


CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

July 19, 2024

TO: Dan Lewis, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Executive Communication regarding Lease at 4904 4th Street NW

The City of Albuquerque owns the property located at 4904 4th Street. For the last 20 years, a non-profit organization named, North Fourth Art Center, held the lease with the City. It came to an end on January 31, 2024. Therefore, the Department of Arts & Culture would like to enter into a new 3-year lease with the Albuquerque Sign Language Academy (ASLA) for the same property located at 4904 4th Street NW.

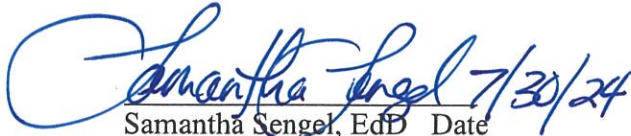
ASLA has agreed to afford programming to the Albuquerque community such as, but not limited to, the following activities: art classes, art exhibits, theater performances, as well as programming and services for individuals with disabilities.

The City Administration and the Department of Arts & Culture seeks your approval to move forward with this lease with ASLA. ASLA has agreed to pay the City \$1,000/month in rent in order to occupy the premises as well as the provide the aforementioned art amenities to Albuquerque residents.

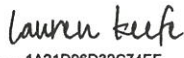
Thank you in advance for your consideration to this matter.

SUBJECT: Executive Communication regarding Lease at 4904 4th Street NW

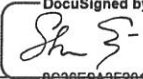
Approved:


Samantha Sengel, EdD Date
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:
 7/29/2024 | 1:44 PM MDT
1A21D96D32C74EE...
Date
City Attorney

Recommended:

DocuSigned by:
 7/24/2024 | 1:33 PM MDT
8C96E9A3F201429...
Dr. Shelle Sanchez Date
Director, Dept of Arts & Culture

Cover Analysis

1. What is it?

It is a lease with the Albuquerque Sign Language Academy (ASLA) for the City owned property located at 4904 4th Street NW.

2. What will this piece of legislation do?

This piece of legislation will lease the property at 4904 4th Street NW to the Albuquerque Sign Language Academy, a state authorized public charter school district, for a 3-year term at \$1,000/month with the option to extend for two consecutive 3-year periods at the same monthly rate.

3. Why is this project needed?

This project is needed because it allows the City to offer programming to the Albuquerque community such as, but not limited to, the following activities: art classes, art exhibits, theater performances, as well as programming and services for individuals with disabilities.

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

This lease will not cost the City anything. ASLA has agreed to pay \$1,000/month in addition to offering the aforementioned community programming.

5. Is there a revenue source associated with the contract? If so, what level of income is projected? Yes, there is projected revenue of \$1,000/month for 3-year term at \$1,000/month. The tenant and City have the option to extend for two consecutive 3-year periods at the same monthly rate.

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

If the project is not approved, the property at 4904 4th Street will remain vacant and the City will continue paying utilities and maintenance of a vacant building until it finds another tenant or another purpose for it. More importantly, Albuquerque residents will lose the proposed cultural programming mentioned above.

7. Is this service already provided by another entity?

No, not that we are aware of.

FISCAL IMPACT ANALYSIS

TITLE: Executive Communication regarding Lease at 4904 4th Street NW

R: O:
 FUND: 110
 DEPT: Arts & Culture

- 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:

	Fiscal Years			
	2025	2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property				-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input checked="" type="checkbox"/> Estimated revenue impact				
Revenue from program	12,000	12,000	12,000	36,000
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ 12,000	12,000	12,000	36,000

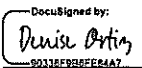
These estimates do not include any adjustment for inflation.
 * Range if not easily quantifiable.

