

1 WHEREAS, pursuant to the LEDA Ordinance, Mesa Film Studios, LLC (the
2 “Company”), has submitted to the Council and the Albuquerque Development
3 Commission (the "Commission") an application (the "Application") requesting certain
4 economic development assistance for the acquisition, construction and improvement of
5 sound stage studios and related support facilities in Albuquerque to support operations
6 and productions of the Company, which will include the Company’s obligation for
7 \$800,000,000 in production spend on or before December 31, 2033 (the "Project"); and

8 WHEREAS, the City will administer and disburse to the Company funds totaling
9 up to \$7,000,000, of which \$6,000,000 is to be received by the City from the State
10 Economic Development Department and \$1,000,000 are to be City funds; and

11 WHEREAS, the Act and the LEDA Ordinance require that the City and the
12 Company enter into a project participation agreement meeting the requirements of the
13 Act and the LEDA Ordinance; and

14 WHEREAS, City staff has worked with the Company to prepare, and has
15 negotiated the terms of, a project participation agreement (the "Agreement") and related
16 documents that will govern the relationship between the City and the Company with
17 respect to the Project; and

18 WHEREAS, the form of the proposed Agreement has been filed with the City
19 Clerk and presented to the Council; and

20 WHEREAS, the proposed Agreement contains the provisions required by the Act
21 and the LEDA Ordinance and, among other things, provides that the Company will grant
22 to the City a security instrument to secure the Company's obligations under the
23 Agreement; and

24 WHEREAS, the City has obtained a cost-benefit analysis with respect to the
25 Project on the basis of information provided to the City by the Company, which cost-
26 benefit analysis shows that the City will recoup the value of its contribution within ten
27 (10) years; and

28 WHEREAS, the Application, together with the cost-benefit analysis,
29 demonstrates the benefits that will accrue to the community as a result of the donation
30 of public resources and demonstrates that the Company, by completing the Project, will
31 be making a substantive contribution to the community, as required by the LEDA
32 Ordinance; and

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1 WHEREAS, the Commission has considered the Project and the proposed
2 Agreement and has recommended that the Council approve the Company's proposal;
3 and

4 WHEREAS, the total amount of public money expended and the value of credit
5 pledged in each fiscal year in which money is expended by the City for the Project (and
6 any other approved projects) pursuant to the Act does not and will not exceed ten
7 percent of the general fund expenditures of the City in such fiscal year; and

8 WHEREAS, the City anticipates that the State will transfer to it, for subsequent
9 transfer to or on behalf of the Company pursuant to an intergovernmental agreement
10 between the City and the State, certain funds of the State that are available for the
11 Project; and

12 WHEREAS, after having considered the Application and the Agreement, the
13 Council has concluded that the economic and other benefits of the Project to the City
14 will be substantial, that it is desirable and necessary at this time to authorize the City to
15 enter into the Agreement, and that the City's provision of the assistance contemplated
16 by the Agreement will constitute a valid public purpose under the Act; and

17 WHEREAS, there has been published in The Albuquerque Journal, a newspaper
18 of general circulation in the City, public notice of the Council's intention to adopt this
19 Ordinance, which notice was published at least fourteen (14) days prior to hearing and
20 final action on this Ordinance.

21 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
22 ALBUQUERQUE:

23 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
24 this Ordinance previously taken by the Council and the officials of the City directed
25 toward the provision of economic development assistance in connection with the Project
26 be approved and the same hereby are ratified, approved and confirmed.

27 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
28 Project are, as set forth in the Agreement, to create and support an economic
29 development project that fosters, promotes and enhances local economic development
30 efforts and that provides job growth and career opportunities for Albuquerque-area
31 residents and otherwise makes a substantive contribution to the community.

32 Section 3. THE PROJECT. The Project will consist of the acquisition,
33 construction and improvement of sound stage studios and related support facilities in

1 Albuquerque to support operations and productions of the Company, which will include
2 the Company's obligation for \$800,000,000 in production spend on or before December
3 31, 2033, and the Company's commitment to operate the facility within the City for a
4 minimum of ten years.

5 Section 4. FINDINGS. The Council hereby declares that it has considered all
6 relevant information presented to it relating to the Project and the Agreement and
7 hereby finds and determines that the provision of economic development assistance for
8 the Project is necessary and advisable and in the interest of the public and will promote
9 the public health, safety, morals, convenience, economy, and welfare of the City and its
10 residents.

11 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
12 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the Project
13 and the Agreement, which provides, among other things, that the City will administer
14 and disburse to the Company funds totaling up to \$7,000,000, of which \$6,000,000 is to
15 be received by the City from the State Economic Development Department and
16 \$1,000,000 are to be City funds, in exchange for which the Company will complete the
17 Project as specified in the Agreement. There is hereby appropriated for the Project up
18 to \$6,000,000 of funds received from the State Economic Development Department and
19 up to \$1,000,000 of City funds.

20 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

21 (A) The form, terms, and provisions of the Agreement in the form
22 presented to the Council with this Ordinance are in all respects approved, authorized,
23 and confirmed, and the City is authorized to enter into the Agreement in substantially
24 the form thereof, with only such changes as are not inconsistent with this Ordinance or
25 such other changes as may be approved by supplemental resolution of the Council.

26 (B) The Council authorizes the Mayor or the Chief Administrative
27 Officer of the City to execute and deliver the Agreement in the name and on behalf of
28 the City, with only such changes therein as are not inconsistent with this Ordinance or
29 such changes as may be approved by supplemental resolution of the Council.

30 (C) The Mayor, Chief Administrative Officer, Chief Financial Officer,
31 City Treasurer, and City Clerk are further authorized to execute, authenticate and
32 deliver such certifications, instruments, documents, letters and other agreements,
33 including an intergovernmental agreement with the State Economic Development

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1 Department, and any appropriate security agreements, and to do such other acts and
2 things, either prior to or after the date of delivery of the executed Agreement, as are
3 necessary or appropriate to consummate the transactions contemplated by the
4 Agreement.

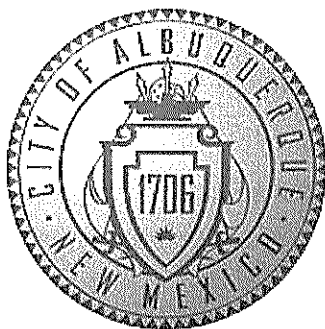
5 (D) City officials shall take such action as is necessary in conformity
6 with the Act, the LEDA Ordinance and this Ordinance to effectuate the provisions of the
7 Agreement and carry out the transactions as contemplated by this Ordinance and the
8 Agreement, including, without limitation, the execution and delivery of any documents
9 deemed necessary or appropriate in connection therewith.

10 Section 7. SEVERABILITY. If any section, paragraph, clause or provision of
11 this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity
12 or unenforceability of that section, paragraph, clause, or provision shall not affect any of
13 the remaining provisions of this Ordinance.

14 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or
15 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only
16 to the extent of that inconsistency. This repealer shall not be construed to revive any
17 bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

18 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
19 DATE. This Ordinance, immediately upon its final passage and approval, shall be
20 recorded in the ordinance book of the City, kept for that purpose, and shall be there
21 authenticated by the signature of the Mayor and the presiding officer of the City Council,
22 and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption
23 thereof shall be published once in a newspaper that maintains an office in, and is of
24 general circulation in, the City, and shall be in full force and effect five (5) days following
25 such publication.

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CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

August 15, 2024

TO: Dan Lewis, President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Approving an Ordinance Involving Mesa Film Studios LLC Project Pursuant to the Local Economic Development Act (LEDA Project 25-1)

Attached for your consideration and approval is an Ordinance involving Mesa Film Studios LEDA Project, Pursuant to the Local Economic Development Act (LEDA-25-1).

This legislation allows for the City to administer and disburse funds to Mesa Film Studios LLC totaling up to \$7,000,000. The State has agreed to provide \$6,000,000 and the City proposes to provide \$1,000,000. LEDA funds will help the Company reimburse LEDA eligible expenses to be used for the construction and improvement of soundstages and other film production facilities (the "Project"), following execution of the Project Participation Agreement ("PPA").

The Company "Mesa Film Studios" is a newly formed venture of world-class owners and operators partnering to create a full-service media & film development campus. Their executive team boasts members with over 125 years experience in the film & television industry. The company will launch "Phase One", with the construction of a full-service purpose-built soundstage complex at Double Eagle II Airport consisting of six soundstages, production offices, mill and flex space. The complex will include an oversized 20+ acre backlot with a permanent greenscreen wall.

Mesa Film Studios is an independent film production studio complex. The project is planned to be built on a 56-acre site located on City of Albuquerque owned land at the Double Eagle II Airport approximately 17 miles west of downtown. The Company is developing and constructing a film & television production campus totaling 285,000+ square feet. Horizontal construction is projected to begin in 4Q 2024, with vertical construction and all improvements completed by 1Q 2026. Upon completion, the project will commence operations immediately.

Mesa Film Studios commits to a cumulative Direct Spend (on its own or affiliated company productions) in at the Project facilities of at least \$800,000,000. The company will provide

approximately \$48,525,000 in investment for new construction of facilities at Double Eagle II Airport and to maintain and operate the facilities for at least ten years. The ordinance would allow reimbursement of approved Project costs so Mesa Film Studios can undertake the acquisition and construction for its new film production facilities located in Albuquerque.

It is important to note that for this project, the evaluation criteria normally addressed in a LEDA project around job creation has to be addressed differently, due to the nature of the film industry. The focus, evaluation, and performance requirements for this project are structured around the economic investment in direct spend. While we know that this results in hundreds of jobs, the performance measures and penalties/clawbacks are built around their ability to meet these financial commitments. Production companies' jobs are not permanent, they vary depending on the production. The Project is expected to create approximately 25 full-time permanent positions. Additionally, during construction 230 construction jobs are expected to be created and sourced from local labor pools, as much as possible.

Mesa Film Studios will maintain the Project's operations in Albuquerque for a minimum of ten (10) years. The ordinance authorizes reimbursement of approved Project costs, up to \$7,000,000, so the Company can construct its Albuquerque film production facility

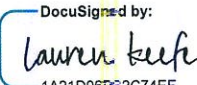
This project includes a fiscal impact analysis provided to the City from the New Mexico Economic Development Department, using a model developed by the New Mexico Economic Development Department. The analysis estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA). The fiscal impact determination of the project is from information the company provided. The analysis shows that the company will be making a substantive contribution to the community. Overall, the City will receive approximately \$13,532,630 in net benefits over the 10-year period, equating to a Present Value of \$ 11,006,945. The Project will have an estimated Total Public Net Benefit of \$ 54,673,586 over the 10-year period.

Your consideration and approval are requested.

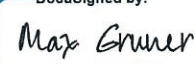
Approved:

Approved as to Legal Form:


Samantha Sengel, EDD Date
Chief Administrative Officer

DocuSigned by:
 8/23/2024 | 12:39 PM MDT
1A21D96D632C74EE...
Lauren Keefe Date
City Attorney

Recommended:

DocuSigned by:
 8/23/2024 | 10:34 AM MDT
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Max Gruner, Date
Director

Cover Analysis

1. What is it?

This is an ordinance for LEDA funding in the amount of \$1,000,000 from the City for the Mesa Film Studios LLC Project (“Mesa Film Studios”). The State has agreed to provide \$6,000,000 in LEDA funds. The City will act as fiscal agent for State LEDA funds for a total of \$7,000,000. The LEDA funds are to be used for the construction of film production facilities (the “Project”). However, as usual, the State LEDA transaction is not under review for approval as part of the Council’s review of the City’s proposed \$1,000,000 LEDA award.

Mesa Film Studios will be eligible for reimbursement for costs of the construction and improvements incurred following execution of the Project Participation Agreement. Mesa Film Studios anticipates its total investment in the facilities will be approximately \$48,525,000. The company further commits to a cumulative direct production spend of at least \$800 million.

2. What will this piece of legislation do?

The ordinance authorizes \$1,000,000 in City LEDA funds for the Project and allows the City to act as fiscal agent for State of New Mexico LEDA funds in the amount of \$6,000,000. The ordinance authorizes reimbursement of approved Project costs so the Company can undertake the acquisition and construction of film production facilities located in Albuquerque. The total investment in the acquisition and construction for its new facility is estimated at \$48,525,000.

The construction project is expected to create over 230 construction jobs sourced from local labor pools.

3. Why is this project needed?

The Project represents a significant capital investment in our community and the company commits to a cumulative direct spend of at-least \$800 million in film-related expenditures. The film industry has been identified as a key, economic-base industry in Albuquerque. Albuquerque already has the talent, workforce development programs, infrastructure and intellectual capital to drive sustainable long-term growth and future investment in this industry.

The Project consists of developing and constructing a film & television production campus totaling 285,000+ square feet over 60+ acres in the West Mesa of Albuquerque, NM. Specifically, the build out will include:

- Grading and comprehensive drainage plan for the entirety of the site.
- Six Sound Stages - 20,250 sf each, 8” concrete slab to receive metal building, 40 feet to the grid, 3200 amps, 3 phases per stage, 800 amps @ 400 power, 20’ elephant doors
- Two Flex Buildings - 36,000 sf total, 6” concrete slab to receive metal building, washer/dryer hookups in each building, 20’ x 20’ elephant doors, red iron framing for dividing wall, R-19 roof insulation.

- Office Building - 50,000 sf rentable space, production space with kitchenettes, mail room and art suites.
- Mill Building - 80,000 sf, full restroom facilities, 1200 amps, 3 phase power.

The Project furthers the City's goals of securing New Mexico as a world-class entertainment production hub and provides desperately needed sound stages for the industry.

The City's LEDA Ordinance requires that economic development projects requesting economic assistance from the City shall clearly demonstrate the benefits that will accrue to the community, and that the qualifying entity is making a substantive contribution to the community. Our analysis clearly demonstrates that by fulfilling the commitment for \$80 million average annually in Direct Spend (\$800M cumulative) and the capital investment of over \$48 million, the Mesa Film Studios LEDA Project will be providing a high degree of benefits to the community and a strong substantive contribution.

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

\$1,000,000. General Fund.

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

No. There is no direct revenue to the City.

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

The incentive is critical to the success of the Project. If the legislation does not pass, the result would be loss of new jobs, a loss of revenue and a potential cancellation of the Project. The Company would not be able to pursue the Project without approval.

7. Is this service already provided by another entity?

No.

ALBUQUERQUE DEVELOPMENT COMMISSION

August 4, 2024

Local Economic Development Act Hearing

Case #2024-7 Mesa Film Studios LEDA

LEDA 25-1: Mesa Film Studios LLC LEDA Project

REQUEST: Approval of an Ordinance for Mesa Media Holdings LLC Pursuant to the Local Economic Development Act

PROJECT SUMMARY:

Mesa Media Holdings LLC, a limited liability corporation registered to do business in New Mexico (“Mesa Film Studios”), is seeking the City of Albuquerque to be the fiscal agent for State LEDA funds and for the City to directly provide LEDA funds, to be used for the construction of soundstages and other film production facilities (the “Project”). Mesa Film Studios is seeking LEDA funding in the amount of \$7,000,000. The State has agreed to provide \$6,000,000 and the City proposes to provide \$1,000,000. Mesa Film Studios will be eligible for reimbursement for costs of the construction and improvements incurred following execution of the Project Participation Agreement (“PPA”).

The Company "Mesa Film Studios" is a newly formed venture of world-class owners and operators partnering to create a full-service media & film development campus. Our executive team boasts members with over 125 years experience in the film & television industry. The company will launch “Phase One”, with the construction of a full-service purpose-built soundstage complex across 60+ acres on Albuquerque’s West Mesa at Double Eagle II Airport consisting of six soundstages, production offices, mill and flex space. The complex will include an oversized 20+ acre backlot with a permanent Greenscreen wall.

Mesa Film Studios is an independent film production studio complex. The project is planned to be built on a 56-acre site located on City of Albuquerque, New Mexico owned land at the Double Eagle II Airport approximately 17 miles west of downtown in Albuquerque. The Company is developing and constructing a film & television production campus totaling 285,000+ square feet over 60+ acres in the West Mesa of Albuquerque, NM. Horizontal construction is projected to begin in 4Q 2024, with vertical construction and all improvements completed by 1Q 2026. Upon completion, the project will commence operations immediately.

Mesa Film Studios commits to a cumulative Direct Spend (on its own or affiliated company productions) in at the Project facilities of at least \$800,000,000. The company will provide approximately \$48,525,000 in investment for new construction of facilities at Double Eagle II Airport and to maintain and operate the facilities for at least ten years. The ordinance would allow reimbursement of approved Project costs so Mesa Film Studios can undertake the acquisition and construction for its new film production facilities located in Albuquerque.

Under the Local Economic Development Act, the State of New Mexico and its local governments are empowered to offer discretionary incentives to companies that support

economic development projects that foster, promote, and enhance local economic development efforts. Qualifying entities for these incentives per statute include(s): A business in which all or part of the activities of the business involve the supplying of products and services to the general public, governmental agencies, or a specific industry or customer, but, other than as provided in Paragraph E of the statute subsection, not including businesses primarily engaged in the sale of goods or commodities at retail. As such, the Mesa Film Studios project represents a qualifying entity under State and City laws.

It is important to note that for this project, the evaluation criteria normally addressed in a LEDA project around job creation has to be addressed differently, due to the nature of the film industry. The focus, evaluation, and performance requirements for this project are structured around the economic investment related to the direct spend by productions. While we know that this results in hundreds of jobs, the performance measures and penalties/clawbacks are built around their ability to meet these financial commitments. Production companies' jobs are not permanent, they vary depending on the production.

In 2003, a year after the State film tax incentive legislation was put in place, New Mexico had a direct spend from the entertainment industry of \$7 million. By FY22, this figure had grown to \$855.40 million. In 2004, the City of Albuquerque recognized the economic potential the industry could bring to our community with these new film incentives, and the Albuquerque Film Office was established within the Economic Development Department. The Film Office has received numerous national awards for its high-quality professionalism, responsiveness, community support, and ability to process film permitting in record times.

This industry growth has led to the development of both direct and indirect film industry businesses and jobs. The majority of these crew members are technical trade workers who hold positions in set, electric, grip and construction departments and typically make a higher average wage than that of similar occupations in other industries.

The impact of the film industry also extends beyond the crew. There is the indirect impact in Albuquerque from the monies spent at local lumber, glass and paint stores, for food vendors and local security companies and insurance companies. The production companies pay local office owners and home-owners location rental fees and often lease warehouses, parking lots and City buildings. The overall economic impact is far and wide throughout the community. The City's LEDA Ordinance requires that economic development projects requesting economic assistance from the City shall clearly demonstrate the benefits that will accrue to the community, and that the qualifying entity is making a substantive contribution to the community. Our analysis clearly demonstrates that by fulfilling the commitment for \$800 million in cumulative Direct Spend, the Mesa Film Studios LEDA Project will be providing a high degree of benefits to the community and a strong substantive contribution.

The Project will generate additional benefits and costs for local taxing districts, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages. Overall, the City will receive approximately \$13,532,630 in net benefits over the 10-year period, equating to a Present Value of \$ 11,006,945. The Project will have an estimated Total Public Net Benefit of \$ 5 4,673,586 over the 10-year

period.

The Project is expected to create approximately 230 construction jobs sourced from local labor pools, as much as possible.

The State of New Mexico and its local governments are empowered to offer discretionary incentives to companies that support economic development projects that foster, promote, and enhance local economic development efforts. Qualifying entities for these projects include:

“A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two (2) or more of the following:

A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in paragraph E of this definition; not including businesses primarily engaged in the sale of goods or commodities at retail;

The LEDA application, as shown in Exhibit 1 provides details of the Project, including the number and types of jobs to be created, the investment to be created, and associated community economic impacts, which are further analyzed below.

Exhibit 2 delineates the required Project Participation Agreement (“PPA”) between Mesa Film Studios and the City. The PPA is summarized in Section V.

This project includes a fiscal impact analysis provided to the City from the New Mexico Economic Development Department, using a model developed by the New Mexico Economic Development Department. The analysis estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA). The fiscal impact determination of the project is from information the company provided. The analysis shows that the company will be making a substantive contribution to the community.

FINDINGS:

1. LEDA 25-1 is a qualified project as defined by the State’s Local Economic Development Act and the City enabling legislation (F/S O-04-10); and
2. LEDA 25-1 would make positive substantive contributions to the local economy and community by developing much needed film production facilities in Albuquerque, and committing to \$800 Million in cumulative Direct Spend on TV, film, and media productions,; and
3. LEDA 25-1 has demonstrated the financial capability to undertake and successfully manage the Project; and

4. Subject to the development of acceptable security documents, LEDA 25-1 would adequately meet the evaluation criteria established by the City for Local Economic Development Act projects, including the requirement that the City recoup the value of its investment within 10 years;

PROJECT ANALYSIS: The project, as proposed in the project application, will be analyzed in accordance with the City’s LEDA project evaluation criteria.

I. PROJECT ELIGIBILITY

1. QUALIFYING ENTITY

City enabling legislation (F/S O-04-10), as well as the State Local Economic Development Act, establishes a definition for a “Qualifying Entity” eligible for LEDA funding assistance. Mesa Film Studios qualifies under the Act and the Ordinance by meeting the following definition:

As stated in the Summary, qualifying entities for these projects include

“A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two (2) or more of the following:

C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in paragraph E of this definition; not including businesses primarily engaged in the sale of goods or commodities at retail;

2. ECONOMIC DEVELOPMENT POLICIES AND OBJECTIVES

The City’s enabling legislation also states that applications for LEDA assistance, which meet the policies and objectives of the City’s community economic development plans, shall receive priority. Mesa Film Studios qualifies as the type of project that meets the City’s identified economic development priorities under (F/S O-04-10) in the following categories:

(2) Private companies seeking to build, expand or relocate facilities;

(3) Private companies which provide facilities or services which enhance the ability of Albuquerque businesses to operate;

II. LAND USE, PLAN AND DESIGN ELEMENTS

1. PLAN & ZONING:

Legal Description

LEDA 25-1: Mesa Film Studios LEDA

Description - MFS Lease Tract 2, Plat of Tract A-1 & Tract L-1 Parcels 1-5

A certain parcel of land being a portion of Tract A-1, Plat of Tract A-1 & Tract L-1 Parcels 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southeasterly corner said LEASE TRACT 2, WHENCE Albuquerque Geodetic Reference Station Brass Cap stamped "2-F6" bears South 05° 51'11" East a distance of 1124.53 feet;

THENCE North 89° 59'48: West a distance of 2000.00 feet to the southwesterly corner of said LEASE TRACT 2;

THENCE North 00° 00'12" East a distance of 1260.00 feet to the northwesterly corner of said LEASE TRACT 2;

THENCE South 89° 59'48" East a distance of 2000.00 feet to the northeasterly corner of said LEASE TRACT 2, WHENCE, as a tie, the southeasterly corner of Tract L-1 Parcel 5, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 41° 51'11" East a distance of 1124.53 feet;

THENCE South 00° 00'12" West a distance of 580.00 feet to an angle point;

THENCE South 89° 59'48" East a distance of 1088.82 feet to an angle point, said point being a point on the westerly easement line of a 156' Wide Public Access Easement granted by plat filed 07/10/2002, Plat Book 2002C, Page 228;

THENCE South 13° 27'24" East a distance of 102.82 feet along said easement line to an angle point;

THENCE North 89° 59'48" West a distance of 112.76 feet to an angle point;

THENCE South 00° 00'12" West a distance of 580.00 feet to the POINT OF BEGINNING.

The property is zoned NON-RESIDENTIAL – SENSITIVE USE ZONE DISTRICT (NR-SU). A film studio is an allowable use in the NR-SU zone. A film studio is also allowable per the master plan at DEII.

The project also conforms to the City's Economic Development strategies:

Smart Recruitment, Retention, and Expansion – The Economic Development Department (EDD) is focused on recruiting companies from specific industries that build upon Albuquerque's existing assets. The EDD supports new enterprise creation, cluster development, and strategic attraction and recruitment of businesses that align with and complement existing strengths.

2. LAND USE:

LEDA 25-1: Mesa Film Studios LEDA

The Project consists of developing and constructing a film & television production campus totaling 285,000+ square feet over 60+ acres in the West Mesa of Albuquerque, NM. Specifically, the build out will include:

- Grading and comprehensive drainage plan for the entirety of the site.
- Six Sound Stages - 20,250 sf each, 8” concrete slab to receive metal building, 40 feet to the grid, 3200 amps, 3 phases per stage, 800 amps @ 400 power, 20’ elephant doors
- Two Flex Buildings - 36,000 sf total, 6” concrete slab to receive metal building, washer/dryer hookups in each building, 20’ x 20’ elephant doors, red iron framing for dividing wall, R-19 roof insulation.
- Office Building - 50,000 sf rentable space, production space with kitchenettes, mail room and art suites.
- Mill Building - 80,000 sf, full restroom facilities, 1200 amps, 3 phase power.

A sound stage is a large, soundproof studio space that is used for the production of films, television shows, and other forms of media. It is typically equipped with a variety of lighting, sound, and camera equipment, and can be used to create a variety of different sets and environments.

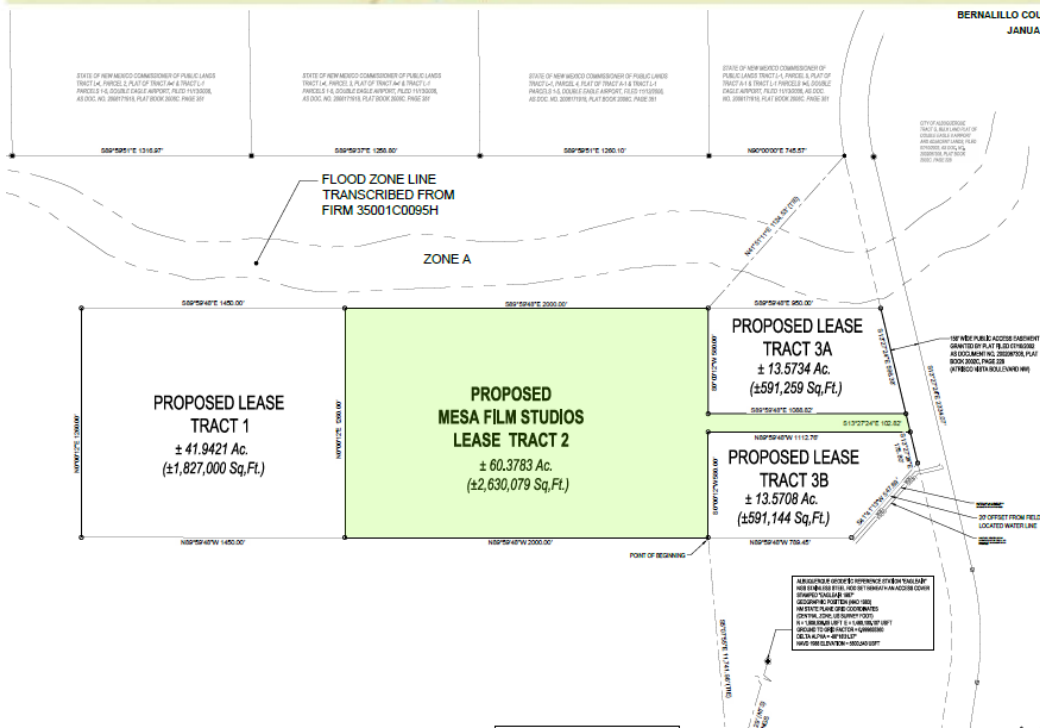
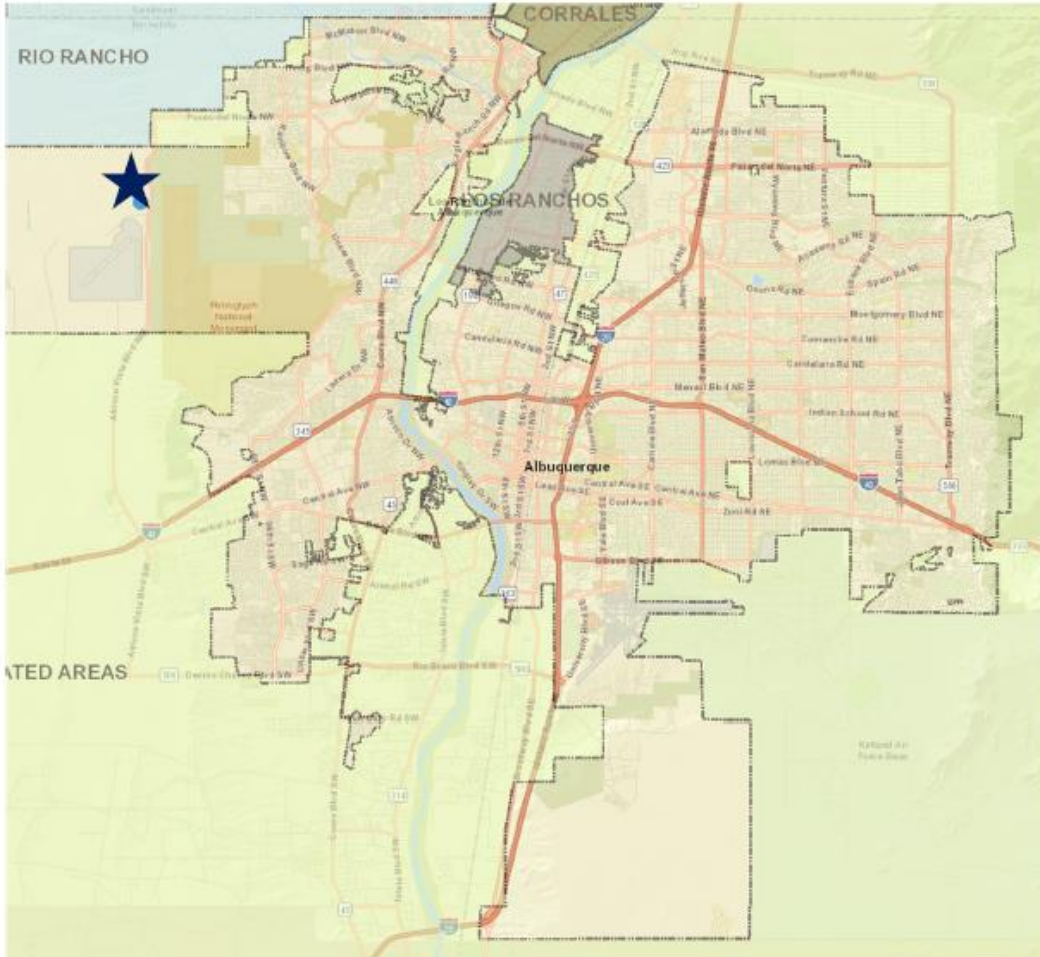
The Project furthers the City’s goals of securing New Mexico as a world-class entertainment production hub and provides desperately needed sound stages for the industry.

