provide and Lessee will have the ability to obtain and use certain water in the performance of Lessee's responsibilities under this Lease; however, Lessee understands that the City cannot make any guarantee, either impress or implied, that the quantity, quality, or adequacy of such obtainable water will meet the needs of Lessee for the entirety of a given irrigation season during the Initial Term or the Renewal Term and/or for the particular plants intended to be planted; and
- iii. City makes no guarantee or representation, either express or implied, that City has the ability to access water rights or sources of water for irrigation of the Leased Area other than water referenced in the subparagraph above; and
- iv. There shall be no modification to the existing irrigation facilities on the Leased Area absent prior written approval from City.

b. Uninterrupted Use and Occupancy.

Provided that Lessee continues to perform all terms, conditions, and covenants of this Lease which Lessee is required to perform, Lessee shall at all times during the Initial Term and, if applicable, the Renewal Term, occupy and use the Leased Area without any disturbance from City.

Notwithstanding the foregoing, nothing under this Lease shall prevent City from accessing the Leased Area or from performing its normal maintenance or activities not otherwise delegated to Lessee hereunder.

c. Assignment and Subletting.

Lessee shall have no right to assign this Lease in whole or in part, or to sublease the Leased Area or any part thereof without the express, prior, written consent of the City.

3. Lessee Obligations Relating to the Leased Area.

a. Lessee shall provide at its own expense all labor, equipment, materials, and supplies necessary to perform Lessee's obligations under this Lease subject to Section II, paragraph B.

b. Lessee shall pay all bills, debts, and obligations promptly when due and payable that are incurred by Lessee's employees in performing the operations on the Leased Area or under the terms of this Lease. Lessee will keep the Leased Area free and clear of all construction, mechanic's, materialmen's, laborer's, and supplier's liens resulting from Lessee's use of the Leased Area. No real property interest (leasehold or otherwise) is granted hereunder to Lessee, and under no circumstances shall any lien filed by any contractor, materialman, laborer, or supplier performing work for the Lessee or any other type of lien associated with Lessee's use and occupation of the Leased Area attach to the Leased Area or the Property. If any contractor's, materialman's, laborer's, or supplier's lien is ever claimed, fixed, or asserted against the Leased Area or any other portion of the Property in connection with Lessee's performance of the Services in Lieu of Fee, Lessee shall, within thirty (30) days after the date of filing of such lien, discharge same either by payment or by posting of any bond as required by a court or as permitted by law, and failure of Lessee to do so shall constitute a material breach of this Lease.

c. All matters pertaining to personnel employment, supervision, promotion, and discharge of Lessee's employees shall be the sole responsibility of Lessee. Lessee shall be responsible for hiring, promotion, discharge, and supervision of all employees performing Services in Lieu of Fee or other work in and about the Leased Area. Such employees shall be in the employ of Lessee and as such, Lessee shall be solely liable to such employees for wages, compensation, and "employee benefits," if any. Employee benefits include the employer's compensation to FICA, unemployment compensation, and other employment taxes, pension plan contribution, worker's compensation, group life, and accident and health insurance premiums, retirement, disability, and other similar benefits applicable to such employees of Lessee which accrue during the Initial Term, all of which shall be set, determined, and paid consistent with applicable law solely by Lessee.

d. Lessee shall ensure that gates providing access to the Property, if any, remain locked at all times to prevent entry by the general public and

unauthorized individuals and in order to protect the activities of Lessee on the Leased Area pursuant to this Lease and the activities of other parties on the Property, including Regenerative Farming and Wildlife Farming and for the protection of the wildlife habitat and wildlife crops and will make good faith efforts to coordinate with any neighboring Lessees and tenants of the City's Property.

4. Compliance with Law; Permits and Licenses.

a. Lessee shall at all times during the term of this Lease at its own expense, comply with all federal, state, county, municipal, and other governmental statutes, ordinances, laws, rules, and regulations, now or hereafter enacted or amended, affecting the Leased Area, or occasioned by or affecting the use thereof by Lessee, including but not limited to, the Americans with Disabilities Act if applicable. Lessee shall have the right to contest by appropriate legal proceedings, without cost or expense to City, the validity of any law, ordinance, order, rule, regulation, or requirement affecting Lessee's use and/or occupancy of the Leased Area. If compliance by Lessee may be legally held in abeyance during the contest without subjecting Lessee or City to any liability whatsoever for failure to so comply, Lessee may postpone compliance until the conclusion of the proceedings.

b. Lessee shall procure, at its sole expense, any permits and licenses required for the activities relating to the Purpose on the Leased Area and shall otherwise comply with all applicable laws, ordinances, and governmental regulations as they may be expanded and /or amended from time to time. Lessee shall immediately notify City in the event any permit, license, or approval necessary for the use of the Leased Area for the Purpose or performance of the Services in Lieu of Fee required hereunder are revoked or suspended. If such revocation or suspension is not corrected within twenty (20) days after notice has been provided to City (or such longer period as may be agreed to by City) then it shall be deemed an automatic event of default under this Lease.

