

EC-23-375




CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

September 28, 2023

TO: Pat Davis, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Lease Agreement Between the City of Albuquerque and United Athletic Club, a New Mexico limited liability company ("United")

I transmit herewith for City Council approval a proposed lease at the Balloon Fiesta Park outlining the terms and conditions under which United will (i) lease and occupy the Site; (ii) build and provide adequate security to City for the performance of United's obligations under the agreement; and (iii) schedule and play United's home games and host other community events in the stadium.

Conditions of the agreement include (A) Tenant obtaining all necessary approvals from the United Soccer League, (B) Tenant obtaining private financing in an amount of at least thirty million dollars (\$30,000,000) to build a multi-purpose stadium at the Site, (C) Tenant securing Industrial Revenue Bonds by July 31, 2024, (D) the City's infrastructure improvements to Balloon Fiesta Park as funded by the New Mexico Legislature, and (E) the City of Albuquerque's Environmental Planning Commission approving an amendment to the Master Plan and approving a Site Plan.

The City intends to renovate Balloon Fiesta park while maintaining and fostering the annual International Balloon Fiesta.

FISCAL IMPACT ANALYSIS

TITLE: 2023 Master Lease Agreement NM United -COA

R: O:
FUND: 110

DEPT: PARKS&REC

- 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:

		2023	Fiscal Years 2024	2025	Total
Base Salary/Wages		-	-	-	-
Fringe Benefits at Subtotal Personnel	49.4600%	-	-	-	-
Operating Expenses		-	-	-	-
Capital/Property		-	-	-	-
Indirect Costs	10.20%	-	-	-	-
Total Expenses		\$ -	\$ -	\$ -	\$ -

Estimated revenues not affected
 Estimated revenue impact

Revenue from Lease	35,000	35,700	36,414	107,114
Amount of Grant	-	-	-	-
City Cash Match	-	-	-	-
City IDOH	-	-	-	-
Total Revenue	\$ 35,000	\$ 35,700	\$ 36,414	\$ 107,114

Note: for Grants - TOTAL EXPENSE should equal TOTAL REVENUE

City Inkind Match	\$ -	\$ -	\$ -	\$ -
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Number of Full-Time Positions Existing _____ New _____

COMMENTS:
Section 3.01- sum of \$35,000 per annum subject to a 2% annual increase at the discretion of the City. The City will potentially receive ten (10) percent net revenue from parking fees annually, estimated at \$102,000 [not included in revenue estimate above]

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

PREPARED BY:
DocuSigned by:
Joy Rowe
FISCAL IMPACT ANALYST

APPROVED:
DocuSigned by:
[Signature]
DIRECTOR

REVIEWED BY:
[Signature]
EXECUTIVE BUDGET ANALYST

[Signature]
BUDGET OFFICER (date) 9.28.23
for LD

[Signature]
CITY ECONOMIST
9/28/23

Cover Analysis

1. **What is it?** This EC is a lease agreement between the City of Albuquerque and United Athletic Club (United/"Tenant") for a site consisting of approximately seven acres within Balloon Fiesta Park and access to parking areas.
2. **What will this piece of legislation do?** This lease grants United use of approximately seven acres within Balloon Fiesta Park and access to parking areas, described in Exhibit A, and all easements, appurtenances, covenants, privileges, access, utility, and solar rights, whether or not of record, belonging to or inuring to the benefit of City and pertaining to such land, if any, together with any adjacent strips, alleys, rights of way, public or private, open or proposed, and any street or road abutting such land. The agreement requires development of the Stadium in a way that promotes synergy with and complements the Balloon Fiesta Park and agree to work together to ensure any Stadium events are coordinated and synchronized with Balloon Fiesta timing each year and look for opportunities for the Stadium to enhance the Balloon Fiesta experience for the public. The Agreement and parties' respective obligations are expressly conditioned upon (A) Tenant obtaining all necessary approvals from the United Soccer League, (B) Tenant obtaining private financing in an amount of at least thirty million dollars (\$30,000,000) to build a multi-purpose stadium at the Site, (C) Tenant securing Industrial Revenue Bonds by July 31, 2024, (D) the City's infrastructure improvements to Balloon Fiesta Park as funded by the New Mexico Legislature, and (E) the City of Albuquerque's Environmental Planning Commission approving an amendment to the Master Plan and approving a Site Plan.
1. **Why is this project needed?** This project is needed to provide for the construction of a United soccer stadium in a way that promotes synergy with the Balloon Fiesta Park and to ensure that operations to not negatively impact the International Balloon Fiesta.
2. **How much will it cost and what is the funding source?** There is no cost to the City associated with this contract. The Tenant agrees to invest a minimum of \$30 million dollars of private capital towards designing and building a stadium within the site.
3. **Is there a revenue source associated with this contract? If so, what level of income is projected?** The Tenant will pay \$35,000 annually, subject to a 2% annual increase at the discretion of the City, plus ten percent net revenue from parking fees annually.
4. **What will happen if the project is not approved?** The property will not be leased and the United stadium will not be constructed at this site.
5. **Is this service already provided by another entity?** No.

This Agreement (the “Agreement”) is made and entered into as of this ___ day of ____, 2023, by and between the City of Albuquerque, New Mexico, a New Mexico municipal corporation (the “City”), and United Athletic Club, a New Mexico limited liability company (“United” or “Tenant”).