No demolition of historic buildings will be involved in this project.

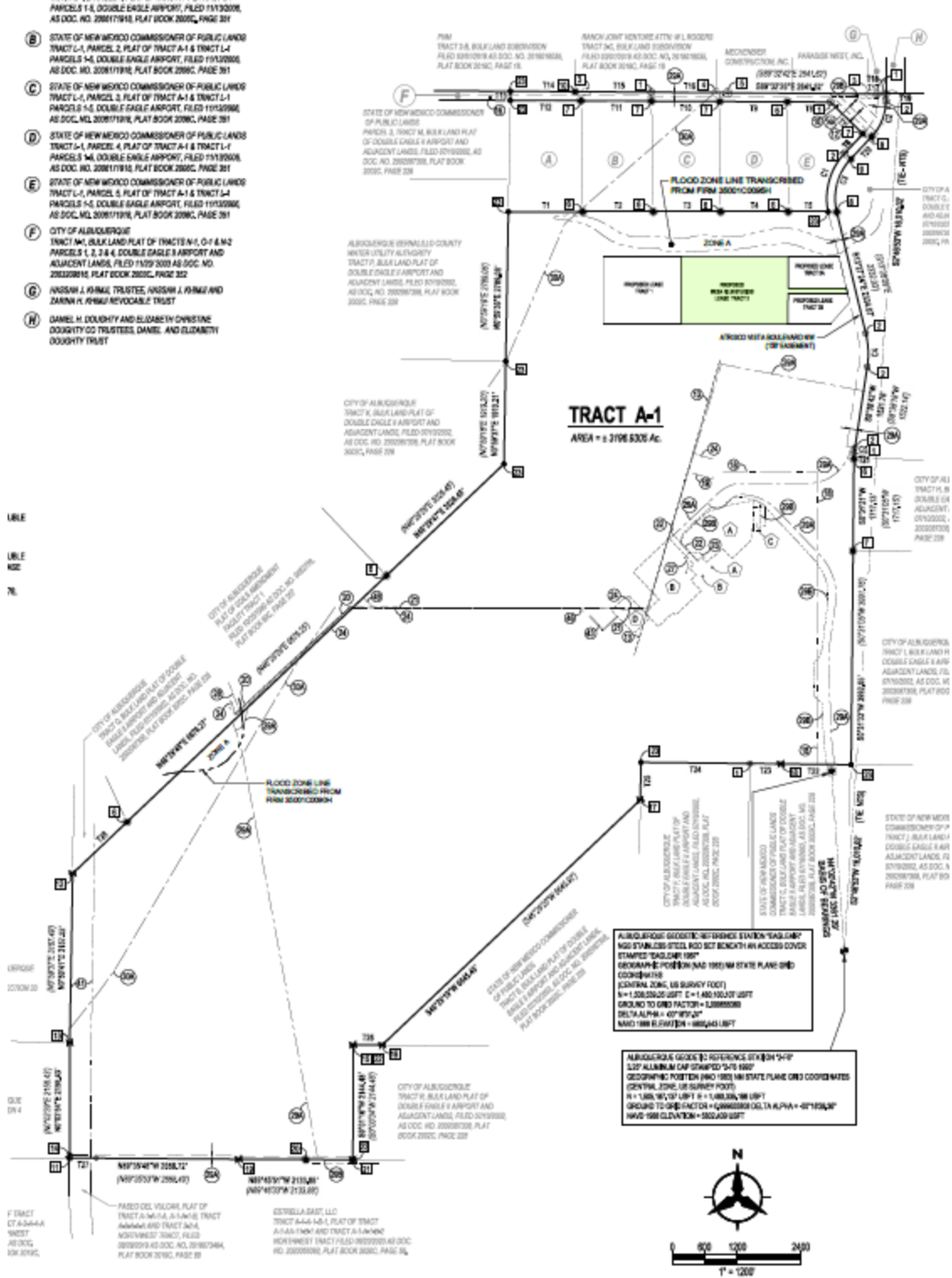
The Project is expected to become operational in 2026. The Project is expected to be in operation for at least 10 years.

3. INFILL:

LEDA 25-1: Mesa Film Studios LEDA



LEDA 25-1: Mesa Film Studios LEDA





4. DESIGN AND CONSERVATION:

The Project will not require significant water usage.

5. RENEWABLE ENERGY:

MFS has completed preliminary conversations with Solar Field Developer Pristine Sun for the provision of a 100% renewable energy supply for the project. Plans to move forward with Pristine Sun will be further investigated upon receipt of the building permit for the project.

Mesa Film Studios is working with the City of Albuquerque on long-term plans to develop a regional retention pond to be used by the development and surrounding areas, which would include a comprehensive hydrological study. All equipment used on the retention pond project will be rated for maximum energy efficiency, including usage of LED light bulbs, smart thermostats and other implementations

III. ECONOMIC BENEFITS

6. COMPETITION:

According to State of New Mexico Film Office, there are 21 qualified production facilities in the state eligible for state assistance. A qualified production facility includes a building (or complex of buildings and backlot facilities) with 1) a sound stage of at least 7,000 square feet, and 2) a standing set with at least one interior and five exteriors built for film production. There are nine qualified production facilities located in the Albuquerque area, nine in Santa Fe County, and one in Las Cruces. Several of the existing Albuquerque film studios that are of large enough size to be considered competitors to Mesa Film Studios are described below.

Netflix – The first major film studio in Albuquerque was ABQ Studios that opened in 2007 in the Mesa Del Sol project located south of the City’s Sunport Airport on University Boulevard. In 2018, Netflix purchased ABQ Studios for \$30 million and is in the process of a 300-acre expansion.

NBCUniversal – One of the more recent film studio projects in New Mexico is NBCUniversal studio in Albuquerque. NBCUniversal signed a 10-year lease in June of 2019 to turn an empty 80,000 square foot warehouse into a film studio with two sound stages, offices, and a mill.

Cinelease Studios – Located at 9201 Pan American Freeway, the Cinelease Studios has 500,000 square feet of space including five sound stages totaling 103,000 square feet, 75,000 square feet of mill space, 45,000 square feet of office, and 5 acres of backlot. Cinelease is a national entertainment company with 12 studios in six states and has contracts with major producers including HBO, Netflix, Disney, and Amazon.

The proposed Mesa Film Studios will fill an existing gap in facilities in Albuquerque as two of the largest soundstage complexes (Netflix and NBCUniversal) have fulltime occupants, leaving a gap for other production facilities. While Netflix and NBC Universal are competitors in the area related to the production of film and television media, it should be noted

that both are primarily focused on the production of their own content rather than leasing sound stage space to outside production companies. Except for Cinelease, other Albuquerque independent studios are relatively small without adequate facilities for major productions.

7. JOBS:

Mesa Film Studios expects to employ 25 full-time, permanent staff for day-to-day operations. These 25 employees fall under five employment categories: chief operations officer (COO), accounting, general staff, security, and janitorial. The projected total annual cost for salaries and benefits is \$1.36 million, and the average hourly wage is \$28.84.

It should be noted that none of the permanent jobs created will not be required as part of the Project Participation Agreement, but provides an additional economic benefit above the Direct Spend requirement in the PPA.

The Project is also expected to the creation of 230 construction jobs sourced from local labor pools, as much as possible. Additionally, the Project is expected to created 469 indirect and induced jobs.

IV. PROJECT FEASIBILITY

9. COST/ FEASIBILITY/ FINANCING:

The Mesa Film Studios project will be capitalized with an Applicant Equity Investment of \$35,000,000. The balance of the financing will come from bank loans. Additionally, the State has committed \$6,000,000 in LEDA funds and the City has committed an additional \$1,000,000 for a total of \$7,000,000. LEDA funding is subject to City Council approval.

10. DEVELOPER'S RECORD:

The Mesa Film Studios development is led by the partnership between Galen Walker, SR Capital and Roadtown Enterprises LTD.

Galen Walker has over 30 years in the entertainment industry managing, overseeing and facilitating 100+ projects through digital and production departments. Established in 1998, Walker founded Pacifica Media Affiliates, an audio post production company. Over a 5 year span, PMA acquired and operated five of Hollywood's largest independent sound studio facilities and later was purchased by Technicolor.

SR Capital a real estate development and investment firm a 30-year track record. A recent project is 551 West 21st Street, a 200,000 square foot residential condominium building in West Chelsea, NYC completed in 2017.

Roadtown Enterprises is a specialized consulting and management company focused on entertainment, real estate, and related industries. The company seamlessly help landowners, developers, business owners, and entrepreneurs design, build, operate, and market motion picture and television production facilities and their associated support businesses. They have designed,

LEDA 25-1: Mesa Film Studios LEDA

developed and serviced studios across the country for firms like Amazon, Sony, Warner Bros, and more.

Nick Smerigan, CEO & Founder of Roadtown, was responsible for building and managing Albuquerque Studios, which was subsequently acquired by the largest content streaming company in the world, Netflix.

For additional info: <https://www.roadtownenterprises.com/home>

Additional team biographies can be found as an exhibit to the LEDA application.

Based upon financial information provided, the company's track record and the organizational capacity, the company appears capable of managing and completing the project.

11. EQUITY:

The Mesa Film Studios project will be capitalized with an Applicant Equity Investment of \$35,000,000. The balance of the financing will come from bank loans. Additionally, the State has committed \$6,000,000 in LEDA funds and the City has committed an additional \$1,000,000 for a total of \$7,000,000. LEDA funding is subject to City Council approval.

Based upon financial information provided and the due diligence conducted, the company appears capable of managing and completing the project.

12. MANAGEMENT:

The Company "Mesa Film Studios" is a newly formed venture of world-class owners and operators partnering to create a full-service media & film development campus. Our executive team boasts members with over 125 years experience in the film & television industry.

Principals:

SCOTT RESNICK - Principal/Owner/Lead Developer of the Project.

GALEN WALKER - Principal/Owner overseeing operations of the Project.

NICK SMERIGAN - Senior Consultant, Roadtown Enterprises

MARK KINDRACHUK - Head of Finance on the Project

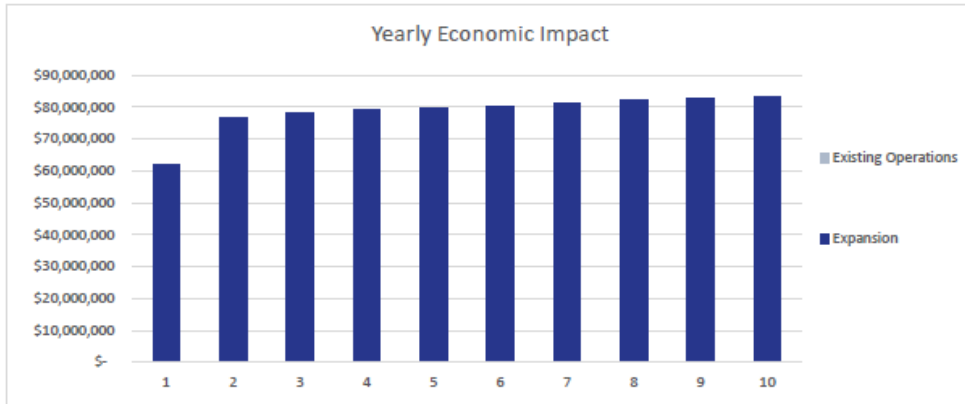
Based upon expertise and proven track record of the management team, the company appears capable of managing and completing the Project.

13. FISCAL IMPACT ANALYSIS

This staff analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	\$ 784,668,326
Combined Total Incentive Over 10 Years:	\$ 6,000,000
Economic Impact Rate of Return:	12,978%

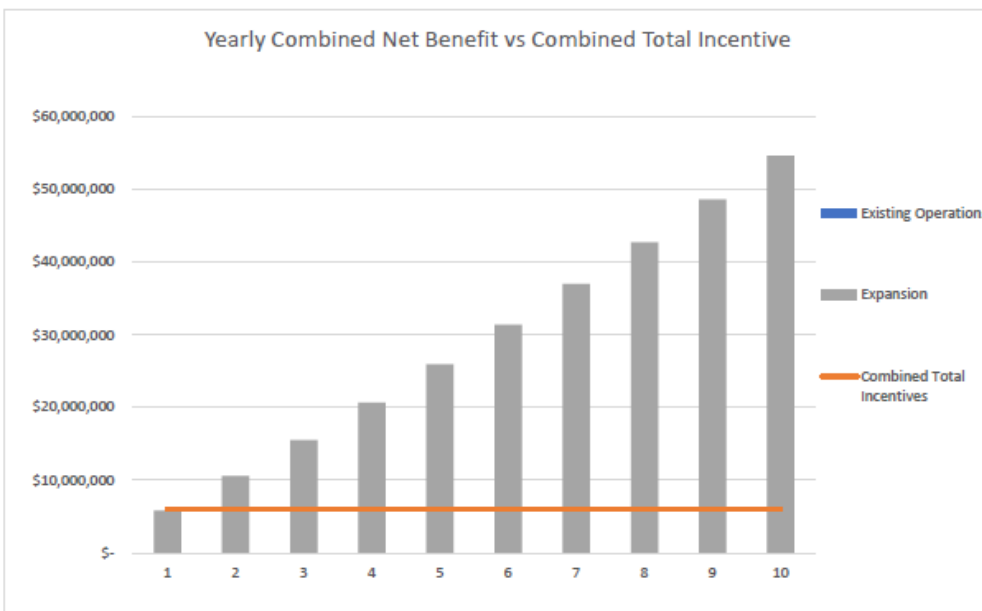


Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	512	469
Estimated Number of Construction Workers:	230	
Estimated Number of New Residents to the State:		8
Estimated Number of New Residents to the County:		7
Estimated Number of New Residents to the City:		7

Total Public Net Benefit

	Total
Estimated Total Public Net Benefit Over 10 Years:	\$ 54,673,586
Combined Total Incentive Over 10 Years:	\$ 6,000,000
Total Public Net Benefit Rate of Return:	811%



V. PROJECT PARTICIPATION AGREEMENT

Pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 ("LEDA"), the City adopted Ordinance No. F/S 04-10 (the "LEDA Ordinance"), approving an economic development plan for the City and authorizing the City to consider applications for economic development assistance. The Ordinance calls for the preparation and approval of a Project Participation Agreement (PPA), which is the formal document, which states the contributions and obligations of all parties in the LEDA project. The agreement must clearly state the following items:

- (1) **The economic development goals of the project;**
- (2) **The contributions of the City and the qualifying entity;**
- (3) **The specific measurable objectives upon which the performance review will be based;**
- (4) **A schedule for project development and goal attainment;**
- (5) **The security being offered for the City's investment;**
- (6) **The procedures by which a project may be terminated and the City's investment recovered; and,**
- (7) **The time period for which the City shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the City shall relinquish interest in and oversight of the project.**

B. Each project participation agreement shall be adopted as an ordinance and adopted by the Council at a public hearing.

The primary terms of the Mesa Film Studios Project Participation Agreement are summarized and attached as an Exhibit.

1. Goals and Objectives. The goals and objectives of the Project are to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide job growth and career opportunities for Albuquerque-area residents and otherwise make a substantive contribution to the community as set forth in this Agreement and in the Mesa Film Studios Application.

2. Company Contribution. Mesa Film Studios shall acquire, construct, improve and operate its Facilities for the use as a production base for various film, television, and media productions and related activities at an estimated cost of approximately \$48,525,000 over ten (10) years, and will commit to the ten (10) year cumulative Production Spend Requirement of \$800,000,000 reflected by the table in Section 7.A, as contemplated by this Agreement all in accordance with the schedule and other terms and conditions set forth in this Agreement. Mesa Film Studios will maintain the Project's operations in Albuquerque for a minimum of ten (10)

years. Mesa Film Studios will comply with all applicable laws in connection with the operation of the Project and will timely pay all personal property taxes with respect thereto.

3. The State Contributions; Procedure for Disbursement of the State Contributions. The City anticipates that the State Contribution of up to \$6,000,000 will be delivered to the City for subsequent disbursement to Mesa Film Studios, following enactment of the Project Ordinance and execution of this Agreement and an intergovernmental agreement between the State and the City. The City will submit an invoice to the State and request transfer of the State funds. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. If, and only if, the City receives the State Contribution, the City will disburse the State Contribution to Mesa Film Studios as follows:

- (1) \$500,000 upon Mesa Film Studios signing the lease for the land described as Mesa Film Studios Tract 2, Plat of Tract A-1 and Tract L-1 Parcels 1-5 in the Ground Lease Agreement signed between the City of Albuquerque and Mesa Film Studios on April 28, 2024 and attached to this Agreement as Exhibit C;
- (2) \$500,000 upon Mesa Film Studios breaking ground for construction of the Facility;
- (3) \$1,000,000 upon the issuance of a Certificate of Occupancy for new stages at the Facility with a minimum of two (2) stages at the Facility;
- (4) \$1,000,000 upon \$100,000,000 in production spending by Mesa Film Studios; and
- (5) \$1,000,000 for every \$80,000,000 in production spending in excess of the \$100,000,000 mentioned above in this Section until the State LEDA funds are exhausted.

State Contribution disbursements (3), (4) and (5) are predicated on the production spending being LEDA eligible and Mesa Film Studios being current with all reporting required herein and under any other agreement or ordinance.

4. The City Contribution. Pursuant to the Project Ordinance and the LEDA Ordinance, the City has committed the amount of \$1,000,000 for use in connection with the Project. As required by the LEDA Ordinance, the City will deposit the proceeds of the City Contribution into a clearly identified separate account, which account will be subject to an annual independent audit. City funds will be dispensed to Mesa Film Studios as follows:

- (1) \$125,000 upon Mesa Film Studios signing the lease for the land described as Mesa Film Studios Tract 2, Plat of Tract A-1 and Tract L-1 Parcels 1-5 in the Ground Lease Agreement signed between the City of Albuquerque and Mesa Film Studios on April 28, 2024 and attached to this Agreement as Exhibit C;
- (2) \$125,000 upon Mesa Film Studios breaking ground for construction of the Facility;

LEDA 25-1: Mesa Film Studios LEDA

(3) \$250,000 upon the issuance of a Certificate of Occupancy for new stages at the Facility with a minimum of two (2) stages at the Facility; and

(4) \$250,000 upon every \$100,000,000 in production spending by Mesa Film Studios until the City LEDA funds are exhausted.

City Contribution disbursements (3) and (4) are predicated on the production spending being LEDA eligible and Mesa Film Studios being current with all reporting required herein and under any other agreement or ordinance.

5. Time Commitment. Mesa Film Studios intends to invest approximately 48,525,000 over ten (10) years for acquisition, construction, and improvement of the Facility, with operations at the Facility to begin in 2026. Mesa Film Studios will continue to occupy the Facility and diligently conduct operations at the Facility in the manner contemplated by this Agreement at least through December 31, 2034.

6. Use of Public Contributions. Mesa Film Studios will be eligible for reimbursement of up to \$7,000,000 for costs of acquiring the land, and construction and improvement of the Facility actually incurred after the date hereof and paid for, subject to the receipt by the City of the State Contribution. The City will make payment to Mesa Film Studios following submission to the City of documentation reasonably satisfactory to the City evidencing payment of expenses with respect to the Facility, evidencing the commencement of construction of the Facility, showing proof of receipt of the Certificate of Occupancy, and meeting the performance targets set forth herein.

No Project funds will be used to reimburse expenses from any individuals or a company that has a financial interest in Mesa Film Studios or its employees.

7. Performance Clawback Requirements.

A. Production Spending Clawback Requirements. The clawback provisions stipulated in the table shown below herein outline the conditions under which financial penalties are triggered if the actual production spend falls short of the predefined thresholds. Specifically, the "Yearly Average of Production Spending Requirement" column establishes the minimum required expenditure for each year. This Agreement enforces a clawback penalty under the following conditions: For the year 2028, should the annual production spending be less than the required average of \$57,000,000, a clawback of 100% of the shortfall amount will be enforced; in 2031, if the production expenditure does not meet the \$72,000,000 threshold, a clawback penalty amounting to 75% of the shortfall will be applied; and by 2033, the clawback rate is adjusted to 50% for any shortfall from the annual requirement of \$72,000,000.

<i>Production Spend Requirement Clawback</i>				
Year	Production Spending	Cumulative Spend	Yearly Average of Production Spending Requirement	Clawback

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2024	\$0	\$0	\$0	
2025		Buffer for extended construction time	\$0	
2026	\$93,000,000	\$93,000,000	\$31,000,000	
2027	\$95,000,000	\$188,000,000	\$47,000,000	
2028	\$97,000,000	\$285,000,000	\$57,000,000	100% of the percentage shortfall below the average
2029	\$99,000,000	\$384,000,000	\$64,000,000	
2030	\$101,000,000	\$485,000,000	\$69,000,000	
2031	\$105,000,000	\$590,000,000	\$72,000,000	75% of the percentage shortfall below the average
2032	\$105,000,000	\$695,000,000	\$72,000,000	
2033	\$105,000,000	\$800,000,000	\$72,000,000	50% of the percentage shortfall below the average

B. Maximum Clawback; Unpaid Payments. Notwithstanding anything herein to the contrary, the maximum aggregate clawbacks payable hereunder will be an aggregate of \$7,000,000, not including interest. Any clawbacks not paid when due shall bear interest at the Prime Rate plus 2% per annum from the due date until paid. “Prime Rate” means the U.S. prime rate as reported from time to time in *The Wall Street Journal* in its Bonds, Rates and Yields table, or successor table.

C. Change in Business Climate. Notwithstanding the foregoing, if Mesa Film Studios fails to achieve the performance targets as identified in Section 7.A herein, or a Facility closure occurs as provided in Section 7.D herein, and believes Business Climate Changes were the cause for its failure to meet such requirements or for the Facility closure, Mesa Film Studios will so advise the City in writing describing the Business Climate Changes in detail. “Business Climate Changes” mean substantial changes outside of the control of Mesa Film Studios, in the segment of the industry in which Mesa Film Studios operates, that cause a significant decrease in the amount of production Mesa Film Studios is able to achieve. The shifting of Mesa Film Studios’

operations to another Project, whether within or outside of Albuquerque, will not constitute a Business Climate Change. If the City determines that Business Climate Changes affect Mesa Film Studios’ ability to achieve the required performance targets or results in the closure of the Facility, after consultation with and concurrence of the State EDD, it may waive or modify the clawback, and may withhold future contributions to Mesa Film Studios. The City must operate with good faith in making any such decision. Any clawback ultimately due will be paid within the later of 15 days after the City notifies Mesa Film Studios of its decision or, if Mesa Film Studios invokes the dispute resolution procedures of Section 12 herein, within 15 days after a final determination is made that the clawback is required.

D. Facility Closure Clawback. Should Mesa Film Studios cease operation of the Facility before December 31, 2034, Mesa Film Studios shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to a specified percentage of the amount of the City Contribution and State Contribution paid pursuant to this Agreement, with the specific percentage based on the date of cessation of operations in accordance with the following table:

Date of Cessation of Operations	Percent of Public Contributions to be Repaid
On or before December 31, 2028	100%
From January 1, 2029 through December 31, 2031	75%
From January 1, 2032 through December 31, 2034	50%

8. Security. To secure the performance of its obligations under this Agreement, prior to the payment of any portion of the State Contribution or the City Contribution to Mesa Film Studios, Mesa Film Studios shall obtain a Letter of Credit issued by [_____], in favor of the City. The Letter of Credit shall be in an aggregate amount of \$7,000,000 and shall serve as security for Mesa Film Studios’ obligations under this Agreement. The Letter of Credit shall be subject to terms and conditions satisfactory to the City and shall be issued on or about the date of this Agreement. The Letter of Credit shall remain in effect throughout the term of the Project, unless otherwise approved by the City, and will be renewed as necessary, such renewal being the sole responsibility of the company.

9. Events of Default and Remedies.

A. Failure to Comply with Obligations. Failure by Mesa Film Studios to comply with any obligation under this Agreement, including without limitation, the failure to make timely payment of any clawback payment due hereunder, shall be an Event of Default. Notwithstanding the foregoing, failure to meet production spending requirements shall not be

considered an Event of Default; however, the failure to make timely payment of any clawback payment due as a result thereof shall be an Event of Default.

B. Notice of Event of Default. If any Event of Default occurs, the City shall notify Mesa Film Studios in writing, and Mesa Film Studios shall have thirty (30) days in which to cure such Event of Default. If the Event of Default is not cured within such thirty-day period, the City shall have and may (1) terminate this Agreement upon notice to Mesa Film Studios and accelerate any clawback provisions and (2) exercise any remedies available at law or in equity.

10. Fees. Mesa Film Studios will promptly pay or reimburse the City for all reasonable third-party expenses incurred by the City in connection with this Agreement and the Project, provided, however, that Mesa Film Studios shall not be liable for costs incurred by the City that are the responsibility of the City in the ordinary course of business. If so determined by the City, in its sole discretion, such third-party expenses may be offset against or reimbursed from the City Contribution or the State Contribution. Although the City does not anticipate incurring significant third party expenses during the term of this Agreement, such expenses could include, without limitation, expenses associated with performance reviews or audits with respect to the Project and legal fees for outside counsel in the event of any proposed amendment to this Agreement or any necessary enforcement action with respect to this Agreement.

11. Reporting Requirement, Performance Review and Termination. Quarterly, on or before each January 31, April 30, July 31 and October 31, Mesa Film Studios will provide to the City and to State EDD the Company's ES903A with Affidavit or its equivalent filed with New Mexico's Department of Workforce Solutions for the previous quarter regarding the workforce for Mesa Film Studios and such other information necessary for the City or its independent contractor to determine whether Mesa Film Studios has met its obligations under this Agreement. Additionally, on the same quarterly schedule, Mesa Film Studios will provide the City and State data showing the production spending and cumulative totals to show compliance with Section 7 herein. Failure to complete the requirements of Section 11 herein by the quarterly deadline will result in a 10% Clawback of LEDA funds received. As required by the LEDA Ordinance, the Project will be subject to an annual performance review conducted by City staff, which will evaluate whether the Project is attaining the requirements of this Agreement. This review shall be presented to the City Administration and the City Council. If the requirements of this Agreement are not being satisfied, the City Council at a public hearing may cause the enforcement of this Agreement, including the right of the City to any Performance Clawbacks and other remedies set forth herein. In addition, pursuant to LEDA, if Mesa Film Studios has ceased operations and paid all amounts due to the City as provided herein, the City may enact an ordinance terminating the LEDA Ordinance.

FINDINGS:

1. LEDA 25-1 is a qualified project as defined by the State's Local Economic Development Act and the City enabling legislation (F/S O-04-10); and

LEDA 25-1: Mesa Film Studios LEDA

2. LEDA 25-1 would make positive substantive contributions to the local economy and community by developing much needed film production facilities in Albuquerque, and committing to \$800 Million in cumulative Direct Spend on TV, film, and media productions,; and

3. LEDA 25-1 has demonstrated the financial capability to undertake and successfully manage the Project; and

4. Subject to the development of acceptable security documents, LEDA 25-1 would adequately meet the evaluation criteria established by the City for Local Economic Development Act projects, including the requirement that the City recoup the value of its investment within 10 years.

STAFF RECOMMENDATION:

Based on the above findings, staff recommends approval of LEDA 25-1 as proposed in the project plan application.