Number of Positions created

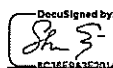
COMMENTS:

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

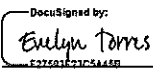
PREPARED BY:

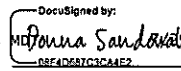
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 7/24/2024 | 1:32 PM MDT
 FISCAL MANAGER (date)

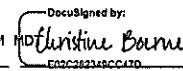
APPROVED:

DocuSigned by:

 7/24/2024 | 1:33 PM MDT
 DIRECTOR (date)

REVIEWED BY:

DocuSigned by:

 7/25/2024 | 10:35 AM MDT
 EXECUTIVE BUDGET ANALYST (date)

DocuSigned by:

 7/29/2024 | 12:15 PM MDT
 BUDGET OFFICER (date)

DocuSigned by:

 7/29/2024 | 1:38 PM MDT
 CITY ECONOMIST (date)

LEASE AGREEMENT

This Lease Agreement (“Lease”) made and entered into by and between the City of Albuquerque (“City”), a New Mexico municipal corporation and the Albuquerque Sign Language Academy, a state-authorized public charter school district, and having an address of 4904 Fourth (4th) Street NW (“Tenant”), a New Mexico non-profit company. Tenant and City may each be referred to herein individually as a “Party” and collectively as the “Parties.”

I. MISCELLANEOUS REPRESENTATIONS.

WHEREAS, the City owns certain real property generally identified by the street address of 4904 Fourth Street NW in the City of Albuquerque as more specifically described on the attached Exhibit A (the “Property”); and

WHEREAS, the Agreement with the previous tenant expired January 31, 2024; and

WHEREAS, Tenant wishes to lease from the City as demonstrated through their submittal of an RFP on December 20, 2023, and the City desires to lease to Tenant, the Property, including the building located thereupon (the “Building”); and

WHEREAS, the City has determined that it is in the best interest of the City to both support nonprofit enterprises and to provide the type of services furnished by entities like Tenant that align with the City’s efforts to provide community access to the arts, including but not limited to exhibits encompassing various mediums, performing arts, arts education, and creative activities and engagements, the City therefore desires to lease the Property to Tenant subject to the terms set forth in this Lease; and

WHEREAS, the City and Tenant wish to enter into this Lease.

II. BASIC LEASE PROVISIONS.

For mutual consideration, and on the terms and subject to the conditions set forth herein, City hereby leases the Property to Tenant, and Tenant hereby leases the Property from the City. City and Tenant hereby agree as follows:

- 1. DEFINITIONS.** In addition to the terms defined throughout this Lease, the following terms shall be defined as follows:

- 1.1 “Property”** means that certain real property situated at the street address, 4904 Fourth Street NW in the City of Albuquerque, County of Bernalillo, State of New Mexico, as more specifically shown and described on **Exhibit A**, attached hereto.

- 1.2** “**Building**” means the building and other associated improvements that are situated on the Property.
- 1.3** “**Environmental Law**” means any Federal, State or local law, statute, ordinance or regulation, rules or guidelines, now or hereafter in effect, pertaining to or governing Hazardous Substances or which relate to the protection of human health, safety, or that of environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), and RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).
- 1.4** “**Hazardous Substance**” means any substance, material, waste, pollutant, or oil, which is, or becomes designated classified, or regulated as being “toxic,” “hazardous,” “radioactive,” “dangerous,” or a “pollutant,” or any similar term, which is or becomes similarly designated, classified, or regulated, under any Environmental Law, including asbestos, petroleum, products.

2. THE TERMS.

- 2.1** **Effective Date:** This Lease will not be binding upon the Parties until it is signed by Tenant and approved by the Albuquerque City Council and signed by the Chief Administrative Officer or her designee. (“Effective Date”).
- 2.2** **Delivery Date:** The “Delivery Date” shall be the same as the Effective Date.
- 2.3** **Lease Commencement Date:** The “Lease Commencement Date” shall be the same as the Estimated Rent Commencement Date. The Parties acknowledge in the event of a delay in executing this Lease, it is the intent and explicit agreement of the Parties that all of the terms and conditions of the Lease are applicable continuously with a commencement date of July 1, 2024.
- 2.4** **Estimated Term Commencement Date:** The “Estimated Term Commencement Date” shall be: **July 1, 2024**. The Parties acknowledge in the event of a delay in executing this Lease, it is the intent and explicit agreement of the Parties that all of the terms and conditions of this Lease are applicable continuously with a commencement date of July 1, 2024.
- 2.5** **Estimated Rent Commencement Date:** The “Estimated Rent Commencement Date” shall be: **July 1, 2024**. The Parties acknowledge in the event of a delay in executing this Lease, it is the intent and explicit

agreement of the Parkies that all of the terms and conditions of this Lease are applicable continuously with a commencement date of **July 1, 2024**.