RECITALS

WHEREAS, the City owns the Balloon Fiesta Park, located at the premises described on Exhibit A (the “Site”), which the City intends to renovate while maintaining and supporting the annual International Balloon Fiesta:

WHEREAS, United owns NM United, a professional soccer franchise that is a member of the United Soccer League and desires to privately finance the building of a multi-purpose stadium to benefit Balloon Fiesta Park and the community:

WHEREAS, United desires a location to build a multi-purpose stadium to enhance opportunities for sport and art in New Mexico, attract tourism to Albuquerque, create local and sustainable jobs, and to be a catalyst for enhanced public use and experiences at Balloon Fiesta Park, including to create a home for New Mexico United and a venue to host community events and entertainment experiences for New Mexicans:

WHEREAS, in 2020, 2021, and 2023, the New Mexico Legislature, appropriated funds for infrastructure to support a stadium in Albuquerque and designated the City as fiscal agent:

WHEREAS, United and the City desire that this Agreement shall set forth their full and complete understanding with respect to the subject matter contained herein and the terms and conditions under which United will (i) lease and occupy the Site; (ii) build and provide adequate security to City for the performance of United’s obligations hereunder; and (iii) schedule and play United’s home games and host other community events in the stadium:

NOW, THEREFORE, in consideration of the terms, covenants, and conditions herein set forth, City and United hereby agree as follows:

ARTICLE I. CONDITION PRECEDENT TO THE PARTIES’ OBLIGATIONS

Section 1.01. Agreement Date. This Agreement is effective and shall be binding on the parties (the “Agreement Date”) upon date of last signature.

Section 1.02. Conditions. This Agreement and the parties’ respective obligations contained herein are expressly conditioned upon (A) Tenant obtaining all necessary approvals from the United Soccer League, (B) Tenant obtaining private financing in an amount of at least thirty million dollars (\$30,000,000) to build a multi-purpose stadium at the Site, (C) Tenant securing Industrial Revenue Bonds by July 31, 2024, (D) the City’s infrastructure improvements to Balloon Fiesta Park as funded by the New Mexico Legislature, and (E) the City of

Albuquerque’s Environmental Planning Commission approving an amendment to the Balloon Fiesta Park Master Plan and approving a Site Plan.

ARTICLE II. LEASE OF PREMISES/TERM

Section 2.01. Demise. Unless otherwise terminated, effective on the Commencement Date, City hereby leases and demises exclusively unto Tenant, the Site (comprised of approximately seven acres within Balloon Fiesta Park and access to parking areas) described in Exhibit A, located in Bernalillo County, New Mexico, and all easements, appurtenances, covenants, privileges, access, utility, and solar rights, whether or not of record, belonging to or inuring to the benefit of City and pertaining to such land, if any, together with any adjacent strips, alleys, rights of way, public or private, open or proposed, and any street or road abutting such land (collectively, the “Land”).

Except as necessary to construct and operate the Stadium and appurtenances thereto, Tenant is not granted any air rights over or subsurface rights under the Land. Neither City nor Tenant will develop, permit any development of, or interfere in any way with any of the air rights or air space above the Land or any of the subsurface rights and space below the Land without the prior written consent of the other Party.

Tenant and City agree to develop the Stadium in a way that promotes synergy with and complements the Balloon Fiesta Park and agree to work together to ensure any Stadium events are coordinated and synchronized with the operations of Balloon Fiesta Park and timing each year and look for opportunities for the Stadium to enhance the park and the Albuquerque International Balloon Fiesta experience for the public. Unless otherwise agreed to with Albuquerque International Balloon Fiesta (“AIBF”) and the City, Tenant may not hold home soccer games at the Stadium during the AIBF, typically held in October of each year, except that nothing herein shall prevent Tenant from reasonable access to its facilities and operations during the AIBF.

Section 2.02. Term. The term of this lease (the “Term”) shall commence on the Commencement Date and shall continue for thirty (30) years thereafter (the “Expiration Date”), unless otherwise terminated in accordance with the terms herein. The “Commencement Date” shall mean the date that is ten (10) days following the delivery of written notice from Tenant to the City that Tenant has secured a certificate of occupancy for the Stadium from pertinent licensing authorities. On the Commencement Date, the Parties shall execute and deliver an “Acknowledgement of Commencement Date” and the Expiration Date shall be the last day of the 30th year following the Commencement Date and any extension so established.

(A) Options to Extend. Tenant, in its sole and absolute discretion, will have the option to extend this Lease (and to extend the Team Lease) for up to two (2) successive extension terms of fifteen (15) years each (each 15-year period, an “Extension Term”), each of which Extension Terms shall be upon all the same terms and conditions as set forth herein except for the reduction of the number of extension options as a result of each such exercise. If Tenant decides to exercise an extension option, then Tenant must provide written notice to City

of such election on a date (each, an “Extension Option Notice Date”) at least eighteen (18) months prior to the scheduled expiration of the Initial Term or any applicable Extension Term.

(B) **Conclusion of Term.** At the end of the term of the lease and any executed Options to Extend the Tenant agrees to sell the Stadium in its entirety to the City of Albuquerque for one (\$1) dollar unless the Term is extended by mutual agreement of the parties. At any time during the term of lease, Tenant may donate the Stadium to the City provided that the City accepts the donation. Tenant agrees to convey the Stadium in reasonable condition including all fixtures.