Max Gruner, Director
Economic Development Department

FY23/24/25 LEDA Application-ABQ

Applicant	Dayan Hochman-Vigil
Applicant ID	APP-019006
Company Name	Mesa Media Holdings LLC
Phone	505-948-2320
Email	day@dhv-law.com
Status	Submitted
Application Amount	\$0.00
Funded/Approved	<input type="checkbox"/>

Contact Information

Question: Legal Company Name

Mesa Media Holdings LLC

Question: Trade Name (dba)

Not Answered

Question: Project Name

Mesal Film Studios

Question: Company Street Address

West Mesa at Double Eagle II Airport

Question: Company City

Albuquerque

Question: Company State

New Mexico

Question: Company Zip

87120

Question: Phone

(917) 565-3102

Question: Website

Not Answered

Question: Primary Contact Person First Name

Galen

Question: Primary Contact Person Last Name

Walker

Question: Federal Tax ID #

99-1868749

Question: NM State Tax and Revenue Identification Number

03660834003

Question: City/County Business License Registration will be pursued

Yes

No

Question: NAICS Code(s)-North American Industry Classification System

512110

Question: DUNS # (preferred but not required)

NA

Question: This Business is organized as a:

C-Corporation

S-Corporation

LLC

Partnership

Sole Proprietorship

B-Corporation

Question: Incorporation Papers

[MSF NM SOS.pdf](#) (7/17/2024, 3:21 PM)

[Mesa Film Studios LLC - EIN Applications and Assignment.pdf](#) (7/17/2024, 3:21 PM)

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 years or younger)

[Mesa_Report_R7-compressed \(5\) 7.pdf](#) (7/17/2024, 3:23 PM)

Question: Company Contact for Project Administration (if different from above)

Scott Resnick

Question: Title

Executive Member

Question: Telephone

917-565-3102

Question: Cell Phone

917-565-3102

Question: Email

sresnick@srcapitalnyc.com

Project Information

Please include detailed information such as:

- Executive Summary; Business description and history
- Infrastructure Development/Needs
- Market analysis and strategy
- Summary of competition
- Tax Reporting Status
- Effect on Existing Industry and Commerce during and after Construction
- Land Acquisition

- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
 - Target Close Date
 - General Contract Signed
 - Construction Start
 - Construction End
 - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

The Company is developing and constructing a film & television production campus totaling 285,000+ square feet over 60+ acres in the West Mesa of Albuquerque, NM. Horizontal construction is projected to begin in 4Q 2024, with vertical construction and all improvements completed by 1Q 2026. Upon completion, the project will commence operations immediately.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

Grading and comprehensive drainage plan for the entirety of the site.

Six Sound Stages - 20,250 sf each, 8" concrete slab to receive metal building, 40 feet to the grid, 3200 amps, 3 phases per stage, 800 amps @ 400 power, 20' elephant doors

Two Flex Buildings - 36,000 sf total, 6" concrete slab to receive metal building, washer/dryer hookups in each building, 20' x 20' elephant doors, red iron framing for dividing wall, R-19 roof insulation

Office Building - 50,000 sf rentable space, production space with kitchenettes, mail room and art suites

Mill Building - 80,000 sf, full restroom facilities, 1200 amps, 3 phase power

Question: Business Plan (required for businesses 1 year or younger)

The Company "Mesa Film Studios" is a newly formed venture of world-class owners and operators partnering to create a full-service media & film development campus. Our executive team boasts members with over 125 years experience in the film & television industry. The development is led by the partnership between Galen Walker, a film producer and post-production executive, he is a 5th generation New Mexican and his films have generated over \$1bn in revenue. RoadTown Enterprises who has designed, developed and actively services studios across the country for firms like Amazon, Sony, Warner Bros, and more. Along with SR Capital, a seasoned real estate developer with a 30 year track record, we will launch "Phase one", we intend to construct a full-service purpose-built soundstage complex across 60+ acres on Albuquerque's West Mesa at Double Eagle II Airport consisting of six soundstages,

production offices, mill and flex space. The complex will include an oversized 20+ acre backlot with a permanent Greenscreen wall. The actual studio facility is designed, built, and will be managed by a team of seasoned production professionals. Helming the project is Nick Smerigan and his company RoadTown Enterprises, LTD. Mr. Smerigan was responsible for building and managing Albuquerque Studios, that anchored the film industry in New Mexico and generated over a billion dollars of production revenue for the state and the eventual acquisition by the largest content streaming company in the world, Netflix. The Studio facility will create thousands of jobs statewide and will eventually expand into additional services including post-production facilities as well as film production within the state.

Question: Supporting Documentation

[MFS - Operational Org Chart v1.pdf](#) (6/25/2024, 8:09 AM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review .

[MFS - 3yr Operating Pro Forma v1.pdf](#) (6/25/2024, 8:11 AM)

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

[Question 30 Section 4.pdf](#) (7/30/2024, 1:58 PM)

Question: What is the collateral/security to be pledged to the funds awarded?

- Letter of Credit
- Surety Bond
- Mortgage Security
- Security Agreement/Escrow
- Security Agreement/Lien
- Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

n/a

Question: What is the equity investment from the applicant?

\$35,000,000.00

Question: External Equity Investment Sources

SR Capital, LLC and a to-be-determined investment partner

Question: External Equity Investment Amount

\$35,000,000.00

Question: City/County Funding Source

LEDA

Question: City/County Funding Amount

\$1,000,000.00

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

TBD

Question: Bank Loans Amount Total

\$49,000,000.00

Question: Other Loans Source

n/a

Question: Other Loans Amount

\$0.00

Question: Other Sources

n/a

Question: Other Sources Amount

\$0.00

Question: Total Project Amount (Sum of above)

\$83,000,000.00

Question: Supporting financial documentation

Company History and Background

Question: How long has the company been in operation, as of the date of application?

N/A - this is a new venture

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

0.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

Scott Resnick. Please see document submitted in section 2 with principal member biographies.

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

None

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

None

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

The current infrastructure needs not yet in place on the community level are as follows:

Power (From PNM)
Water (Water Authority)
Gas (NM Gas Company)
Sewer

Data (Exchange)
Phones (Exchange)
Traffic Study For Atrisco Vista
Drainage Retention Pond
Night Sky (Lighting City May Require)

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

Mesa Film Studios, LLC has requested Local Economic Development Act (LEDA) funding from both the State of New Mexico Economic Development Department and the City of Albuquerque. A term sheet has already been executed for the provision of \$6,000,000 in LEDA funds from the State of New Mexico, with an additional \$1,000,000 from the City of Albuquerque over a ten year period. The applicant is expecting to finalize the LEDA application process by the end of June 2024, with submission of the required proposed ordinance to the Albuquerque City Council for consideration by August 5, 2024, and expected confirmation of approval by September 4, 2024. The first drawdown of LEDA funding is expected to occur immediately following finalization of the Project Participation Agreement, which is contingent upon approval of the LEDA ordinance. Subsequent draw downs of LEDA funds will occur upon the achievement of certain project milestones, as outlined by the project term sheet and Project Participation Agreement.

Question: What specific incentives will be PROVIDED from the COMMUNITY? (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

At this time, Mesa Film Studios has finalized a ground lease agreement with the City of Albuquerque Aviation Department for specific land parcels located around the city's Double Eagle II Airport, as detailed in the lease attached to this application. All requisite infrastructure and utilities will be provided by the City of Albuquerque to the site boundary.

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- [Job Creation Worksheet](#)

Question: Outline the number and types of jobs to be created.

See pdf titled 'MFS - Job Creation Worksheet'

Question: Outline the proposed pay scale and payroll proposed by the entity.

See pdf titled 'MFS - Job Creation Worksheet'

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

Employees will be offered full benefits, as negotiated and contracted by associated labor unions, including medical, vision and dental.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

We have conducted initial outreach to the IATSE union and are investigating partnerships with the local film school sponsored by Governor Michelle Lujan Grisham and the New Mexico Film Office.

Question: Attach job creation worksheet

[7. MFS - Job Creation Worksheet.pdf](#) (7/17/2024, 3:36 PM)

Question: Starting Headcount (from worksheet above)

24.00

Question: Total new jobs to be created Year 1 (from worksheet above)

24.00

Question: Total new payroll Year 1 (from worksheet above)

\$1,300,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

2.00

Question: Total new payroll Year 2 (from worksheet above)

\$110,000.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

2.00

Question: Total new payroll Year 3 (from worksheet above)

\$110,000.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Impact Data Sheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

See attached Economic Impact Analysis pdf document completed by EIS.

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- [Authorization for examination and release of information form](#)
- [Employer quarterly wage and contribution report example](#)

If you are a new business, please apply for a NM Tax Identification Number here:

<http://www.tax.newmexico.gov/Businesses/wage-withholding-tax.aspx>

Please download the LEDA Application Affirmation Template here:

[LEDA Application Affirmation Template](#)

[Click here](#) to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

[MFS Authorization for examination and release of information.pdf](#) (7/17/2024, 3:41 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

[Question 69 Section 9.pdf](#) (7/30/2024, 2:04 PM)

Question: Affirmation and any other supporting documents

[233131-Final Mesa Film Studios EIA 1-10-2024.pdf](#) (7/28/2024, 7:12 AM)

[IDO - 2023 Annual Update - Effective \(2\).pdf](#) (7/28/2024, 6:58 AM)

[EIS Summary.pdf](#) (7/17/2024, 3:58 PM)

[07032024_Exhibit C-LEDA Application.pdf](#) (7/17/2024, 3:56 PM)

City of Albuquerque Project Information

This section of the NMEDD LEDA Application contains information required by the City of Albuquerque Ordinance 0-04-10 and conforms with and complements the policies established for the Local Economic Development Act pursuant to the Council action. This documentation is presented to demonstrate to the City of Albuquerque the public benefits of this project and to help the City evaluate its merit in comparison to other projects submitted.

Question: Project Supporting Documents: City Zone Atlas Map of Location, aerial/satellite picture of area, conceptual overview of finished location, Fiscal Impact Analysis from UNM BBER (if requested by City ED Director), Conceptual Site Plan and Elevation.

[LEDA PACKET.pdf](#) (7/28/2024, 6:53 AM)

Question: General Description-Statement of benefit to be gained by the Albuquerque community from this development

Mesa Film Studios (MFS) is a full service, purpose-built, film and television production facility with the probability of bringing \$1.4 billion of direct economic impact to the City of Albuquerque and the state of New Mexico over a 10-year period, which includes over 11,200 high paying jobs over that time frame. Located 20 minutes from Albuquerque International Sunport and 15 minutes from downtown Albuquerque, a facility the size and scope of MFS, has the potential to provide a significant economic development impact to the local economy.

Providing a designated 12 acre backlot and a permanent 280' x 120' by 40' high blue screen, makes MFS unique to the New Mexico studio landscape. In addition to the backlot and permanent Blue Screen wall, MFS will offer its clients six sound stages, production office space, construction mill building and flex space for wardrobe, special effects, and props.

Question: Site and Existing Conditions: Legal Description-Give both the precise and complete legal description and address or identification of location.

Description - MFS Lease Tract 2, Plat of Tract A-1 & Tract L-1 Parcels 1-5

A certain parcel of land being a portion of Tract A-1, Plat of Tract A-1 & Tract L-1 Parcels 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southeasterly corner said LEASE TRACT 2, WHENCE Albuquerque Geodetic Reference Station Brass Cap stamped "2-F6" bears South 05° 51'11" East a distance of 1124.53 feet;

THENCE North 89° 59'48" West a distance of 2000.00 feet to the southwesterly corner of said LEASE TRACT 2;

THENCE North 00° 00'12" East a distance of 1260.00 feet to the northwesterly corner of said LEASE TRACT 2;

THENCE South 89° 59'48" East a distance of 2000.00 feet to the northeasterly corner of said LEASE TRACT 2, WHENCE, as a tie, the southeasterly corner of Tract L-1 Parcel 5, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 41° 51'11" East a distance of 1124.53 feet;

THENCE South 00° 00'12" West a distance of 580.00 feet to an angle point;

THENCE South 89° 59'48" East a distance of 1088.82 feet to an angle point, said point being a point on the westerly easement line of a 156' Wide Public Access Easement granted by plat filed 07/10/2002, Plat Book 2002C, Page 228;

THENCE South 13° 27'24" East a distance of 102.82 feet along said easement line to an angle point;

THENCE North 89° 59'48" West a distance of 112.76 feet to an angle point

THENCE South 00° 00'12" West a distance of 580.00 feet to the POINT OF BEGINNING.

Question: Prevailing Site Conditions: Describe the present use and development of the site, including any improvements, vacant land, etc.

This is a vacant lot, with no existing easements as confirmed by the ALTA land survey conducted by Bohannon Huston Incorporation as part of the project due diligence process.

Question: Present Assessed Value: According to the Bernalillo County Assessor's office.

This property belongs to the City of Albuquerque, therefore there is no assessed value at this time.

Question: Present Zoning of Property

See filed entitled "IDO 2023 Annual Update Effective (2).pdf" attached to this application.

Question: Proposed Zoning: If change in zoning is required for the proposed use, enter the proposed new zone.

No zoning change is necessary.

Question: Status of Permitting/Regulatory matters needed for project.

At this time, Mesa Film Studios has completed all evaluation and permitting processes required by the Federal Aviation Administration, since the project would be located on airport land. Currently, Mesa Film Studios is awaiting approval of a site plan text amendment to the City of Albuquerque Double Eagle II Airport Master Plan existing site plan which will specifically enumerate a film studio as a permitted use. Adoption of that amendment is imminent.

Question: Sustainability Initiatives: Describe any sustainability initiatives or programs the company already has and/or plans to use in its facility operations and processes.

MFS is working with the City of Albuquerque on long-term plans to develop a regional retention pond to be used by the development and surrounding areas, which would include a comprehensive hydrological study. All equipment used on the retention pond project will be rated for maximum energy efficiency, including usage of LED light bulbs, smart thermostats and other implementations.

Question: Renewable Energy: Indicate in detail if and how the Project will create, produce or use renewable energy and renewable energy technology.

MFS has completed preliminary conversations with Solar Field Developer Pristine Sun for the provision of a 100% renewable energy supply for the project. Plans to move forward with Pristine Sun will be further investigated upon receipt of the building permit for the project.

Question: Products and Process: Will the proposed development generate air, noise or

waste pollution or traffic congestion? If so, what plans are in place for the reduction and disposal of waste and/or project emissions?

MFS engineers will conduct a thorough traffic study as required by the City of Albuquerque planning process to determine the project impact on local roads. Similarly, the MFS development team is in active conversations with all relevant city departments in advance to MFS' submission to the City of Albuquerque Environmental Planning Commission to identify and address any issues flagged with regards to sewer, utility, gas, and waste management.

Question: Competition: The Development Commission and City Council do not wish to make public funds available for projects with local competition. Describe any competition in the same area of commerce or industry existing in the City.

See page 5 of the full EIS report attached to this submission.

Question: Describe the predicted effects of the project including construction jobs generated, increased employment, increased sales, new industrial base, possible spin-off business in the City.

See page 36 of the EIS report attached to this submission.

Question: Proposed Development: Describe any construction to be undertaken in the project, including square footage, construction type, location of construction on project site.

Please see the information provided in Section 3 of this application.

Question: Proposed Development: Will existing buildings will be rehabilitated or incorporated in the construction?

No. This is a vacant lot.

Question: Proposed Development: Detail any demolition required and indicate whether it involves any identified historic properties.

No demolition will be required as this is a vacant lot.

Question: Infrastructure: Indicate if the project will require any extension or relocation of utility or road systems and if so, what cost sharing agreements have been reached between the applicant and the City.

The City of Albuquerque, at its own expense, shall cause all necessary infrastructure to be extended, provided and made available for water, sewer, electricity in an amount sufficient to provide "reserve" capacity to the 130 acre development, roads, fiberoptic and natural gas connections as required by MFS to the demise line of the 130 acre project cite. As required by MFS and the project, the City of Albuquerque will assist in facilitating running such facilities from the demise line to the project at MFS' expense

Question: Area Enhancement: Describe how project design and placement will enhance the area.

See page 36 of the EIS report attached to this application.

Question: Local Purchasing: Provide and estimated annual expenditure on goods and services locally procured that are subject to the New Mexico gross receipts tax, and an estimated annual increase in such an expenditure.

See page 27 of the EIS report attached to this application.

Question: Water Conservation: Estimate average daily and monthly water consumption and include any plans for reduction or re-use of water.

See page 28 of the document entitled "LEDA Packet.pdf" attached to this application.

Question: Relocation of Individuals or Businesses: No individuals, families or businesses should be displaced by the activities outlined in this plan. If any relocation is required, detail the assistance the applicant will give in relocation.

None identified.

Question: Corporate Citizenship Policy/Plan: List any company policies/plans regarding community charitable and civic donations and volunteerism.

As this is a new venture that has yet to become operational, all policies and plans for community engagement and charitable/civic donations or volunteerism are aspirational at this point. However, once the studio spaces are built and functional, MFS has plans to engage with children interested in film production and development through the New Mexico film academy and CNM, inclusive of opportunities for internships and access to other members of the film community to create mentorship opportunities.

Question: Positive Contributions: List all positive contributions that the project will make to the neighborhood.

See EIS summary attached to this application.

Question: Management: If the project will not be managed by the applicant, who will manage it and does the applicant have any long-range involvement?

The project will be managed by Roadtown Enterprises. The biographical information for all principals of the company has been provided in Section 1 of this application.

Question: Indicate the estimated appraised value of the project after completion.

The replacement value of this project is approximately \$70 million for property and infrastructure.



EDD ECONOMIC
DEVELOPMENT
DEPARTMENT

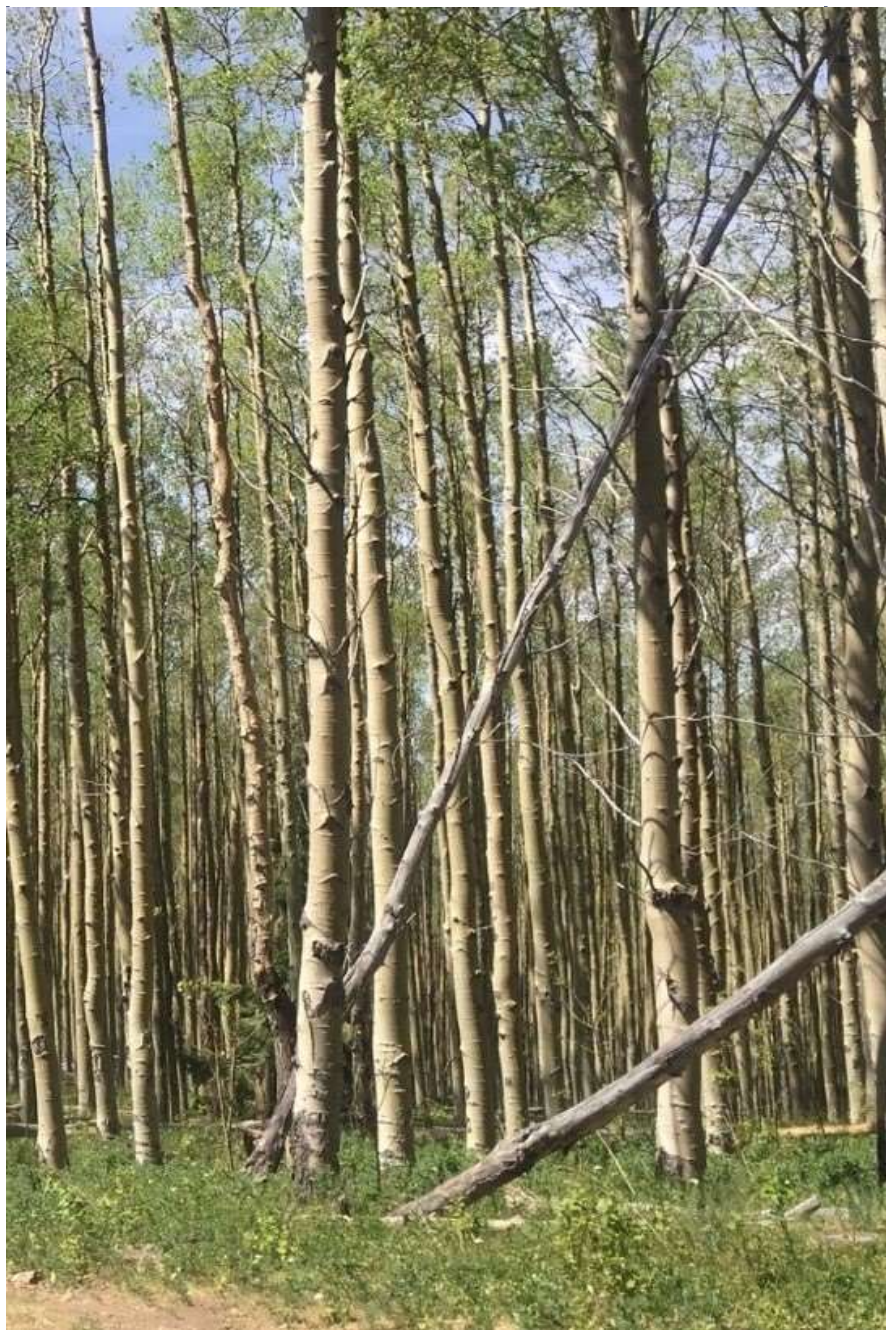
3/8/2024

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF MESA MEDIA HOLDINGS LLC

Prepared by:

New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505





Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roadways, bridges and utilities) and public services (including public safety, schools and administrative services). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

The Company "Mesa Media Holdings" is a newly formed venture of world-class owners and operators who are partnering to create a full-service media & film development campus. Our executive team boasts members with over 125 years experience in the film & television industry. The development is led by the partnership between Galen Walker, a film producer and postproduction executive, he is a 5th generation New Mexican and his films have generated over \$1bn in revenue. RoadTown Enterprises who has designed, developed and actively services studios across the country for firms like Amazon, Sony, Warner Bros, and more. Along with SR Capital, a seasoned real estate developer with a 30 year track record, we will launch "Phase one", we intend to construct a full-service purpose-built sound stage complex across 50+ acres on Albuquerque's West Mesa at Double Eagle II Airport consisting of six soundstages, production offices, mill and flex space. The complex will include a twelve-acre backlot with a permanent Greenscreen wall. The actual studio facility is designed, built, and will be managed by a team of seasoned production professionals. Helming the project is Nick Smerigan and his company RoadTown Enterprises, LTD. Mr. Smerigan was responsible for building and managing Albuquerque Studios, that anchored the film industry in New Mexico and generated over a billion dollars of production revenue for the state and the eventual acquisition by the largest content streaming company in the world, Netflix. The Studio facility will create thousands of jobs statewide and will eventually expand into additional services including postproduction facilities as well as film production within the state.

Description of the Project:

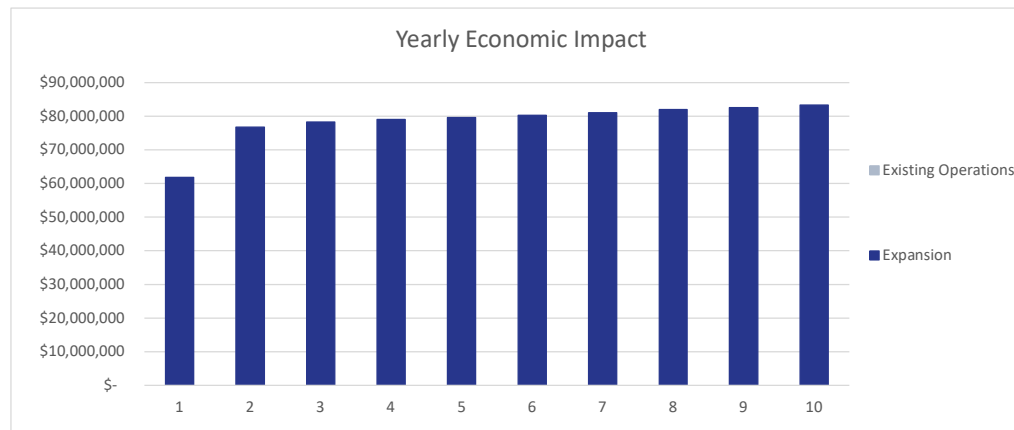
Phase one: The project involves development of approximately 54 acres of unimproved land in the West Mesa at Double Eagle II Airport. Initial grading, environmental remediation, and geotechnical work will be followed by increasing the capacity of utilities that service the site (water, power, gas, data). The improvements thereupon will total over 312,000 square feet, including 6 sound stages (20,000 sf to 25,000 sf each), an 80,000 square foot mill, 60,000 square feet of office space, and 37,000 square feet of flex space. Also included on the property will be a dedicated "back lot" area for outdoor filming, as well as a Greenscreen. This studio complex will generate many new production partners and production vendors which will result in more than 400 jobs per contracted production. The studio has a partnership with a world-class lighting and grip company which will be located within our facility. There is a plan to design a new postproduction facility for sound and picture, the studio will partner with major "Hollywood" Post facilities that will supply talent / personnel required in these high-end positions for film and television. Upon the completion of construction, the partnership plans to commence "Phase two" and double the size of the complex, expanding over the full 100 acres. Future growth at the Double Eagle II Airport will accommodate direct private flights for the production and postproduction talent between ABQ and LA. This will have a major impact on successfully keeping postproduction sustainability in NM. Mesa Holdings intends to partner with Pristine Sun to provide both on site solar power generation, as well as a dedicated array just north of the Project site, with the intent to be a fully-solar powered studio.