- 2.6 Initial Term; Term:** The “Initial Term” shall be three (3) years (unless earlier terminated by either Party as permitted hereunder) beginning on the Term Commencement Date. “Term” shall refer to the Initial Term and any Renewal Term(s) (pursuant to Article II, paragraph 3.2), collectively.
- 2.7 Estimated Expiration of the Initial Term:** The “Estimated Expiration of the Initial Term” shall be: **June 30, 2027**.
- 2.8 Option to Extend:** Tenant shall have the option to extend the Term of this Lease up to two (2) consecutive times (each an “option to extend”) pursuant to the requirements and as specifically set out in **Article II, paragraph 3.2 “Lease Renewal.”**
- 2.9 Base Rent:** Base annual rent for the Property shall be calculated for the initial Term at a rate of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) per square foot for the seventeen thousand, four hundred twenty-nine (17,429) square feet of property leased hereunder, totaling FOURTEEN THOUSAND DOLLARS AND NO/100 (\$14,000) if paid monthly (the “Base Rent” or “Rent”)
- 2.10 Monetary Rent Payment:** Provided that Tenant performs the Services in lieu of Rent as set forth below in this Article II, paragraph 2.9, Tenant shall pay to the City on a monthly basis One Thousand and No/100 Dollars (\$1,000) (the “Monetary Rent Portion”).
- 2.11 In-Kind Services.**
- 2.11.1 The Services in Lieu of Rent.** In lieu of a monetary payment of that portion of the Base Rent not designated as the Monetary Rent Portion, for the duration of the Term of the Lease, the Parties have agreed that the Tenant shall instead perform certain services and meet certain obligations, as follows:
- 2.11.1.1.** Tenant shall perform and provide certain services through its occupancy of and in return for the lease of the Property, which services shall consist of those relating and necessary to establish and maintain a multi-purpose art community center that (i) provides a forum for art exhibits and art sales of various kinds; (ii) provides a community performing art space comprised of a one-hundred (100) seat, fully equipped, black-box theater; (iii) provides two (2) large and one (1) small classroom for the provision by Tenant of education services relating to the arts for the community; and (iv) generally

provides for the other opportunities for community arts engagement and activities (the “Services”), all of which Tenant agrees to.

2.11.1.2. Tenant further agrees that it shall provide (including the payment of any salaries) adequate staff to operate the facility and/or perform the Services required hereunder, including (a) scheduling, contracting, maintenance, and supervision of the theater and its operation; (b) management of the visual arts gallery; (c) supervision and performance of the education services; (d) grounds and building maintenance; and (e) bookkeeping and general facility management.

2.11.1.3. The facility shall be open for community use for three hundred (300) days of the year, on average six (6) hours daily. Community classes, events, and rental use must be scheduled in advance and the continuation, expansion, or removal of community offerings will be adjusted in response to community interest and staffing limitations.

2.11.1.4. Tenant may charge reasonable rental fees for facility use and/or reasonable fees for tickets for performances and activities, provided that for any ticketed performance or activity, Tenant shall allot no less than five (5) free tickets to underserved groups or individuals.

2.11.1.5. City and Tenant understand and agree that the Services performed in lieu of rent hereunder by Tenant are intended to increase access to and engagement in the arts amongst those in the community.

2.11.1.6. In addition to performance of the Services, for the duration of the Lease and included as part of the Tenant’s in-kind obligations, Tenant shall:

- a) Maintain a current registration with the New Mexico Office of the Attorney General’s Registry of Charitable Organizations as a charitable organization, searchable via the New Mexico Charitable Organization Registration Online System (“NM-COROS”) and shall ensure that its operations and activities comport with the requirements for and purpose of a charitable organization under the New Mexico Charitable Solicitations Act §57-22-1 et. seq. NMSA 1978; and
- b) Comply with and perform all obligations relating to repair and maintenance of the Property as set out in **Article III, paragraph 9.**

2.11.1.7. In-Kind Monitoring. The Tenant will be required to provide evidence of compliance with and performance of its in-kind obligations. Upon request and within a timely manner, Tenant will provide assistance to and shall provide information requested by the City to monitor and evaluate the performance of the above-mentioned in-kind Services and other in-kind obligations. It is understood that the City, at its discretion, may perform periodic fiscal and program monitoring reviews. It is also understood that reviews by other officials may be required.