E. MAINTENANCE AND REPAIRS.

1. Lessee shall maintain, repair, and replace all elements or improvements on or of the Leased Area in good condition and repair consistent with the quality of materials and workmanship of the original work. In the event that such elements or improvements are damaged as a result of the actions or omissions of Lessee, its employees, representatives, volunteers, or contractors, Lessee shall promptly repair such damage or replace such elements or improvements, or shall cause such repair or replacement to be performed.

2. Lessee shall cause its employees, contractors, representatives, and volunteers to place all refuse in refuse containers meant for that purpose, contained and bagged so as to avoid being unsightly or unsanitary. Lessee shall not permit offensive or strong odors of any kind or excessive dust to emanate

from the Leased Area. If such odors are emanating from the Leased Area, then upon notice from City, Lessee shall, within twenty-four (24) hours, install devices or put in place procedures to eliminate or contain such odors within the Leased Area. The foregoing shall not apply to composting provided that such composting is appropriate and acceptable to the City in its sole discretion.

3. In the event Lessee breaches its obligations as set forth in Section I(D)(3), Section I(D) (4), and this Section I(E) and fails to cure the breach to the satisfaction of City within thirty (30) days (or such other time period specified herein, or as otherwise agreed to by the City) of receipt of notice from City specifying the breach, Lessee shall be considered to be in default of this Lease. In such cases, as an alternative to terminating the Lease for default pursuant to Section I, paragraph B(3(a) City shall have the right (but not the obligation) to enter upon the Leased Area and perform whatever acts are necessary to cure the deficiency(ies) and then to invoice Lessee for the costs incurred by City in such performance, which invoice Lessee shall promptly pay.

4. The City shall be responsible for general maintenance of the Leased Area including but not limited to maintenance and repair of any road thereupon, any existing fencing on the Leased Area, any trees and shrubs along a roadway on the Leased Area, irrigation systems, and any ditches ("Leased Area Maintenance and Repair"). Notwithstanding the foregoing, upon mutual agreement of the Parties:

a. Where Lessee is willing to perform certain Leased Area Maintenance and Repair at its own expense or using grant funding obtained by Lessee for such purposes, provided City approval is first obtained, Lessee may perform such Leased Area Maintenance and Repair; and

b. City may delegate the City's obligations for performance of the Leased Area Maintenance and Repair in whole or in part and/or may arrange to have Lessee perform certain, additional services on and for the benefit of the Leased Area for the purpose of further enhancing and improving the Parties' collective ability to achieve the Purpose of this Lease ("Enhanced Services"). In such cases, Lessee and City shall update **Exhibit B, Scope of Services in Lieu of Fee**, to incorporate the specific, additional Leased Area Maintenance and Repair and/or Enhanced Services to be performed by Lessee and to specify the compensation to be paid by City to Lessee for such performance ("Compensation"). The Compensation shall be limited to only direct, reasonable, charges at then-current-market- rates for materials and labor, with no mark-up whatsoever, and which in no event shall include

charges for overtime labor (“Compensation”).

F. ENVIRONMENTAL.

1. Lessee will be responsible for all obligations of ensuring compliance on the Leased Area with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Leased Area, unless such conditions or concerns are caused by the specific activities of City or third parties.

2. Lessee represents and warrants that its use of the Leased Area as provided herein will not generate any hazardous substance in violation of applicable law, and that Lessee will not store or dispose on the Leased Area nor transport to or over the Leased Area any hazardous substances as may be required by Lessee’s use and occupancy of the Leased Area other than in accordance with all applicable federal, state, and local laws and regulations governing such substance.

3. Lessee further agrees to indemnify, defend, and hold harmless the City and its employees agents, councilors, and contractors, from and against any claims asserted by any party arising out of any use or release of any hazardous substance by Lessee, its employees, volunteers, contractors, and agents in violation of this provision, and any damage, loss, or expense, penalties, or liability to the extent resulting or arising from such use in violation of this provision, including all reasonable attorneys’ fees, costs, and penalties incurred as a result thereof; provided, however, Lessee shall not indemnify, defend, and hold City harmless from any hazardous substance on the Leased Area to the extent arising out of the actions or omissions of the City or its employees, agents, or any third parties for whom Lessee is not legally responsible.