Economic Impact

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	\$ 784,668,326
Combined Total Incentive Over 10 Years:	\$ 6,000,000
Economic Impact Rate of Return:	12,978%



Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	512	469
Estimated Number of Construction Workers:	230	
Estimated Number of New Residents to the State:	8	
Estimated Number of New Residents to the County:	7	
Estimated Number of New Residents to the City:	7	

Total Public Impacts



Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

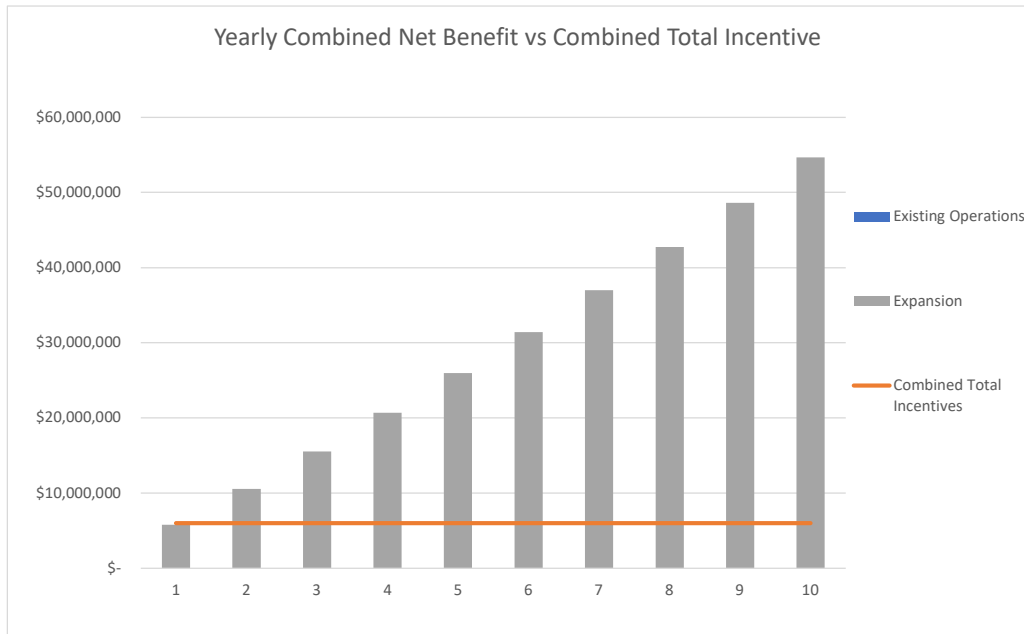
Cumulative Net Benefits					
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*	
State of New Mexico	\$ -	\$ 34,846,217	\$ 34,846,217	\$	27,911,915
County	-	6,294,739	6,294,739	\$	5,117,465
City	-	13,532,630	13,532,630	\$	11,006,945
School District	-	1,541,981	1,541,981	\$	1,235,499
Special Taxing District	-	2,435,356	2,435,356	\$	1,951,308
Total	\$ -	\$ 58,650,924	\$ 58,650,924	\$	47,223,132

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

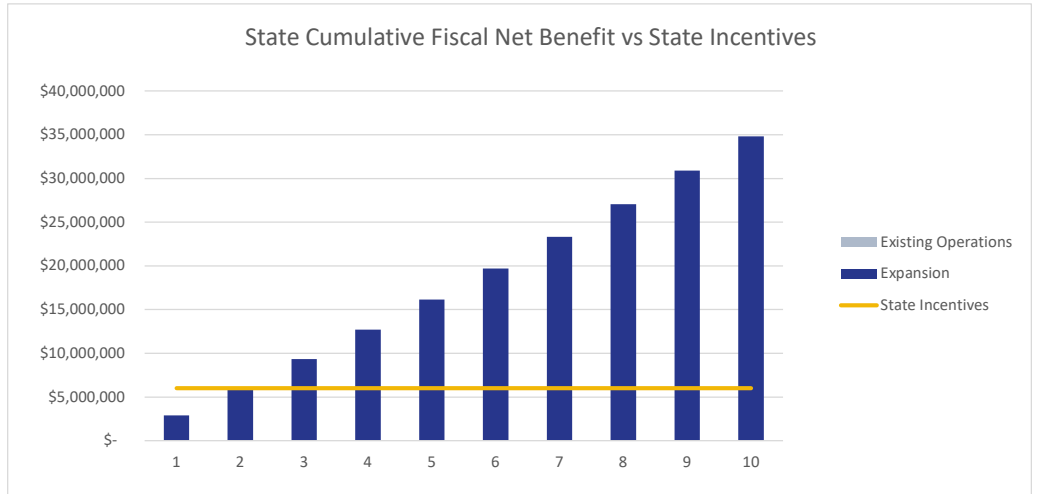
Total Public Net Benefit

	Total
Estimated Total Public Net Benefit Over 10 Years:	\$ 54,673,586
Combined Total Incentive Over 10 Years:	\$ 6,000,000
Total Public Net Benefit Rate of Return:	811%



State Impacts





Incentives

Total State Incentive:	\$ 6,000,000
State Incentive Per Job:	\$ 157,895

Combined Payback and Return

State Payback Period Combined:	1.98 Years
State Rate of Return Combined:	365%

Expansion Only Payback and Return

State Payback Period Expansion:	1.98 Years
State Rate of Return Expansion:	365%

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,920,046	\$ 9,537	\$ 2,910,509	\$ 2,910,509
2	\$ 3,153,916	\$ 10,621	\$ 3,143,295	\$ 6,053,804
3	\$ 3,293,499	\$ 11,736	\$ 3,281,763	\$ 9,335,567
4	\$ 3,382,754	\$ 12,882	\$ 3,369,873	\$ 12,705,440
5	\$ 3,468,993	\$ 13,651	\$ 3,455,342	\$ 16,160,781
6	\$ 3,559,411	\$ 14,441	\$ 3,544,970	\$ 19,705,751
7	\$ 3,653,285	\$ 15,663	\$ 3,637,622	\$ 23,343,374
8	\$ 3,755,351	\$ 16,918	\$ 3,738,433	\$ 27,081,806
9	\$ 3,850,368	\$ 17,801	\$ 3,832,567	\$ 30,914,374
10	\$ 3,950,551	\$ 18,708	\$ 3,931,844	\$ 34,846,217

State Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,920,046	\$ 9,537	\$ 2,910,509	\$ 2,910,509
2	\$ 3,153,916	\$ 10,621	\$ 3,143,295	\$ 6,053,804
3	\$ 3,293,499	\$ 11,736	\$ 3,281,763	\$ 9,335,567
4	\$ 3,382,754	\$ 12,882	\$ 3,369,873	\$ 12,705,440
5	\$ 3,468,993	\$ 13,651	\$ 3,455,342	\$ 16,160,781
6	\$ 3,559,411	\$ 14,441	\$ 3,544,970	\$ 19,705,751
7	\$ 3,653,285	\$ 15,663	\$ 3,637,622	\$ 23,343,374
8	\$ 3,755,351	\$ 16,918	\$ 3,738,433	\$ 27,081,806
9	\$ 3,850,368	\$ 17,801	\$ 3,832,567	\$ 30,914,374
10	\$ 3,950,551	\$ 18,708	\$ 3,931,844	\$ 34,846,217

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 14,162,362
Personal Income Taxes	\$ 20,794,162
Corporate Income Taxes	\$ -
Misc. Taxes and Revenue	\$ 31,652
Subtotal of Benefits	\$ 34,988,175

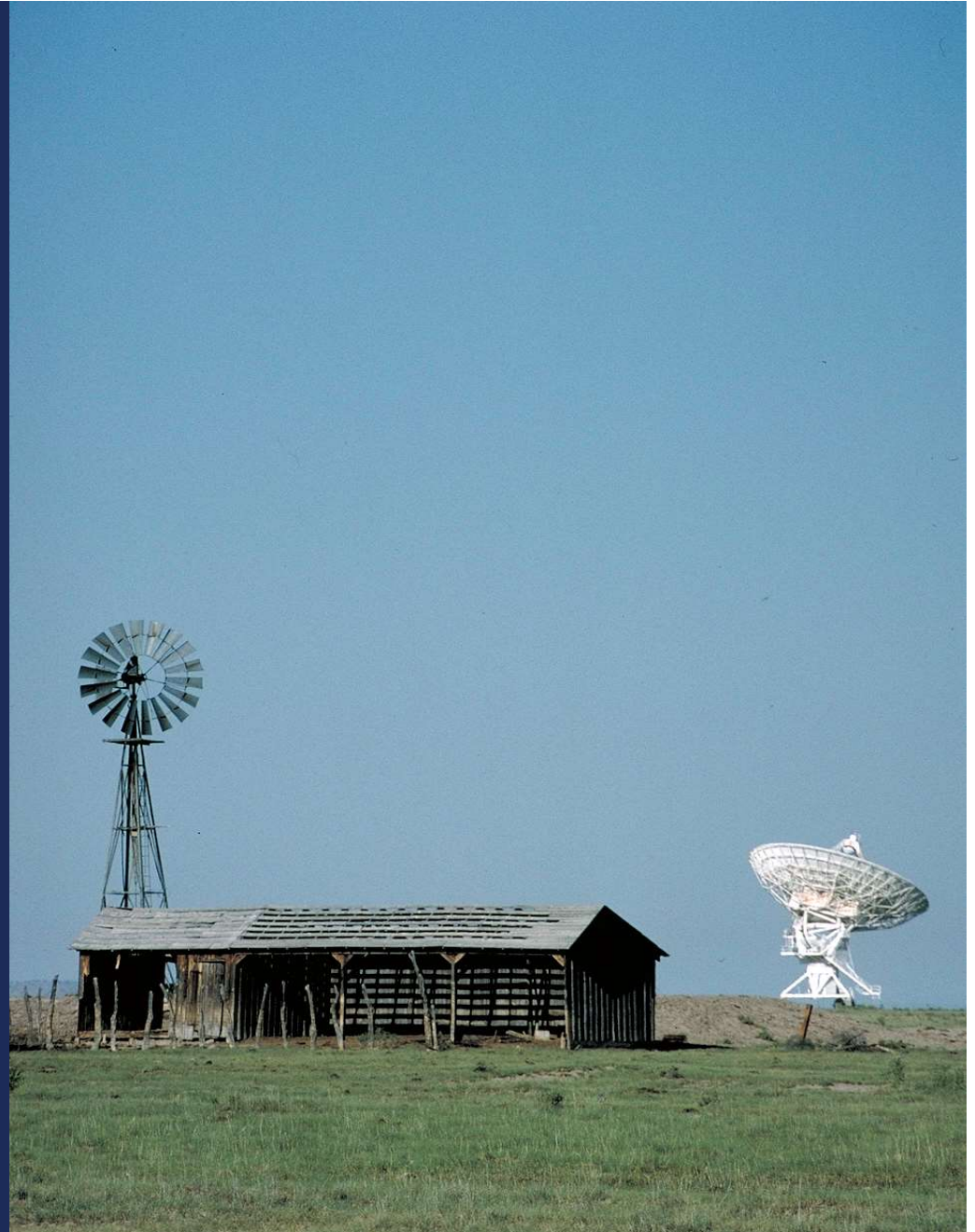
Costs

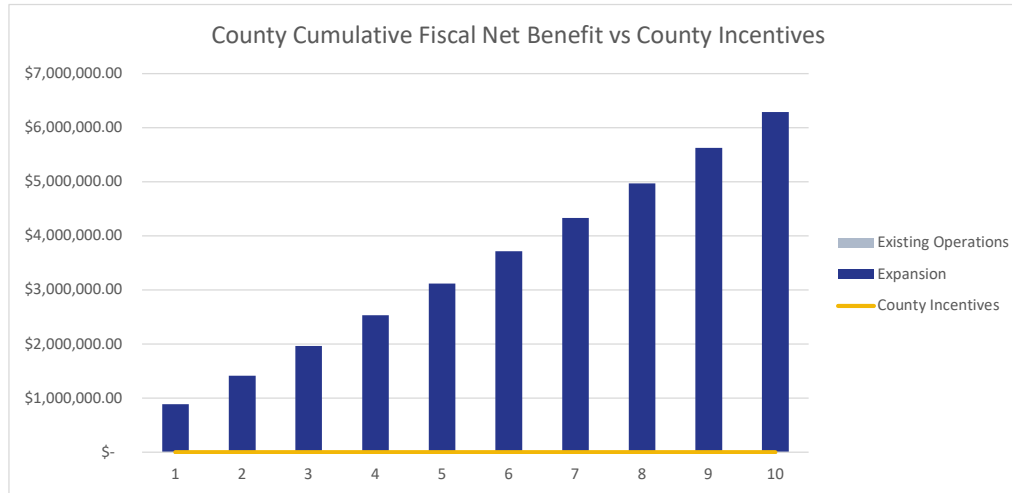
Costs	\$ 141,958
Subtotal of Costs	\$ 141,958

Net Benefits

Net Benefits	\$ 34,846,217
Present Value	\$ 27,911,915

County Impacts





Incentives

Total County Incentive:	\$	-
County Incentive Per Job:	\$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

County Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 888,217	\$ 1,197	\$ 887,020	\$ 887,020
2	\$ 527,465	\$ 1,333	\$ 526,132	\$ 1,413,151
3	\$ 553,321	\$ 1,473	\$ 551,848	\$ 1,964,999
4	\$ 569,817	\$ 1,617	\$ 568,200	\$ 2,533,199
5	\$ 586,027	\$ 1,713	\$ 584,313	\$ 3,117,513
6	\$ 602,398	\$ 1,813	\$ 600,585	\$ 3,718,098
7	\$ 619,433	\$ 1,966	\$ 617,467	\$ 4,335,565
8	\$ 637,860	\$ 2,123	\$ 635,737	\$ 4,971,302
9	\$ 654,816	\$ 2,234	\$ 652,581	\$ 5,623,883
10	\$ 673,204	\$ 2,348	\$ 670,856	\$ 6,294,739

County Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 888,217	\$ 1,197	\$ 887,020	\$ 887,020
2	\$ 527,465	\$ 1,333	\$ 526,132	\$ 1,413,151
3	\$ 553,321	\$ 1,473	\$ 551,848	\$ 1,964,999
4	\$ 569,817	\$ 1,617	\$ 568,200	\$ 2,533,199
5	\$ 586,027	\$ 1,713	\$ 584,313	\$ 3,117,513
6	\$ 602,398	\$ 1,813	\$ 600,585	\$ 3,718,098
7	\$ 619,433	\$ 1,966	\$ 617,467	\$ 4,335,565
8	\$ 637,860	\$ 2,123	\$ 635,737	\$ 4,971,302
9	\$ 654,816	\$ 2,234	\$ 652,581	\$ 5,623,883
10	\$ 673,204	\$ 2,348	\$ 670,856	\$ 6,294,739

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 4,607,618
Misc. Taxes and Revenue	\$ 41,075
Property Taxes	\$ 1,663,864
Subtotal of Benefits	\$ 6,312,556

Costs

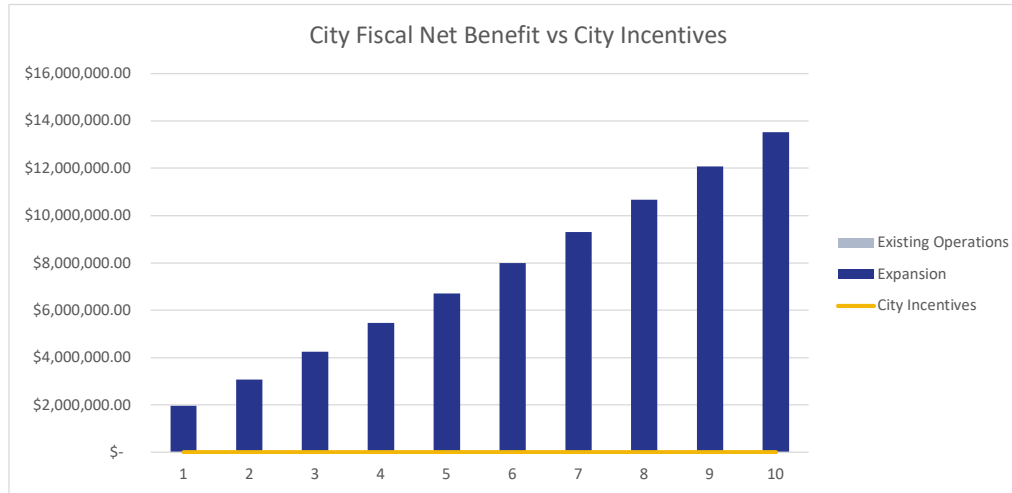
Costs	\$ 17,817
Subtotal of Costs	\$ 17,817

Net Benefits

Net Benefits	\$ 6,294,739
Present Value	\$ 5,117,465

City Impacts





Incentives

Total City Incentive:	\$	-
City Incentive Per Job:	\$	-

Combined Payback and Return

City Payback Period Combined:	-	Years
City Rate of Return Combined:	N/A	

Expansion Only Payback and Return

City Payback Period Expansion:	-	Years
City Rate of Return Expansion:	N/A	

City Net Benefits Of Current Operations

Year	Benefits		Costs		Net Benefits	Cumulative Net Benefits
1	\$	-	\$	-	\$	-
2	\$	-	\$	-	\$	-
3	\$	-	\$	-	\$	-
4	\$	-	\$	-	\$	-
5	\$	-	\$	-	\$	-
6	\$	-	\$	-	\$	-
7	\$	-	\$	-	\$	-
8	\$	-	\$	-	\$	-
9	\$	-	\$	-	\$	-
10	\$	-	\$	-	\$	-

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 1,959,508	\$ 443	\$ 1,959,065	\$ 1,959,065
2	\$ 1,119,566	\$ 651	\$ 1,118,915	\$ 3,077,980
3	\$ 1,176,407	\$ 993	\$ 1,175,414	\$ 4,253,394
4	\$ 1,211,763	\$ 1,470	\$ 1,210,294	\$ 5,463,687
5	\$ 1,247,079	\$ 1,743	\$ 1,245,336	\$ 6,709,023
6	\$ 1,283,548	\$ 2,025	\$ 1,281,523	\$ 7,990,546
7	\$ 1,322,577	\$ 2,532	\$ 1,320,046	\$ 9,310,592
8	\$ 1,366,308	\$ 3,053	\$ 1,363,255	\$ 10,673,847
9	\$ 1,408,629	\$ 3,373	\$ 1,405,256	\$ 12,079,103
10	\$ 1,457,229	\$ 3,702	\$ 1,453,527	\$ 13,532,630

City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 1,959,508	\$ 443	\$ 1,959,065	\$ 1,959,065
2	\$ 1,119,566	\$ 651	\$ 1,118,915	\$ 3,077,980
3	\$ 1,176,407	\$ 993	\$ 1,175,414	\$ 4,253,394
4	\$ 1,211,763	\$ 1,470	\$ 1,210,294	\$ 5,463,687
5	\$ 1,247,079	\$ 1,743	\$ 1,245,336	\$ 6,709,023
6	\$ 1,283,548	\$ 2,025	\$ 1,281,523	\$ 7,990,546
7	\$ 1,322,577	\$ 2,532	\$ 1,320,046	\$ 9,310,592
8	\$ 1,366,308	\$ 3,053	\$ 1,363,255	\$ 10,673,847
9	\$ 1,408,629	\$ 3,373	\$ 1,405,256	\$ 12,079,103
10	\$ 1,457,229	\$ 3,702	\$ 1,453,527	\$ 13,532,630

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 10,893,212
Misc. Taxes and Revenue	\$ 1,090,713
Property Taxes	\$ 1,568,689
Subtotal of Benefits	\$ 13,552,614

Costs

Costs	\$ 19,985
Subtotal of Costs	\$ 19,985

Net Benefits

Net Benefits	\$ 13,532,630
Present Value	\$ 11,006,945

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 211,686	\$ -	\$ 211,686	\$ 211,686
2	\$ 218,607	\$ -	\$ 218,607	\$ 430,293
3	\$ 225,612	\$ -	\$ 225,612	\$ 655,905
4	\$ 232,657	\$ -	\$ 232,657	\$ 888,562
5	\$ 239,748	\$ -	\$ 239,748	\$ 1,128,310
6	\$ 246,883	\$ -	\$ 246,883	\$ 1,375,193
7	\$ 254,068	\$ -	\$ 254,068	\$ 1,629,262
8	\$ 261,310	\$ -	\$ 261,310	\$ 1,890,571
9	\$ 268,650	\$ -	\$ 268,650	\$ 2,159,221
10	\$ 276,135	\$ -	\$ 276,135	\$ 2,435,356

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 211,686	\$ -	\$ 211,686	\$ 211,686
2	\$ 218,607	\$ -	\$ 218,607	\$ 430,293
3	\$ 225,612	\$ -	\$ 225,612	\$ 655,905
4	\$ 232,657	\$ -	\$ 232,657	\$ 888,562
5	\$ 239,748	\$ -	\$ 239,748	\$ 1,128,310
6	\$ 246,883	\$ -	\$ 246,883	\$ 1,375,193
7	\$ 254,068	\$ -	\$ 254,068	\$ 1,629,262
8	\$ 261,310	\$ -	\$ 261,310	\$ 1,890,571
9	\$ 268,650	\$ -	\$ 268,650	\$ 2,159,221
10	\$ 276,135	\$ -	\$ 276,135	\$ 2,435,356

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

Public Schools Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 134,032	\$ -	\$ 134,032	\$ 134,032
2	\$ 138,414	\$ -	\$ 138,414	\$ 272,446
3	\$ 142,849	\$ -	\$ 142,849	\$ 415,295
4	\$ 147,310	\$ -	\$ 147,310	\$ 562,605
5	\$ 151,800	\$ -	\$ 151,800	\$ 714,405
6	\$ 156,318	\$ -	\$ 156,318	\$ 870,723
7	\$ 160,867	\$ -	\$ 160,867	\$ 1,031,590
8	\$ 165,452	\$ -	\$ 165,452	\$ 1,197,042
9	\$ 170,100	\$ -	\$ 170,100	\$ 1,367,142
10	\$ 174,839	\$ -	\$ 174,839	\$ 1,541,981

Public Schools Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 134,032	\$ -	\$ 134,032	\$ 134,032
2	\$ 138,414	\$ -	\$ 138,414	\$ 272,446
3	\$ 142,849	\$ -	\$ 142,849	\$ 415,295
4	\$ 147,310	\$ -	\$ 147,310	\$ 562,605
5	\$ 151,800	\$ -	\$ 151,800	\$ 714,405
6	\$ 156,318	\$ -	\$ 156,318	\$ 870,723
7	\$ 160,867	\$ -	\$ 160,867	\$ 1,031,590
8	\$ 165,452	\$ -	\$ 165,452	\$ 1,197,042
9	\$ 170,100	\$ -	\$ 170,100	\$ 1,367,142
10	\$ 174,839	\$ -	\$ 174,839	\$ 1,541,981

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	No
Building and Property Improvements:	No
Furniture, Fixtures and Equipment:	No

Property Tax Percentage Exemptions On Land and Building

	County		City		Schools		Special Taxing District
	0%		0%		0%		0%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

	County		City		Schools		Special Taxing District
	0%		0%		0%		0%

Value of Exemption Through 10 Years:	\$	-	\$	-	\$	-	\$	-
*Value of Payment in Lieu of Taxes Through 10 Years:	\$	-	\$	-	\$	-	\$	-

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City			
1	0%	0%	0%			
2	0%	0%	0%			
3	0%	0%	0%			
4	0%	0%	0%			
5	0%	0%	0%			
6	0%	0%	0%			
7	0%	0%	0%			
8	0%	0%	0%			
9	0%	0%	0%			
10	0%	0%	0%			
Value of Exemption Through 10 Years:	\$	-	\$	-	\$	-

GROUND LEASE AND AGREEMENT
between
THE CITY OF ALBUQUERQUE
and
MESA MEDIA HOLDINGS LLC

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GROUND LEASE AND AGREEMENT
between
THE CITY OF ALBUQUERQUE
and
MESA MEDIA HOLDINGS LLC

This **Ground Lease and Agreement** (this "**Agreement**") is made and entered into as of the date of the last signature below (the "**Effective Date**"), by and between the **City of Albuquerque**, a New Mexico municipal corporation ("**City**"), and **Mesa Media Holdings LLC**, a Delaware limited liability company ("**Lessee**", and together with City, the "**Parties**", and each, a "**Party**").

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

Section 1. Recitals.

1.1 City owns and operates through its Aviation Department the Double Eagle II Airport (the "**Airport**"), which is located in the County of Bernalillo, State of New Mexico; and

1.2 The Airport is depicted on the Airport Property Map attached hereto as **Exhibit A**; and

1.3 Lessee desires to lease, and City desires to grant the lease of approximately sixty and three-thousand, seven-hundred eighty-three ten-thousandths (60.3783) acres of certain land situated on the Airport for the Film Studio Uses (as defined below), in accordance with the terms and conditions of this Agreement; and

1.4 The Parties have the right and power to enter into this Agreement.

Section 2. Premises.

2.1 General. City, for and in consideration of the rents reserved in this Agreement and each of the covenants, conditions, and agreements set forth hereafter 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 realty consisting of approximately two-million, six-hundred thirty thousand and seventy-nine (2,630,079) square feet of land, which includes approximately 95,000 square feet for a driveway (to be privately developed, owned, and maintained by Lessee), in each case, as described and depicted in the diagram attached hereto as **Exhibit B** (the "**Premises**").

2.2 Survey. As of the Effective Date, Lessee, at its expense, has furnished City with a survey of the Premises prepared and certified by a registered land surveyor, architect, or engineer.

2.3 Acceptance of Premises. Lessee hereby acknowledges that it has conducted

all necessary due diligence and has independently determined that, except for City's full performance of each City Delivery Obligation (as hereinafter defined), the Premises is suitable for the use permitted under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, except for City's full performance of each City Delivery Obligation, Lessee acknowledges that it has fully inspected the Premises in its present condition and it is understood and agreed that the Premises is accepted AS IS, WHERE IS, AND WITH ALL FAULTS, WITHOUT ANY REPRESENTATION OR WARRANTY FROM CITY. LESSEE ACKNOWLEDGES THAT CITY HAS MADE NO EXPRESSED OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PREMISES, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING COMPLIANCE WITH ENVIRONMENTAL LAWS OR THE SUITABILITY FOR THE USE ANTICIPATED IN THIS AGREEMENT. Notwithstanding the foregoing, City represents and warrants to Lessee that (a) no person or entity has any possessory right to the Premises and no person or entity has any right or claim to occupy, license, lease, sublease, use, manage, use or control the Premises or any portion thereof other than Lessee in accordance with the terms of this Agreement, and (b) there are no unrecorded easements, burdens, restrictions, covenants or other encumbrances affecting the Premises that have not been disclosed in writing to Lessee.

2.4 Right to Additional Sixty-Nine (69) Acres. City grants to Lessee the right (each, an "**Expansion Option**"), exercisable at any time and from time-to-time until the fifteenth (15th) anniversary of the completion of the Project Improvements (as hereinafter defined), to lease, in increments of not less than ten (10) acres, up to an additional appurtenant sixty-nine and eight-hundred and sixty-three ten-thousandths (69.0863) acres (to constitute, along with the initial 60.3783 acres, up to approximately one hundred-thirty (130) acres (the "**130 Acres**")), upon the same terms and conditions as the Premises. The entire 130 Acres, and the location of the additional 69.0863 acres (the "**Expansion Acres**") is each shown and described on **Exhibit B**, attached hereto. Lessee shall provide written notice to City of Lessee's election to exercise an Expansion Option (each such written notice, an "**Expansion Notice**"). An Expansion Notice shall include a survey of the portion of the Expansion Acres (each such portion, an "**Expansion Premises**") that Lessee desires to lease pursuant to this Agreement. The survey referenced in the immediately preceding sentence shall be prepared by Lessee at its expense and shall include a metes-and-bounds of the Premises aggregated with the applicable Expansion Premises. Upon City's receipt of an Expansion Notice, this Agreement shall automatically be deemed modified so that the Premises includes the applicable Expansion Premises. At Lessee's written request, City shall execute, acknowledge and consent to the recording of such documents as are reasonably requested by Lessee to memorialize any modification of this Agreement to include the Expansion Premises; provided the failure to enter into any such documents shall not affect the inclusion of the Expansion Premises in the Premises as hereinabove described.

2.5 Competing Uses and Activities. During the initial twenty (20) years of the Term, City will not: (a) transfer, lease, license or otherwise grant the right to occupy any portion of the Airport (which, for the avoidance of doubt, means the entire property shown on **Exhibit A**) to any person or entity seeking to construct motion picture facilities, television and media production facilities, sound stages, production offices, or set construction buildings, or (b) permit any person or entity to engage in, and will prohibit any person or entity from engaging in, including through deed restrictions, any activity that involves, makes possible, or is required for

the production of motion picture or television, streaming, online or similar media, on the portion of the Airport not leased by Lessee. The preceding restriction shall not apply to use of: (i) the Airport for filming activities of the type currently taking place on the Airport (i.e., temporary filming activities that do not involve the construction or use of facilities that do not, as of the Effective Date, exist on the land, but simply involve the use of the land and/or the structures existing on the land as of the Effective Date); or, (ii) the building located at 4100 Aerospace Pkwy NW, Albuquerque, NM 87120 as of the Effective Date or any portion thereof as a sound stage provided that any sound stage production area presently existing or constructed in the future will not exceed 10,100 square feet.

2.6 Right of First Refusal. During the Term, should City decide to transfer fee title (which includes, without limitation, an installment sale agreement) to all or any portion of the 130 Acres to a third party, or to convey a leasehold interest (which includes, without limitation, a leasing of undeveloped land) for a period of greater than two (2) years to all or any portion of the 130 Acres that is not yet included in the Premises to a third party (such fee or leasehold interest to all or any portion of the 130 Acres, as applicable, the "**ROFR Property**"), Lessee shall have the right of first refusal to acquire fee title or the leasehold interest, as applicable, to such portion of the 130 Acres on the ROFR Terms (as hereinafter defined) set forth in a written notice delivered to Lessee (the "**ROFR Notice**"). The ROFR Notice shall include (x) a legal description and a title survey of the ROFR Property, and (y) the proposed purchase price, earnest money deposit requirement (if any), closing date, any material contingencies, and any letter of intent, deal term sheet and/or any other similar document in accordance with which City desires to transact, in each case relating to the proposed conveyance of the ROFR Property (the "**ROFR Terms**"). Lessee shall have the right, exercisable within sixty (60) days following Lessee's receipt of the ROFR Notice, to elect to acquire the ROFR Property upon the ROFR Terms. If Lessee elects within such 60-day period to acquire the ROFR Property, then Lessee shall acquire from City the ROFR Property upon the ROFR Terms on the closing date set forth in the ROFR Terms (or such other date mutually agreed upon by the Parties). If Lessee does not elect within such 60-day period to acquire the ROFR Property, and if City shall thereafter decide to transfer fee title (which includes, without limitation, an installment sale agreement) or leasehold interest (which includes, without limitation, a ground lease) to the ROFR Property or any portion thereof to a third party either (i) upon terms that are materially more favorable to the proposed purchaser or lessee, as applicable, than the ROFR Terms were to Lessee, or (ii) on a date that is more than 270 days after Lessee's receipt of the initial ROFR Notice to which such ROFR Property applied, then Lessee shall again have the right of first refusal to acquire the ROFR Property (or such applicable portion thereof) upon the terms offered City to such third party, and the procedures described in this **Section 2.6** shall again apply. For the avoidance of doubt, any sale or lease of all or any portion of the 130 Acres to a third party will be subordinate to Lessee's rights, including all the rights described herein.

2.7 The City's Delivery Obligations.

2.7.1 City, at City's expense, shall cause infrastructure to be extended, provided, and made available for water, sewer, electricity (including, without limitation, in an amount sufficient to provide "reserve" capacity to the 130 Acres), roads, fiberoptic and natural gas and connections therefor as required by Lessee to the demise line of the 130 Acres (such obligation

on the part of City described in the foregoing clause, the "**Utility Connections Obligation**"). As required by Lessee, City will assist in facilitating running such utilities from the demise line to the Project Improvements at Lessee's expense. City shall be required to timely fulfill the Utility Connections Obligation on or before the date that is one-hundred eighty (180) days after Lessee's commencement of construction of the Project Improvements. If City notifies Lessee in writing of any delays in City's fulfillment of the Utility Connections Obligation that makes the fulfillment thereof on or before the City Delivery Deadline therefor unfeasible, and to the extent it is practicable for Lessee to take any action that is reasonably likely to mitigate such delay by City or actually fulfill the Utility Connections Obligation with respect to any one or more utility (such as, by way of example only, Lessee contracting directly with a gas utility to provide gas to the demise line of the 130 Acres), then Lessee may endeavor to take such mitigatory action at Lessee's out-of-pocket cost and expense and shall have the right to offset against any Annual Base Rent payable by Lessee to City the dollar-amount expended by Lessee in connection with such mitigatory action taken by Lessee.