Section 2.03. Leasehold Priority. City covenants and agrees that Tenant’s leasehold estate in the Leased Premises shall be senior and prior to any lien or other encumbrance other than the encumbrances described herein or imposed by law.

ARTICLE III: PAYMENTS, RENT

Section 3.01. Base Rent Payment. From and after the Commencement Date and throughout the Term, Tenant shall pay to City the sum of \$35,000 per annum subject to a 2% annual increase at the discretion of the City, plus ten (10) percent net revenue from parking fees annually.

Section 3.02. Payments Due. Payments shall be made by Tenant to City by January 31 of each year for the previous year throughout the Term of the lease.

Section 3.03. Place of Payment. Rent shall be paid to City either at City Treasurer’s Office at One Civic Plaza or addressed to City Treasurer, P.O. Box 1293, Albuquerque, New Mexico, 87103, or at such other place as City may designate from time to time for this purpose.

Section 3.04. Accounting Matters. Tenant shall and hereby agrees to keep and maintain during the Lease Term and for a period of four (4) consecutive years following the end of each Lease Year, complete and accurate financial records for the gate and parking receipts and the expenses for operations of the Stadium, for each Lease Year. Tenant shall submit to the City on or before January 1 of each Lease Year, beginning on the first full year after the Commencement Date, a complete and accurate financial statement of the parking receipts. At any time, City shall have the right to inspect such financial statement with reasonable notice to the Tenant.

ARTICLE IV. STADIUM CONSTRUCTION

Section 4.01. Tenant’s Financing Obligation. Tenant agrees to invest a minimum of thirty million dollars (\$30,000,000) of private capital towards designing and building a stadium within the Site.

Section 4.02. Local Contractors. Tenant shall endeavor to hire and use local contractors for building and operating the Stadium, including construction and food and beverage services. All employees and contractors shall be paid no less than \$15 per hour or the prevailing minimum wage if higher than \$15 per hour for their services.

Section 4.03. Energy-Efficient Stadium. Tenant is committed to creating a Stadium that is energy-efficient, sustainable, environmentally conscious, including in the areas of solid waste (waste reduction, recycling, and composting) and water conservation.

Section 4.04. Project Construction Schedule. “Project Construction Schedule” means a schedule of critical dates relating to the stadium construction and the commencement of operations (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) ordering and delivering of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Stadium, (ii) completion of the Stadium’s design in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (iii) issuance of all governmental authorizations prerequisite to commencement of the construction, (iv) commencement of any of Tenant’s construction and all other construction work, (v) substantial completion of the construction; and (vi) all material elements of pre-opening services. Tenant shall submit to City the Project Construction Schedule within sixty (60) days after City commences Site Development as stated in Section 8.01(D). The Project Construction Schedule shall be adjusted as appropriate to reflect any delay in construction that the parties agree is reasonable.

ARTICLE V. USE OF LEASED PREMISES

Section 5.01. Use and Possession Rights. Tenant shall be entitled to exclusive use and possession of the Site subject only to the encumbrances and exceptions stated herein, none of which shall materially diminish Tenant’s ability to use the Leased Premises for its intended purposes. Tenant shall be entitled to grant licenses with respect to the Leased Premises, and shall be entitled to revenue from all events and activities (other than Reserved Community Events).

Section 5.02. Revenue from Events. Tenant shall be entitled to receive and retain all revenues, net of taxes, relating to the operations of the Team and the Stadium, including, but not limited to, revenues generated from the Stadium, the naming rights, sponsorship, advertising (including both in-stadium and exterior signage), tickets, merchandise, games, events, and ancillary revenues. Tenant agrees to bear all costs of operating the Stadium and parking on the Site at all times, including staffing, clean up and security.

Section 5.03. Concessions and Vendors. Tenant shall have the exclusive right to select and to establish the contractual terms for all stadium concessionaires and vendors. Tenant shall also have the exclusive right to market, sell, and retain all concessions, hospitality, merchandise, and other revenue from the Stadium and all events held at the Stadium except for Community Events as defined in Section 5.04 unless requested by the City. The Team shall endeavor to hire and use local contractors for building and operating the Stadium, including construction and food and beverage services.

Section 5.04. Public Use – Community Events. The City shall have the right to use the Stadium for at least ten (10) days per year for events as mutually agreed upon by the parties

(“Reserved Community Event Days”). On these Reserved Community Event days, Tenant shall provide the Stadium free of charge and the City will be responsible and assume liability for event planning, execution, and operating costs (excluding utilities) for and arising from each event for these Community Event Days.

ARTICLE VI. UTILITIES

Tenant shall pay the utility costs of Stadium operation and use to include water, sewer, electricity, gas, refuse services, internet and/ or television services and any such other cost reasonably understood as utility cost.

ARTICLE VII. TAXES

Tenant has the exclusive obligation to determine all applicable taxes to which it is subject, including gross receipts tax and compensating tax.

ARTICLE VIII CONDITIONS TO COMMENCEMENT OF LEASE TERM

Section 8.01. Conditions to Commencement of Lease Term. If the conditions set forth below (the “Conditions to Commencement”) are not timely satisfied or waived prior to the Commencement Date, City and Tenant shall each have the option in accordance with this Agreement to terminate this Lease and all future obligations hereunder.