G. VACATION OF LEASED AREA UPON TERMINATION.

4. Early Termination or Expiration. In the event that this Lease is terminated prior to the expiration of the Initial Term hereof for any reason other than a default by Lessee, this Lease shall be of no further force or effect and all rights and obligations of the Parties hereto shall cease and terminate concurrently with the effective date of such termination. Nothing in this subsection shall relieve any party from its obligations relating to a matter that occurred prior to the effective date of termination or expiration or pursuant to any provision that either by its nature implicitly survives, or by its language expressly survives the expiration or earlier termination of this Lease.

5. Vacation of Leased Area. Upon the expiration or any earlier termination of this Lease, Lessee shall full vacate the Leased Area and shall leave all improvements located thereon in good condition, reasonable wear and tear excepted (“Vacation”), and all improvements thereupon shall be the property of City as the owner of the real property in which the Leased Area is situated (specifically excluding all of Lessee's fixtures, machinery signs and any other removable personal property placed upon the Leased Area by Lessee, provided that Lessee removes such fixtures and equipment and repairs any damage caused by their original installation and/or their removal), and all other fixtures and improvements shall remain at the Leased Area at the expiration or termination of this Lease. In the event the Lessee elects to remove any Lessee installed improvements, then such improvements shall be removed in their entirety and the Leased Area shall be restored to the reasonable satisfaction of the City upon termination or expiration of this Lease, unless City otherwise agrees to a later date for completion of removal and any necessary repairs. All of Lessee’s property that remains on the Leased Area after the termination or expiration of the Lease (or beyond such later date agreed to by the City) shall be deemed abandoned by Lessee, and City shall have the right to remove and dispose of such property at Lessee’s expense, and City shall in no event be responsible for the value, preservation, or safekeeping thereof. All such Lessee’s property impermissibly remaining in the Leased Area, excluding any items leased to Lessee by a third party such as furniture, fixtures, equipment, and personal property, shall, at the City’s option, be conclusively deemed to have been conveyed by Lessee to the City as if by bill of sale without payment by City.

H. RIGHT TO ENTER.

1. City, its agents, and other representatives shall have the right to enter into and upon the Leased Area or any part thereof at reasonable times for the purpose of inspecting the Leased Area upon reasonable advance notice in the presence of a representative of Lessee. In the event of an emergency, such emergency being an imminent threat of harm to persons or property, City and its agents and other representatives may enter the Leased Area immediately, without notice provided to Lessee, and City shall, as soon as reasonably possible following such emergency entry, notify Lessee.

II. SERVICES IN LIEU OF FEE. Lessee agrees to perform certain, specialized services for Regenerative Farming including Wildlife Farming, and to provide Community Programming, all as more specifically set forth and detailed in **Exhibit B, Scope of Services in Lieu of Fee.**

A. PERFORMANCE OBLIGATIONS.

Lessee's obligations with regard to the performance of the Services in Lieu of Fee hereunder shall include but not be limited to the following:

1. Lessee shall furnish, at its own expense, as applicable and as necessary, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment, and facilities, to properly perform the Services in Lieu of Fee. Notwithstanding the foregoing, the City may (but is not required to) provide certain, specialized equipment ("COA Equipment") to be used for performance of the Services in Lieu of Fee by Lessee. In the event that City provides such equipment for Lessee's use, Lessee shall be permitted to use the COA Equipment subject to the following:

a. COA Equipment shall only be operated by Lessee personnel who have the appropriate skills, training, and licensing (if applicable) regarding the use of COA Equipment; and

b. COA Equipment shall only be operated on the Leased Area and Property; under no circumstances shall the COA Equipment be removed from the Property or operated outside of the Property, including but not limited to any public roadway; and

c. COA Equipment use by Lessee personnel as permitted hereunder shall be subject to compliance with insurance requirements as set forth in this Lease including the requirements that the scope of coverage shall include coverage for COA Equipment operation.

d. Lessee shall provide appropriate and sufficient training to and direct oversight (including any needed and appropriate training and oversight relating to the operation and use of COA Equipment) of Lessee's employees, contractors, and volunteers for activities relating to the applicable Lease, at Lessee's own risk and liability and without otherwise obligating the City.

e. In the event that City provides COA Equipment to other Lessees of other areas of the Property in which the Leased Area is situated, Lessee will coordinate with such other Lessees regarding the use of COA Equipment.