2.7.2 City, at City's expense, shall cause the Premises to be legally subdivided in accordance with applicable law such that the Premises shall constitute a single distinct parcel and tax lot (the "**City's Legal Subdivision Obligation**"). If, in connection with the City's Legal Subdivision Obligation, City proposes a form of plat, easement agreement, declaration, restrictive covenant agreement or similar agreement, as applicable, (collectively, the "**Subdivision Title Documents**") that shall be applicable to or otherwise affect or encumber the Premises, as subdivided, such Subdivision Title Documents shall be in form and substance reasonably satisfactory to Lessee but shall in no event adversely affect the Premises, Lessee's construction of the Project Improvements, Lessee's use and enjoyment of the Premises or leasehold estate therein. City shall be required to fulfill the City's Legal Subdivision Obligation on or before the date that is forty-two (42) days following the Effective Date.

2.7.3 City, at City's expense, shall provide written assurance to Lessee of the location of any retention pond required to render the Premises and the intended Project Improvements in compliance with applicable federal, state, and local stormwater regulations and, in all cases, to allow Lessee to obtain site plan approval for the Project Improvements (the "**Retention Pond Location**"; the retention pond located on such Retention Pond Location, the "**Retention Pond**"), which Retention Pond Location shall not be situated within the 130 Acres, but rather on land furnished by City for such purpose at no cost or expense to Lessee, and City shall, upon request of Lessee, provide such proof of the same as may be required for all land use approvals, including site plan approval (the foregoing, the "**City's Retention Pond Obligation**"). Further, in connection with the City's Retention Pond Obligation, City shall be required to (i) complete construction of the Retention Pond in a permanent Retention Pond Location and complete a permanent stormwater drainage plan in connection with such Retention Pond and the 130 Acres, in each case, prior to Lessee's commencement of operations of its business at the Premises, and (ii) commit to (x) the Retention Pond Location, and (y) a stormwater drainage plan for the 130 Acres relating to the Retention Pond, in each case, in quality and character sufficient for Lessee to obtain requisite land use approvals, including site plan approval, for the Project Improvements, on or before April 1, 2024 (such date, the "**Retention Pond Outside Date**"). If, in fulfillment of the City's Retention Pond Obligation as described in the foregoing clause (ii), City furnishes a temporary (as opposed to a permanent) Retention Pond in

a temporary Retention Pond Location which is otherwise of a character and quality sufficient so as to allow Lessee to obtain land use approvals, including site plan approval for the Project Improvements, then City shall also, at its sole cost and expense, furnish and complete systems for temporary drainage for the 130 Acres in connection therewith on or before the Retention Pond Outside Date. If, at any point, Lessee determines, in its reasonable discretion, that all or any portion of the City's Retention Pond Obligation shall not be fulfilled in full by City on or before the applicable deadline therefor, then, in addition to all other rights granted to Lessee hereunder and pursuant to applicable law and regulations, Lessee shall have the right to and may endeavor to fulfill the City's Retention Pond Obligation through its own efforts and shall have the right to offset against any Annual Base Rent payable by Lessee to City the dollar-amount expended by Lessee in connection with such efforts exercised by Lessee.

Each of the Utility Connections Obligation, the City's Legal Subdivision Obligation, and the City's Retention Pond Obligation is each referred to herein as a "**City Delivery Obligation**", and each applicable deadline to satisfy same pursuant to the provisions of this **Section 2.7** (including, without limitation, the Retention Pond Outside Date) is referred to herein as a "**City Delivery Deadline**". If the fulfillment of any City Delivery Obligation is in any respect dependent upon Lessee's provision of information or documentation to City or the taking of any action by Lessee (such as, by way of example only, the provision of a "fire flow" study to facilitate the connection of water to the demise line of the 130 Acres in connection with the Utility Connections Obligation), then, the City Delivery Deadline for such City Delivery Obligation shall be extended on a day-for-day basis for each day that Lessee's failure to actually provide such information or documentation or take such action (as the case may be) actually delays the fulfillment of such City Delivery Obligation, provided, in each case, that City shall have notified Lessee in writing of such actual delay promptly upon the occurrence thereof. Should any City Delivery Obligation not be fulfilled or satisfied on or before the applicable City Delivery Deadline therefor, then, in addition to all other rights and remedies afforded to Lessee hereunder and pursuant to applicable law, and without limitation of any other remedy it may have in law or equity, Lessee shall have the following remedies, any or all of which Lessee may choose to exercise in its sole discretion either individually or cumulatively (e.g., Lessee can choose the remedy in clause (i) at any time after Lessee chooses the remedy in clause (ii)): (i) Lessee shall be permitted to terminate this Agreement, in which case Lessee shall be relieved of all of its obligation under this Agreement; and/or (ii) Lessee's obligations under this Agreement (including, without limitation, Lessee's obligation to pay Annual Base Rent) shall be suspended from the date of such failure by City until such time as the applicable City Delivery Obligation is satisfied, other than those obligations which directly relate to the construction of the Project Improvements (such as, by way of example only, compliance with applicable law and procurement of insurance relating to the construction of such Project Improvements) if Lessee elects, in its sole discretion, to continue to proceed with such construction notwithstanding such failure by City; provided, no performance or course of conduct by Lessee after such failure by City shall serve as a waiver by Lessee of any of its rights afforded hereunder or of City's obligation to fulfill in full each City Delivery Obligation.

Section 3. Use of Premises.

3.1 Limited Use. Lessee shall have the right throughout the term of this Agreement, subject to any specific limitations or requirements contained in this Agreement, to use and occupy

the Premises solely for the purpose of: (a) film studios, including film and sound stages; (b) office space; (c) back lot uses (provided the structures are not permanent structures); (d) mill and warehouse spaces; (e) post-production facility space; and (f) parking to accommodate all of the foregoing (collectively, the "**Film Studio Uses**"); subject, in the case of structures, to a height limitation of 150 feet above highest point of the usable landing area of the Airport. In addition to the foregoing, from and after Lessee's completion of the Project Improvements pursuant to **Section 3.2**, Lessee shall be permitted to use the Premises for another lawful purpose, provided, that Lessee provides City at least six (6) months' advance written notice, and further provided that Lessee's proposed additional use conforms with City's Double Eagle II Airport Master Plan then in effect. To the extent such purpose requires any permits or approvals from any governmental agencies, City shall reasonably cooperate with Lessee, at Lessee's sole cost and expense, to procure same. LESSEE ACKNOWLEDGES AND AGREES THAT (X) AS OF THE EFFECTIVE DATE, CITY HAS SOUGHT AND RECEIVED APPROVAL FROM THE FEDERAL AVIATION ADMINISTRATION (THE "**FAA**") TO ALLOW THE PREMISES TO BE USED FOR FILM STUDIO USES, AND (Y) ANY ADDITIONAL USE PROPOSED BY LESSEE AFTER THE EFFECTIVE DATE WILL REQUIRE FAA USE CHANGE APPROVAL. CITY MAKES NO REPRESENTATION, GUARANTEE, OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE OUTCOME OF FAA REVIEW OF A USE CHANGE PROPOSED BY LESSEE. Except as provided in the preceding provisions of this **Section 3.1**, Lessee shall not use the Premises for any other purpose than as specified herein without the prior written consent of City, such consent not to be unreasonably withheld. In connection with Lessee's use of the Premises, Lessee shall abide by all applicable ordinances, rules, and regulations established by any federal, state, or local government agency or by City. City hereby represents to Lessee that the Film Studio Uses comply with all City, state and federal laws and environmental requirements. Without limiting the effect of this **Section 3.1**, if any rule or regulation is promulgated by City which has the effect of reducing the fair market value of the Project Improvements, Lessee's business, and/or its leasehold interest in the 130 Acres by more than ten percent (10%), as determined by baseball arbitration, then, City shall be deemed to be in breach of this Agreement and Lessee shall be entitled to (x) pursue and avail itself of any and all rights and remedies available to Lessee under this Agreement and under applicable law, or (y) to offset against Lessee's Annual Base Rent an amount equal to such reduction in fair market value unless and until such rule or regulation is rescinded by City. Lessee shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal use or purpose, or in such manner as to constitute a nuisance of any kind, whether public or private. Lessee shall take, immediately upon the discovery of any such unlawful or illegal use, all necessary actions, legal and equitable, to compel the discontinuance of such use. Lessee may, at its cost and expense, contest in good faith by appropriate legal proceeding any laws, ordinances, rules or regulations affecting the Premises, provided that Lessee complies with such laws, ordinances, rules or regulations (as the case may be) during the pendency of such contest.

3.2 Termination of Use. Lessee shall begin construction pursuant to the Film Studio Uses allowed in **Section 3.1** above within one (1) year following the Effective Date (such date, as the same may be tolled pursuant to **Section 2.7** and the further provisions of this **Section 3.2**, the "**Construction Commencement Deadline**"), and shall have four (4) years from the Construction Commencement Deadline to complete the Project Improvements on the Premises. Without limiting any other activity that would constitute the beginning of construction, an example of an activity that would constitute beginning construction shall include the commencement of

any grading of any portion of the Premises. The Construction Commencement Deadline shall be tolled by the actual number of calendar days that (x) City and City's Director of Aviation ("**Director**") use to review plans required hereunder that are submitted to City by Lessee and deliver final, definitive and conclusive approval of the proposed Project Improvements from all applicable agencies, authorities and governmental bodies, (y) the design and/or commencement of construction is delayed due to Force Majeure Occurrences, and/or (z) City does not timely fulfill any of the City Delivery Obligations that are to be performed prior to Lessee's commencement of construction (without limiting the rights of Lessee pursuant to **Section 2.7** of this Agreement). The number of tolled days shall be computed from the date on which City receives plans requiring review hereunder to the date City provides Lessee with written notification of approval, conditional approval, or rejection, together with a reasonably detailed explanation of any rejection or conditional approval. Subject to the provisions of **Exhibit G**, in the event that construction does not commence on or before the Construction Commencement Deadline, either party may, in its sole discretion, terminate this Agreement. Upon such termination, Lessee shall vacate and peaceably surrender the Premises, remove all Lessee property, and restore the Premises to substantially its original condition. The provisions, covenants and rights contained in this **Section 3.2** shall be irrespective of any portion of the Expansion Premises leased by Lessee in accordance with the terms of this Agreement and shall not apply to any other Improvements (as hereinafter defined) that may be constructed from time to time within the Expansion Premises in accordance with the terms of this Agreement and, for the avoidance of doubt, shall only apply to the Project Improvements contemplated by this Agreement to be constructed on the Premises.

Section 4. Project Improvements. Lessee shall have the right, at its sole cost and expense, to construct improvements to the Premises for the Film Studio Uses ("**Project Improvements**"), provided that it receives prior written approval from the Director to the extent such approval is required by the further provisions of this **Section 4** and in all cases subject to the provisions of **Section 3.2** and the fulfillment in full of City's Delivery Obligations.

4.1 Approval by the Director of Aviation. For all Project Improvements and Major Improvements, Lessee shall submit to Director complete plans sufficient to obtain a building permit from the City of Albuquerque. Lessee shall obtain written approval for same from Director prior to beginning construction and installation, to the extent such approval is required by the further provisions of this **Section 4**. Approval by Director shall include, but not be limited to, architectural and aesthetic matters, and Director shall be entitled to reject designs submitted and require Lessee to re-submit designs until approval by Director is given; provided, Director's approval of Lessee's plans (or any features thereof, including but not limited to architectural and aesthetic matters) will not be required except to the extent the same materially differ from any plans (or such features, as applicable) then previously submitted to and approved by Director, and Director shall provide Lessee in writing with a reasonably detailed explanation for Director's rejection of any feature of any plans and specifications submitted to Director. The standard of care used in designing all Project Improvements and Improvements shall be a standard consistent with the level of skill and care ordinarily exercised by members of the architectural profession for a project of a similar size, scope, and complexity in a similar geographic location at the time the design services are being provided pursuant to this Agreement. Designs shall be consistent with the requirements of all applicable laws. City agrees to act promptly upon Lessee's request for approval of plans, specifications, and modifications thereto.

Any review or approval by Director of Lessee's plans or any inspection by City of the 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 its architects, engineers, and contractors. Lessee shall cause all Project Improvements and Major Improvements authorized under this Agreement to be constructed only by a contractor properly licensed by the State of New Mexico to construct such improvements.

4.2 Construction Plans and Specifications. No Project Improvements or Major 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 have been approved by City, to the extent such approval is required by the further provisions of this **Section 4.2**. When applicable, such plans must be prepared and stamped by an architect and/or engineer licensed to practice in the State of New Mexico. Within a reasonable time after the execution of this Agreement, the Director shall contact Lessee to schedule a pre-project meeting to brief City staff on the proposed Project Improvements. City hereby acknowledges and agrees that the conceptual plans for the Project Improvements attached hereto as **Exhibit H** (the "**Phase 1 Plans**") have been prepared by Lessee. Any preliminary plans or other deliverables required under this **Section 4** or otherwise directly or indirectly contemplated in this Agreement to be submitted to and approved by the Director which contain features shown, detailed, or described on the Phase 1 Plans shall be deemed approved by the Director to the extent such features are materially consistent with those described on the Phase 1 Plans.

4.2.1 Preliminary Plans. In the event the Project Improvements and/or Major Improvements proposed by Lessee are of a nature such that the services of an architect and/or engineer are required, then electronic sets of preliminary plans prepared and stamped by the architect and/or engineer must be submitted to the Director. Such preliminary plans shall show the full extent of the Project Improvements and/or Major Improvements to be constructed, including but not limited to, grading, drainage, landscaping, paving, signs, structural details and utility locations, showing the relationship of each proposed Project Improvement to all adjacent Airport parcels, public roadways, or service roadways. Plans shall include complete specifications in sufficient detail for Director to determine compatibility with any and all Aviation Department Development Guidelines and their overall objectives for the aesthetic character and quality of the Project Improvements and/or Major Improvements. Architectural submittals shall include an accurate architectural perspective color rendering of the Project Improvements and/or Major Improvements, 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 sixty (60) days after receipt of the rejection notice, Lessee shall amend such plans to comply with the items set forth in the rejection notice and submit amended plans to

Director for approval. Director shall notify Lessee within fifteen (15) days thereafter of City's decision regarding the revised plans.

4.2.2 Final Plans and Construction Schedule. Within sixty (60) days following Lessee's receipt of Director's approval of the preliminary plans as delivered pursuant to **Section 4.2.1** above, Lessee shall deliver to Director for approval electronic sets of final construction plans and specifications for construction of the Project Improvements and/or Major Improvements, as applicable, together with a schedule for construction of the Project Improvements or Major Improvements, as applicable. Such final 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. There shall be no substantial changes or substantial alterations made in the final plans and specifications after the approval by Director without the advance written approval of Director; provided, changes and alterations to the final plans and specifications in order to comply with laws, regulations, ordinances and codes or otherwise satisfy the requirements of any governmental authority, and/or to reflect unforeseen site conditions, shall be permitted without Director's approval so long as such changes do not materially adversely affect the construction of the Project Improvements and/or the Major Improvements or the Project Improvements and/or the Major Improvements themselves, and Lessee shall deliver a copy of any such changes to Director for informational purposes only. Director's approval of such plans shall not infer approval by other City or controlling agencies. After approval of the plans by Director, Lessee shall have complete responsibility for obtaining all other required approvals and permits for the Project Improvements or Major Improvements, as applicable, provided that Lessee shall not be obligated to obtain such required approvals and permits to the extent same constitute a component of any of the City's Delivery Obligations. City shall reasonably cooperate with Lessee, at Lessee's sole cost and expense, to procure any such required approvals and permits.

Lessee warrants that City may use all plans and specifications submitted by or on behalf of Lessee only for purposes of reviewing same to the extent review of such plans and specifications are required under this Agreement.

4.2.3 Modification of Final Plans. Any modifications to the approved final plans and specifications, which may be required following review by the City of Albuquerque Code Enforcement Division, the New Mexico Environment Department, the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, or other governmental agencies, shall be submitted to Director for approval prior to construction provided that such modifications do not materially adversely affect the Project Improvements or their construction.

4.3 Permits, Licenses, and Approvals. Subject to fulfillment in full of each City Delivery Obligation, Lessee shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of the Project Improvements and Major Improvements from City, State, and Federal agencies. These shall include, but not be limited to:

4.3.1 Permits, licenses, and approvals for fuel storage tanks, if such tanks are approved by City; and

4.3.2 Permits, licenses, and approvals of: (a) the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, and the City of Albuquerque Building and Safety Division; and (b) the Insurance Services Office, Inc. or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions; and

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

4.4 Notice to Proceed, Construction Bonds, and Insurance. Director's approval of Lessee's final plans and specifications, to the extent such approval is required as described above, shall constitute Lessee's notice to proceed with construction of the Project Improvements and/or Major Improvements, provided that, in addition to any other insurance and indemnity requirements provided hereinafter, Lessee satisfies the following requirements:

4.4.1 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 provision of **Exhibit D**; and

4.4.2 Lessee's construction contractor has duly executed a Labor and Materials Payment Bond or Letter of Credit with a surety authorized to do so in the State of New Mexico, in an amount equal to the value of its contract for construction of the Project Improvements and/or Major Improvements to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property. Lessee shall provide City with a true copy of such executed bond, upon request by Director.

Lessee shall be solely responsible for payment, promptly when due, to all persons supplying labor and materials to its contractor(s) for all elements of construction of Project Improvements and/or Major Improvements. Lessee shall keep the Premises free and clear of all liens resulting from any construction 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 (excluding consequential, special and punitive damages) for payment of any such lien and reasonable out-of-pocket attorney's fees, except to the extent the foregoing is caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

4.4.3 Lessee's construction contractor has duly executed a performance bond or letter of credit securing contractor's performance of its obligations relating to the construction of the Project Improvements and/or Major Improvements, in an amount equal to the value of its construction contract, naming City as obligee thereunder. Lessee shall provide City with a true copy of such executed bond, upon request by Director. In the alternative, subject to the approval of City, Lessee may submit to Director in lieu of a Performance Bond, a cash deposit in an amount equal to the total value of Lessee's construction contract; and

4.4.4 Lessee has obtained at its sole expense all necessary licenses and permits required for construction of Project Improvements and/or Major Improvements; and

4.4.5 Lessee shall provide City with copies of the building permits issued to Lessee by the City of Albuquerque Building Inspection Division or similar City entity, upon request by Director.

4.5 Contractor Indemnification. Lessee shall include in all construction contracts entered into in connection with the construction of the Project Improvements and/or Improvements, a provision requiring the contractor and subcontractors party to such contracts to indemnify, hold harmless, defend and insure Airport, City, and their directors, officers, and employees, from and against the risk of third party legal liability for death, injury or direct damage to persons or property, arising or alleged to arise out of, or in connection with, the performance of any or all 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. To the extent NMSA 1978 § 56-7-1 (2005) is applicable to this Section 4.5 or any other provisions of this Agreement, any indemnification requirements of Lessee, its contractors, or agents shall be deemed not extend to or be construed to require Lessee or its agents 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, provided, further, that Lessee, its contractors or agents shall in no event be liable under this Section 4.5 or as elsewhere provided in this Agreement, for punitive, special, consequential or similar damages, or losses in the nature of lost profits or diminution in value.

4.6 Coordination of Construction. Lessee agrees that all construction and installation of Project Improvements and/or Major Improvements on the Premises shall be accomplished without interfering with any aeronautical activity occurring in or around the Airport. Lessee and its construction contractor and subcontractors shall at all times keep the construction site 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 away from the Airport.

Lessee shall be responsible for obtaining and paying for any temporary utilities needed during construction of the Project Improvements.

4.7 Intentionally Omitted.

4.8 As-Built/Certified Drawings. Within sixty (60) days following receipt of a Certificate of Occupancy, Lessee shall furnish to City certified drawings showing the "as-built" Project Improvements. Certified drawings shall be dated and stamped by the architect of record or registered engineer to provide the same and Lessee shall be liable for the cost of said drawings. Upon request of City, Lessee shall inspect the Project Improvements jointly with City to verify substantial compliance with the "as-built" drawings.

4.9 Removal of Unapproved Improvements. Project Improvements made on or to the Premises without the Director's written approval as required or portions of the improvements that are not constructed substantially as indicated and specified on approved plans (subject to changes thereto that are permitted pursuant to **Section 4.2**) will be considered to be unapproved improvements constructed in violation of the provisions of this Agreement. Unapproved improvements shall be either removed by Lessee or modified in a manner acceptable to Director, in both cases at Lessee's sole expense, as promptly as possible following Lessee's receipt of written notice from the Director.

4.10 Improvements by Lessee to Remain Throughout Term. Subject to the provisions of **Section 4.13**, all of Lessee's Improvements shall remain on the Premises throughout the Term.

4.11 Ownership of Improvements. All Improvements constructed by Lessee shall be owned by Lessee until expiration or earlier termination of this Agreement; provided, however, that if the terms of any Economic Development Incentives require, title to the Improvements shall be deemed to be vested in the necessary party required per such Economic Development Incentives, but only for so long as such Economic Development Incentives are in effect and/or require such vesting of title. Lessee shall not, however, remove any of its Improvements from the Premises, nor waste, destroy, demolish, or materially alter any of the Improvements on the Premises except as permitted pursuant to this Agreement. All Improvements on the Premises at the expiration or earlier termination of this Agreement shall automatically, without compensation to Lessee (subject, however, to the immediately succeeding sentence), become property of City, free and clear of any and all rights to possession and all claims to or against them created by Lessee. If (i) (A) for any reason, **Section 5.2.2** and/or **Section 5.2.3** is invalid or unenforceable by Lessee, or (B) Lessee requests the Extension Period in accordance with **Section 5.2.2** and, at such time, one or more Extension Period Prohibitions apply, and (ii) this Agreement terminates at the end of the Term set forth in **Section 5.1** for any reason, then, as a condition to any subsequent lease, transfer, purchase or other conveyance of any interest in the Premises, City shall, or shall cause any subsequent lessee, purchaser, or other transferee of the Premises, to remit to Lessee an amount equal to the fair market value of the Improvements then-existing on the Premises, in each case, as determined by a Final EFP Appraisal (as defined below) calculated in accordance with **Section 4.11.1** below (such sum, the "**Extension Failure Payment**"). City's obligation described in the immediately preceding sentence shall survive the expiration or earlier termination of this Agreement.

4.11.1 Appraisal Process In Connection With Extension Failure Payment.

Upon the occurrence of an event causing the Extension Failure Payment to be due to Lessee in accordance with **Section 4.11**, Lessee shall, at its sole cost and expense, select and retain a Qualified Appraiser (as defined in **Section 6.2.1**) to prepare and provide a written appraisal of the Improvements constructed or located on the Leased Land (as defined in **Section 6.2.1**) at the time such Extension Failure Payment is due, and such Qualified Appraiser shall satisfy any qualifications for appraisers set forth in any then-applicable FAA standards for appraisals (such qualifications for the Qualified Appraiser, the "**Extension Failure Payment Appraisal Criteria**", and such an appraisal, the "**First EFP Reappraisal**"); and Lessee shall promptly

deliver a copy of such First EFP Reappraisal to City (the "**First EFP Reappraisal Notice**"). If, within thirty (30) days following City's receipt of the First EFP Reappraisal Notice, either City notifies Lessee in writing that City accepts the results of the First EFP Reappraisal, or City fails to deliver to Lessee a written acceptance or rejection of the First EFP Reappraisal, then the First EFP Reappraisal shall constitute the Final EFP Reappraisal (as hereinafter defined) for purposes of **Section 4.11** above. If City delivers a written notice to Lessee within thirty (30) days following City's receipt of the First EFP Reappraisal via the First EFP Reappraisal Notice rejecting the First EFP Reappraisal, then City shall, at its sole cost and expense, select and retain a Qualified Appraiser to prepare and provide a written appraisal of such Improvements using the Extension Failure Payment Appraisal Criteria (the "**Second EFP Reappraisal**").

If the First EFP Reappraisal and the Second EFP Reappraisal are within five percent (5%) of each other (i.e., the higher of the First EFP Reappraisal and the Second EFP Reappraisal is no more than 1.05 times the lower of the First EFP Reappraisal and the Second EFP Reappraisal), then the Final EFP Reappraisal for purposes of this **Section 4.11.1** shall equal (i) the sum of the First EFP Reappraisal and the Second EFP Reappraisal, divided by (ii) two (2). If the First EFP Reappraisal and the Second EFP Reappraisal are not within five percent (5%) of each other, then: (A) City and Lessee shall promptly instruct the two appraisers to, within thirty (30) days following the date that City delivers the Second EFP Reappraisal to Lessee, select a third appraiser (the "**Third EFP Appraiser**"); (B) City and Lessee shall promptly deliver to the Third EFP Appraiser a copy of the First EFP Reappraisal and the Second EFP Reappraisal; (C) the Third EFP Appraiser shall be instructed to choose whichever of the First EFP Reappraisal or the Second EFP Reappraisal (and no other valuation) the Third EFP Appraiser determines to be closer to the fair market value of the Improvements then-existing on the Leased Land as determined by the Third EFP Appraiser using the Extension Failure Payment Appraisal Criteria; (D) the appraisal chosen by the Third EFP Appraiser pursuant to clause (C) shall constitute the "**Final EFP Reappraisal**" for purposes of **Section 4.11** above; and (E) City and Lessee shall each bear fifty percent (50%) of the fees and expenses of the Third EFP Appraiser.

If the two appraisers who prepared the First EFP Reappraisal and the Second EFP Reappraisal cannot agree on the Third EFP Appraiser within the 30-day period noted above, then City and Lessee shall promptly request the American Arbitration Association ("**AAA**") (or, if AAA no longer exists, its successor or another nationally recognized arbitration organization) to select the Third EFP Appraiser, and City and Lessee shall each bear fifty percent (50%) of any fees or other charges of AAA (or such other arbitration organization).

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 (or any Extension Period, as applicable) to remove any or all of such personal property subject to Lessee's obligation to repair material damage resulting from such removal.

4.12 Pavement and Landscaping. Any walkway, roadway, or other paved surface shall be constructed by the Lessee in accordance with applicable law and pursuant to the plans and specifications approved by City and/or another applicable agency, in all cases, as explicitly referenced and in accordance with the terms of this Agreement. Any landscaping installed by

Lessee must be installed and maintained by Lessee at Lessee's expense.

4.13 Future Alterations. Following completion of the construction of the initial phase of Project Improvements, Lessee shall be permitted to make (a) De Minimis Alterations to the Premises, without the prior written approval of Director, provided that Lessee obtains all legally required approvals and permits therefor and performs such work in a good and workmanlike manner and in compliance with laws, (b) Minor Improvements to the Premises, subject to receipt of the prior written approval of City, such approval not to be unreasonably conditioned, withheld or delayed (and, for the avoidance of doubt, not requiring approval from Director or being subject to the approval procedures applicable to Project Improvements), and (c) Major Improvements to the Premises, subject to receipt of prior written approval from City and Director in the same manner as applicable to the Project Improvements. "**De Minimis Alterations**" means, individually or collectively, any changes, alterations, additions, or improvements that do not materially adversely affect the structural integrity of the Project Improvements and/or Improvements. "**Major Improvements**" means, individually or collectively, vertical structures of a height of at least 12 feet requiring substantial details of construction and mechanical adjustment and the construction of which requires significant arrangements for the connections of utilities thereto. "**Minor Improvements**" means, individually or collectively, improvements and alterations that are neither De Minimis Alterations nor Major Improvements. Notwithstanding anything to the contrary contained herein, Lessee may, without City's approval, demolish any Improvements due to the obsolescence of such Improvements. Any improvements, including, without limitation, the Project Improvements, Major Improvements and De Minimis Improvements, if any, that exist from time to time on the Premises are referred to herein as the "**Improvements**".

4.14 Intentionally Omitted.

Section 5. Term; Holding Over.

5.1 Initial Term. The term of this Agreement shall be for fifty (50) years (the "**Term**"), commencing on the Effective Date, unless earlier terminated pursuant to any provisions of this Agreement.

5.2 Extension of the Term.

5.2.1 For purposes of this **Section 5.2**:

- (i) the term "**Extension Obligations**" means the obligations imposed on the City pursuant to Section 5.2.2 below;
- (ii) the term "**Extension Period Prohibition**" means any law, rule or regulation (other than a law, rule or regulation promulgated by City), or Grant Assurance (as defined below), that prohibits, restricts or limits the ability of City from satisfying any or all of its Extension Obligations;

- (iii) the term "**Grant Assurance**" means any provision of any written agreement heretofore or hereafter made between City and the United States, regarding the operation or maintenance of the Airport, which provision was required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, 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; and
- (iv) the term "**Government Approval**" means the approval by the FAA, by any other United States agency or authority, or by the State of New Mexico.

5.2.2 If, at any time during the period commencing on the forty-fifth (45th) anniversary of the Effective Date and ending on the date that is six (6) months prior to the expiration of the Term, Lessee notifies City in writing (such written notice, an "**Extension Notice**") that Lessee would like to extend the Term for an additional twenty-five (25) or fifty (50) years (the "**Extension Period**"), then, subject to **Section 5.2.3** below, City shall either (i) execute an amendment to this Agreement extending the Term by the Extension Period or (ii) enter into a new lease with Lessee that is identical to this Agreement except that the Term of such new lease shall be the Extension Period; and provided that in the case of clauses (i) and (ii), the Annual Base Rent for the first year of the Extension Period shall equal the lesser of: (A) the Fair Market Rent determined pursuant to the mechanism set forth in **Section 6.2** below, or (B) the aggregate rent paid by Lessee during the last twelve (12) months of the Term, multiplied by 1.1. The 2% Per Annum Escalation shall not apply to the Annual Base Rent that is payable with respect to the first year of an Extension Period.