2.11.1.8 In-Kind Reports and Information. At such times and in such forms as the City may require, the Tenant shall furnish the City with all requested statements, records, data, and information pertaining to the required in-kind Services.

2.11.1.9. Annual Reports. Tenant will additionally provide to the City performance reports covering the Services provided during the reporting period. The reports shall be in a form acceptable to the City and will be used to furnish the required information, along with other supporting documentation as required or requested. Reports are due no later than thirty-one (31) calendar days after the end of the fiscal year, or by July 31 of each year.

2.11.1.10. Cooperation. Tenant will further cooperate with any City, State, or Federal program data collection and evaluation efforts by providing, in a timely manner, any requested information for the Services delivered. Failure to do so may result in termination of this Lease at the discretion of the City.

2.11.1.11. In-Kind Record Keeping. The Tenant shall maintain records of all Services provided as part of the Lease. All records should be maintained in a manner that allows information to be made readily available upon request by the City.

2.11.1.12. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Tenant's records with respect to all matters covered by this Agreement. The Tenant shall permit the City to audit, examine, and make excerpt or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Lease. The Tenant understands and will abide by the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq.

2.11.1.13. Independent Contractor. Tenant acknowledges that

in providing Services it is providing Services as an independent contractor and will be responsible for all needed insurance, liability waivers and employer responsibilities.

2.11.1.14. Additional Rent. In the event Tenant fails to perform and report in kind Services in accordance with Article II paragraph 2.6.1. Tenant shall make a monetary payment to the City as “Additional Rent” in addition to the Monetary Rent Portion a late payment charge equal to ONE HUNDRED FIFTY DOLLARS (\$150.00).

2.11.1.15. No Offset. Rent, Additional Rent and any and all other consideration to be paid or provided by Tenant to City shall collectively constitute Rent and shall be paid or provided without offset.

2.12. Time, Place, and Manner of Payments.

2.12.1 The Monetary Rent Portion and any Additional Rent shall be paid by check.

2.12.2. All monetary Rent and Additional Rent shall be paid to the City of Albuquerque, Central Accounts Receivable and Billing Division, PO Box 27780, Albuquerque, NM 87125.

2.13. Tenant’s Trade Name, Permitted Use and Exclusive Use.

2.13.1. Trade Name: ASLA North Fourth Arts Center.

2.13.2. Use. Tenant shall continuously (except for short term closures due to fire, casualty, condemnation, permitted or approved Tenant remodeling not exceeding thirty (30) days, or other causes beyond Tenant’s control (“Permitted Closures”) use the leased Property for the purposes stated in Article II, paragraph 2.11 above subject to the terms, conditions, and limitations set forth in this Lease.

2.13.3. Exclusive Use. None

2.13.4. Percentage Rental Rate: None

2.14. Brokers: The is not represented by a broker. Tenant is not represented by a broker.

2.15. Radius Restriction: None

2.16. Tenant Improvement Allowance: None

3. LEASE OF PROPERTY.

3.1 Grant of Leasehold Interest

3.1.1 In consideration of the mutual covenants and agreements set forth

herein, the City hereby leases the Property to Tenant, subject to rules for the use thereof by Tenant of the Building that may be developed by the City from time to time.

3.1.2. The leasehold interest granted by this Lease shall be subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace, and reconstruct all public utilities in, under, across and upon the Property and to all easements, licenses and restrictions now or hereafter granted by the City to third parties in the Property.

3.2 Lease Renewal. Tenant shall have two (2) consecutive Options to Extend the Term of the Lease provided that at the time each such Option to Extend is exercised by Tenant, Tenant is not in Default (as defined herein), with each Option to Extend providing for an additional three (3) one (1) year term (each a “Renewal Term”), and further subject to the following:

3.2.1. In order to exercise such Option(s) to Extend, Tenant shall be required each time to provide written notice of Tenant’s intention to exercise its Option to Extend to City no less than ninety (90) days prior to the expiration of the then current Initial Term or Renewal Term. Tenant’s exercise of each Option to Extend must be consecutive; Tenant’s right to exercise the second consecutive Option to Extend shall be contingent upon Tenant’s exercise of the first Option to Extend.