B. INSURANCE. Lessee shall procure and maintain at Lessee's expense during the Term, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Lease, whether performed by it or its employees, agents or contractors. Upon execution of this Lease and on the renewal of all coverages, Lessee shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Paragraph. All certificates of insurance shall provide thirty (30) days' written notice be given to the Risk

Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103 with a copy of all certificates to the Real Property Division, City of Albuquerque, P.O. 1293, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. The City shall be named an additional insured for all coverages and the coverage afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

1. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Lessee, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

2. Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

3. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

4. Sexual Abuse Molestation Coverage. Sexual abuse molestation insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000. This coverage should be required, unless specific circumstances that eliminate potential risks indicate otherwise, if the vendor/contractor will be working with, or in physical or virtual contact with, children under the age of 18 or a compromised client base (deaf and hard of hearing, blind, senior and older adults, persons with mental disabilities, intellectual disabilities and/or a developmental disability).

During the term of this Lease, the City may require the Lessee to increase the maximum limits of any required insurance.

5. To the extent that engages contractors for any performance of Services in

Lieu of Fee hereunder, shall ensure that each such contractor is required to carry insurance covering such contractors' performance of Services in Lieu of Fee meeting the requirements set forth in this Paragraph B, the scope of which will include coverage for COA Equipment operation by any such party.

6. Shall ensure that prior to the start of Services in Lieu of Fee, shall have caused each of the contractors, employees, and volunteers conducting any activities relating to the Services in Lieu of Fee under this or otherwise coming onto the Leased Area to sign a waiver specifically exempting and disclaiming the City of liability for any injuries or damages arising out of any acts or omissions relating to such performance of Services in Lieu of Fee or of such party's presence on the Leased Area.

C. CITY REPRESENTATIONS.

In addition to other representations and covenants contained in this Lease, Lessee represents and covenants to City that:

1. Lessee has performed similar Services in Lieu of Fee and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services in Lieu of Fee. Lessee shall provide, in connection with the Services in Lieu of Fee, the standard of care, skill, and diligence normally provided by a contractor in the performance of similar services and shall ensure that all such Services in Lieu of Fee shall be performed in accordance with sound and accepted industry or professional standards and practices, and in accordance with all applicable federal, state, and local laws, statutes, regulations, rules, and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation, and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time).

2. Lessee's employees, contractors, and volunteers performing or supervising the Services in Lieu of Fee have all necessary certifications and licenses and are fully qualified to perform their respective tasks.

3. If applicable, the Compensation reflected on **Exhibit B** for any performance of Leased Area Maintenance and Repair and/or Enhanced Services is reasonable compensation for the performance thereof as represented by this Lease, **Exhibit B**, and Lessee's independent investigation of site conditions.

4. Lessee is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services in Lieu of Fee and perform Lessee's obligations required by this Lease.

5. Other than the COA Equipment, if applicable, Lessee is able to furnish

the tools, materials, supplies, equipment, services, and labor required to complete the Services in Lieu of Fee and perform the obligations required by this Lease and has sufficient experience and competence to do so and is properly insured and Leased (to the extent applicable) to perform the Services in Lieu of Fee.

6. Lessee is the holder of or will take the necessary action to obtain and maintain all exemptions, consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Lease in compliance with all applicable laws.

C. CHANGES TO SCOPE OF SERVICES IN LIEU OF FEE.

Lessee or City may propose changes to **Exhibit B, Scope of Services in Lieu of Fee**, but such changes shall only become effective upon memorialization in the form of a written Amendment to this Lease, approved by the City and executed by authorized representatives of both Parties.

III. MISCELLANEOUS PROVISIONS

A. NOTICE.

Notice to Lessee:

Southwest Soil Health LLC
Attn: Jacobo Sanchez
9214 Edith Blvd NE
Albuquerque, New Mexico 87107

Notice to City:

City of Albuquerque
Parks and Recreation, Open Space Division
Attn: Open Space Superintendent
P.O. Box 1293
Albuquerque, NM 87103

and

City of Albuquerque
Attn: Real Property Division Manager
P.O. Box 1293
Albuquerque, NM 87103

B. AMENDMENTS TO THIS LEASE.

This Lease may be amended, revised, or modified only by the written mutual consent of the Parties and the approval of the City.

C. LIABILITY; RELEASE AND HOLD HARMLESS.

1. Neither Lessee nor the City shall be responsible for liability incurred as a result of the other's acts or omissions in connection with this Lease. Any liability incurred in connection with this Lease by City is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-2-1 et seq., NMSA 1978, as amended.