5.2.3 If Lessee requests the Extension Period in accordance with **Section 5.2.2** and, at the time Lessee delivers such request to City pursuant to an Extension Notice, either City or Lessee notifies the other in writing that City or Lessee, as the case may be, believes (based on advice of counsel with experience in dealing with such matters) that one or more Extension Period Prohibitions apply, then:

- (i) City may (in its discretion) or if requested by Lessee pursuant to **Section 5.2.4** below, City shall in accordance with **Section 5.2.4**, expeditiously pursue Governmental Approval for a waiver of, or exception to, any such Extension Period Prohibition(s) and/or for a written acknowledgment that such Extension Period Prohibition(s) do not in fact apply; and
- (ii) If neither City nor Lessee opts to pursue the alternative set forth in clause (i) of this **Section 5.2.3**, or if such alternative is pursued

but the Government Approval is not obtained, then, if requested in writing by Lessee, City shall act in good faith and expeditiously to fulfill, to the greatest extent possible without violation such Extension Period Prohibition(s), all of the City's Extension Obligations, including, but not limited to, negotiating in good faith with Lessee.

In furtherance and not in limitation of clause (ii) of this **Section 5.2.3**, if one or more Extension Period Prohibitions apply to one or more economic provisions of this Agreement, City shall negotiate in good faith with Lessee changes to this Agreement (including **Section 5.2.2**) that avoid violating such Extension Period Prohibition(s) but preserve, to the greatest extent possible, the overall economics of this Agreement (including **Section 5.2.2**).

5.2.4 If, at any time on or after the Effective Date, Lessee determines, in its sole discretion, that the entirety of or any provision in this **Section 5.2** requires Government Approval (including, without limitation, effectuating the Extension Period), then: (i) upon the written request of Lessee (which Lessee may deliver to City at any time and from time to time, including on the Effective Date), City shall, at its sole cost and expense, promptly, diligently, and continuously pursue such Government Approval; and (ii) Lessee shall not be required to agree to any amendment to this Agreement (including, without limitation, the Annual Base Rent provision of **Section 5.2**), or to otherwise pay or incur any amount, to obtain such Government Approval. In connection with clause (i) of this **Section 5.2.4**, City shall keep Lessee reasonably informed of City's efforts to obtain such Government Approval, including promptly providing to Lessee any correspondence sent or received by City in connection with such efforts. City makes no representation, warranty or guaranty that it will receive any Government Approval, and City shall not be liable to Lessee due to any non-occurrence of any Government Approval, provided that City has satisfied its obligations under this **Section 5.2**.

5.2.5 If (i) (A) for any reason, **Section 5.2.2** and/or **Section 5.2.3** is invalid or unenforceable by Lessee, or (B) Lessee requests the Extension Period in accordance with **Section 5.2.2** and, at such time, one or more Extension Period Prohibitions apply, and (ii) this Agreement terminates at the end of the Term set forth in **Section 5.1** for any reason, then, in addition to any other rights Lessee may have at law or in equity (any or all of which City acknowledges and agrees that Lessee shall be entitled to pursue), Lessee shall have the right, by written notice to City, to elect the remedy set forth in **Section 4.11**.

5.3 Holding Over by Lessee. Holding over by Lessee after the expiration of the Term without the exercise of Lessee's right to extend pursuant to **Section 5.2.2** above or otherwise at the expiration of any Extension Period, shall not operate to extend or renew this Agreement (unless the Renewed Lease is entered into). Any such holding over without the consent of City shall be construed as a month-to-month tenancy on the same terms and conditions of this Agreement then in effect, except only as to: (a) the Term of this Agreement; and (b) the monthly rent, which during such tenancy shall be equal to one hundred ten percent (110%) of the monthly rent paid by Lessee during the last month of the Term of this Agreement (without any application of the 2% Per Annum Escalation).

Section 6. Rent and Fees. Subject to the next paragraph, Annual Base Rent during the first year of the Agreement will be **TWELVE CENTS (\$0.12)** per square foot of the Premises, and thereafter shall increase annually commencing at the beginning of the day after the fifth anniversary of this Agreement (and continuing thereafter on each subsequent anniversary of such date), at a rate of two percent (2%) per year (the "**2% Per Annum Escalation**").

The rent due for the first nine (9) years of the Term shall be adjusted and modified as follows:

- a. Year One: \$0.00.
- b. Year Two: **FOUR CENTS (\$0.04)** per square foot of the Premises.
- c. Year Three: **EIGHT CENTS (\$0.08)** per square foot of the Premises.
- d. Year Four: **TWELVE CENTS (\$0.12)** per square foot of the Premises.
- e. Year Five: **TWELVE CENTS (\$0.12)** per square foot of the Premises.
- f. Year Six: **TWELVE AND TWENTY-FOUR ONE-HUNDREDTHS CENTS (\$0.1224)** per square foot of the Premises.
- g. Year Seven: **TWELVE AND FIVE-TENTHS CENTS (\$0.125)** per square foot of the Premises.
- h. Year Eight: **TWELVE AND SEVEN-TENTHS CENTS (\$0.127)** per square foot of the Premises.
- i. Year Nine: **THIRTEEN CENTS (\$0.13)** per square foot of the Premises.

6.1 Rent Adjustment. Beginning on day after the tenth anniversary of this Agreement and on the day after every tenth anniversary thereafter (the "**Rent Reset Date**"), Annual Base Rent due under the Agreement shall be reset to equal the lesser of:

- (a) The Fair Market Rent, determined in accordance with **Section 6.2** below; and
- (b) The Annual Base Rent per square foot that was payable immediately prior to the Rent Reset Date multiplied by 1.05;

provided, however, that in no event will the Annual Base Rent be reset to an amount that is less than the Annual Base Rent being paid on the Premises immediately prior to the Rent Reset Date, and further provided that the Annual Base Rent calculated as of such Rent Reset Date shall not be subject to the 2% Per Annum Escalation for the year such Rent Reset Date occurs.

6.2 Fair Market Rent Determination Process.

6.2.1 Determination of Fair Market Value of the Land. One (1) year prior to the Rent Reset Date, City shall, at its sole cost and expense, select and retain a Qualified Appraiser (as defined below) to prepare and provide a written appraisal of the land comprising the Premises (such land, the "**Leased Land**"), (i) without giving effect to any Improvements constructed or located thereon (i.e., as though the land was unimproved), and (ii) taking into account the City's Double Eagle II Airport Master Plan in effect at the time of such appraisal (such appraisal criteria, the "**Appraisal Criteria**", and such an appraisal, the "**First Reappraisal**"); and City shall promptly deliver a copy of such First Reappraisal to Lessee (the "**First Reappraisal Notice**"). If, within thirty (30) days following Lessee's receipt of the First Reappraisal Notice,

either Lessee notifies City in writing that Lessee accepts the results of the First Reappraisal, or Lessee fails to deliver to City a written acceptance or rejection of the First Reappraisal, then the First Reappraisal shall constitute the Final Reappraisal (as hereinafter defined) for purposes of **Section 6.2.2** below. If Lessee delivers a written notice to City within thirty (30) days following Lessee's receipt of the First Reappraisal via the First Reappraisal Notice rejecting the First Reappraisal, then Lessee shall, at its sole cost and expense, select and retain a Qualified Appraiser to prepare and provide a written appraisal of the Leased Land using the Appraisal Criteria (the "**Second Reappraisal**").

If the First Reappraisal and the Second Reappraisal are within ten percent (10%) of each other (i.e., the higher of the First Reappraisal and the Second Reappraisal is no more than 1.1 times the lower of the First Reappraisal and the Second Reappraisal), then the Final Reappraisal for purposes of **Section 6.2.2** below shall equal (i) the sum of the First Reappraisal and the Second Reappraisal, divided by (ii) two (2). If the First Reappraisal and the Second Reappraisal are not within ten percent (10%) of each other, then: (A) City and Lessee shall promptly instruct the two appraisers to, within thirty (30) days following the date that Lessee delivers the Second Reappraisal to City, select a third appraiser (the "**Third Appraiser**"); (B) City and Lessee shall promptly deliver to the Third Appraiser a copy of the First Reappraisal and the Second Reappraisal; (C) the Third Appraiser shall be instructed to choose whichever of the First Reappraisal or the Second Reappraisal (and no other valuation) the Third Appraiser determines to be closer to the fair market value of the Leased Land as determined by the Third Appraiser using the Appraisal Criteria; (D) the appraisal chosen by the Third Appraiser pursuant to clause (C) shall constitute the "**Final Reappraisal**" for purposes of **Section 6.2.2** below; and (E) City and Lessee shall each bear fifty percent (50%) of the fees and expenses of the Third Appraiser.

If the two appraisers who prepared the First Reappraisal and the Second Reappraisal cannot agree on the Third Appraiser within the 30-day period noted above, then City and Lessee shall promptly request AAA (or, if AAA no longer exists, its successor or another nationally recognized arbitration organization) to select the Third Appraiser, and City and Lessee shall each bear fifty percent (50%) of any fees or other charges of AAA (or such other arbitration organization).

For purposes of this **Section 6.2.1**, a "**Qualified Appraiser**" means an appraiser licensed in the State of New Mexico and having at least ten (10) years' experience in valuing land similar to the land comprising the Premises.

6.2.2 Determination of Fair Market Rent. Upon the determination of the Final Reappraisal pursuant to **Section 6.2.1** above, the fair market rent for the applicable Extension Period shall be established as, and deemed to be, an amount equal to five percent (5%) of the value of the Leased Land based upon the Appraisal Criteria pursuant to such Final Reappraisal (the "**Fair Market Rent**").

6.2.3. True-Up Rent Payment. If, as of the Rent Reset Date, the Fair Market Rent has not yet been determined pursuant to **Sections 6.2.1** and **6.2.2** above, then: (a) until the Fair Market Rent has been so determined, the Annual Base Rent due under the Agreement shall equal the Annual Base Rent that was payable on the Premises immediately prior to the Rent

Reset Date, and (b) within 30 days after the determination of the Fair Market Rent, Lessee shall pay City the amount, if any, by which the Annual Base Rent payable by Lessee following the Rent Reset Date and through such date based on **Section 6.1** exceeded the Annual Base Rent actually paid by Lessee following the Rent Reset Date and through such date.

6.2.4 No City Council Approval. For the avoidance of doubt, each of City and Lessee acknowledges and agrees that the rent determined pursuant to **Section 6.1** and this **Section 6.2** shall not be subject to, or conditioned upon, the approval of either City or Lessee.

6.3 Place of Payment. Lessee shall deliver payments of Annual Base Rent 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 to the order of the "City of Albuquerque". Annual Base Rent, as calculated pursuant to the terms of this Agreement, shall be paid in twelve (12) equal monthly installments on or before the tenth (10th) day of each month of the Term.

6.4 Late Payment Fee. If (a) the Annual Base Rent required by this Agreement is not received by City on or before the date specified in this Agreement, (b) City notifies Lessee of such failure in writing, and (c) Lessee fails to pay such Annual Base Rent within 15 days following Lessee's receipt of such written notice from City, Lessee shall pay an interest charge to City of ten percent (10%) per annum 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 NO/100 DOLLARS (\$50.00)** if City sends Lessee a late payment notice more than once in any 12-month calendar year.

6.5 Net Lease. Except as otherwise explicitly provided in this Agreement, Lessee shall pay, in addition to the taxes, water, sewer charges, assessments, and insurance premiums elsewhere provided for in this Agreement:

6.5.1 All maintenance, operation, and repair expenses of every kind, nature, or description, now or hereafter existing in the Premises, and each part thereof, both inside and out, including, but specifically not limited to roofs, windows, fronts, sidewalks, vaults, plumbing and heating systems, air-conditioning systems, and any street in front of and adjoining said Premises, to the persons, forms, or corporations performing, furnishing, or rendering such services.

6.5.2 Cost of all alterations of whatever nature, whether structural or otherwise, undertaken by Lessee at any time during the Term, to the persons, firms, or corporations performing, furnishing, or rendering such services.

Section 7. Provisions Incorporated by Exhibits. Throughout the term of this Agreement, Lessee shall comply with the provisions of the following exhibits, attached hereto and incorporated herein as though set forth in full:

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

7.1.1 Commercial General Liability Insurance. Lessee shall have liability limits in amounts not less than **TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00)**.

TWO MILLION DOLLARS (\$2,000,000.00) Per Occurrence;
TWO MILLION DOLLARS (\$2,000,000.00) Policy Aggregate;
ONE MILLION DOLLARS (\$1,000,000.00) Product Liability/Completed Operation;
ONE MILLION DOLLARS (\$1,000,000.00) Personal and Advertising Injury; and
FIVE THOUSAND DOLLARS (\$5,000.00) Medical Payments.

The Commercial General Liability (“CGL”) insurance policy must include coverage for all operations performed for City by the vendor/contractor, and the contractual liability coverage shall specifically insure the hold harmless provisions of City’s contract with the vendor/contractor. City shall also be listed as an “additional insured” by endorsement onto the CGL policy. Proof of this additional insured relationship shall be evidenced on the Certificate of Insurance (“COI”) and on the insurance endorsement.

7.1.2 Commercial Automobile Liability Insurance. Lessee shall have liability limits in amounts not less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** should Lessee, its officers, agents, or employees access the Premises using Lessee-owned automobiles.

7.1.3 Workers’ Compensation and Employers Liability Insurance. The provisions of this paragraph shall be carried and maintained as required by New Mexico Law.

7.1.4 Commercial Property Insurance. Commercial property insurance shall be purchased and maintained in an amount equal to the replacement cost of the Improvements and all personal property situated on the Lessee’s Premises.

7.1.5 Builders’ Risk Insurance. During any period of construction or reconstruction that Lessee contracts Lessee shall carry, or shall require its contractors to carry, Builders’ Risk Insurance in an amount sufficient to insure the value of the work.

7.2 Exhibit D: Security Deposit Provisions. Per the terms of the Letter of Intent between the Lessee and City, effective June 16, 2023, Lessee has deposited **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** in a form that conforms to the requirements provided in **Exhibit D**, attached hereto and incorporated herein, with City for consideration for keeping the Premises off of the market. In accordance with the terms of the Letter of Intent, this amount will be credited towards the security deposit for this Agreement upon commencement of this Agreement.

7.3 Exhibit E: Environmental Provisions.

7.4 Exhibit F: General Conditions.

7.5 Exhibit G: Mortgagee Provisions.

Section 8. Termination of Agreement.

8.1 Termination by City: 15-Day Cure Period. This subsection shall govern Lessee's failure to comply with the following provisions (collectively, "**Events of Default**"):

8.1.1 pay the Annual Base Rent;

8.1.2 provide and maintain insurance;

8.1.3 failure to commence construction on or before the Construction Commencement Deadline.

In the event Lessee fails to comply with any or all of the aforementioned provisions for a period of fifteen (15) days following receipt by Lessee of City's written notice of an Event of Default, subject to the provisions of **Exhibit G**, City shall be entitled to terminate this Agreement by sending a Notice of Termination to Lessee, provided, however, that no Notice of Termination shall be effective if Lessee has fully cured all Events of Default identified in the fifteen (15) day notice prior to Lessee's receipt of the Notice of Termination. Subject to the provisions of **Exhibit G**, termination of this Agreement will take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise therein. Subject to the provisions of **Exhibit G**, upon Lessee's receipt of a Notice of Termination, Lessee shall immediately quit and surrender the Premises and City shall have the right to immediate sole possession of same without any requirement of City to give notice to Lessee to quit possession.

8.2 Termination by City: 60-Day Cure Period. Subject to the provisions of **Exhibit G**, except for Events of Default which are governed by **Section 8.1** above, if Lessee fails to comply with any covenant or provision herein required for a period of sixty (60) days following receipt from City of written notice ("**Notice of Non-Compliance**"), City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Subject to the provisions of **Exhibit G**, 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 paid the fees or costs identified in the afore-mentioned notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

For events of non-compliance, which cannot reasonably be cured within a period of sixty (60) days following receipt from City of written Notice of Non-Compliance, Lessee shall, to the extent Lessee is reasonably capable of doing so, commence corrective action within said thirty (30) day period, and shall, to the extent is reasonably capable of doing so, continue appropriate curative action until such default has been cured. Subject to the provisions of **Exhibit G**, in the event Lessee fails to meet its obligation as provided for herein, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Subject to the provisions of **Exhibit G**, 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 commenced corrective action, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

The rest of this **Section 8** notwithstanding, if Lessee fails to comply with any provision of this Agreement for twenty-four (24) hours following a Notice of Non-Compliance, and such non-compliance is or is reasonably likely to be the cause, in whole or in part, of actual or imminent harm to human health or the environment, risks to safety or security of aeronautical operations at the Airport, or any other emergency condition ("**Emergency Non-Compliance**"), City may but is not obligated to immediately enter onto the Premises and resolve such Emergency Non-Compliance to its reasonable satisfaction. In such cases, provided that City has identified the Emergency Non-Compliance in the corresponding Notice of Non-Compliance, Lessee shall bear City's reasonable costs in resolving the Emergency Non-Compliance, plus a 10% administrative fee.

8.3 City's Non-Waiver. Subject to the provisions of Exhibit G, 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.

8.4 Termination by Lessee: 30-Day Cure Period. If City fails to comply with any covenant or provision herein required for a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, Lessee shall be entitled to terminate this Agreement 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 complied with all covenants and provisions identified in the Notice of Non-Compliance, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. Upon any such default by City, which is not cured in a timely manner, whether or not Lessee terminates this Agreement, Lessee shall have all remedies available to it at law or in equity or pursuant to any applicable statute.

For events of non-compliance, which cannot reasonably be cured within a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, City shall commence corrective action within said thirty (30) day period, and shall continue appropriate curative action until such default has been fully cured. In the event City fails to meet its obligation as provided for herein, Lessee shall be entitled to terminate this Agreement 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 commenced corrective action, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

8.5 Other Termination by Lessee. Lessee may terminate this Agreement any time that Lessee is not in default in its payments of Annual Base Rent to City hereunder, by giving City sixty (60) days advance written notice as hereinafter provided, based upon one of the following events:

8.5.1 The issuance by any court of competent jurisdiction of an injunction in any way preventing, restraining, or otherwise materially impairing the use of the Airport or any part thereof for aeronautical purposes, and the remaining in force of such injunction for a period of at least ninety (90) days;

8.5.2 A written determination by any governmental authority (including, without limitation, the rejection of any application or approval or withholding of any permit) that prevents, restrains, or otherwise materially impairs the ability to construct the Project Improvements and/or use the Premises for any Film Studio Use;

8.5.3 The inability of Lessee to use, for a period in excess of ninety (90) days, the Airport or any of the Premises, facilities, rights, licenses, services or privileges leased to Lessee hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy, provided that same is not caused by the gross negligence or willful acts or failure to act on the part of Lessee;

8.5.4 The lawful assumption by the United States Government or any authorized agency thereof of the operation, control, or use of the Airport, Premises and facilities, Improvements, or any substantial part or parts thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) days, from operating at the Premises and/or from exercising its rights upon the Premises pursuant hereto.

Section 9. Approvals, Consents, and Notices. All notices, consents, and approvals 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, or by personal delivery, or by reputable overnight courier, or by email transmission to the e-mail address given below, provided that the completed transmission is electronically verified. Either Party shall have the right, by giving written notice to the other, to change the address and/or e-mail 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
Certified Mail:	Albuquerque International Sunport PO Box 9948 Albuquerque, NM 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE - 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
Email:	rmccurley@cabq.gov

Lessee: Mesa Media Holdings LLC
Lessee Official: Scott Resnick
Title: Authorized Signatory
Certified Mail and Personal Delivery: c/o SR Capital
375 Park Avenue
Suite 1504
New York, NY 10152

Telephone: (917) 565-3102
Email: SResnick@srcapitalnyc.com

with a copy to: Galen Walker
5929 Canyon Ridge Pl NE
Albuquerque, NM 87111
Attention: Galen Walker
Email: gwalker@gama-ent.com

and to: Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Michael J. Werner, Esq.
Email: Michael.Werner@friedfrank.com

If notice, consent, or approval 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 notice, consent, or approval 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 one business day after depositing the same with a reputable overnight courier, or the date of electronic verification of the facsimile or email transmission, unless provided otherwise in this Agreement.



Section 10. Savings. The Parties acknowledge they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. The Parties 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 11. Approval of Agreement. This Agreement shall not become effective or binding until signed by the Chief Administrative Officer of the City of Albuquerque and by Lessee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

City of Albuquerque:

By: DocuSigned by:

BC2424C09B0741A... DS
 Date: 4/28/2024 | 8:53 PM MDT


Samantha Sengel
Chief Administrative Officer

Recommended:

By: DocuSigned by:

4E327F3E2466405... DS
BC DS
MM Date: 4/26/2024 | 2:04 PM MDT

Richard G. McCurley
Director of Aviation

DS
G DS


Mesa Media Holdings LLC:

By: DocuSigned by:

D026B614F660472... Date: 4/15/2024 | 10:48 AM MDT

Scott Resnick
Authorized Signatory

**Exhibit B
Premises**

Initial Premises

DESCRIPTION – MFS LEASE TRACT 2, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5

A certain parcel of land being a portion of Tract A-1, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southeasterly corner said LEASE TRACT 2, **WHENCE** Albuquerque Geodetic Reference Station Brass Cap stamped "2-F6" bears South 05° 07'55" East a distance of 11,741.98 feet;

THENCE North 89° 59'48" West a distance of 2000.00 feet to the southwesterly corner of said LEASE TRACT 2;

THENCE North 00° 00'12" East a distance of 1260.00 feet to the northwesterly corner of said LEASE TRACT 2;

THENCE South 89° 59'48" East a distance of 2000.00 feet to the northeasterly corner of said LEASE TRACT 2, **WHENCE**, as a tie, the southeasterly corner of Tract L-1 Parcel 5, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 41° 51'11" East a distance of 1124.53 feet;

THENCE South 00° 00'12" West a distance of 580.00 feet to an angle point;

THENCE South 89° 59'48" East a distance of 1088.82 feet to an angle point, said point being a point on the westerly easement line of a 156' Wide Public Access Easement granted by plat filed 07/10/2002, Plat Book 2002C, Page 228;

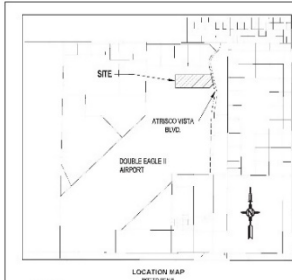
THENCE South 13° 27'24" East a distance of 102.82 feet along said easement line to an angle point;

THENCE North 89° 59'48" West a distance of 1112.76 feet to an angle point

THENCE South 00° 00'12" West a distance of 580.00 feet to the **POINT OF BEGINNING**.

Said parcel contains ± 60.3783 Acres (2,630,079 Sq. Ft.) more or less

[See attached survey]



NOTES

1. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
2. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET.
3. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
4. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
5. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
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8. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
9. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.
10. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

PROPOSED SITE DEVELOPMENT

GENERAL NOTES:

1. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE CITY OF ALBUQUERQUE AND THE AVIATION DEPARTMENT.
2. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE AVIATION DEPARTMENT AND THE CITY OF ALBUQUERQUE.
3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE AVIATION DEPARTMENT AND THE CITY OF ALBUQUERQUE.
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9. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE AVIATION DEPARTMENT AND THE CITY OF ALBUQUERQUE.
10. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE APPROVAL OF THE AVIATION DEPARTMENT AND THE CITY OF ALBUQUERQUE.

LEGAL DESCRIPTION

THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

ALTA / NISPS LAND TITLE SURVEY
MESA FILM STUDIOS
LEASE TRACT 2 OF
TRACT A-1
DOUBLE EAGLE II AIRPORT
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
JANUARY, 2024

DETAILED

1. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

2. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

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9. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO. THE SURVEY WAS CONDUCTED ON THE DATE INDICATED ON THE TITLE SHEET. THE SURVEY WAS CONDUCTED BY THE SURVEYORS AND MAPPERS OF THE STATE OF NEW MEXICO.

SURVEYOR'S CERTIFICATION

I, the undersigned, being a duly licensed and qualified Surveyor and Mapper of the State of New Mexico, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the client, and that the same was conducted in accordance with the Rules and Regulations of the Board of Surveyors and Mappers of the State of New Mexico.

Maple R. Nelson, P.E. 250747
State of New Mexico - Surveyor 2020
City of Albuquerque

Date: January 23, 2024



Expansion Acres

DESCRIPTION – MFS LEASE TRACT 1, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5

A certain parcel of land being a portion of Tract A-1, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southeasterly corner said LEASE TRACT 1, **WHENCE** Albuquerque Geodetic Reference Station Brass Cap stamped "2-F6" bears South 14° 37'06" East a distance of 12,086.28 feet;

THENCE North 89°59'48" West a distance of 1450.00 feet to the southwesterly corner of said LEASE TRACT 1;

THENCE North 00°00'12" East a distance of 1260.00 feet to the northwesterly corner of said LEASE TRACT 1, **WHENCE** the southwesterly corner of Tract L-1, Parcel 1, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 64° 41'37" West a distance of 1959.93 feet;

THENCE South 89° 59'48" East a distance of 1450.00 feet to the northeasterly corner of said LEASE TRACT 1;

THENCE South 00° 00'12" West a distance of 1260.00 feet to the **POINT OF BEGINNING.**

Said parcel contains ± 41.9421 Acres (1,827,000 Sq. Ft.) more or less

[See attached survey]

DESCRIPTION – MFS LEASE TRACT 3A, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5

A certain parcel of land being a portion of Tract A-1, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southwesterly corner said LEASE TRACT 3A, **WHENCE** Albuquerque Geodetic Reference Station Brass Cap stamped “2-F6” bears South 00° 00’12” West a distance of 680.00 feet **THENCE** South 05° 07’55” East a distance of 11,741.98 feet;

THENCE North 00° 00’12” East a distance of 580.00 feet to the northwesterly corner of said LEASE TRACT 3A, **WHENCE**, as a tie, the southeasterly corner of Tract L-1 Parcel 5, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 41° 51’11” East a distance of 1124.53 feet;

THENCE South 89° 59’48” East a distance of 950.00 feet to the northeasterly corner of said LEASE TRACT 3A, said point also being a point on the westerly easement line of a 156’ Wide Public Access Easement granted by plat filed 07/10/2002, Plat Book 2002C, Page 228;

THENCE South 13° 27’24” East a distance of 596.38 feet along said easement line to the southeasterly corner of said LEASE TRACT 3A;

THENCE North 89° 59’48” West a distance of 1088.82 feet to the **POINT OF BEGINNING**.

Said parcel contains ± 13.5734 Acres (591,259 Sq. Ft.) more or less

DESCRIPTION – MFS LEASE TRACT 3B, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5

A certain parcel of land being a portion of Tract A-1, PLAT OF TRACT A-1 & TRACT L-1 PARCELS 1-5, filed in the office of the County Clerk of Bernalillo County, New Mexico on November 13, 2006, in Plat Book 2006C, Page 351, as Document No. 2006171918, and being more particularly described by New Mexico State Plane Grid Bearings (NAD 83 Central Zone) and ground distances as follows:

BEGINNING at the southwesterly corner said LEASE TRACT 3B, **WHENCE** Albuquerque Geodetic Reference Station Brass Cap stamped “2-F6” bears South 05° 07’55” East a distance of 11,741.98 feet;

THENCE North 00° 00’12” East a distance of 580.00 feet to the northwesterly corner of said LEASE TRACT 3B, **WHENCE**, as a tie, the southeasterly corner of Tract L-1 Parcel 5, as shown on said plat filed in Plat Book 2006C, Page 351 bears North 00° 00’12” East a distance of 680.00 feet **THENCE** North 41° 51’11” East a distance of 1124.53 feet;

THENCE South 89° 59’48” East a distance of 1112.76 feet to the northeasterly corner of said LEASE TRACT 3B, said point also being a point on the westerly easement line of a 156’ Wide Public Access Easement granted by plat filed 07/10/2002, Plat Book 2002C, Page 228;

THENCE South 13° 27’24” East a distance of 175.80 feet along said easement line to the

southeasterly corner of said LEASE TRACT 3B;

THENCE North 89° 59'48" West a distance of 789.45 feet to the **POINT OF BEGINNING**.

