



CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

12/6/2024

TO: Dan Lewis President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Land Lease and Agreement between the City of Albuquerque and Honeywell Federal Manufacturing & Technologies.

I transmit herewith for City Council approval a proposed Land Lease and Agreement between the City of Albuquerque and Honeywell Federal Manufacturing & Technologies ("Honeywell"), which is a single-purpose, LLC established solely to manage and operate Kansas City National Security Campus, New Mexico Operations under Prime Contract No. DE-NA0002839 with the United States Government, as administered by the National Security Administrations of the U.S. Department of Energy.

This Land Lease will allow the local contractor, Honeywell, to design and build upon 2.7719 acres of land directly next to their current leasehold.

City Council approval of this agreement is required pursuant to Section 5-2-6 ROA 1994, Leasing of Real Property.

Approved:

Approved as to Legal Form:

^{DS}

Samantha Sengel Date
Chief Administrative Officer


Lauren Keefe Date
City Attorney

Recommended:

^{Initial}
GG
^{DS}

^{DocuSigned by:}
Richard G. McCurley 1/6/2025 | 7:57 AM PST
^{DS}
Richard G. McCurley Date
Director of Aviation
^{DS}


Cover Analysis

1. What is it?

The subject of this Executive Communication is a proposed Land Lease and Agreement (hereafter, "Land Lease") between the City of Albuquerque, as lessor, and Honeywell Federal Manufacturing & Technologies as lessee.

2. What will this piece of legislation do?

This Land Lease will allow the local developer, Honeywell, to design and build upon 2.7719 acres of land directly next to their current leasehold. The Land Lease term is for one year with 9 successive option following the expiration of the Initial Term to renew the Agreement for one year.

3. Why is this project needed?

The land in review is currently vacant, the Land Lease would allow construction of additional building support to satisfy strong local and regional demand for Honeywell production.

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

There is no cost to the City as this is a revenue-producing agreement.

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

The Land Lease will generate revenue to the Aviation Department in the amount of \$.30/SF for 120,743 sq. ft. at a monthly amount of \$3,018.57 which will be an annual amount of \$36,222.90.

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

The Sunport will lose a valuable revenue stream which it needs to remain compliant with FAA and NMDOT grant assurances.

7. Is this service already provided by another entity?

This vendor provides energy & sustainability solutions along with industrial automation for the local Labs. Honeywell is currently the only vendor on contract with the Aviation department providing this type of service, directly next to the leased land in review.

FISCAL IMPACT ANALYSIS

TITLE: Land Lease and Agreement between the City of Albuquerque and Honeywell Federal Manufacturing & Technologies. R: O:
 FUND: 611
 DEPT: 7000611

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

	2025	Fiscal Years 2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property				-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[] Estimated revenues not affected				
[x] Estimated revenue impact				
Revenue from program	21,130	36,223	36,223	93,576
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ 21,130	\$ 36,223	\$ 36,223	\$ 93,576

These estimates do not include any adjustment for inflation.

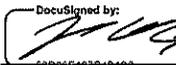
* Range if not easily quantifiable.

Number of Positions created

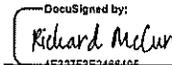
COMMENTS: This Land Lease will allow the developer, Honeywell, to design and build on 2.7719 acres of Aviation-owned property off of Yale Blvd. SE and Alamo Ave SE. Rent will be calculated at \$.30/SF for 120,743 sq. ft. at a monthly amount of \$3,018.57 which will be an annual amount of \$36,222.90. The initial term of the agreement is one year with nine possible one-year extensions for a total of 10 years. The FY25 revenue amount is based on the remaining 7 months of FY25 at \$3,018.57 each.

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

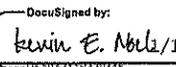
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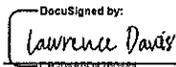
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 12/24/2024 | 11:21 AM MST
 FISCAL ANALYST

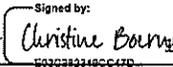
APPROVED:

DocuSigned by:

 6/25/2025 | 7:57 AM PST
 DIRECTOR (date)

REVIEWED BY:

DocuSigned by:

 6/13/2025 | 3:18 PM MST
 EXECUTIVE BUDGET ANALYST

DocuSigned by:

 6/16/2025 | 9:45 AM MST
 BUDGET OFFICER (date)

Signed by:

 6/16/2025 | 9:52 AM MST
 CITY ECONOMIST

LAND LEASE AND AGREEMENT
between
THE CITY OF ALBUQUERQUE
and
HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES (FM&T)

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LAND LEASE AND AGREEMENT
between
THE CITY OF ALBUQUERQUE
and
HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES (FM&T)

This **Land 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 **Honeywell Federal Manufacturing & Technologies**, which is a single-purpose, LLC established solely to manage and operate Kansas City National Security Campus, New Mexico Operations under Prime Contract No. DE-NA0002839 with the United States Government, as administered by the National Security Administrations of the U.S. Department of Energy ("**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 manages, through its Aviation Department, the Albuquerque International Sunport, located in the County of Bernalillo, State of New Mexico (the "**Airport**"), as shown in **Exhibit A** attached hereto and incorporated herein; and

1.2 Lessee desires to lease, and City desires to grant the lease of, all that certain tract of real property located on the Airport as further described herein (the "**Premises**"), in accordance with the terms and conditions of this Agreement; and

1.3 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 Premises, consisting of a tract of land as depicted in the map attached hereto as **Exhibit B**, which Premises measures [2.7719] acres ([**120,743**] square feet) and is legally described as Tract A-1-B, Replat of Tract Z-4 & A-1 Airport Park to Tracts A-4-1, A1-A. A-1-B, & A-1-C Airport Park Cont.

2.2 Acceptance of Premises. Lessee hereby acknowledges that it has conducted all necessary due diligence and has independently determined that the Premises is suitable for the use permitted under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Lessee acknowledges that it has fully inspected the Premises in its present condition and it is understood and agreed that the Premises is being accepted **AS IS, 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.

Section 3. Use of Premises. As of the Effective Date, Lessee shall have the right, subject to specific limitations or requirements contained in this Agreement, to take possession and use the Premises solely for the purpose of providing parking and constructing and maintaining secured storage facilities. Lessee shall abide by all applicable ordinances, rules, and regulations established by any federal, state, or local government agency or by City in connection with its use of the Premises. Lessee shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal, or extra hazardous business, use, or purpose, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way may make void or voidable any insurance then in force on the Premises. Lessee shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal, or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use.

Section 4. Term. The term of this Agreement shall commence on the first day of the month immediately following the month in which this Agreement is executed by City's Chief Administrative Officer, and shall continue for one year thereafter (such one-year initial term, the "**Initial Term**").

4.1 Options to Renew. Lessee shall have nine (9) successive options following the expiration of the Initial Term to renew this Agreement for one year (any such renewal option, a "**Renewal Option**"; any such one-year term, a "**Renewal Term**"). Lessee may elect to exercise a Renewal Option, and City shall grant Lessee an associated Renewal Term, provided that Lessee (a) delivers written notice to City of Lessee's intent to exercise a Renewal Option at least ninety (90) days prior to the expiration of the Initial Term or the expiration of a Renewal Term (as applicable), (b) is current in its payments to City, and (c) is compliant with all conditions, covenants, and agreements set forth in this Agreement upon City's receipt of Lessee's notice of election to exercise a Renewal Option. If Lessee does not elect to exercise a Renewal Option or does not satisfy the conditions this Agreement, the Agreement shall terminate.

4.2 Holding Over. Holding over by Lessee after the expiration of the Initial Term or a Renewal Term (as applicable), whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy on the same terms and conditions of this Agreement.

Section 5. Rent. Commencing on the Effective Date, and continuing throughout the Initial Term and any Renewal Term, as consideration for the rights granted to Lessee pursuant to this Agreement, Lessee shall pay rent (as defined herein) to City, subject to the terms of this Section 5.

5.1 Rent. Lessee agrees to pay City, on the first day of each month, in advance and without notice, rent in monthly installments as set forth in the table below. If the earlier termination of this Agreement occurs on a date other than the first or last day of a calendar

month, rent shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

TERM	RATE \$ (NNN)/SF	SF	MONTHLY AMOUNT	ANNUAL AMOUNT
1-YEAR FIRM	\$0.30	120,743	\$3,018.57	36,222.90
1 st -YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
2 nd YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
3 rd YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
4 th YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
5 th YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
6 th YEAR RENEAL	\$0.30	120,743	\$3,018.57	36,222.90
7 th YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
8 th YEAR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90
9 th (FINAL) YR RENEWAL	\$0.30	120,743	\$3,018.57	36,222.90

