

EC-22-113




CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM


05/05/2022

TO: Isaac Benton, President, City Council**FROM:** Timothy M. Keller, Mayor **SUBJECT:** First Amendment to Atlantic Aviation Fixed Base Operator Lease and Operating Agreement

I transmit herewith for City Council approval a proposed First Amendment to the Fixed Base Operator Lease and Operating Agreement ("Amendment") between the City of Albuquerque and Atlantic Aviation Albuquerque, Inc. ("Atlantic Aviation").

This Amendment will allow Atlantic Aviation to: (1) expand its leasehold by 34,500 square feet in consideration for additional rent, (2) construct a large hangar facility at its sole expense, and (3) insert language required by the Federal Aviation Administration.

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

Approved:
Lawrence Rael
Acting Chief Administrative Officer

Date

Approved as to Legal Form:

DocuSigned by:



5/23/2022 | 9:42 AM MDT

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Esteban A. Aguilar, Jr.
City Attorney

Date

Recommended:

DocuSigned by:

4E327F3E2466405...
Richard G. McCurley
Director of Aviation

Date



FISCAL IMPACT ANALYSIS

TITLE: First Amendment to Atlantic Aviation Fixed Base Operator Lease and Operating Agreement R: O:
FUND: 611
DEPT: 70000611

- ☒ 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:

	2022	Fiscal Years 2023	2024	Total
Base Salary/Wages	-	-	-	-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses	-	-	-	-
Property	-	-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[X] Estimated revenues not affected				
[] Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City In-kind Match				
City IDOH				
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

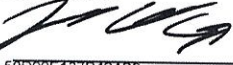
Number of Positions created

COMMENTS: This will have no impact on budgeted revenues.

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

PREPARED BY:

DocuSigned by:

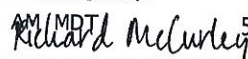


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FISCAL ANALYST

5/10/2022 | 10:26 AM MDT

APPROVED:

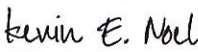
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5/16/2022 | 8:13 AM PDT
DIRECTOR (date)

REVIEWED BY:

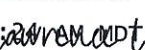
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55A9A311B438448
EXECUTIVE BUDGET ANALYST

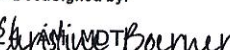
5/18/2022 | 10:24 AM MDT

DocuSigned by:



5022ED7BFB0344E
BUDGET OFFICER (date)

DocuSigned by:



5/23/2022 | 9:05 AM MDT
CITY ECONOMIST

Cover Analysis

1. What is it?

A First Amendment (“Amendment”) to the Fixed Base Operator Lease and Operating Agreement (“Agreement”) between the City and Atlantic Aviation Albuquerque, Inc. (“Atlantic Aviation”) that allows Atlantic Aviation to lease space and operate on Aviation Department property.

2. What will this piece of legislation do?

Council approval of this Amendment will allow the Aviation Department to amend the Agreement between the City and Atlantic Aviation. The Amendment contains the following salient provisions:

- (1) Expands the amount of land leased by Atlantic Aviation by Thirty-four Thousand Five Hundred square feet (34,500 SF);
- (2) Obligates Atlantic Aviation to construct a new hangar on its expanded leasehold at its sole expense; and
- (3) Updates the underlying agreement to include contract provisions now required by the Federal Aviation Administration.

3. Why is this project needed?

The Amendment will allow Atlantic Aviation to accommodate more aircraft in the new hangar facility and will result in increased revenue to the Aviation Department.

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 Aviation Department currently receives \$70,186.50 per year in rent from Atlantic Aviation. Approval of this amendment will increase that amount by \$9,315.00, for a total annual amount of \$79,501.50, which amount will be subject to annual increases.

Albuquerque International Sunport
First Amendment
Fixed Base Operator Lease and Operating Agreement
Atlantic Aviation Albuquerque, Inc.

This First Amendment to the Fixed Base Operator Lease and Operating Agreement ("Amendment") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City"), and **Atlantic Aviation Albuquerque, Inc.**, a New Mexico corporation ("Operator", and, together with City, the "Parties", and each, a "Party").

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

Section 1. Recitals.