2. Lessee shall indemnify, defend, and hold harmless City and its officials, employees, representatives, and contractors from any and all duties, responsibility, and liability for payment of penalties, sanctions, forfeitures, losses, costs, or damages, and for responding to any action, notice, claim, order, summons, citation, directive, or litigation which may arise out of Lessee's performance of this Lease, caused by the negligent or reckless action or omission, failure to act or willful or intentional misconduct of Lessee, its officers, agents, employees, contractors, volunteers, or if caused by the actions of any of Lessee's employees, officers, agents, volunteers, or contractors during such persons' performance of obligations pursuant to this Lease or presence in the Leased Area and resulting in injury or damage to persons or property.

D. DISCRIMINATION PROHIBITED.

In the occupation and use of the Leased Area, Lessee shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Lessee agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

E. AMERICANS WITH DISABILITIES.

Lessee agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Lessee or that would be

imposed on City as a public entity. Lessee agrees to be responsible for knowing all applicable requirements of the ADA to defend, indemnify and hold harmless the City and its officials, agents, and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of Lessee or its agents in violation of the ADA.

F. AUTHORIZED REPRESENTATIVES.

City and Lessee each represent and warrant that the individuals executing this Lease on each of their respective behalf have the authority and are legally competent to do so.

G. SEPARATE AGREEMENT; TIME IS OF THE ESSENCE.

This Lease is separate and distinct from and shall be construed separately from any other agreement between City and Lessee. Time is of the essence in the performance of this Lease.

H. SURVIVAL.

The obligations, promises, covenants, and agreements contained in this Lease survive its termination.

I. COMPLIANCE WITH LAWS.

Lessee and City shall comply with all applicable laws, ordinances, codes, rules, and regulations of the Federal, State, and local governments.

J. PUBLIC DOCUMENT.

City is a political subdivision of the State of New Mexico. Lessee and City acknowledge that this Lease is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a “public record” within the meaning of said Act.

K. BINDING AGREEMENT; CONSTRUCTION AND SEVERABILITY.

If any provision of this Lease is deemed to be invalid or unenforceable, in whole or in part, such provision will be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or will be deemed excised from this Lease, as the case may require, and the remainder of this Lease shall remain valid and will be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

L. ENTIRE AGREEMENT.

This Lease contains the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

M. APPLICABLE LAW.

This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico.

N. VENUE; ATTORNEY FEES.

If either Party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, each Party shall be responsible for its own attorney's fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Lease shall only be brought in and shall be pursued to completion in the Second Judicial District Court located in Bernalillo County, New Mexico Albuquerque, New Mexico. The Parties irrevocably admit themselves to, and consent to, the jurisdiction of said court.

O. NO WAIVER.

Nothing in this Lease shall be construed or interpreted as limiting, relinquishing, or waiving City's control over the management, operations, or maintenance of the Leased Area except as specifically provided in this Lease.

P. FORCE MAJEURE.

In the event City or Lessee is delayed, hindered, or prevented from performing any act or thing required hereunder by reason of strikes, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, pandemic, public health crises, other causes beyond the reasonable control of City or Lessee, neither Party shall be liable for the delay, and the period for the performance by either Party shall be extended for a period equivalent to the period of such delay.

Q. COUNTERPARTS.

The Lease may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all Parties thereto as if all Parties signed the same document.

R. ELECTRONIC SIGNATURES.

Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Lease may be electronically signed and that the electronic signatures appearing on the Lease are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

-SIGNATURES BEGIN ON FOLLOWING PAGE -

IN WITNESS WHEREOF, the Parties hereto have signed this Lease Agreement as of the date indicated by each signature and, and the Lease is effective after approval by the City Council and then only upon the signature of the City's Chief Administrative Officer or his/her authorized designee.

CITY OF ALBUQUERQUE
A New Mexico Municipal Corporation.

Approved by City Council

EC# _____

Approval Date: _____

Samantha Sengel, EdD
Chief Administrative Officer

Date: _____

Recommended by:

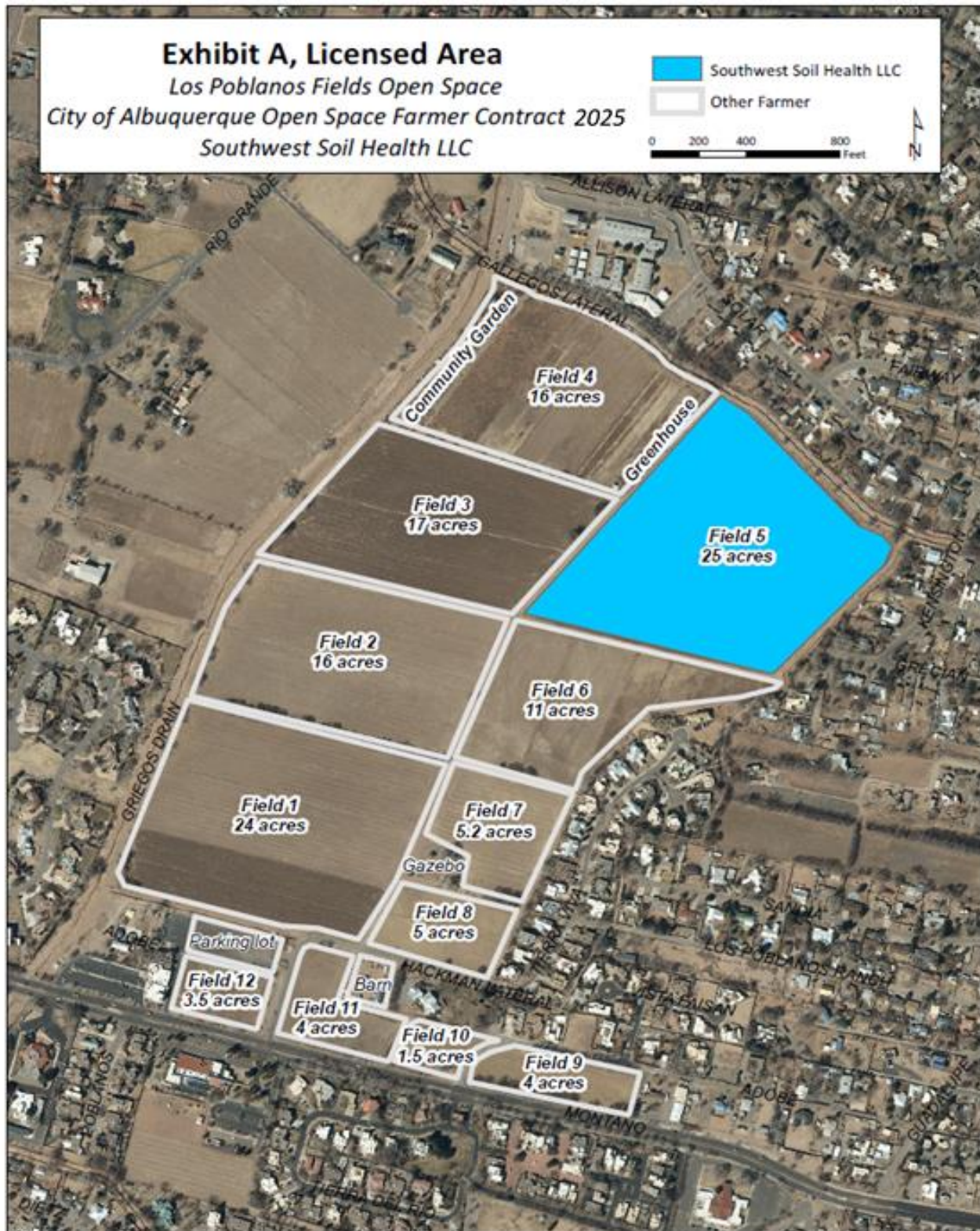
David Simon, Director
Parks and Recreation Department

LESSEE:
SOUTHWEST SOIL HEALTH, LLC:

Jacobo Sanchez, Owner

Date:_____

EXHIBIT A LEASED AREAS



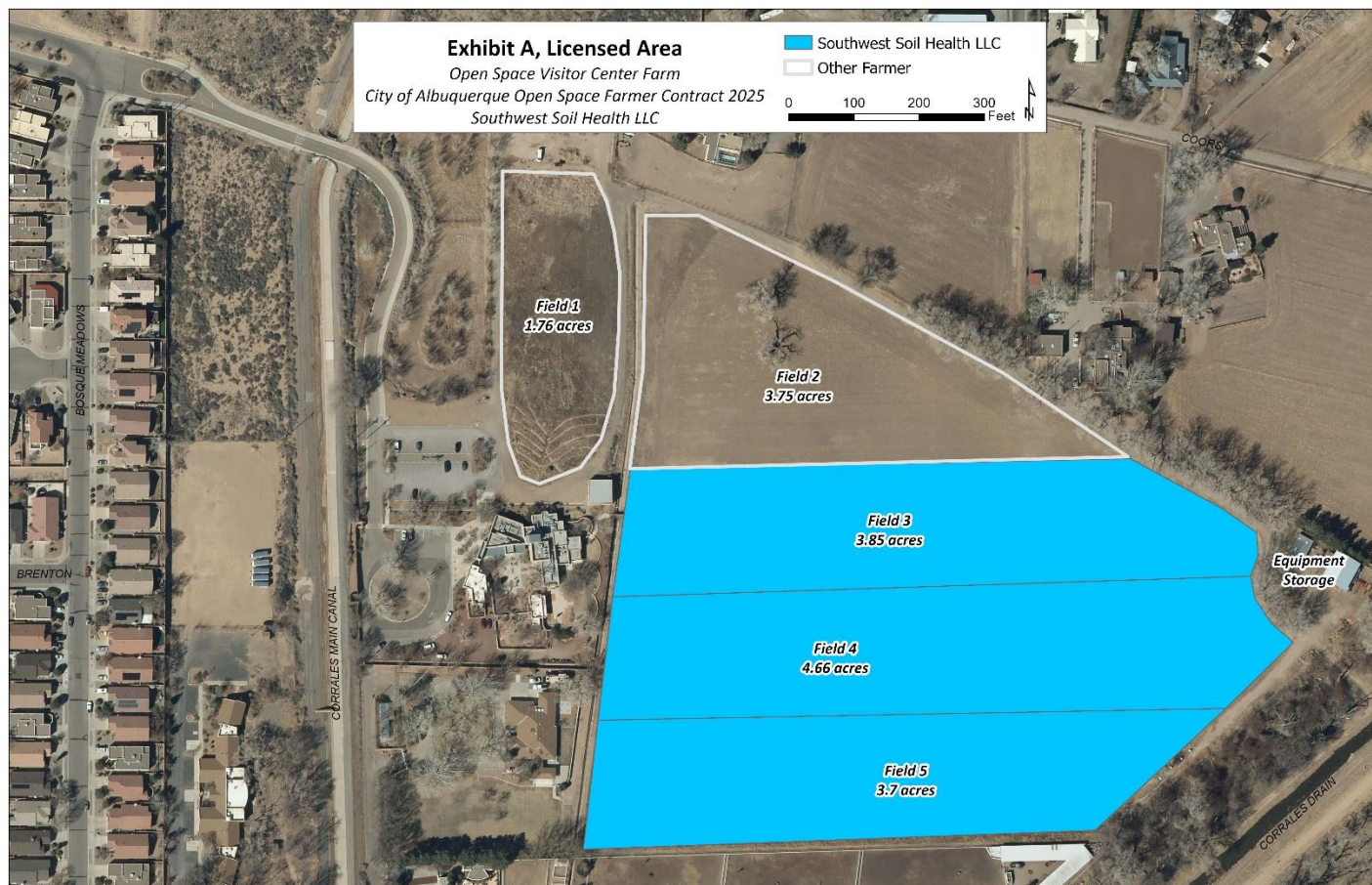


EXHIBIT B
SCOPE OF SERVICES IN LIEU OF FEE

1. **Regenerative and Wildlife Farming Requirements:** Lessee shall farm the Leased Area using Regenerative Farming practices; 25% of the acreage of the Leased Area shall be dedicated to Wildlife Farming; Lessee shall provide a Cropping Plan to the City no later than thirty (30) days after the Effective Date of this License.
- a. “Regenerative Farming” describes farming and grazing practices that sustain and improve soil health, improve air quality, enhance ecosystem biodiversity, produce organic food, store carbon to mitigate the effects of climate change, and increase crop resilience, quality, and yield, and includes but is not limited to one or more of the following practices:
 - i. Climate-smart crop selection
 - ii. Irrigation Water Management
 - iii. Reduced or No-till tillage prescriptions
 - iv. Residue management and composting systems
 - v. Cover cropping
 - vi. Prescribed grazing
 - vii. Silvopasture /Agroforestry Perennial Cropping Systems
 - viii. Organic Annual Cropping Systems
 - b. “Wildlife Farming” describes the establishment, production, and maintenance of wildlife food plots and/or wildlife habitat plantings/enhancements. “Wildlife food plots” are annual or perennial plantings of grain, grass, or legumes to provide food for a variety of wildlife. “Wildlife habitat planting/enhancements” are wildflowers, grasses and/or shrubs or trees that provide cover and/or food, to wildlife. This includes but is not limited to pollinator habitat, a flower-rich habitat that supports native and/or managed pollinators. “Wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.
 - c. The “Cropping Plan” shall include at a minimum the following:
 - i. Types of crops being grown for wildlife and the acreage for each
 - ii. Types of crops being grown for commercial purpose and the acreage for each;
 - iii. Projected irrigation schedule;
 - iv. Anticipated harvesting or cutting plan;
 - v. Disking or prepping soil schedule; and
 - vi. Fertilizer application schedule.