5.2 Place of Payment. Payment shall be made to the order of the "City of Albuquerque".

5.3 Triple Net Lease. Lessee shall pay City on a triple net basis throughout the Initial Term and Renewal Terms as applicable, Rent and all other payments required under this Lease, without any deductions, offsets, charges, assessments, or abatements, except as expressly provided herein. UNDER NO CIRCUMSTANCES OR CONDITIONS WHETHER NOW EXISTING OR HEREAFTER ARISING, OR WHETHER WITHIN OR BEYOND THE PRESENT CONTEMPLATION OF THE PARTIES, SHALL CITY BE REQUIRED TO MAKE ANY PAYMENT OF ANY KIND WHATSOEVER, OR BE UNDER ANY OTHER OBLIGATION OR LIABILITY HEREUNDER (FINANCIAL OR OTHERWISE), EXCEPT AS HEREIN OTHERWISE SPECIFICALLY STATED IN THIS LEASE.

Section 6. Provisions Incorporated by Exhibits. Lessee shall comply with the provisions of all exhibits to this Agreement, including the following exhibits, (as revised), attached hereto and incorporated herein as though set forth in full:

6.1 Exhibit C: Insurance and Indemnity Provisions.

- **Indemnification:** Lessee covenants that the City, its officers, and employees shall not be liable for any claims or actions arising from Lessee's failure to comply with the insurance provisions above. The Indemnification provision of this Agreement applies fully to this paragraph. It is expressly understood that Lessee's employees are not employees of the City for any purpose.

6.2 Exhibit D: Environmental Provisions.

6.3 Exhibit E: General Conditions.

6.4 Exhibit F: Non-Discrimination Provisions.

Section 7. Termination of Agreement.

7.1 Termination by City: 180-Day Cure Period. If Lessee shall fail to pay any installment of Rent or other amount due and payable when due and/or if Lessee shall fail to perform or comply with any of the other conditions or agreements expressed or implied herein and fail to remedy such failure to pay Rent and/or lack of compliance within one-hundred and eighty (180) days after notice from City of such default, then and in either case regardless of any waiver or consent to any earlier event of default, City, at its option, may exercise any and all remedies available to City under law, all of such rights and remedies to be cumulative and not exclusive.

In the event this Agreement is terminated by City, Lessee shall remain liable to City for damages in an amount equal to the payment obligation for outstanding rents and fees required by the table set forth in Section 5.1.

7.2 Termination by Lessee: 180 Day Cure Period. If City fails to comply with any covenant or agreement herein one-hundred and eighty (180) days following receipt from Lessee of written notice of non-compliance describing in detail the failure, 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 such notice of termination unless City has fully cured all events of non-compliance identified in the notice, then this Agreement shall remain in full force and effect and the notice of termination shall be null and void.

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

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

Section 8. Approvals, Consents, and Notices. All notices, consents, and approvals required by this Agreement shall be in writing and shall be given 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 Albuquerque International Sunport
Certified Mail:	PO Box 9948 Albuquerque, NM 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE - 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
FAX Transmission:	(505) 842-4278
Email:	rmccurley@cabq.gov
Lessee:	Honeywell Federal Manufacturing & Technologies (FM&T)
Lessee Negotiator:	Shirley Bailey
Title:	Realty Specialist Consultant
Certified Mail and Personal Delivery:	
Telephone:	(505) 507-2532
Email:	onerazorback@gmail.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 of electronic verification of the facsimile or email transmission, unless provided otherwise in this Agreement.

Section 9. Savings. City and Lessee acknowledge that they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Lessee further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 10. Approval of Agreement. This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the City's Chief Administrative Officer and the Honeywell FM&T Buyer.

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

Approved by the City Council

Date and EC#: _____

City of Albuquerque:

By: _____
Samantha Sengel
Chief Administrative Officer

Date: _____

Recommended:

By: _____
Richard G. McCurley
Director of Aviation

Date: _____

Honeywell Federal Manufacturing & Technologies:

By: _____
Kristin C. South
Buyer II
Contractor to the U.S. Department of Energy's
Kansas City National Security Campus
Managed by Honeywell
New Mexico Operations