Said parcel contains ± 13.5708 Acres (591,144 Sq. Ft.) more or less

[See attached survey]

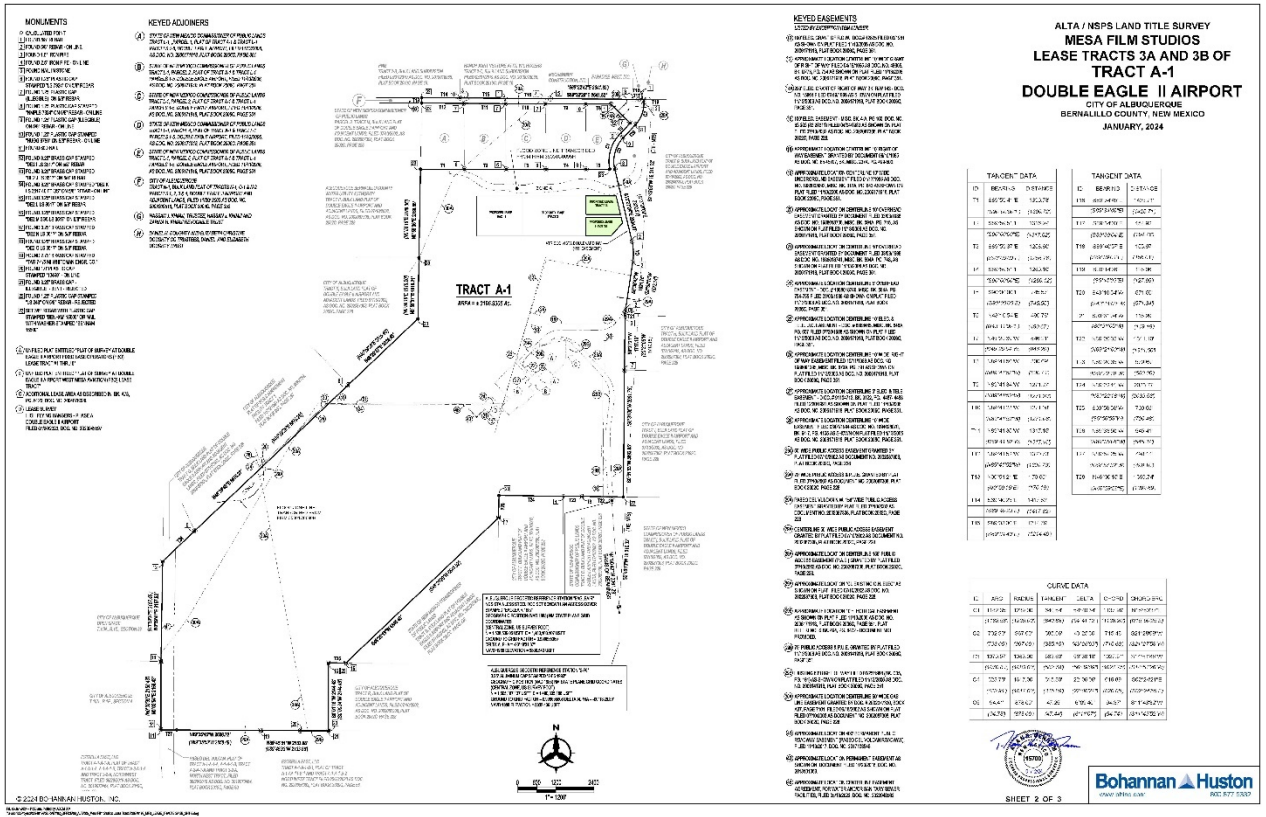


Exhibit C Insurance and Indemnity Provisions

1. Insurance

1.1 General Requirements. For the term of this Agreement Lessee shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Lessee 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, Lessee shall allow City to review in the presence of Lessee'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.

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

1.2 Additional Insured. With respect to all coverage required other than workers' compensation, 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 Lessee 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 Lessee, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

1.3 Insurance Certificates and Endorsements. On or before the Effective Date and on the renewal of all coverage, Lessee 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 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 Lessee of any of the insurance requirements set forth herein, nor decrease the liability of

Lessee. Neither Lessee nor any contractors, assignees or other transferees of Lessee shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director.

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

1.4 General Insurance Specifications. To the extent any of the below types of insurance are required in this Agreement, they must meet the following specifications:

1.4.1 Aircraft Liability Insurance. The Lessee 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 Lessee). Such coverage shall include War & Allied Perils.

1.4.2 Commercial General Liability Insurance. The Lessee 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 Lessee 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 Intentionally Omitted.

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 1.4.1 – 1.4.3 above must:

- (a) be written on an occurrence basis.
- (b) include coverage for Lessee's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the indemnification provisions of this Agreement.

- (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. Lessee shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Lessee 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 City and its employees and agents.

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

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

1.4.7 Builders Risk Insurance during any period of construction or reconstruction for which Lessee contracts. Lessee 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: (a) the minimum coverage limits specified in this Agreement; or (b) 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 Lessee 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, Lessee 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.

2. Indemnification

2.1 General Indemnification. Lessee 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 relating to any act, error, or omission of Lessee or Lessee's agents, contractors, employees, or invitees arising out of the operations of Lessee 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. Notwithstanding the foregoing, Lessee, its contractors or agents shall in no event be liable under this Section 2.1 or as elsewhere provided in this Agreement, for punitive, special, consequential or similar damages, or losses in the nature of lost profits or diminution in value.

2.2 Environmental Harm Indemnification. Subject to the limitations in **Exhibit E** of this Agreement, Lessee 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, in connection with third-party claims brought against City arising out of Lessee's operations under this Agreement, all (a) except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents, and (b) excluding consequential, special and punitive damages, as follows:

2.2.1 Intentionally omitted;

2.2.2 Intentionally omitted;

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

2.2.4 any violation by Lessee of any Environmental Laws in connection with its operations at the Airport.

Lessee's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

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 Lessee 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 and shall in no event include special, punitive, consequential or similar damages.

2.4 Scope of Indemnification. In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from the negligent acts, omissions or operations of Lessee, its agents, servants, or employees, Lessee shall: (a) investigate or cause the investigation of accidents involving such injuries; (b) negotiate or cause to be negotiated all claims made as may be deemed expedient by Lessee, 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; (c) pay and satisfy judgments finally establishing the liability of City in all actions defended by Lessee pursuant to this Section; (d) 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 (e) pay or cause to be paid: (i) all costs taxed against City in any legal proceeding defended or caused to be defended by Lessee as aforesaid; (ii) any interest, if any, accruing up to the date of payment by Lessee; (iii) all premiums charged upon appeal bonds required in such proceedings, if any; and (iv) all reasonable, actual out-of-pocket expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Lessee fail to provide the defense and indemnification required herein for more than sixty (60) days after City sends to Lessee written notice of such failure.

By way of further clarification, these requirements do not apply (a) 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, or (b) consequential, special or punitive damages.

2.5 Miscellaneous. City shall, promptly upon receipt, give Lessee every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Lessee notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Lessee in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Lessee 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 Lessee from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Lessee indemnified City.

3. Non-liability of City. City shall not in any event be liable for any acts or omissions of Lessee, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Lessee, Lessee's agents, servants, employees, or independent contractors working for, or on behalf of, Lessee, except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees or agents.

City shall not be liable for Lessee'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 D Security Deposit Provisions

Purpose of Security Deposit. The 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 Lessee under this Agreement.

Form of Security Deposit. Such Security Deposit shall be a Bond or LOC 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, Lessee shall immediately reinstate the Security Deposit to the full amount required in this Section. 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 Lessee under the terms of this Agreement are not made in accordance with the payment provisions set forth in **Section 6** above, 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 Lessee has fully performed.

City shall have the option of accepting cash security deposits. 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 PRESENTS, 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 a _____ (“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

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

_____ available by your draft at sight when accompanied by:
[name of Lessee]

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that [name of Lessee] 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 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 "Contamination" shall mean the presence of Hazardous Substances in the soil, soil vapor, sediment, surface water, or groundwater requiring investigation and/or remediation pursuant to applicable Environmental Laws.

1.2 "Environmental Laws" shall mean 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 or safety (to the extent relating to Hazardous Substances), wildlife, or the environment.

1.3 "Hazardous Substances" or "Contaminants" shall mean 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. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.

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

2. Compliance with Environmental Laws. In connection with its operations or any other activity at the Airport, Lessee shall at all times comply with all applicable Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to Lessee's operations at the Premises and Airport. Upon expiration or earlier termination of this Agreement, Lessee shall cause all Hazardous Substances introduced to the Premises and the Airport by Lessee or its 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. Intentionally omitted.

4. Intentionally omitted.

5. Prior Written Consent. Except for Hazardous Substances (a) customarily used or stored in connection with the development, construction, operation or maintenance of film studios,

sound stages, and ancillary facilities, or (b) customarily used or stored in connection with any other lawful, permitted use pursuant to this Agreement that would not reasonably be expected to materially and adversely impact the Premises, Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or at the Premises by Lessee, its agents, employees, contractors or invitees without providing notice to the Aviation Department Environmental Manager.

6. Liability and Remediation. If Lessee breaches the obligations stated in the preceding paragraph and the breach results in Contamination of the Premises, or if the presence of a Hazardous Substance on the Premises caused by Lessee or permitted to be brought upon, kept, or used at the Premises by Lessee results in Contamination of the Premises, Lessee shall indemnify, defend and hold City harmless from any third-party claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, but not limited to, sums paid in settlement of claims, and reasonable attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such Contamination, all (a) except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents, and (b) excluding consequential, special and punitive damages. This indemnification of City by Lessee 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 pursuant to applicable Environmental Law promulgated by any federal, state or local governmental agency with jurisdiction because of such Hazardous Substance present in the soil or ground water on or under the Premises as the result of Lessee's conduct. To the extent, if at all, NMSA 1978 § 56-7-1 is applicable to this Agreement, these Liability and Remediation provisions shall not extend to or be construed to require Lessee 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.

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused by Lessee or permitted to be brought upon, kept or used at the Premises by Lessee results in any Contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to remediate the Contamination on the Premises to the extent required by pursuant to applicable Environmental Law by government agencies having jurisdiction. Lessee 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 pursuant to applicable Environmental Law. In the event such an order is issued, City shall immediately notify Lessee 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 Lessee is responsible for any investigatory remediation or cleanup work on the Premises after expiration or earlier termination of this Agreement, Lessee 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 that are the responsibility of Lessee pursuant to this **Section 6**.

For the avoidance of doubt, the indemnification required by these provisions shall not apply to (a) any Hazardous Substance or Contamination existing on, under or about the Premises prior to

the date of full execution of this Agreement, or (b) any Hazardous Substance or Contamination migrating to the Premises from nearby or adjacent properties (including, but not limited to, the Airport), except, in each case of (a) and (b), to the extent that such Hazardous Substance(s) or Contamination are released as a result of the negligent, willful, or intentional actions or omissions of Lessee. However, the Parties recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Substance or Contamination on, under or about the Premises as of the date of full execution of this Agreement. City represents that, as of the date of full execution of this Agreement, it is not aware of the existence of any Hazardous Substance or Contamination on, under or about the Premises.

7. Notices. Lessee and City shall promptly notify the other in writing of (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Environmental Laws related to the Premises to the extent such action is reasonably likely to materially impair the value of the Premises or result in material restrictions on the use of the Premises, and (b) any other third-party claim giving rise to either Party's indemnification obligations pursuant to this **Exhibit E**. Without limiting the foregoing, Lessee shall also provide City as promptly as possible, and in any event within ten (10) business days after Lessee first receives or sends the same, with copies of all claims, complaints, notices of violation or asserted violations arising under Environmental Law and relating in any way to the Premises or Lessee's use thereof to the extent such matters are reasonably likely to materially impair the value of the Premises or result in material restrictions on the use of the Premises.

8. Environmental Record Maintenance. To the extent required by applicable Environmental Law, Lessee shall maintain any written release notices or reports that Lessee 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 and shall make such notices or reports available to City promptly upon written request by City.

9. City's Right of Entry. Subject to the terms of this paragraph and generally applicable rules, regulations and safety and security standards of the Premises established from time to time by Lessee in writing, and provided only if such generally applicable rules, regulations and safety and security standards do not unreasonably restrict or prohibit the Director or other authorized representatives from entering and/or testing for Hazardous Substance Contamination of the Premises in accordance with the terms of this paragraph, 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 in the event (a) Director reasonably believes that there exists any such Hazardous Substance Contamination that is reasonably likely to materially impair the value of the Premises or result in material restrictions on the use of the Premises, and (b) Director first requests Lessee to conduct any such test and Lessee fails to do so within one-hundred twenty (120) days after written request from Director. Entry for this purpose shall be with advance notice, at reasonable times, except in case of emergency, and shall not unreasonably interfere with Lessee's use of the Premises (and, for any portions of the Premises which are then subleased, licensed, or otherwise occupied by any third party, Director, City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall not interfere with such subtenant's, licensee's, or other occupant's operations).

10. Lessee's Corrective Action Obligation. Lessee shall undertake corrective action to address Contamination at the Premises caused by Lessee, its agents, employees, contractors, or representative during Lessee's occupancy of the Premises, if and to the extent required by any environmental agency pursuant to applicable Environmental Law. Lessee shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action in a commercially reasonable manner (utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls), subject to environmental agency requirements and approval, provided, however that Lessee may contest and appeal any environmental agency decision or directive. Lessee shall have no further obligations for corrective action under this Agreement following receipt by Lessee 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. In the event such "No Further Action" letter or its equivalent is not available from the appropriate regulatory agency(ies), Lessee shall have no further obligations for corrective action under this Agreement if Lessee provides City with the written determination by an environmental consultant, reasonably acceptable to City, that no further action is necessary to address the Contamination.

11. Lessee's Environmental Access Right. In the event Lessee's Remediation Equipment remains on the Premises following the expiration or earlier termination of this Agreement, Lessee 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 Lessee's Remediation Equipment; and to verify with the applicable environmental agency that Lessee's corrective action has been completed. Lessee 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. Lessee 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 Lessee. 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 Lessee's corrective action. The access right will terminate when the applicable environmental agency issues a letter to Lessee stating that, based on certain assumptions and conditions, no further corrective action will be necessary and Lessee removes its existing Remediation Equipment. If, however, following the environmental agency's issuance of such letter, the environmental agency requires Lessee to perform further corrective action, then the access right provided herein will resume.

12. Post Termination Restoration of Affected Areas. If Lessee is required to perform corrective action to remove Contaminants at the Airport, Lessee shall restore the areas at the Airport impacted by such corrective action ("**Affected Areas**") as closely as reasonably possible to the state that the Affected Areas were in when Lessee, 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 Lessee 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 Lessee to be in possession of the Affected Areas after such thirty (30) day period, this Agreement will not be considered to be renewed. Instead, Lessee will be considered to be in possession of the Affected Areas under a month-to-month holdover tenancy until Lessee 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, Lessee shall perform and be bound by all terms, conditions, and covenants contained in this Agreement.

Exhibit F General Conditions

1. Maintenance of Premises. During the term of this Agreement, it shall be Lessee's obligation, without cost to City, to maintain the Premises and Improvements. In addition, Lessee shall maintain, repair, and when necessary, replace, all personal property, trade fixtures, equipment, and other Improvements placed or installed on the Premises by Lessee. Lessee shall be responsible for repairing any accidental or tortious damage to the ramp and any parking area, systems, and components caused by Lessee's operations and activities at the Premises.

Lessee shall at all times keep the Premises in good repair. 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 the Airport. City shall be entitled to remove Lessee's Refuse from the Premises and charge Lessee for City's actual, out-of-pocket costs if Lessee fails to remove such Refuse within thirty (30) days after receiving written notice from City of improper disposal.

2. Utilities. Subject to City's completion of the Utility Connections Obligation, Lessee, at its sole cost and expense, shall make its own arrangements, and pay for all fees so assessed, for any and all of its utilities at the Premises including but not limited to electrical power, natural gas, water, sanitary sewer, refuse collection and disposal, telephone and communication services, and for any other utility service or other service supplied to or used on the Premises, including any and all connection and metering fees, as billed directly to Lessee by utility companies furnishing such services or as invoiced by City. If invoiced by City, Lessee shall pay City such costs and fees based upon standard rates and fees as may be established from time to time by City, and meter readings, if any, for amounts used by Lessee, within thirty (30) days following the date such invoice is delivered to Lessee. Lessee agrees that any and all such fees for any and all such services shall be paid before delinquency, provided however, that Lessee may contest the amount or validity of, and may compromise, any such fees in good faith. Lessee shall at all times protect and hold City harmless from liens for non-payment of utility charges against City (directly relating to the Premises) or the Premises caused by Lessee's actions.

City shall not be liable to Lessee for any interruption in or curtailment of any utility service. City shall not be liable for damages to persons or property for any such interruption, nor shall such interruption in any way be construed as cause for abatement of rents or fees or operate to release Lessee from any of its obligations hereunder, except that, in the event the interruption is caused by City (or City has the ability to restore such service) and the interruption continues for more than seventy-two (72) hours, Annual Base Rent and all other rents will be abated for the duration of the interruption.

3. Surrender of Premises. Lessee covenants and agrees that upon expiration or earlier termination of this Agreement, including termination for Events of Default, Lessee will peaceably surrender possession of the Premises, and City shall have the right to take possession of the Premises. City shall not be required to give notice to take possession at the expiration of the Agreement.

3.1 Removal of Personal Property. Upon expiration or earlier termination of this

Agreement, Lessee shall, within at least thirty (30) days prior notice to Lessee from City requesting the removal of any and all non-permanent equipment, trade fixtures, materials, supplies, and other personal property placed on or about the Premises by Lessee ("**Personal Property**"), remove any and all Personal Property on or about the Premises, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of this Agreement.

3.2 Ownership of Property Not Removed. In the event Lessee fails to remove some or all Personal Property within thirty (30) days after written notice to Lessee from City requesting removal of same (the "**Removal Notice**"), City shall have the options of: (a) removing Lessee's Personal Property at Lessee's reasonable out-of-pocket 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 following receipt of the Removal Notice, 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 the sale of such Lessee personal property as liquidated damages for the breach of Lessee's covenant to remove.

4. Title to Land. Fee simple title to the real property underlying the Premises 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 underlying the Premises, other than the leasehold estate created by this Agreement and any other encumbrances contemplated by this Agreement which may impact title to the Premises or which may be necessary or advisable in Lessee's reasonable determination in connection with the construction of the Project Improvements, any future Improvements, and/or the use of the Premises for the Film Studio Uses, which encumbrances, for the avoidance of doubt, shall be expressly allowed.

5. 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.

6. 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 Premises and use of its facilities promulgated by City from time to time during the Term hereof or during any Extension Period, but only to the extent the same does not adversely affect the Premises, Lessee's use and enjoyment thereof or leasehold estate therein.

7. Non-Discrimination.

7.1 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, and City's affirmative action policies and practices.

7.2 Federal Compliance.

7.2.1 General Civil Rights Provision. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, creed, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. 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 owned, 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.

7.2.2 Compliance with Nondiscrimination Provisions. 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 (including limited English proficiency), sex (including sexual orientation and gender identity), age or disability, 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.

7.2.3 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, color or national origin 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.

In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

7.2.4 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; 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) (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- 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 § 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 (42 U.S.C. § 12101, *et seq.*) (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) 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 (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 (2005));

- 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.).

8. 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 agrees to meet all the requirements of the ADA which are imposed directly on the Lessee or which would be imposed on City as a public entity. Lessee agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any acts or omissions of Lessee or its contractors or agents in violation of the ADA, all (a) except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents, (b) excluding consequential, special and punitive damages, and (c) in no event including losses in the nature of lost profits or diminution of value.

9. Lessee’s Compliance with Environmental Laws. In connection with its operations or any other activity conducted by Lessee at the Airport, Lessee shall at all times comply with all Environmental Laws (as defined in **Exhibit E**) pertaining to Hazardous Substances (as defined in **Exhibit E**). Upon expiration or earlier termination of this Agreement, Lessee shall cause all hazardous substances introduced at the Airport by Lessee, its personnel, or its agents to be removed from the Airport and transported for use, storage, or disposal in accordance and compliance with all applicable environmental laws. Lessee shall further comply with any environmental provisions provided as an exhibit to this Agreement.

10. City’s Right of Inspection/City’s Right to Enter. Subject to generally applicable rules, regulations and safety and security standards of the Premises established from time to time by Lessee in writing, City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, upon reasonable advance notice to Lessee and 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 (and, for any portions of the Premises which are then subleased, licensed or otherwise occupied by any third party, City and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall not interfere with such subtenant’s, licensee’s, or other occupant’s operations), accompanied by an authorized Lessee, representative to inspect such space to determine whether Lessee is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection, or security purposes. Lessee further agrees to make any and all corrections of violations observed by City as a result of this inspection to the extent such violations constitute violations of applicable law; 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.

11. Signs. Any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content, that in any case is prominently visible from any street-level area that is outside of the Premises and that, in each case, may reasonably be deemed to interfere with the operation of aircraft or activities that are directly related to the operation of aircraft, shall not be erected, maintained, or displayed on the Premises, or elsewhere at the Airport, without the prior written consent of the Director, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall submit to the Director for approval, detailed drawings indicating dimensions, location, materials, and colors for all proposed signs at the Premises that require the Director's approval as described above. Notwithstanding the foregoing, Lessee may erect, maintain, and display an identifying entrance gate and may hang banners and otherwise post signage on any Improvements located on the Premises (including, without limitation, in relation to ongoing production projects) and in all cases in the ordinary course of business of Lessee consistent with Film Studio Uses without any approval of Director.

12. Damage or Destruction of Premises. If for any reason the Premises is rendered unfit for its intended use due to fire or other casualty, or fire or other casualty causes a material interference with Lessee's operation on the Premises, Lessee may terminate this Agreement by written notice to City within one hundred and eighty (180) days after the date of loss, and City shall not be obligated to repair, restore, or rebuild any Improvements or Project Improvements. Lessee may otherwise repair, replace, rebuild and restore the Premises to substantially the same condition in which it existed prior to such fire or other casualty at its own cost and no rent or other costs shall be payable by Lessee to City during such period of restoration, and City shall reasonably cooperate with Lessee during the course of such restoration. Lessee shall be authorized to adjust, collect, retain and compromise all claims under any of the insurance policies required under this Agreement, and to execute and deliver on behalf of itself and or City all necessary proofs of loss, receipts, vouchers and releases required by the insurers. City agrees to sign, upon the written request of Lessee, all such proofs of loss, receipts, vouchers and releases reasonably required by the applicable insurer. Lessee's rights hereunder to insurance proceeds following a casualty shall be subject to the rights of any Leasehold Mortgagee and any Mezzanine Lender.

13. 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, in each case except to the extent caused by, resulting from, or arising out of the gross negligence or willful misconduct of City, its officers, employees, or agents. 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 pursuant to the terms of this Agreement.

14. 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, 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.

City will make said agreements available to Lessee for review upon Lessee's request.

15. Other Subordination. This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

16. 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 Premises leased to Lessee under the provisions of this Agreement, and further provided that in no event shall the foregoing statute and circular, as may be amended, adversely affect the Premises, Lessee's construction of the Project Improvements, Lessee's use and enjoyment of the Premises or leasehold estate therein.

17. Intentionally Omitted.

18. 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 nondiscriminatory, and do not extend the term of the Agreement or modify rent and fee provisions. No modification of this Agreement will be effective unless executed and delivered by Lessee. 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.

19. Relation to Other Lessees and Lessees. This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between City and any other Lessee or 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.

20. Financial Responsibility.

20.1 Taxes, Licenses, Debts. Lessee shall promptly pay all taxes 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. All tax credits, abatements and all other governmental incentives granted to Lessee shall be the sole property and asset of Lessee and/or Lessee's affiliates (as the case may be).

20.2 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; provided however, Lessee may contest the amount or validity of, and may compromise, any such liens in good faith.

21. 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, employees and representatives. Lessee acknowledges receipt of adequate consideration by City in support of this waiver. Notwithstanding the above, if construction inconvenience interferes with Lessee's business to the extent that the Premises, Lessee's use and enjoyment thereof or leasehold estate therein is adversely affected beyond a de minimis extent and City cannot provide alternative premises, Lessee may terminate this Agreement upon payment of all outstanding rents and fees for which Lessee was previously invoiced.

22. 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.

23. 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.

24. Force Majeure. Neither Party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, pandemics, epidemics, quarantine restrictions, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the Party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a Party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "**Force Majeure Occurrences**"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither Party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

25. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New Mexico, in each case located in the City of Albuquerque and County of Bernalillo, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

26. Ethics.

26.1 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 or agreement between City and Lessee (including this Agreement), or in any franchise, concession, right, or privilege of any nature granted by City to Lessee in this Agreement or otherwise.

26.2 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.

26.3 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 in any manner 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 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.

27. Audits and Inspections. Lessee 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 9, of the Albuquerque City Charter.

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 records pursuant to the Act or pursuant to City of Albuquerque public records ordinance, rules, regulations, instructions, or other legal requirement.

29. Contract Interpretation.

29.1 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.

29.2 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.

29.3 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.

29.4 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.

29.5 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.

29.6 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.

29.7 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.

29.8 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction), and the laws, rules and regulations of the City of Albuquerque.

29.9 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.

29.10 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.

29.11 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.

29.12 Business Days. Unless otherwise stated in this Agreement, all references herein to "days" mean business days.

30. 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, and so

long as this Agreement shall be in effect, Lessee shall peaceably have and enjoy the Premises and all of the rights, privileges and appurtenances granted herein.

31. Signature Process. This Agreement may be electronically signed and electronic signatures appearing hereon are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

32. Administration of Agreement. The Director of Aviation of the City of Albuquerque or the Director's authorized representative shall administer this Agreement for the City of Albuquerque.

33. Condemnation.

33.1 Partial Taking. In the event the Premises is taken or condemned by any competent authority that does not constitute a Material Taking, 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.

33.2 Material Taking. In the event the entire Premises or any portion of the Premises is taken or condemned by any competent authority such that the continuation of Lessee's operations thereafter and/or the value of Lessee's leasehold estate in the Premises is materially impaired (a "**Material Taking**"), then Lessee may elect to terminate this Agreement as of the date of the Material Taking.

33.3 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 the fair market value of the leasehold estate and City agrees to reasonably cooperate with Lessee's claim if pursued. In the event the law at the time of the condemnation does not provide or allow for separate condemnation awards for landlords and Lessees, then Lessee shall be entitled to receive the portion of the condemnation award allocable to the leasehold estate and the remainder of the award shall be paid to City. In the event of a taking that does not result in a termination of this Agreement, the entire condemnation award shall be payable to Lessee.

33.4 Awards. Unless as otherwise required by law or by a competent authority, deed restriction, or other legal requirement imposed on City, Lessee alone shall be authorized to adjust, collect, retain and compromise all awards for the taking or condemnation by any competent authority of all or any portion of the Premises, and to execute and deliver on behalf of itself and/or City all necessary proofs of loss, receipts, vouchers and releases required by the condemning authority. City agrees to sign, upon the written request of Lessee, all such proofs of loss, receipts, vouchers, and releases reasonably required by the condemning authority. Lessee's rights hereunder to any condemnation award shall be subject to the rights of any Leasehold Mortgagee and any Mezzanine Lender.

34. Assignment; Subletting; Easements

34.1 Subleases. Lessee shall be permitted to enter into subleases, licenses and other occupancy agreements for all or any portion of the Premises without the prior written consent of City, provided such subleases, licenses or other occupancy agreements shall be subject to the terms of this Agreement and shall not be for a term longer than the then-remaining term of this Agreement (or, if such term extends beyond the then-remaining term of this Agreement, the granting of such term is continued on extension of the term of this Agreement or the entering into of a Renewed Lease). If requested by City in writing, Lessee shall provide City with a copy of any such sublease, license or occupancy agreement, as the case may be; provided, that, Lessee may redact any information contained in such sublease, license or occupancy agreement that Lessee (in its or in any sublessee's, licensee's, or occupant's good faith judgment) determines is sensitive or confidential. City, for the benefit of any subtenant, shall recognize such subtenant as the direct tenant of City upon the termination of this Agreement pursuant to the terms hereof, provided (x) City receives a copy of such sublease, and (y) at the time of the termination of this Agreement (I) no default exists under such sublease beyond the expiration of any applicable cure period, which at such time would permit the landlord thereunder to terminate the sublease or to exercise any remedy for dispossession provided for therein, and (II) such subtenant delivers to City an instrument confirming the agreement of the subtenant to attorn to City and to recognize City as the subtenant's landlord under its sublease. City shall, within thirty (30) days following receipt of such request and delivery by Lessee of the subject sublease and any other information reasonably required by City, execute and deliver an agreement, in form and substance reasonably satisfactory to City, Lessee and such subtenant, confirming that such subtenant is entitled to such recognition as of the date of termination of this Agreement.