A. The Parties have entered into a certain Fixed Base Operator Lease and Operating Agreement, effective March 1, 2012 ("Agreement"); and

B. City owns the General Aviation Ramp adjacent to Operator's Premises, which was constructed with grant funding provided by the FAA; and

C. The Parties desire to amend the Agreement to add to Operator's Land a 34,500 square foot portion of the General Aviation Ramp, on which Operator wishes to construct a hangar facility ("New Hangar") for its exclusive use; and

D. The Parties wish to incorporate into the Agreement provisions required by the FAA; and

E. The Parties have the right and power to enter into this Amendment.

Section 2. Amendments to the Agreement. As of the Effective Date (defined below), the Agreement is hereby amended or modified as follows:

A. Section 3. Land, of the Agreement is deleted in its entirety and replaced with the following language:

Section 3. Land. City, for and in consideration of the rents and fees reserved in this Agreement and each of the covenants, conditions and agreements set forth in this Agreement to be kept and performed by Operator, hereby leases to Operator for its exclusive use, and Operator hires and takes from City upon the conditions, covenants and agreements set forth in this Agreement, all of which Operator accepts, a certain tract of land at the Airport approximately two hundred ninety-four thousand four hundred fifty (294,450) square feet in size ("Land"), as depicted in the Revised **Exhibit B** Atlantic Aviation Land. The Parties acknowledge that, of the 34,500 square feet of Land underlying the New Hangar, 32,630 square

feet thereof is real property that was developed into part of the General Aviation Ramp using FAA funds. The New Hangar is deemed a Leasehold Improvement that is subject to all provisions of the Agreement pertaining to other Leasehold Improvements.

B. Exhibit B of the Agreement is replaced with the Revised Exhibit B Atlantic Aviation Land attached hereto.

C. Exhibit C of the Agreement is replaced with the Revised Exhibit C General Aviation Ramp attached hereto.

D. Exhibit D of the Agreement is replaced with the Revised Exhibit D Atlantic Aviation Aircraft Parking Ramp Area attached hereto.

E. Subsection 10.2.1, Land Rent of the Agreement is deleted in its entirety and is replaced with the following language:

10.2.1 Rent. Operator shall pay Rent to City for the use of the part of the Premises not used as the New Hangar at a rate of \$0.27 per square foot, or \$70,691.40 per year, payable in advance without invoice on the first day of each calendar month in equal monthly installments of \$5,890.95.

F. A Section titled **10.2.2 New Hangar Rent** is added to the Agreement, providing as follows:

10.2.2. New Hangar Rent. Operator shall pay New Hangar Rent to City for the use of the New Hangar at a rate of \$0.64 per square foot, or \$20,883.20 per year, payable in advance without invoice on the first day of each calendar month in equal monthly installments of \$1,740.27. The initial rent rate of \$0.64 for 32,630 square feet of ramp area transferred into Operator's Premises includes an additional thirty-seven cents (\$0.37) per square foot to compensate for FAA grant funds used to construct such portion of the General Aviation Ramp. Operator agrees to further reimburse the City to the extent that the FAA determines that the additional compensation is insufficient. Any further reimbursement shall be merged into the monthly lease payment for the duration of the agreement. Only \$0.27 per square foot of the New Hangar Rent is subject to escalation pursuant to Section 10.2.1.1.

G. Subsection 31.4, Discrimination Prohibited, of the Agreement is deleted in its entirety and replaced with the following language:

31.4 Non-Discrimination.

A. State and Local Compliance. Operator 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.

B. Federal Compliance.

1. General Civil Rights Provision

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

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

a) 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.

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

c) 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.

d) 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.

e) 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:

1. Withholding payments to the contractor under the contract until the contractor complies; and/or
2. Cancelling, terminating, or suspending a contract, in whole or in part.

f) Incorporation of Provisions: The contractor will include the provisions of paragraphs a) through f) 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.

3. Title VI Clauses for Lease of Real Property. Operator, 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 Operator 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.

4. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- •Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. Disability Laws and Accessibility Requirements. Operator shall comply and shall require its sublessees and contractors to comply and act in accordance with provisions of the Americans with Disabilities Act of 1990 (the "ADA"), and federal regulations promulgated thereunder. With respect to any improvements Operator constructs on the Premises, Operator agrees to be responsible for knowing all applicable rules and requirements of the ADA and to meet all the requirements of the ADA which are imposed directly on the Operator or which would be imposed on City as a public entity.

H. A Section titled **11.6 Audits and Inspections** is added to the Agreement, providing as follows:

11.6 Audits and Inspections. The Operator understands and will comply with the City's Accountability in Government Ordinance, § 2-10-1 et seq. and the Inspector General Ordinance, § 2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

Section 4. Term of Amendment. The term of this Amendment shall begin on the first day of the month following execution of all parties, but shall be void if Operator does not commence construction of the New Hangar within twenty-four (24) months of execution of this Amendment, or fails to complete construction of the hangar within twenty-four (24) months of the start date of construction.

Section 5. Signature Process. The Parties agree that this Agreement may be electronically signed and that the electronic signatures appearing hereon are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Section 6. Effect of Amendment. Except as expressly stated in this Amendment, the terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of a conflict in the terms and conditions of this Amendment and the Agreement, the terms and conditions of this Amendment shall control. Capitalized terms appearing herein shall have the meanings assigned in the Agreement, unless otherwise defined in this Amendment.