Date: _____

Exhibit A Airport

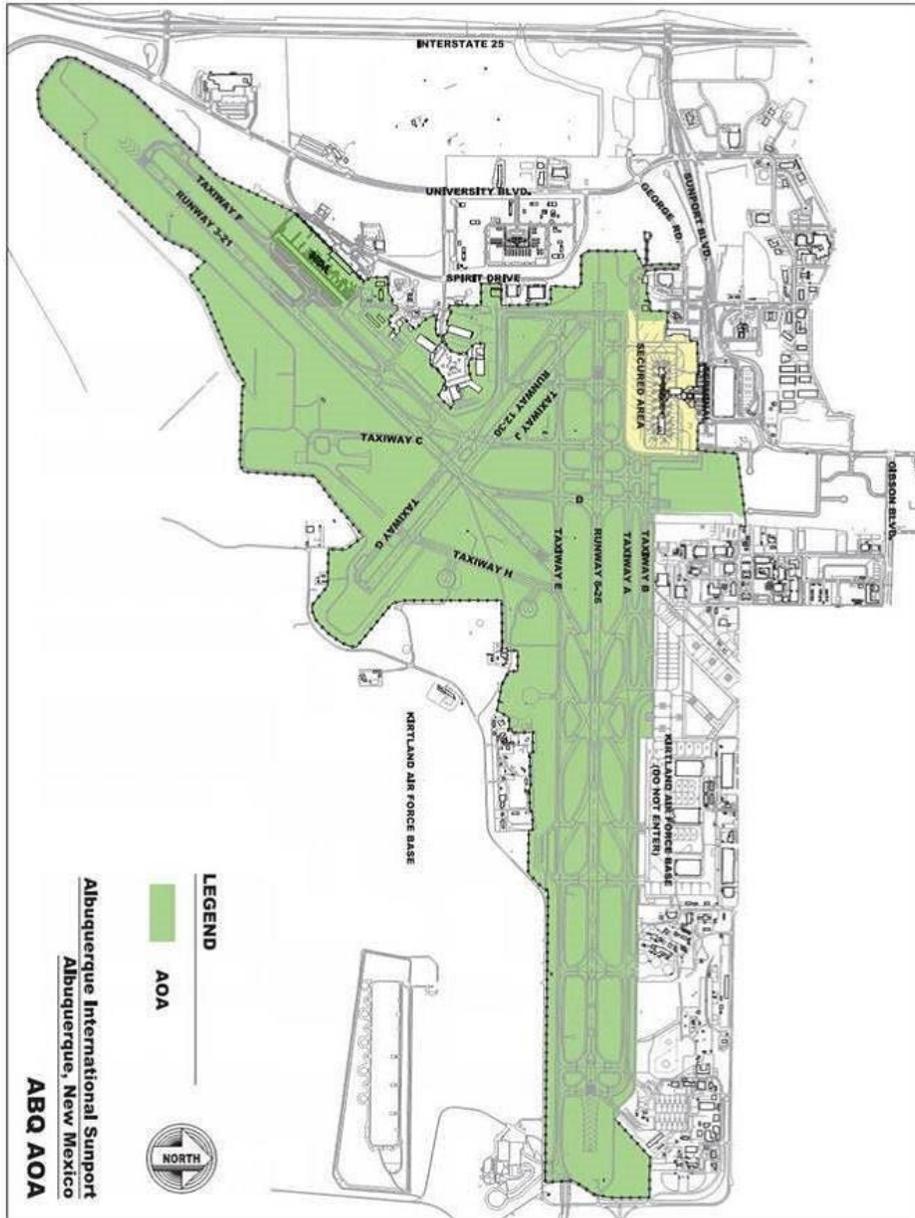


Exhibit B Premises

Land Records Comp. FT. ALBUQUERQUE BE 965-471-1002

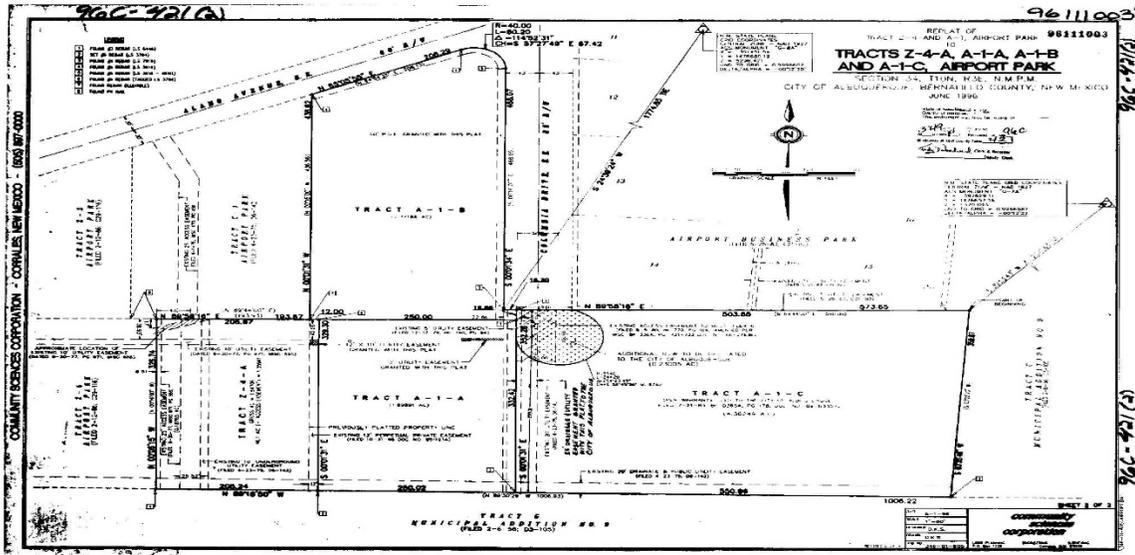


Exhibit C Insurance and Indemnity Provisions

1. Insurance

Lessee's Insurance Obligations. Lessee agrees to self-insure or otherwise maintain coverage for any losses, liabilities, or damages arising from its activities under this Lease, including but not limited to:

- **Commercial General Liability** (contractual liability included) with minimum limits as follows:
 - Each Occurrence \$2,000,000.00
 - Products/Completed Operations aggregate \$1,000,000.00
 - Personal and Advertising Injury \$1,000,000.00
 - Coverage must also include War & Allied Perils.
 - General aggregate \$2,000,000.
- **Commercial Automobile Liability:** Combined single limit of not less than \$500,000 per occurrence, covering owned, non-owned, and hired vehicles for bodily injury and property damage arising from activities related to Airport premises, both on and off-site.
- **Environmental Impairment Liability:** Coverage for environmental risks associated with Lessee's operations.
- **Commercial Property Insurance:** Coverage equal to the replacement cost of Lessee's improvements and all personal property located on Lessee's Premises.
- **Builders Risk Insurance:** During any period of construction or reconstruction for which Lessee contracts, Lessee or its contractor(s) shall maintain Builders Risk Insurance sufficient to cover the value of the work.
- **Workers' Compensation and Employer's Liability Insurance:** Lessee shall comply with the New Mexico Workers' Compensation Act, Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Lessee shall procure and maintain Workers' Compensation and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include safety device protection as permitted under NMSA 1978 § 52-1-10 and shall include a waiver of subrogation in favor of the City, its employees, and agents. If Lessee elects to self-insure Workers' Compensation, it shall comply with all applicable legal requirements. For any work sublet to others, Lessee shall ensure sublessees maintain comparable coverage or qualify as self-insured for their employees involved in the work.

1.1. 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 resulting from any negligent act, error, or omission of Lessee, its agents or its employees 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.

2.2 Environmental Harm Indemnification. Without limiting any provisions 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, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

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

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

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