(A) **Financing.** Tenant has obtained binding commitments in respect of the Project Financing within nine (9) months after the Environmental Planning Commission’s approval of the Master Plan amendment and Site Plan and all appeals therefrom have been exhausted.

(B) **Site Tests and Development.** The City’s Site Development shall include development of the Site in cooperation with the Tenant, including providing a build-ready pad for the Stadium pursuant to Section 13.02(A). The City’s work for the development of the Site shall include a site survey and any other necessary surveys and utility connectivity to the Site with relocation of existing utilities.

(C) **Suitability; Governmental Authorizations.** Tenant has determined that the Leased Premises are suitable for development as contemplated hereunder and has obtained all Governmental Authorizations necessary to permit commencement of construction of the Stadium, including building permits and engineering and land use approvals necessary for the commencement of development and construction of the Project Improvements, on or before September 30, 2024, provided, however, to the extent permitted by Applicable Laws, the construction permits and authorizations may be procured in stages and need not be obtained before such deadline.

(D) **Site Development Start Date.** City will begin groundwork on the Site within thirty (30) days of issuance of a building permit. **A BUILDING PERMIT CANNOT BE ISSUED UNTIL BALLOON FIESTA PARK MASTER PLAN IS AMENDED AND A SITE**

PLAN IS APPROVED BY THE ENVIRONMENTAL PLANNING COMMISSION AND ALL APPEALS FROM THE EPC HAVE BEEN EXHAUSTED.

(E) **Project Start Date.** Tenant has caused the construction of the Stadium to commence, subject to reasonable extensions due to any delays contrary to Section 8.01(D), on or before the later of (i) September 30, 2024, or (ii) sixty (60) days after City has met its obligations under Section 8.01(B) and (C).

(F) **USL Approval.** On or before March 31, 2024, United Soccer League has authorized Tenant to conduct its operations at the Stadium.

Section 8.2. Agreement to Consult. At any reasonable time, prior to the satisfaction of the Conditions in 1.02 or Conditions to Commencement, either Party may reasonably request a consultation meeting with the other party. In such event each Party shall designate a Representative, who shall meet, consult with and reasonably assist the other Party with respect to satisfaction of the Conditions to Commencement. Commencing on the date, which is thirty (30) days after the Execution Date and continuing monthly thereafter until Final Completion, Tenant shall give to the City Representative (i) a progress report each quarter concerning the status of Tenant's efforts to satisfy the Conditions to Continuance and (ii) a report setting forth any new matters occurring since the date of the last quarterly report that Tenant expects will change or significantly affect any such deadlines or milestones promptly after Tenant becomes aware of any such matters.

Section 8.3. Termination for Failure of Conditions to be Satisfied. If for any reason any Condition to Commencement has not been fully and timely satisfied (or waived in writing by City Representative and Tenant, as applicable) by the applicable deadline provided herein (as the same may be extended by City Representative) either Party may (subject to the limitations set forth herein), by Notice to the other Party elect to terminate this Lease, in accordance with Article XV.

ARTICLE IX. DELAYS AND EFFECT OF DELAYS

Section 9.01. Continued Performance. Upon the occurrence of a delay in any Party's performance of obligations agreed herein, the Parties shall endeavor to continue to perform their obligations under this Lease so far as reasonably practical. Toward that end, Tenant and City each hereby agree that each Party shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay and shall use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any delay.

ARTICLE X. REPAIRS AND MAINTENANCE

Section 10.01. Maintenance. Tenant will keep the Stadium in good, first-class working order, repair and condition, throughout the Term. Tenant and City, respectively, shall be responsible for repairs and maintenance for any component of the Stadium that they caused to be constructed, as stated more fully below.

Section 10.02. Tenant. Tenant shall be responsible, at its own cost and expense to repair and maintain in good, clean, safe and sanitary condition, and in compliance with all laws and USL requirements, all Stadium components that Tenant is responsible for constructing under this Agreement and under any amendments to this Agreement that the Parties may from time to time execute. Such components include, without limitation, all interior and exterior structures, areas (including the playing field), building systems, equipment, and fixtures existing at the Commencement Date stated in Section 2.02 of this Agreement or at any other time during the Term for which City was not responsible under this Agreement.

Section 10.03. City. City shall be responsible, at its own cost and expense, for repairs and maintenance of all components that (A) City caused to be constructed or (B) are required by this Lease to be open to the public. Such components include without limitation parking surfaces; utility lines to the point of connection to the Stadium; all retention ponds and all drainage pipes, culverts, basins, drop inlets and other drainage structures; and other public facilities constructed by the City.

In consideration for City's lease and Tenant's payment of rents, and subject to covenants stated in Article V, the Parties are entitled to reasonable use and enjoyment of the Site without regard to that Party's maintenance repair obligations.

ARTICLE XI. COMPLIANCE WITH LAW

Section 11.01. Tenant's Obligations. During the Term of this Agreement, Tenant shall, at its sole cost and expense:

(A) Legal Requirements. Comply with any notices of violations of any laws, orders, rules, regulations, directives, and orders (individually and collectively, "Legal Requirement(s)") of federal, state, county, municipal and local governments and quasi-governmental departments, commissions, boards, and public officers having jurisdiction over the Site (individually and collectively, "Governmental Authorities"), which may impose any violation, order, or duty upon Tenant with respect to the Stadium arising solely out of the business conducted by Tenant therein.