- 2. Soil Health Optimization and Soil Health Principles Requirements:** In its use and occupancy of the Leased Area for performance of the Services in Lieu of Fee, Lessee shall optimize soil health through the utilization of applicable best management practices such as those established by agencies including the National Resource Conservation Service (NRCS) of the United States Department of Agriculture (USDA), the New Mexico State University Extension Service (NMSUES), and local soil and water conservation districts, and shall make good faith efforts to implement NRCS soil health principles.
- a. “Soil Health” has been defined by the NRCS as “the continued capacity of soil to function as a vital living ecosystem that sustains plants, animals, and humans.”
 - b. “Soil Health Principles” established by the NRCS include the following:
 - i. Minimizing disturbance;
 - ii. Maximizing living roots;
 - iii. Maximizing soil cover; and
 - iv. Maximizing biodiversity.
- 3. Integrated Pest Management (IPM) Requirement:** Lessee shall develop and implement an “IPM Plan” using current, comprehensive information on the life cycles of pests and their interaction with the environment in combination with available pest control methods to manage pest damage by the most economical means posing the least possible hazards to people, property, and the environment. Tenant shall submit the IPM Plan to City within thirty (30) days of the Effective Date of the License. The IPM Plan shall at a minimum include the following:
- a. Prevention – Prevent infestations of pests through utilizing best management practices, such as: proper farm management, irrigation, and fertilization.
 - b. Monitoring – Regularly scouting for pests or signs of damage or disease in crop areas.
 - c. Identification – Correctly identify pests that are of concern. Making a proper identification is central to establishing a successful IPM program and selecting best management practices.
 - d. Management – Using the appropriate cultural, mechanical, biological, and chemical pest controls leads to management of the pest(s) of focus.
- 4. Community Programming Requirements:** Lessee shall incorporate Community Programming into their use of the Leased Area which shall consist of the estimated type, amount, and frequency of programs as outlined in a Community Programming Plan that Lessee shall submit to the City for its review and approval no later than thirty (30) days after the Effective Date of this License. Lessee shall include documentation reflecting and confirming the Community Programming provided by Lessee during the preceding year as part of the annual report required by Section I, paragraph C (2) of the License and shall specify in that report the type of programs, number of programs, and number of community members attending. Programming may include, but is not limited to, such things as education, outreach, and farmer mentorship.

EXHIBIT “C”
LIST OF ACCEPTABLE WILDLIFE CROPS

Certain commercial crops can meet the wildlife cropping requirement if they are left to flower and seed. These crops may include, but are not limited to, teff, sorghum, oats and alfalfa. The following wildlife crops have been pre-approved for the purposes of this License. In addition to the below-listed crops, Lessee may propose other crops in the crop plan, to the City for approval, in City’s sole discretion, on a case-by-case basis.

1. TREES/SHRUBS FOR BENEFICIAL INSECTS IN CENTRAL NEW MEXICO:

- | | |
|---|-------------------------|
| ▪ Apache Plume | ▪ Golden Currant |
| ▪ Apples, including
crab apples | ▪ Goldenrain tree |
| ▪ Apricots, cherries,
peaches, plums | ▪ Honey mesquite |
| ▪ Baccharis | ▪ Jujube |
| ▪ Catalpa | ▪ Littleleaf sumac |
| ▪ Chaste Tree | ▪ Mexican elder |
| ▪ Grape Myrtle | ▪ New Mexican locust |
| ▪ Desert willow | ▪ New Mexico olive |
| ▪ Eastern Redbud | ▪ Texas mountain laurel |
| ▪ False Indigo | ▪ Texas red yucca |
| | ▪ Yellow rabbitbrush |

2. PERENNIAL HERBACEOUS PLANTS FOR POLLINATORS IN NEW MEXICO:

- | | |
|-------------------------------|---------------------------------|
| ▪ Giant hyssop | ▪ Upright prairie
coneflower |
| ▪ Broadleaf milkweed | ▪ Blue sage |
| ▪ Showy milkweed | ▪ Mule’s ear |
| ▪ Horsetail milkweed | ▪ Riddell’s ragwort |
| ▪ Butterfly milkweed | ▪ Copper globemallow |
| ▪ Damianita | ▪ MacDougal verbena |
| ▪ Lanceleaf coreopsis | |
| ▪ White prairie clover | |
| ▪ Engelmann’s daisy | |
| ▪ James buckwheat | |
| ▪ Red dome
blanketflower | |
| ▪ Wild bergamot | |
| ▪ Palmer’s penstemon | |
| ▪ Desert penstemon | |
| ▪ Rocky Mountain
penstemon | |