3.2.2. If Tenant fails to exercise the Option to Extend within the time period established and pursuant to the requirements as set forth in this section, then the Option to Extend for the applicable Renewal Term, and if applicable, the subsequent Renewal Term that may have otherwise still been available pursuant the terms of this Lease, shall be waived by Tenant.

3.3 Termination for Convenience. Notwithstanding any other requirement, either Party may terminate this lease upon six (6) months’ written notice to the other Party of the intent to terminate. Upon termination of this Lease, as provided below, the City and Tenant shall have no further rights, obligations, or liabilities as between the City and Tenant as provided in this Lease and all future payment obligations and liabilities in the Lease will cease upon the date of termination, except as otherwise provided in this Lease, including, without limitation, as to liabilities expressly state to survive termination of the Lease.

3.4 Holding Over. Holding over by the Tenant after the expiration or earlier termination of this Lease, whether with or without the consent of the City (“Holding Over”), shall not operate to extend or renew this Lease. Any such holding over shall be construed as a tenancy from month to month and Tenant shall be bound by all terms and conditions of this Lease but only as they are applicable to a month-to-month tenancy, provided however, that if the Holding Over is without consent of the City, all Rent and charges shall be in an amount

equal to one hundred fifty percent (150%) of the rates and charges required in this Lease and no in-kind Services will be applied to the Holding Over without Rent. Nothing in this Lease shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Property, as well as any damages incurred by City, or including attorneys' fees.

3.5 Security Deposit. Tenant is not required to provide a “Security Deposit” to City. Notwithstanding the foregoing, upon three or more events of Default in any twelve-month period, or upon the assignment or sub-letting of the Property to a party that is not an affiliate of Tenant, City may require a Security Deposit. In the event a Security Deposit is required, the deposit shall not bear interest, shall not be required to be maintained in a separate account, and shall be returned to Tenant or the last assignee of Tenant’s interest within ninety (90) days less any unpaid claims against Tenant upon the expiration of this Lease and the surrender of possession of the Property. If Tenant fails to perform with respect to any provision of this lease, City may apply the Security Deposit for the payment of any sum in default, or for the payment of any other amount that City may spend or become obligated to spend by reason of Tenant’s Default, or to compensate City for any loss or damage that City suffers from Tenant’s Default. Application of the deposit is not a cure of the Default by Tenant to which the application relates. If any portion of the Security Deposit is applied, Tenant shall, within five (5) days after written demand, therefore, deposit cash with City in an amount sufficient to restore the Security Deposit to its original amount. In the event of termination of City’s interest in this Lease, City shall transfer said deposit to City’s successor in interest and thereafter shall have no further liability for the return of such Security Deposit.

4. DEFAULT AND REMEDIES.

4.1 Default. The occurrence of any one or more of the following events shall constitute a “Default” by Tenant:

- 4.1.1.** Tenant fails to make any payment when due as required by the terms of this Lease; or
- 4.1.2.** Tenant fails to supply and report the required type and/or amount of in-kind Services and perform the other specified in-kind obligations in lieu of rents when due as required by the terms of this Lease; or
- 4.1.3.** Tenant abandons the Property for a period of thirty (30) consecutive calendar days; or
- 4.1.4** Tenant ceases to meet any of the requirements set forth in Article II, paragraph, 2.10; or
- 4.1.5.** Tenant fails to observe or perform any of the express covenants or provisions of this Lease, including but not limited to those set forth at

Article III, paragraph 1 “Tenant Shall” and Article III, paragraph 6 “Compliance with Law, Permits and Licenses,” where such failure shall continue for a period of ten (10) consecutive calendar days after written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period to the satisfaction of the City, and thereafter diligently and continuously prosecutes such cure to completion; or

4.1.6. Tenant (i) files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (ii) makes an assignment for the benefit of its creditors; (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or (iv) takes action for the purpose of any of the foregoing; or (v) a court of governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within one hundred and eighty (180) days; or

4.1.7. This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within one hundred and eighty (180) days; or

4.1.8. Tenant assigns this Lease or subleases all or any portion of the Property without City's prior written consent.

4.2. City's Remedies. In the event of Default by Tenant, as defined above, the City, in addition to any other remedies set forth in this Lease, may without further notice or demand, exercise any one or more of the following remedies concurrently or in succession:

4.2.1. The City may terminate this Lease by providing written notice to the Tenant specifying the effective date of such termination, in which event this Lease and the leasehold estate hereby created shall automatically terminate upon the effective date so stated with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease Term. City shall thereupon be entitled to take possession of the Property, and Tenant shall

immediately surrender the Property to City and agrees to pay to the City, on demand, the following damages:

4.2.1.1. The unpaid Rent, Additional Rent, and other amounts due at the time of termination, including but not limited to any fees, costs, and expenses for which the City has invoiced the Tenant pursuant to the terms of this Lease, plus interest thereon at the maximum lawful rate per annum from the due date until paid; and

4.2.1.2. Any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events would be likely to result therefrom, including the cost of recovering the Property, which costs shall not include the costs of demolition or remodeling the Property for a new tenant, and brokerage commissions.

4.2.2. The City may continue this Lease in effect, and as long as, the City does not terminate Tenant's right to possession, and City may enforce all its rights and remedies under the Lease, including the right to recover the rent. Actions to collect amounts due by Tenant to City as provided in this **Article II, paragraph 4.2** may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease term.

4.2.3. The City may terminate Tenant's right of possession (but not this Lease) and repossess the Property pursuant to the laws of New Mexico, without demand or notice of any kind to Tenant, in which event City may, but shall be under no obligation to do so (except to the extent required by New Mexico), relet the Property for the account of Tenant for such rent and upon such terms as shall be satisfactory to City. Tenant shall be responsible for rent for the period that the Property are vacant and all direct and reasonable costs of recovering possession, re-letting the Property, and collecting amounts owed, as provided in paragraph 4.2.7, below. Tenant shall be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the term of this Lease. City may, at its discretion, elect to accelerate all future payments due in this paragraph and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. If said breach of the Lease continues, City may, at any time thereafter, elect to terminate the Lease as provided above.

4.2.4. The City may from time to time recover accrued and unpaid Rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 18% per annum or the highest lawful rate, whichever is less.

4.2.5 Subject to any subordination of lien expressly granted by City in writing, the City shall have the right to enforce the statutory City's lien on Tenant's

property.

4.2.6. With or without having terminated the Lease, the City may enter upon and take possession of the Property and expel or remove Tenant and any other person who may be occupying or using said Property or any part thereof, by force, if necessary, without incurring liability to Tenant or to any person occupying or using the Property for any damage caused or sustained by reason of such entry or such removal.

4.2.7. In case of any event of Default or breach by Tenant, Tenant shall also be liable for and shall pay to City, at the address specified for notice to City herein, in addition to any sum provided to be paid above, brokers' fees incurred by City in connection with re-letting the whole or any part of the Property; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property into condition acceptable to a new tenant or tenant's and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies, recovering possession, re-letting the Property, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of City's legal counsel and the reasonable charges of City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees.)

4.2.8. The City shall have the right to enter upon and/or take possession of the Property and perform any obligation on Tenant's behalf and recover from Tenant, upon demand, the entire amount paid or incurred by City for such purpose, plus 15% for special handling, supervision and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.

4.2.9. The City may alter all locks and other security devices at the Property without terminating this Lease. City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.

4.2.10. In the event that the City shall have taken possession of the Property pursuant to the authority herein granted:

4.2.10.1. The City shall have the right to keep in place and use all of the furniture, fixtures, and equipment at the Property, including that which is owned by or leased to Tenant, at all times prior to any foreclosure thereon by City or repossession thereof by a lessor thereof or third party having a lien thereon.

4.2.10.2. The City shall also have the right to remove from the Property (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the County in which the Property is located; and in

such event, Tenant shall be liable to City for costs incurred by City in connection with such removal and storage and shall indemnify and hold City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage.

4.2.10.3. The City shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to City a copy of any instrument represented to City by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of City to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of City's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant agrees to indemnify and hold City harmless from all cost, expense, loss damage and liability incident to City's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant.