(B) Americans with Disabilities Act. Comply with all requirements of the Americans with Disabilities Act (ADA) and all applicable rules and regulations imposed directly on Tenant thereby. Tenant agrees to be responsible for knowing all applicable 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 sort brought against said parties as a result of any acts of omissions of Tenant or its agents, with respect to the Stadium, during the Term of this Agreement in violation of the ADA.

(C) Appeal. Have the right to contest or appeal any Legal Requirement, the foregoing notwithstanding, and shall not be required to comply with any such Legal Requirement during the pendency of any appropriate proceedings, as permitted by law.

ARTICLE XII. INSURANCE

Section 12.01. Tenant. From the Commencement Date and throughout the Term, Tenant shall provide and cause to be maintained the following insurance:

(A) Builder’s Risk Policies for all construction work. Following the Execution Date and prior to the commencement of any construction work and at all times during the performance of such work and for so long after the completion thereof that (i) any of Tenant’s other contractors or subcontractors has not been paid in full with respect to the construction or (ii) any person has any repair obligations with respect to the construction, Tenant shall, at its cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, builder’s “all risk” insurance policies (collectively, the “Builder’s Risk Policies for Construction”) affording coverage of such construction, whether permanent or temporary, against loss or damage due to insured casualty risks by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time in the City of Albuquerque, New Mexico.

(B) General Liability. Comprehensive general public liability insurance (including contractual liability coverage), with an insurance carrier licensed to do business in New Mexico, with a minimum Best’s rating of A, against claims for bodily injury, death, or property damage occurring upon or in the Stadium, such insurance to afford minimum protection of not less than Two Million Dollars in respect of bodily injury or death to any one person, and of not less than Five Million Dollars in respect of any one accident, and of not less than One Million Dollars for property damage, or such lesser amounts as may be approved by City. City shall be named as a co-insured, and the policy shall not be canceled except upon thirty (30) days prior written notice thereof to City.

(C) Business Interruption. Tenant shall also obtain and maintain Business Interruption Insurance, with an insurance carrier licensed to do business in New Mexico, with a minimum Best’s rating of A, in an amount equal to \$150,000, showing City as co-insured. Tenant shall be responsible for any deductible amount payable under such coverage in the event of an insured loss. To the extent City receives the proceeds of Business Interruption Insurance, Tenant shall be relieved of the obligation to pay Rent for the period covered by the insurance proceeds.

Section 12.02. City Self Insurance. City may elect to self-insure against any or all of the risks, or any portion thereof, against which City is required to insure.

Section 12.03. Waiver and Release. The Parties hereby waive and release each other from any and all liabilities, claims and losses arising from damage to the waiving Party or its property, or damages to an individual or entity under the waiving Party’s control.

ARTICLE XIII. CITY’S WARRANTIES AND COVENANTS

Section 13.01. Representations. City represents, warrants, and covenants to Tenant:

(A) City has the right and lawful authority to enter into this Agreement and perform City’s obligations hereunder.

(B) City is the fee owner of good and marketable title to the Site, free and clear of any mortgages or liens, leases or tenancies, agreements, easements or restrictions, or other matters which would adversely affect Tenant’s use or occupancy of the Site.

(C) City has no actual knowledge that the Site has been used as a storage facility or burial site for hazardous materials or of the presence of hazardous materials on, in, or under the Site.

Section 13.02. City’s Additional Obligations.

(A) As fiscal agent for funds already appropriated by the State for Site Development and any additional State funding, the City agrees to grade, create and maintain parking areas suitable for Tenant use; create a public, common area plaza(s) generally to the North, West and South of the Stadium including lighting; stabilize, retain, and terrace the east and south edges of the bowl of the Site along the existing escarpment; provide lighting for urban greenspace areas, pedestrian use; landscaping for the Park, including the creation of shade areas and public restrooms which shall be accessible to the public during Balloon Fiesta; improve the fencing and entrance to the Stadium, by July 1, 2025; and execute on any infrastructure needs as agreed by the Parties.

(B) The City agrees to support and help secure Industrial Revenue Bonds (“IRBs”) for the Stadium.

ARTICLE XIV. TENANT’S WARRANTIES AND COVENANTS

Section 14.01. Representations. Tenant represents, warrants, and covenants to City that Tenant has the right and lawful authority to enter into this Agreement and perform Tenant’s obligations hereunder.

Section 14.02. Tenant’s Additional Obligations. Tenant covenants and agrees that it will:

(A) Market and promote the Club in Albuquerque commensurate with industry standards for similar USL soccer sports franchises.

(B) Retain, employ, compensate, train, and manage a sufficient number of personnel to discharge its responsibilities and obligations under this Agreement.

(C) Control ingress and egress to and from the On-Site Parking during Tenant-sponsored events, and to develop the Stadium in way that provides synergy with and complements the Park and agrees to work together to ensure any Stadium events are coordinated and synchronized with the Balloon Fiesta Park and the Balloon Fiesta timing each year and look for opportunities for the Stadium to enhance the Balloon Fiesta Park and the Balloon Fiesta experience for the public.

(D) Tenant agrees to use best efforts to operate a professional women’s soccer team franchise.