2.2.4 any violation by Lessee of any Environmental Laws.

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.

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 (1) investigate or cause the

investigation of accidents involving such injuries; (2) 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; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Lessee pursuant to this Section; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Lessee as aforesaid; b) any interest accruing up to the date of payment by Lessee; c) all premiums charged upon appeal bonds required in such proceedings; and d) all 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.

By way of further clarification, these requirements do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

2.5 Miscellaneous. City shall, promptly upon receipt, give 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.

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

Environmental Provisions

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

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

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

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

2. Compliance with Environmental Laws. In connection with its operations or any other activity at the Airport, Lessee shall at all times and in all respects comply with all applicable Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Lessee's operations at the 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. Waste Disposal. Lessee shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its operations into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Lessee shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All disposal shall comply with applicable regulations of the

United States Department of Agriculture, Environmental Laws, Federal Stormwater Regulations, and Section 2 above or Section 4 below of this Exhibit.

4. Federal Stormwater Regulations.

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

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

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

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

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

4.6. City and Lessee agree to provide each other upon request with any non-privileged

information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

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

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

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

5. Prior Written Consent. City may require removal of Hazardous Substances unless Lessee demonstrates to City's reasonable satisfaction that such Hazardous Substance is necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance brought upon, used or kept in or about the Premises.