Section 7. Approval of Amendment. This Amendment shall not become effective or binding until approved by the Albuquerque City Council and signed by City's Chief Administrative Officer ("CAO", and such date of signing by the CAO, the "Effective Date").

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

City of Albuquerque:

By: _____ Date: _____
Sarita Nair
Chief Administrative Officer

Recommended:

By: _____ Date: _____
Richard G. McCurley
Director of Aviation

Operator: Atlantic Aviation Albuquerque, Inc.

By: _____ Date: _____
Louis T. Pepper
Chief Executive Officer

Exhibit B
Atlantic Aviation Land

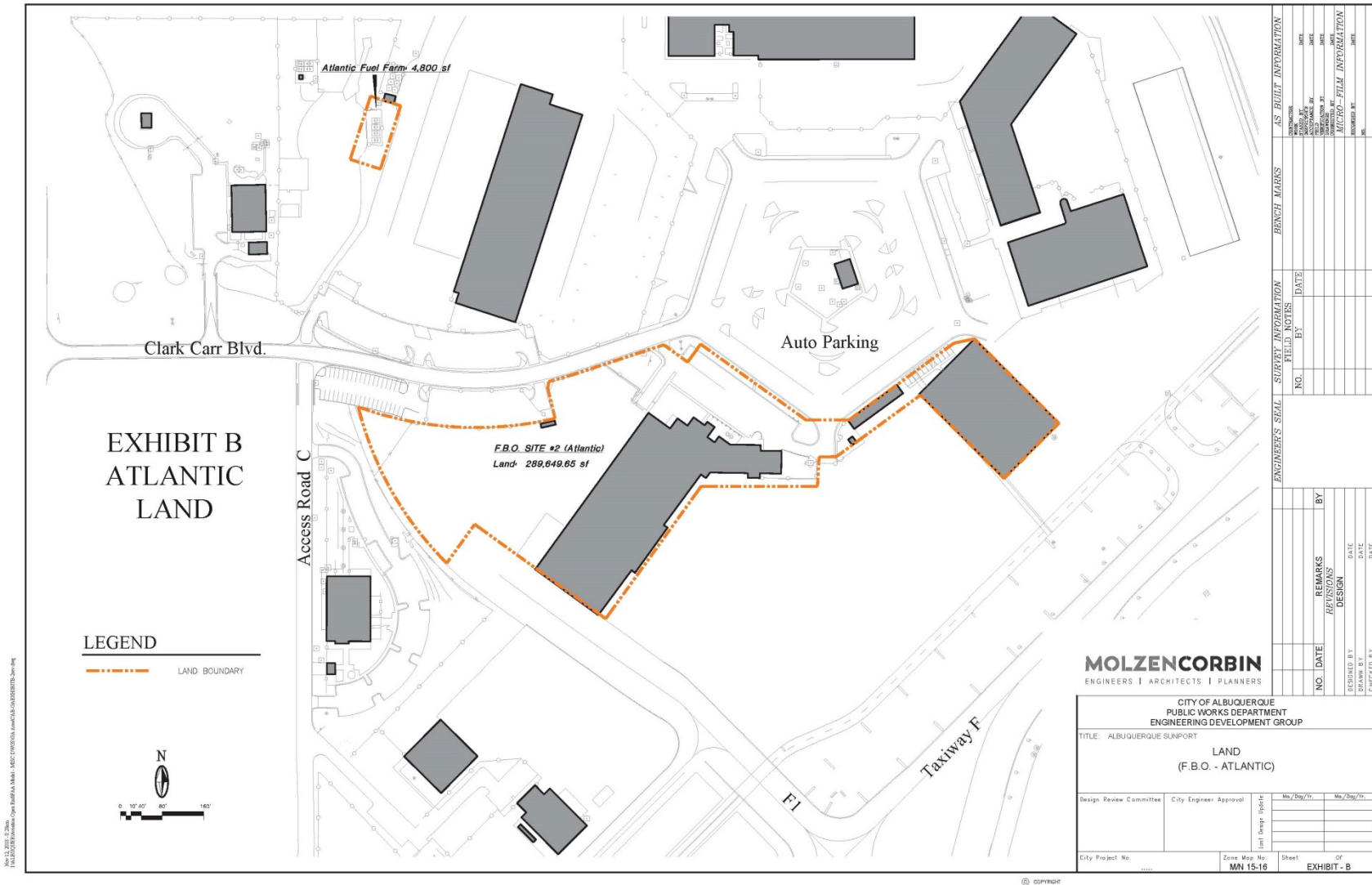


Exhibit C
General Aviation Ramp

Exhibit D

**Atlantic Aircraft
Parking Ramp Area**