(E) Tenant agrees to use best efforts to host the men’s and women’s state high school soccer championship games.

(F) Provide the City with a box or cabana or specialized seating depending on the configuration of the Stadium for New Mexico United games and Tenant-sponsored public events for community use to be determined at the discretion of the City.

(G) Tenant agrees to work with the City to develop opportunities for art programming, sports programming, soccer tourism and / or other public events in order to facilitate community use of the Stadium and enhance the public experience of the Park.

(H) Tenant shall endeavor to minimize the impact on neighboring communities during construction of the Stadium. In conjunction with the City, Tenant agrees to develop a Community Benefits program.

(I) Tenant agrees it will use the Stadium as the official home field for a men’s professional soccer team (currently the New Mexico United).

ARTICLE XV. DEFAULT

Section 15.01. Tenant’s Default. The following shall constitute Tenant’s Events of Default under this Agreement:

(A) If Tenant fails to pay any payments due to City hereunder for ten (10) business days after receipt of written notice by certified mail from City to Tenant of such failure; or

(B) If Tenant fails to perform or observe any material requirement, obligation, agreement, covenant, or condition of this Agreement, and any such failure shall continue for forty-five (45) days after City gives Tenant written notice thereof.

Section 15.02. City’s Remedies. Except as to Section 17.01, City may not exercise any of the following remedies until after a breach of this Agreement by Tenant is established by a court in accordance with Section 17.05, whereupon such breach becomes an Event of Default as set forth in Section 15.01. At any time following any Event of Default, City, without waiving any

other rights herein or available to City at law or in equity, may give Tenant thirty (30) days' written notice of termination of this Agreement without or without notice of City's intention to re-enter and take possession of the Site. The giving of such notice to Tenant of City's election under this Section shall terminate Tenant's right to possession of the Site under this Agreement without prejudice, however, to the rights of City or Tenant to exercise all other available legal remedies and defenses and without discharging the Parties from any liabilities hereunder arising prior to termination.

Section 15.03. City's Termination. If City terminates this Agreement pursuant to Section 15.02 at any time after Commencement Date but before the expiration of the first extension Term, as defined in Section 2.02, Tenant shall be responsible for its outstanding debt from Tenant's financing of the Stadium's construction.

Section 15.04. City's Default. The following shall constitute City Events of Default under this Agreement:

- (A) Failure to comply with any covenant, agreement or condition contained in this Lease that remains uncured after a period of sixty (60) days after receipt of written notice of default from Tenant;
- (B) Failure to perform maintenance as required by this Lease that remains uncured after a period of sixty (60) days after receipt of written notice from Tenant;
- (C) City or any of its instrumentalities, departments, or authorities causes any authorization, approval, ordinance, filing, or registration necessary to enable City to comply with its obligations under this Lease to be revoked, rescinded, suspended, invalidated, or otherwise limited in effect in a manner that would affect materially and adversely City's ability to perform its obligations under this Lease.

Section 15.05. Tenant's Self-Help and Offset Remedies. In the case of a City Event of Default or if City fails to perform any obligation under this Lease, and City does not cure such failure or Event of Default within sixty (60) days after receiving written notice thereof (provided that, if the failure is of a nature that cannot be cured within sixty (60) Days, but the City commences in good faith to cure such failure within sixty (60) days and diligently and continuously pursues the cure to completion as soon as reasonably possible, City will not be deemed to have committed an Event of Default), Tenant may, without waiving any other rights herein or under law or equity, inform City that Tenant intends to perform the obligation that City has failed to perform. Tenant's notice must inform City of the action Tenant intends to take, and City shall have fifteen (15) days after receiving Tenant's notice to reject Tenant's proposed action. If City approves or fails timely to object to Tenant's notice, Tenant may take the proposed action and City will be obligated to reimburse Tenant for the reasonable, actual costs incurred by Tenant to effect such cure, to the extent documented by invoices or other written evidence. If City fails to pay the reasonable, actual costs and expenses within thirty (30) days after written demand therefor, Tenant may deduct the amount due by City to Tenant under this subsection as an offset from Tenant's Rent obligations. Tenant shall perform any work pursuant to this subsection in accordance with Article V of this Agreement.

ARTICLE XVI. UNAVOIDABLE DELAYS / FORCE MAJEURE

Time limits for each Party’s satisfaction of any obligation or condition under this Agreement may be reasonably tolled in case of unavoidable delays or of any Force Majeure. “Force Majeure” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Lease or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party’s negligence or willful misconduct and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (c) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning, pandemics, and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage, and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Lease or any Applicable Laws; and (vii) failure of either Party to perform any of its obligations under this Lease within the time or by the date required pursuant to the terms of this Lease for the performance thereof.

ARTICLE XVII. MISCELLANEOUS

Section 17.01. No Waivers. The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

Section 17.02. Relationship of Parties. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties other than the relationship of Landlord and Tenant. Nothing contained herein shall in any way impose any liability upon the officers, directors, or employees of City or Tenant.

Section 17.03. Recording. A Memorandum of this Agreement will be recorded in the real property records of the County of Bernalillo.

Section 17.04. Captions. The captions, section numbers and index appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles nor in any way affect this Agreement.

2023 Master Lease Agreement
United Athletic Club, LLC – City of Albuquerque

Section 17.05. Applicable Law/Venue/Severance. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico and any suit to enforce any provision of this agreement shall be brought in a court of competent jurisdiction in Bernalillo, County, New Mexico. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by the law.