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

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused or permitted 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 release on the Premises to the extent required 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. 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 of Lessee.

The indemnification required by these provisions shall not apply to any Hazardous Substance existing on, under or about the Premises prior to the date of full execution of this Agreement, except to the extent that such Hazardous Substance(s) 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 on, under or about the Premises as of the date of full execution of this Agreement. The Parties agree that, as of the date of full execution of this Agreement, they are not aware of the existence of any Hazardous Substance on, under or about the Premises.

7. Notices. Lessee shall immediately notify City in writing of any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Environmental Laws related to its operations on the Premises. Except as otherwise provided below, 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, reports, complaints, notices or warnings or asserted violations relating in any way to the Premises or Lessee's use thereof.

8. Environmental Notices; Indemnification Notices. Lessee shall provide City with a copy of 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. Lessee shall, within twenty-four (24) hours, provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Lessee each shall promptly provide the other with a copy of 1) any claim or demand for corrective action that any environmental agency issues and 2) any other claim giving rise to either Party's indemnification obligations herein.

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

10. Lessee's Corrective Action Obligation. Lessee shall undertake corrective action to remove Contaminants released 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. Lessee shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action, subject to environmental agency requirements and approval, provided, however that 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 and City of a "No Further Action" letter or equivalent written directive, if applicable, from the appropriate regulatory agency(ies) indicating that no further corrective action is required to satisfy applicable law and regulations.

11. 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, Lessee shall restore the areas at the Airport containing or impacted by such Contaminants ("**Affected Areas**") as closely as reasonably possible to the state that the Affected Areas were in when 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 E
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 to conduct ordinary preventative maintenance and ordinary upkeep and repair of the Premises. In addition, Lessee shall, at Lessee's sole discretion, 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 at all times keep the Premises neat, orderly, sanitary, and presentable. Lessee shall provide for snow and ice removal, and cause to be removed at its own expense from the Premises all safety hazards and all waste, garbage, debris, and rubbish, collectively referred to herein as "Refuse," and agrees not to deposit same on any part of Airport.

2. Surrender of Premises. Lessee covenants and agrees that upon expiration or earlier termination of this Agreement, it will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, acts of God, fire, and other casualties excepted, and City shall have the right to take possession of the Premises. City shall not be required to give notice to quit possession at the expiration of the Agreement.

2.1 Removal of Personal Property. WAIVER OF RESTORATION: City hereby waives, releases and discharges, and forever relinquishes any right to make a claim against the Lessee for waste, damages, or restoration arising from or related to (a) Lessee's normal and customary use of the Premises during the Term (including any extensions thereof), as well as (b) any initial or subsequent alteration to the Premises, including cabling, or removal thereof, during the Term (including any extensions thereof), where such alterations or removals are performed by Lessee. Lessee may, abandon property on the Premises following expiration of this Agreement, in which case title to such property will immediately vest with City and Lessee will be relieved of any liability in connection therewith. Upon expiration or earlier termination of this Agreement, Lessee shall remove any and all non-permanent equipment, trade fixtures, materials, supplies, and other personal property on or about the Premises.

3. Title to Land. Fee simple title to the Premises is and shall remain vested in the 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 Premises.

4. Compliance with Law. Lessee shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, contractors, 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, the Premises and/or Lessee's operations and activities under this Agreement.

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

6. Disability Laws and Accessibility Requirements. Lessee shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Lessee constructs on the Premises, Lessee agrees to meet all the requirements of the ADA which are imposed directly on the Lessee or which would be imposed on the 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 the 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.

7. Construction of Improvements. Lessee may not construct any improvements or alter constructed improvements to the Premises without written approval provided by the FM&T completion of a GSA 276, *Supplemental Lease Agreement* (SLA) Form, of and approval from the Director of Aviation (the.

7.1 Approval by the Director of Aviation. Before the commencement of any construction, detailed plans and specifications, including any modifications or amendments thereto requested by City, shall be filed with, and approved, in writing, by the Director of Aviation (the "**Director**") and all governmental agencies and authorities having jurisdiction over such construction. Lessee shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of the improvements.