34.2 Assignment. The following shall be permitted without City's consent: (a) any sale, assignment, disposition or other transfer of this Agreement and the interest of Lessee in this Agreement (or any portion thereof) whether by operation of law or otherwise, in each case, to a "Qualified Buyer" (as hereinafter defined) pursuant to an instrument under which the assignee assumes all of the obligations of Lessee arising under this Agreement from and after such assignment and agrees to be subject to all of the terms and conditions of this Agreement; (b) any sale, assignment, disposition, pledge or other transfer of any direct or indirect interest in Lessee, and (c) any merger with Lessee or any entity that owns any direct or indirect interest in Lessee, reorganization of Lessee or any entity that owns any direct or indirect interest in Lessee or transfer or consolidation of any or all of the assets of Lessee or any entity that owns any direct or indirect interest in Lessee; provided, with respect to any of the foregoing transactions described in clauses (a), (b), and (c) that is effected prior to substantial completion of the Project Improvements, Lessee shall continue to be Controlled by Scott Resnick; and (d) the giving of any Mortgage and/or a Pledge and the exercise of any rights or remedies of a Recognized Mortgagee under the terms of a Mortgage and/or a Pledge or of a Mezzanine Lender under the terms of a Pledge (as each such capitalized term in the foregoing clause (d) is defined on **Exhibit G**), including, without limitation, the consummation of any foreclosure or transfer in lieu of foreclosure and the transfer of Lessee's leasehold estate and rights and obligations under this Agreement to a Recognized Mortgagee or a Mezzanine Lender or their respective designee pursuant to a foreclosure or an assignment in lieu of foreclosure. As used herein, a "**Qualified Buyer**" shall mean any Person (as defined on **Exhibit G**) (or any Person who is day-to-day Controlled (as defined on **Exhibit G**) by any Person) who has directly or indirectly engaged in the business of

owning, operating or investing in media and/or studio production facilities and/or who makes or owns loans (including mezzanine loans to direct or indirect owners of real property) to Persons directly or indirectly engaged in the business of owning, operating or investing in media and/or studio production facilities. Without limiting the rights of Lessee described in this **Section 34.2**, the Parties acknowledge that it is the intent of the parties for the "Lessee" hereunder to be MESA FILM STUDIOS LLC, a Delaware limited liability company (the "**Assignee Lessee**"). In furtherance of the foregoing, it is agreed by the Parties that, upon approval of that certain Foreign Limited Liability Company Application for Registration of Assignee Lessee by the Secretary of State of the State of New Mexico, Lessee shall have the right, without the prior written consent of City, to assign this Agreement to such Assignee Lessee, through a written instrument pursuant to which Assignee Lessee shall assume all of Lessee's obligations and rights arising under this Agreement and, upon the effectiveness of such assignment, (i) Lessee, as assignor pursuant to and under the foregoing described instrument, shall be released and discharged from any obligation or liability hereunder, and (ii) Assignee Lessee shall be deemed to be "Lessee" for all purposes hereunder.

Solely with respect to any transfer as described in clause (a) of the immediately preceding paragraph of this **Section 34.2** to any entity other than a Qualified Buyer, such transfer shall require City's consent in the form of a "consent to assignment agreement".

34.3 Easements. If Lessee proposes that City enter into any easement covenant, restriction or encumbrance (each, an "**Easement Agreement**") benefiting or burdening all or a portion of the Premises or required by any agreement between Lessee or its affiliates and any applicable governmental authority or any other person as Lessee reasonably requests in furtherance of the development or use of the Premises in accordance with this Agreement, Lessee shall deliver to City a complete copy of the proposed Easement Agreement for review (including, if applicable, a survey (certified to City) plotting the proposed Easement Agreement) and City's approval, such approval not to be unreasonably withheld, conditioned or delayed. So long as such Easement Agreement does not materially adversely affect the Airport or any portion of the 130 Acres (including, without limitation, the Premises), City shall execute and authorize for recording any such Easement Agreement. City hereby acknowledges that certain Easement Agreements will be required to be entered into in connection with the fulfillment of certain of the City's Delivery Obligations (such easements, the "**Required Easements**"). City hereby agrees that such Required Easements will be in form and substance reasonably acceptable to Lessee and any Leasehold Mortgagee.

35. Estoppel Certificates.

35.1 Lessee Estoppel. Lessee shall, within ten (10) business days after notice by City, execute, acknowledge and deliver to City, a statement in writing (a) certifying (i) that this Agreement is unmodified and in full force and effect (or if there are modifications, stating the date of each such modification), and (ii) the date to which Annual Base Rent has been paid, (b) stating whether, to the knowledge of Lessee, an Event of Default has occurred or any event has occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default and, if so, specifying in detail each such Event of Default, and (iii) whether, to the knowledge of Lessee, City is in default in performance of any covenant, agreement, obligation or condition contained in this Agreement, and, if so, specifying in detail each such default, and (c)

stating such other customary factual information as may reasonably be requested.

35.2 City Estoppel. City shall, within ten (10) business days after notice by Lessee or the Recognized Mortgagee and/or the Mezzanine Lender, as applicable, execute, acknowledge and deliver to Lessee (or a Recognized Mortgagee or Mezzanine Lender, as applicable), a statement in writing (a) certifying (i) that this Agreement is unmodified and in full force and effect (or if there are modifications, stating the date of each such modification), and (ii) the date through which Annual Base Rent has been paid, (b) stating whether, to the knowledge of City, an Event of Default has occurred or any event has occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default and, if so, specifying in detail each such Event of Default, and (c) stating such other customary factual information as may reasonably be requested.

36. Fee Mortgages. Notwithstanding anything to the contrary contained in this Agreement, any mortgage or similar instrument placed upon City's fee estate in the Premises shall be subject and subordinate to this Agreement and the lien of any Recognized Mortgage. At the request of Lessee or any Recognized Mortgagee, City shall confirm (and shall cause any holder of a fee mortgage or similar instrument placed upon City's fee estate in the Premises to confirm) the foregoing by written instrument.

37. Economic Development Incentives. City hereby acknowledges that Lessee has applied for certain economic development incentives from City, Bernalillo County, and/or the State of New Mexico, as applicable, including, but not limited to an IRB and City Local Economic Development Act ("**LEDA**") funding of all or a portion of the Annual Rent due under this Agreement (the foregoing, without limitation, the "**Economic Development Incentives**"). City hereby agrees to serve as the financial agent and administrator of any such Economic Development Incentives granted or hereafter granted to Lessee pursuant to applicable law, if applicable.

38. Plat. City hereby acknowledges that Lessee has obtained a title report from a title insurance company relating to the Premises (the "**Title Report**") and hereby agrees that any plat that City and Lessee shall submit for recording in connection with the construction of the Project Improvements or City's Delivery Obligations shall not include any encumbrances or reference any instruments not included in such Title Report or which do not constitute Subdivision Title Documents, or which, in all cases, adversely affect the Premises, Lessee's construction of the Project Improvements, Lessee's use and enjoyment of the Premises or its leasehold estate therein.

39. Memorandum of Lease. City and Lessee hereby agree to execute a Memorandum of Lease (or similar instrument), in proper form for recordation ("**Memorandum**"), to be recorded in the land records where the Premises is located, to be recorded against the entire 130 Acres, which Memorandum shall provide, without limitation, record notice of (i) Lessee's right, at its election and subject to any then-applicable Extension Period Prohibition, to an Extension Period with respect to this Agreement, (ii) in connection with Lessee's election to an Extension Period, Lessee's right to either an amendment to this Agreement providing for the Extension Period or a new lease identical in all material respects to this Agreement with a term equal to the applicable Extension Period, (iii) Lessee's right to receive the fair-market-value of the Improvements from any subsequent purchaser or lessee of the Premises in accordance with **Section 4.11** of the Agreement, (iv) Lessee's right of first refusal with respect to the ROFR Property, and (v) Lessee's

right to an Expansion Option with respect to the Expansion Acres.

Exhibit G

Mortgagee Provisions

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

1.1 "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common ownership or Control with such Person or is a director, officer, general partner, member or manager of such Person or, with respect to an individual, has a relationship with such individual by blood, adoption or marriage not more remote than first cousin.

1.2 "Bankruptcy Law" means Title 11, United States Code, and any other successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.3 "Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.4 "Control" and "Controlled" and terms similar thereto means the power, exercisable jointly or severally, to manage and direct the day-to-day business and affairs of a Person through the direct, indirect, or beneficial ownership of partnership interests, membership interests, stock, trust powers, or other beneficial interests and/or management or voting rights; provided that (x) the right to approve so-called major decision rights or similar protective provisions shall not constitute "Control", and (y) a Person shall not be deemed to lack Control over a Person solely because a third Person has the right, directly or indirectly, to approve major decisions or exercise similar protective rights in respect thereof.

1.5 "Eligibility Requirements" means, with respect to any Person, that such Person, (a) is subject to the jurisdiction of the courts of the State of New Mexico in any actions pertaining to or arising in connection with the lease of the Premises or portion thereof and (b) has net assets (inclusive of uncalled capital commitments) of not less than One Hundred Million Dollars (\$100,000,000), or such lower amount as is deemed acceptable in City's sole reasonable discretion.

1.6 "Foreclosure Event" means any transfer of title to any estate through any (a) judicial or non-judicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Recognized Mortgage; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding), in each case whether the transferee is a Recognized Mortgagee, a party claiming through a Recognized Mortgagee, or a third party. For any Mezzanine Lender, a "**Foreclosure Event**" means any exercise of rights and remedies upon an event of default under such Mezzanine Lender's documents, including any that effectuates a change of Control of Lessee.

1.7 "Lending Institution" means (A) any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary

capacity), investment bank, REIT, an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit religious, educational or eleemosynary institution, employees welfare, benefit, pension or retirement fund, any governmental agency or entity endures by a governmental agency, a credit union, investment bank or company, trust or endowment fund or any combination of Lending Institutions; (B) an investment company, money management firm or "qualified institutional buyers" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements; (C) an institution substantially similar to any of the foregoing entities, described in clauses (A) or (B) that satisfies the Eligibility Requirements; (D) any entity controlled by any of the entities described in clauses (A), (B) or (C) above; (E) a Qualified Trustee (as hereinafter defined) in connection with a securitization of or the creation of collateralized debt obligations or commercial mortgage backed securities ("**CDO**") secured by or financing through an "owner trust" of a loan to finance the Project Improvements or a capital improvement (collectively, "**Securitization Vehicles**"), so long as the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Lending Institutions under clauses (A), (B), (C) or (D) of this definition; provided that (1) the operative documents of the related Securitization Vehicle require that in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Lending Institutions under clauses (A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (E), such Person must be replaced by a Person meeting the requirements of this clause (E) within (30) days; or (F) an investment fund, limited liability company, limited partnership or general partnership where (i) Lending Institutions under clauses (A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% or more of the equity interest in such investment vehicle is owned, directly or indirectly, by one or more entities that are otherwise Lending Institutions under clauses (A), (B), (C) or (D) of this definition or (ii) such entity, one or more Affiliates of such entity, and/or one or more principals of such entity have been in the business of investment banking, private investing or private equity for at least five (5) years, and has, individually or collectively with its Affiliates, net assets (inclusive of capital commitments) in excess of \$100,000,000 or such lower amount as is deemed acceptable by City in its reasonable discretion. "**Lending Institutions**" shall also mean any subsidiary of any of the foregoing, and any other trustee or fiduciary for the holders of bonds, notes, commercial paper or other evidence of indebtedness approved by City, which approval shall not be unreasonably withheld.

1.8 "Mezzanine Lender" means a Lending Institution that provides bona fide financing and/or a bona fide preferred equity investment to Lessee or any Affiliate of Lessee and receives (in addition to any other collateral): (a) a pledge of equity or other direct or indirect ownership interests of Lessee; and/or (b) a preferred equity or other direct or indirect ownership interest in Lessee.

1.9 "Mezzanine Loan" means the bona fide financing and/or bona fide preferred equity investment provided to Lessee or any Affiliate of Lessee by a Mezzanine Lender and secured by: (a) a pledge of equity or other direct or indirect ownership interests of Lessee; and/or (b) a preferred equity or other direct or indirect ownership interest in Lessee which is secured by a pledge of equity or other direct or indirect ownership interests of Lessee.

1.10 "Mortgage" means any mortgage, deed of trust, leasehold deed of trust, or collateral assignment of lease which grants a security interest in real property (including leasehold) for any obligations (including a purchase money or other promissory note), as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record that constitutes a lien on Lessee's interest in this Agreement and the leasehold estate created hereby, and all permitted amendments and modifications thereto. If two or more such mortgages are consolidated or restated as a single lien or held by the same Person, then all such mortgages so consolidated or restated shall constitute a single Mortgage. A participation interest in a Mortgage (or partial assignment of the secured loan) does not itself constitute a Mortgage.

1.11 "New Lease" means a new lease of the Premises, effective as of (or retroactively to) the termination date of this Agreement, for the remainder of the term of this Agreement, through and including the last date of the Term, considered as if the Agreement had not been terminated, on all the same terms and provisions of this Agreement, and in the same form as this Agreement, except as the New Lease otherwise expressly states.

1.12 "Person" means (a) an individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or other entity, (b) any governmental authority, and (c) any fiduciary acting in such capacity on behalf of any of the foregoing.

1.13 "Pledge" means a pledge of the equity interests (a) that is made in favor of a Lending Institution and (b) that complies with the provisions of the Agreement.

1.14 "Qualified Trustee" means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, and subject to supervision or examination by federal or state regulatory authority, (ii) an institution insured by Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is a rated in either of the then in effect top two rating categories of S&P, Moody's, Fitch, Inc., or any other nationally recognized statistical rating agency; and, in both of cases (i) and (ii), having a combined capital and surplus of at least Two Hundred Fifty Million Dollars (\$250,000,000).

1.15 "Recognized Mortgage" means a Mortgage (a) that is held by a Lending Institution, (b) that complies with the provisions of the Agreement, and (c) a true, correct and complete copy of which has been delivered to City.

1.16 "Recognized Mortgagee" means the holder of a Recognized Mortgage.

1.17 "Successor Leasehold Owner" means any successor owner of Lessee's leasehold estate following a Foreclosure Event.

2. Recognized Mortgage and Pledges.

2.1 Right of Lessee. Subject to compliance with the terms of this Exhibit G, Lessee, from time to time during the Term and any Extension Period may grant one or more Mortgages

and/or permit one or more Pledges without the necessity of obtaining the consent of City, provided that:

2.1.1 Lessee shall deliver or cause to be delivered to City a written notice of such Mortgage and/or Pledge identifying the name and address of the applicable Recognized Mortgagee and/or Mezzanine Lender (as applicable) (the "Mortgage/Pledge Notice"). Upon receipt of any Mortgage/Pledge Notice, City shall confirm by estoppel certificate, recognition agreement or other instrument reasonably requested by the applicable Recognized Mortgagee and/or Mezzanine Lender that such Person is a "Recognized Mortgagee" or "Mezzanine Lender" hereunder.

2.1.2 If at any time there is a Recognized Mortgagee and/or Mezzanine Lender, or more than one of either, Lessee shall also deliver to City a notice setting forth the order of priority and right among the Recognized Mortgagees and/or Mezzanine Lenders (the "Lender Priority Notice"). City shall have the right to conclusively rely (without any duty of inquiry or verification) on the order of priority and right among the Recognized Mortgagees and/or Mezzanine Lenders set forth in a Lender Priority Notice. For the avoidance of doubt, no Mezzanine Lender shall have any claims against the assets of Lessee unless each Recognized Mortgagee consents thereto.

2.1.3 No Mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of City in the Premises, in the Agreement or any part thereof.

2.2 Notices. If City has received the Mortgage/Pledge Notice, City will give to each Recognized Mortgagee and/or Mezzanine Lender, a copy of each notice of Event of Default (including any subsequent Termination Notice) from City to Lessee pursuant to the Agreement at the time of giving such notice to Lessee, and City will promptly (but in any event within ten (10) days after City receives such notice) give to each such Recognized Mortgagee and/or Mezzanine Lender a copy of each notice received by City of any rejection of the Agreement by any trustee in bankruptcy of Lessee. No notice of Event of Default (including any subsequent Termination Notice) pursuant to the Agreement from City shall be effective against Lessee, or against any Recognized Mortgagee and/or Mezzanine Lender who is the subject of a Mortgage/Pledge Notice unless a copy of such notice of Event of Default (and Termination Notice, if applicable) was simultaneously given to such Recognized Mortgagee and/or Mezzanine Lender at the time delivered to Lessee and in the manner provided in the Agreement for the giving of notices.

3. Right to Cure.

3.1 If City delivers a written notice shall be given of an Event of Default by Lessee and Lessee has failed to cure such Event of Default before the expiration of any applicable grace and cure period as provided in the Agreement, then, subject to **Section 9** below, any Recognized Mortgagee and/or Mezzanine Lender shall have ten (10) additional days, in the case of a monetary Event of Default, and thirty (30) additional days, in the case of a non-monetary Event of Default, in either case following the later to occur of (a) the expiration of any applicable grace and cure periods provided to Lessee in the Agreement, and (b) the date such Recognized Mortgagee and/or Mezzanine Lender has received notice of the applicable Event of Default, to cure such Event of Default.

3.2 Subject to **Section 9** below, to the extent any Recognized Mortgagee and/or Mezzanine Lender reasonably requires possession of the Premises in order to effectuate the cure of any Event of Default, the time period for the Recognized Mortgagee and/or Mezzanine Lender to cure such default shall be extended for a reasonable period after such Recognized Mortgagee and/or Mezzanine Lender is granted such access, subject to further extension due to Force Majeure Occurrences.

4. City Agreements. City hereby further agrees that (a) neither a Recognized Mortgagee, Mezzanine Lender nor a Successor Leasehold Owner shall be required to cure any Event of Default by Lessee, and (b) subject to Sections 9 and 11 below, and subject to an express agreement by such Recognized Mortgagee, Mezzanine Lender and/or Successor Leasehold Owner that it or they will assume all obligations to perform, and will perform, the construction to be performed under the Agreement, City will enter into a new lease on the same terms and conditions as are set forth in the Agreement, with a Recognized Mortgagee and/or Mezzanine Lender if the Agreement is terminated as a result of an Event of Default by Lessee. Notwithstanding anything to the contrary contained in the Agreement, from and after the date that a Recognized Mortgagee shall have commenced foreclosure proceedings on a Mortgage or a Mezzanine Lender shall have commenced foreclosure proceedings on a Pledge, City shall permit such Recognized Mortgagee and/or Mezzanine Lender (and any permitted successors and assignees of such Recognized Mortgagee and/or Mezzanine Lender, as applicable) to commence and continue construction in accordance with the provisions of the Agreement; provided, that such Recognized Mortgagee and/or Mezzanine Lender comply, in all material respects, with all insurance and other requirements of Lessee contained in this Agreement.

5. No Termination. City agrees that no termination of the Agreement shall be effective against a Recognized Mortgagee and/or Mezzanine Lender unless City shall have sent such Recognized Mortgagee and/or Mezzanine Lender a notice of Event of Default and Termination Notice as provided in Section 2.4 hereof and such Recognized Mortgagee and/or Mezzanine Lender has failed to cure the Event of Default giving rise to such right of termination within the time periods set forth in Sections 3.1 and 3.2 and any written agreement between City and such Recognized Mortgagee and/or Mezzanine Lender. The parties agree that there shall be no consensual surrender or consensual termination of the Agreement without the consent of the Recognized Mortgagee and/or Mezzanine Lender who is designated pursuant to the Lender Priority Notice as the most senior in lien or right.

6. No Amendment Binding. Provided that a Recognized Mortgagee and/or Mezzanine Lender shall have delivered to City the Mortgage/Pledge Notice, no amendment or modification of the Agreement shall be binding upon such Recognized Mortgagee and/or Mezzanine Lender unless such Recognized Mortgagee and/or Mezzanine Lender has consented in writing to such amendment or modification.

7. No Liability. Notwithstanding anything in the Agreement to the contrary, no holder of a Mortgage or Pledge shall become liable under the provisions of the Agreement unless and until such time (if any) as it becomes, and then, without limiting this Exhibit G, only for so long as it remains, the tenant under the Agreement or under a New Lease.

8. Other Defaults. While a Recognized Mortgagee and/or Mezzanine Lender is exercising any right to cure Lessee's Events of Default pursuant to this Exhibit G, City shall not be precluded

from exercising any rights or remedies it may have with respect to other Events of Default of Lessee's obligations that may arise from time to time under the Agreement, subject in each case to any Recognized Mortgagee's right and/or Mezzanine Lender's right (subject to Section 9 below) to cure such other Events of Default pursuant to this Exhibit G; provided that City shall not terminate the Agreement by reason of such other Events of Default for so long as a Recognized Mortgagee and/or Mezzanine Lender is diligently and in good faith pursuing the cure of all Events of Default of which City has given any Recognized Mortgagee and/or Mezzanine Lender notice in accordance with Section 2.4, other than Events of Default that (a) are personal to Lessee (including, without limitation, the existence of any Bankruptcy Proceeding), and (b) are then impossible to cure (including, without limitation, the failure to commence construction on or before the Construction Commencement Deadline), or (c) a Recognized Mortgagee and/or Mezzanine Lender is not obligated to cure as expressly set forth in any written agreement between City and such Recognized Mortgagee and/or Mezzanine Lender (collectively, the "Incurable Defaults").

9. Recognition by City of Recognized Mortgagee or Mezzanine Lender Most Senior in Lien. Only the Recognized Mortgagee (or Mezzanine Lender, as applicable) who is designated in the Lender Priority Notice as the most senior in lien or right shall be recognized by City as having exercised the applicable rights under this Exhibit G, to the exclusion of all other Recognized Mortgagees and all other Mezzanine Lenders.

10. Acceptance of Performance. Subject to Section 9 hereof, City shall accept performance by Recognized Mortgagee and/or Mezzanine Lender of any covenant, condition or agreement on Lessee's part to be performed under the Agreement with the same force and effect as though performed by Lessee.

11. Execution of New Lease.

11.1 If the Agreement terminates for any reason (including because of any Event of Default or rejection in a Bankruptcy Proceeding or Recognized Mortgagee's and/or Mezzanine Lender's failing to timely exercise or otherwise pursue its cure rights), but excluding any termination upon the end of the applicable Term, then (in addition to any other or previous notice that the Agreement requires City to give to a Recognized Mortgagee and/or Mezzanine Lender), City shall, within ten (10) days thereafter, notify all Recognized Mortgagees and/or Mezzanine Lenders of such termination. Such notice shall describe the basis upon which the Agreement was terminated and describe all then uncured Events of Defaults known to City in reasonable detail, including the amount(s) of any then known monetary Events of Default. Upon any Recognized Mortgagee's and/or Mezzanine Lender's written request delivered within sixty (60) days following the termination of the Agreement (the "**New Lease Option Period**"), City shall, subject to the provisions of this **Section 11**, enter into a New Lease on the sixty-fifth (65th) day following the date of termination of the Agreement (provided that City may enter into such New Lease at any time during the New Lease Option Period after receipt of a Recognized Mortgagee's and/or Mezzanine Lender's written request if only one Recognized Mortgagee and/or Mezzanine Lender exists at such time) with such Recognized Mortgagee (or Mezzanine Lender) or its nominee or designee (or if such request is received from more than one Recognized Mortgagee and/or Mezzanine Lender, the Recognized Mortgagee (or if no Recognized Mortgagee then exists, the Mezzanine Lender) most senior in priority (as compared with the other Recognized Mortgagees (or Mezzanine Lenders) from which such request is received) as set forth in the Lender Priority

Notice). Upon entering into a New Lease with City, such Recognized Mortgagee (or Mezzanine Lender) (or nominee or designee, as applicable) shall thereafter be referred to as the "**New Tenant**".

11.2 The provisions of the foregoing **Section 11.1** notwithstanding, City is not obligated to enter into a New Lease with a New Tenant: (i) unless, concurrently with the execution and delivery of such New Lease, all Annual Base Rent (other than as otherwise limited in any written agreement between City and a Recognized Mortgagee or Mezzanine Lender) due under the Agreement up to and including the date of the commencement of such New Lease and all expenses, including all reasonable legal costs, incurred by City in connection with (A) the enforcement of City's rights and remedies with respect to all Events of Default in existence at the time of the termination of the Lease, (B) the termination of the Agreement and (C) the preparation of such New Lease have, in each case, been paid in full; and (ii) until City receives a written assumption by such New Tenant, or a nominee or designee, of all of Lessee's obligations under the Agreement (other than the obligation to cure Incurable Defaults and other than as limited in any written agreement between City and a Recognized Mortgagee or Mezzanine Lender). To the extent not set forth in the notice given to the Recognized Mortgagee or Mezzanine Lender pursuant to the Agreement and this **Exhibit G**, City agrees to notify the Recognized Mortgagee or Mezzanine Lender, upon request and/or concurrently with the execution of such New Lease, of any unperformed obligations of, and/or Events of Default by, Lessee which, to City's knowledge, then exist.

11.3 No Waiver of Default. The execution of a New Lease shall not constitute a waiver of any Event of Default existing immediately before the termination of the Lease, except for any Incurable Defaults and any Events of Default with respect to matters addressed in any written agreement and/or estoppel between City and a Recognized Mortgagee or Mezzanine Lender, and the New Tenant shall cure, within the longer of (i) the period of cure remaining to the Recognized Mortgagee or Mezzanine Lender pursuant to this **Exhibit G** or (ii) the applicable periods set forth in the provision of such New Lease relating to events of default thereunder (which applicable periods shall commence with the execution and delivery of the New Lease or, if notice of such defaults had not previously been given, upon the giving of such notice under the New Lease; provided that with respect to any default of which notice is first given under the New Lease, the cure periods applicable thereto shall be those set forth in the New Lease), all other Events of Default (except Incurable Defaults) existing under the Agreement immediately before its termination of which such tenant has been or, to the extent any such Events of Default were not then known by City, is thereafter given notice.

11.4 Conduct Prior to Execution of New Lease. Between the date of the termination or rejection of the Agreement and either (i) the last day of the New Lease Option Period, or (ii) if any Recognized Mortgagee or Mezzanine Lender has requested a New Lease, the earlier of the following: (A) the date of the execution and delivery of a New Lease or (B) the last day of the New Lease Option Period, where the failure to execute and deliver the New Lease results from the failure of such Recognized Mortgagee or Mezzanine Lender to satisfy the conditions precedent to such execution and delivery, City shall not (I) enter into any lease, license or other occupancy agreement with respect to all or any portion of the Premises, modify any such lease, license or occupancy agreement then-existing or accept any cancellation, termination or surrender thereof, or (II) execute any Easement Agreement with respect to all or any portion of the Premises. The rest of this **Section 11.4** notwithstanding, City may execute or modify any agreement concerning

the Premises to the extent such agreement or modification is, in City's reasonable discretion, necessary for City to comply with any applicable laws or its contractual obligations to the federal government regarding the use and operation of the Airport.

12. Miscellaneous Mortgage Provisions.

12.1 Nominee. Each Recognized Mortgagee and Mezzanine Lender shall have the right to assign the Mortgage or Pledge, as applicable, held by it to a nominee which Controls, is Controlled by, or is under Common Control with, such Recognized Mortgagee or Mezzanine Lender, as applicable, prior to and in anticipation of a Foreclosure Event, and shall not thereby lose its status as a Recognized Mortgagee or Mezzanine Lender under the Lease.

12.2 Lessee Actions. None of the following actions by Lessee shall be valid or effective under the Agreement unless the prior written consent of each Recognized Mortgagee and/or Mezzanine Lender shall have been obtained by Lessee: (i) Lessee's consent to a rejection of the Agreement in any Bankruptcy Proceeding of City, or Lessee's assertion of offset rights by reason of a lease rejection by City in any Bankruptcy Proceeding; (ii) Lessee's agreement to a determination of "total loss" resulting in termination of the Agreement; and (iii) Lessee's consent to or failure to object to a proposed "sale free and clear" in any Bankruptcy Proceeding of City. Each Recognized Mortgagee and Mezzanine Lender is an intended third party beneficiary of this **Section 12.2.**

12.3 Assignment of Lessee's Rights. Lessee's right to object to a rejection of the Agreement by City in any Bankruptcy Proceeding of City, or a proposed "sale free and clear" of the Premises by City in any Bankruptcy Proceeding of City is hereby assigned by Lessee to the first-priority Recognized Mortgagee and/or Mezzanine Lender, as applicable, designated in the Lender Priority Notice.

12.4 Modifications to the Agreement. City shall consider in good faith any modification to the Agreement requested by a Recognized Mortgagee and/or Mezzanine Lender as a condition or term of granting financing to Lessee, provided that the same does not increase City's obligations or diminish City's rights and remedies pursuant to the Agreement.

12.5 Notice of Foreclosure Event. Subject to **Section 7** of this **Exhibit G**, Lessee shall use commercially reasonable efforts to require a Recognized Mortgagee and/or Mezzanine Lender (or their respective designees or nominees), as the case may be, to provide City with written notice of its intent to effectuate a Foreclosure Event; provided, however, that any failure of (x) the loan documents between Lessee and a Recognized Mortgagee and/or Mezzanine Lender to explicitly require such notice be delivered to City, and/or (y) any Recognized Mortgagee and/or Mezzanine Lender (or their respective designees or nominees), as the case may be, to actually deliver a notice to City of its intent to effectuate a Foreclosure Event, shall not, in any case, (i) invalidate a Foreclosure Event that is consummated in accordance with any applicable loan documents entered into or granted by Lessee in connection with this **Exhibit G**, (ii) be deemed to be a breach of this Agreement by Lessee, or (iii) otherwise preclude the exercise of rights and remedies by any Recognized Mortgagee and/or Mezzanine Lender that may be available to them, as applicable.

13. Transfer. A transfer or assignment of this Agreement, all or any portion of the leasehold

estate created herein, or the direct or indirect interests in Lessee, in each case, resulting from or in connection with a Foreclosure Event shall not require the consent of City. Notwithstanding the foregoing, following the consummation of a Foreclosure Event, any subsequent sale, assignment, disposition or other transfer of this Agreement and the interest of Lessee in this Agreement (or any portion thereof), shall be to a Qualified Buyer satisfying the requirements of **Section 34.2(a)** of the Agreement.

Exhibit H PHASE 1 PLANS