Section 17.06. Entire Agreement. This Agreement and the exhibits attached hereto and forming a part thereof, set for all the covenants, promises, agreements, conditions and understandings between City and Tenant concerning the subject matter hereof and there are no covenants, promises, agreements conditions, or understandings heretofore made, either oral or writ, between the parties other than as herein set forth. No modification, amendment, change, or addition to this Agreement shall be binding upon City or Tenant unless reduced to writing and signed by each party.

Section 17.07. Sunset Clause. If the commencement of construction pursuant to Section 4.04 has not occurred by December 31, 2027, this Agreement shall terminate.

Section 17.08. Dispute Resolution.

(A) General. In the event a dispute arises between the parties in any way connected with this Agreement, the parties shall try to resolve the dispute informally, including use of a mutually agreeable mediator. In the event mediation does not succeed, the parties may pursue remedies in a court of competent jurisdiction in Bernalillo County, New Mexico.

(B) Costs and Expenses. Each party shall be responsible for its own attorney's fees and costs in seeking enforcement of any provision of this Agreement. The costs of a mediator will be borne equally by the parties.

-----SIGNATURES FOLLOW-----

2023 Master Lease Agreement
United Athletic Club, LLC – City of Albuquerque

CITY OF ALBUQUERQUE

Chief Administrative Officer
City of Albuquerque

Date

Legal Department
City of Albuquerque
For legal sufficiency only

Date

UNITED ATHLETIC CLUB, LLC

Peter Trevisani
Manager

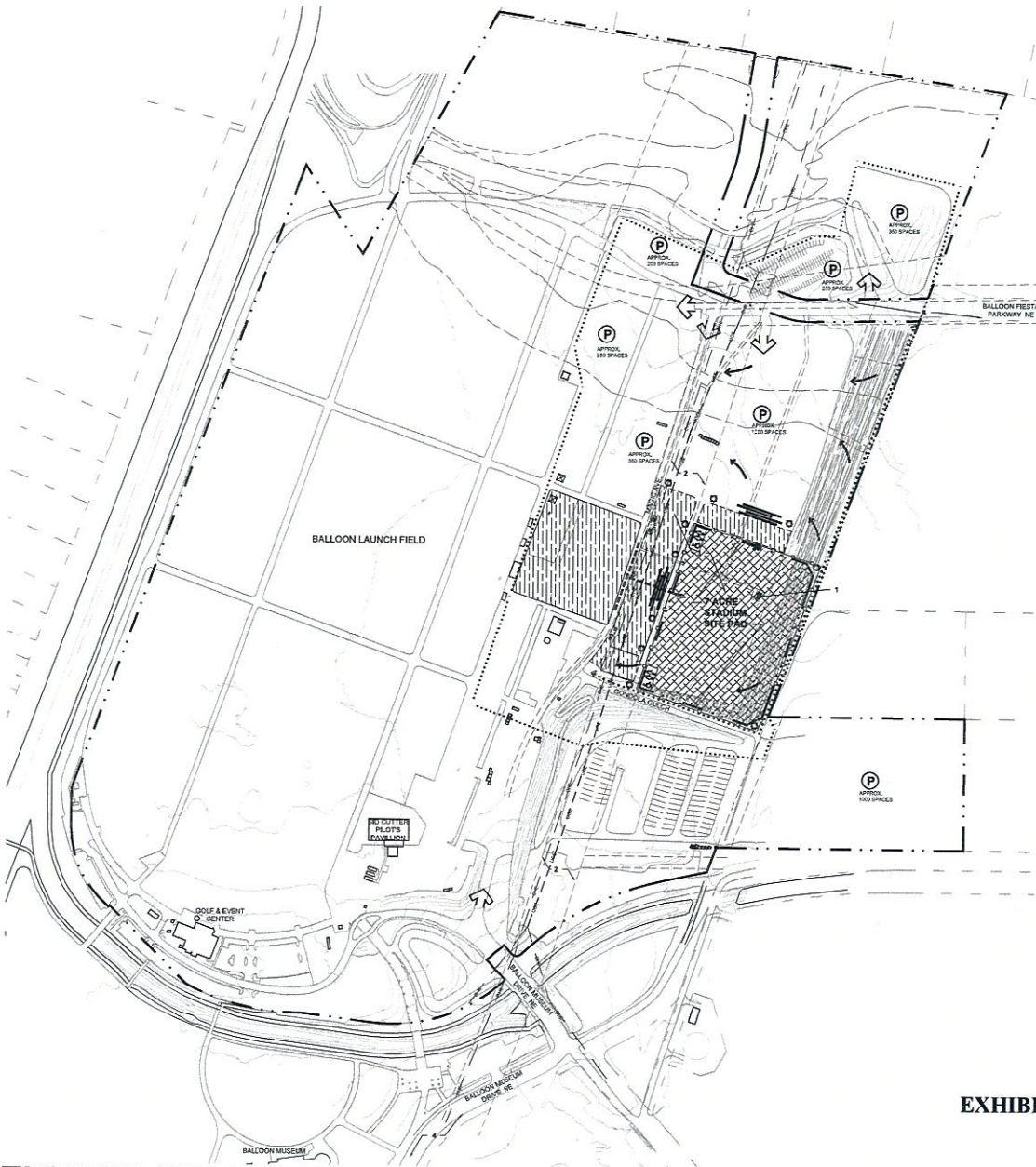
Date

Katherine Ferlic
Counsel
For legal sufficiency only

Date

City Council approved this
Agreement as EC No. _____
On ___ day of _____, 2023

City Clerk

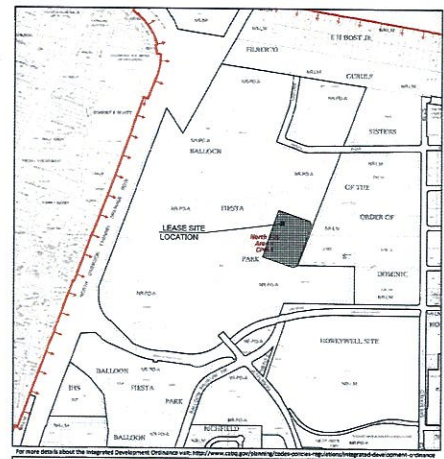


KEYED NOTES:

1. REMOVE EXISTING VERIZON BUILDING, FENCE, AND ASSOCIATED INFRASTRUCTURE
2. EXISTING 150' WIDE OVERHEAD ELECTRIC EASEMENT, WIDTH OF EASEMENT TO BE MODIFIED. HIGH VOLTAGE POWER LINES WITHIN THIS ZONE TO REMAIN. LOW VOLTAGE POWER / DATA LINES TO BE BURIED.
3. GEOTECHNICAL AND ENVIRONMENTAL ASSESSMENT PROVIDED WITHIN HATCHED ZONES OF BUILD-READY PAD SITE AND PUBLIC COMMONS AREAS.