The quality, design, and appearance of such improvements shall conform with the Airport's architectural design criteria and be consistent with first-class, modern facilities. Such construction shall be performed in a good and workmanlike manner and in accordance with the plans and specifications approved for same. At all times during such construction, Lessee shall have a copy of the approved plans and specifications on the Premises for inspection by City or other governmental agencies.

7.2 Utilities.

7.2.1 Responsibility of Lessee. 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 Airport 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 of such invoice. 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 or charges against City or the Premises caused by Lessee's actions.

7.2.2 Non-Liability of City. 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 solely by the act or omission of City and the interruption continues for more than seventy-two (72) hours, rents will be abated for the duration of the interruption.

8. Alterations.

8.1 Before commencing any alterations or improvements to the Premises, Lessee shall enter into a GSA 276 Supplemental Lease Agreement ("SLA") Form with City.

8.2 Lessee may directly contract with qualified subcontractors in order to install, modify or replace Lessee-owned equipment when installation, modification or replacement does not alter the structural, mechanical or electrical integrity of the Premises.

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

9. Signs. Any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content, 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. Lessee shall submit to the Director for approval, detailed drawings indicating dimensions, location, materials, and colors for all proposed signs at the Premises.

10. Damage or Destruction of Premises. If, for any reason the Premises are damaged to such an extent that it is untenable in whole or in substantial part, then Lessee shall have the option, in addition to and without limitation of any other rights and remedies available to Lessee under law or otherwise, to terminate this Agreement, but in the case of termination by Lessee pursuant to this Section 13, Lessee shall remain liable for payment of any outstanding Rent due on the date of termination.

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

Lessee further acknowledges that its use of the Premises, in relation to the avigation

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

12. 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.

13. Other Subordination. The Premises are, and this Agreement is, subject to and subordinate to the terms of that certain deed from the United States of America to City dated December 15, 1962, and filed for record on December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of City. This Agreement is subject to and subordinate to any and all City Ordinances codified in the Revised Ordinances of City of Albuquerque, New Mexico, 1994, and the provisions of any agreements or deeds made between the City and the United States. This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

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

15. 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 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.

16. 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 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.

17. Assignment and Subletting. Lessee shall not assign, sublet, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement.

18. Financial Responsibility.

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

18.2 Liens. Lessee shall not permit any judgment, execution or mechanic'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.

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

20. 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.

21. 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.

22. Dispute Resolution, Remedies, and Forum Selection. DISPUTES: This Agreement shall be governed by the laws of the State of New Mexico, except Choice of Law provisions, and except that any provision in this Agreement that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation ("FAR"), or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies and bodies of the federal Government. Either party may submit a dispute to a court of competent jurisdiction provided that the Parties' senior management representatives have first attempted in good faith to negotiate a resolution for a period of no less than ten business days following written notice from the Party claiming dispute. To the extent permitted by applicable law, the Parties waive any right they may have to a trial by jury. Notwithstanding the above, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time. Pending resolution or settlement of any dispute arising under this Agreement, both parties will proceed diligently.

23. Ethics.

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

23.2 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.

23.3 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.

24. 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.

25. 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.

26. Contract Interpretation.

26.1 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.

26.2 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.

26.3 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.

26.4 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.

26.5 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.

26.6 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.

26.7 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.

26.8 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.

26.9 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.

26.10 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.

26.11 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.

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

28. Signature Process. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

29. 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.

Exhibit F
Non-Discrimination Provisions

City, State, and Federal laws and regulations require the language below to be present in all agreements entered into by the Airport. The Federal government reserves the right to update the required language contained within this section at any time. In the event the Federal government makes a change, the City will amend this exhibit by notifying the Lessee of said change: (a) in writing using registered or certified mail; (b) personally delivered; or (c), email transmission to the e-mail address provided in Section 20 above, provided that the completed transmission is electronically verified. Amendments affecting this Exhibit will not require signatures of either Party.

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.

2. Federal Compliance.

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, 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 Lessee.

The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and City remains obligated to the Federal Aviation Administration.

2.2 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Agreement, 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, national origin (including limited English proficiency), creed, 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.

2.3 Title VI Clauses for Lease of Real Property. Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of

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

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.

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 (hereinafter referred to as the "Contractor") 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 USC § 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 USC § 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 USC § 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 USC § 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 100-259) (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 USC § 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 U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration's Nondiscrimination statute (49 USC § 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 nondiscrimination 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. 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 USC § 1681, et seq).