4. TRAFFIC STUDY CONDUCTED FOR AREA EXTENDING FROM TRAMWAY TO THE NORTH, AND ALAMEDA TO THE SOUTH.
5. UTILITIES CONNECTIONS TO BUILD-READY PAD INCLUDE FIRE AND DOMESTIC WATER SERVICE, SANITARY SEWER, GAS, ELECTRICAL AND DATA.

LEGEND

- 7 ACRE BUILD-READY PAD FOR STADIUM
- ACCESSIBLE PUBLIC COMMONS AREAS
- STABILIZE ESCARPMENT / AREA OF STEEP TOPOGRAPHY AND TERRACE INTO FUNCTIONAL PUBLIC LANDSCAPE
- PUBLIC SHADE STRUCTURE
- PUBLIC RESTROOMS IN PROXIMITY TO BUILD-READY PAD
- EXISTING BUILDING TO REMOVE
- IMPROVED PAVED PARKING AREAS WITH SAFE AND ACCESSIBLE GRADING FOR ACCESS TO BUILD-READY PAD SITE.
- BOUNDARY OF SITE DESIGN AND IMPROVEMENTS AREA
- BALLOON FIESTA PARK PROPERTY LINE
- ADJACENT PROPERTY LINES
- EXISTING EASEMENTS, FULL EXTENT OF EXISTING SITE EASEMENTS TO BE PROVIDED BY THE CITY.
- UTILITY CONNECTIONS TO BUILD-READY PAD
- DIRECTION OF PROPER SITE DRAINAGE TO BE CONFIRMED OR ESTABLISHED BY SITE IMPROVEMENTS INCLUDING RE-GRADING AND/OR RE-PAVING.
- IMPROVED VEHICULAR CIRCULATION / ACCESS LOCATIONS INCLUDING ENTRANCE IMPROVEMENTS.
- MULTIMEDIA DIGITAL DISPLAY SYSTEM
- SITE LIGHTING
- SECURE FENCING TO BE PROVIDED.
- ACCESSIBLE MULTIMEDIA PEDESTRIAN TRAIL
- EXISTING OVERHEAD ELECTRICAL LINES
- EXISTING OVERHEAD ELECTRICAL LINES RELOCATED UNDERGROUND AT LOCATION ADJACENT TO LEASE AREA



IDO Zone Atlas May 2018

Zone Atlas From **B-17-Z**

AGIS

For more details about the Integrated Development Ordinance (IDO) visit <http://www.ci.albuquerque.nm.us/government/planning-and-development/ido>

1000 zoning information as of May 11, 2018. The Zone Districts and Overlay Zones are established by the Albuquerque Development Ordinance (IDO).

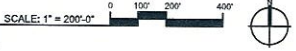
ZONE MAP B-17-Z

- GENERAL NOTES:**
- A. PLANNED PUBLIC EXPENDITURES PURSUANT TO CAPITAL OUTLAY APPROPRIATIONS BY THE NEW MEXICO STATE LEGISLATURE.
 - B. UTILITIES / EASEMENTS INDICATED GRAPHICALLY ON THE SITE PLAN DO NOT REPRESENT THE COMPLETE EXTENT OF EXISTING UTILITIES / EASEMENTS AND ARE PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY.

EXHIBIT A

EXHIBIT SITE PLAN

NEW MEXICO UNITED STADIUM • SITE LEASE AT BALLOON FIESTA PARK
 ALBUQUERQUE, NEW MEXICO
 28 September 2023



TYPICAL VIEW WITHIN ACCESSIBLE PUBLIC COMMONS AREAS