4.3. The City's Lien. To secure the payment of all rental and other sums of money due and to become due hereunder and the faithful performance of this lease by Tenant, Tenant hereby gives to City an express first and prior contract lien and security interest on all property (including fixtures, equipment, chattels and merchandise) which may be placed in the demised premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed therefrom without the written consent of City until all arrearages in rental and other sums of money then due to City hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in lieu of the City's statutory lien. Upon the occurrence of an event of default, this lien may be foreclosed with or without court proceedings by days' notice of the time and place of said sale, and city shall have the right to become the purchaser, upon being the highest bidder (and if requested hereafter by City), Tenant shall execute and deliver to city Uniform commercial code financing statements insufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by City, Tenant shall also execute and deliver to City uniform commercial code financing statement change instruments in sufficient form to reflect any property amendment of modification in or extension of the aforesaid contract lien and security interest hereby granted. City shall, in addition to all of its rights hereunder also have all of the rights and remedies of a secured party under the uniform commercial code as adopted in the states in which the demised premises is located.

4.4. The City shall have the right to seek injunctive relief, including, if applicable, a mandatory injunction.

4.5. The City may pursue any other remedies provided in specific provisions of this Lease, available at law or provided in equity.

4.6. If Tenant fails more than twice within a twelve (12) month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the timely payment of Rent, Additional Rent, or an invoice for costs and fees issued pursuant to the terms of this Lease), regardless of whether such failures have been cured by Tenant, the third failure will at the election of City, in its sole and absolute discretion, be deemed an automatic event of Default, without notice to Tenant or an opportunity to cure, subject to immediate termination at the option of the City.

4.7. Once the Tenant has failed to timely make a payment of Rent, Additional Rent, or other payment due or has failed to perform or observe any other obligation, term or condition contained in this Lease, the City, in its sole discretion, may by providing written notice thereof to Tenant require that all future payments from Tenant pursuant to this Lease be in cash or certified funds or made by automatic electronic bank transfers.

4.8 All of the remedies provided in this Article II, Section 4, shall survive the termination of this Lease.

4.9. The rights of the City herein stated shall be in addition to any and all other rights which City has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights herein granted to the City are commercially reasonable.

5. Lease Exempt from Bateman Act: Appropriations.

By virtue of the provisions of NMSA 1978, §6-6-12 (1999), this Lease is exempt from the Bateman Act, including, without limitation as set out in NMSA 1978, §6-6-12 (1968), and it does not constitute the creation of debt. Nonetheless, as a result of Tenant's requirements and demands, if in any fiscal year of the City of Albuquerque during the term of this Lease, sufficient appropriations and authorizations are not made by the City Council to fund this Lease, or, in the event that City Council determines the property not essential for municipal purposes, this Lease may be terminated by the City at the end of the City's then current fiscal year, upon six (6) months' written notice given by the City to the Tenant. Such event shall not constitute an event of Default under this Lease. Upon termination of this Lease as provided in this Article II, the City and the Tenant shall have no further rights, obligations or liabilities as between the City and Tenant as provided in this Lease and all payments obligations and liabilities of the Tenant and of its interest in this Lease will cease upon the date of termination, except as otherwise provided in this Lease, including, without limitation, as to liabilities expressly stated

to survive termination of the Lease.

6. Quiet Enjoyment.

Upon the performance of all terms, conditions, and covenants of this Lease, which the Tenant is required to perform, the Tenant shall, at all times during the Term peaceably and quietly enjoy the Property without any disturbance from the City. Any entry by the City pursuant to the rights, terms, and conditions of this Lease shall not be deemed a constructive or actual eviction of Tenant and shall not be considered to be a breach of City's covenant of quiet enjoyment.

III. USE OF PREMISES.

1. Tenant shall:

- 1.1 Continuously (except for short term closures due to fire, casualty, condemnation, permitted or approved Tenant remodeling not exceeding thirty (30) days, or other causes beyond Tenant's control ("Permitted Closures") use the leased Property for the purpose of operating an operating engineer apprenticeship and journeyman training program, subject to the terms, conditions and limitations set forth in this Lease and for no other purpose whatsoever without City's prior written consent.
- 1.2 Operate and maintain the Property in a safe, sanitary, and operable condition.
- 1.3 Properly handle and dispose of all Hazardous Substances pursuant to all Environmental Laws (both as defined herein). Tenant shall take all appropriate measures necessary to prevent the release on or from the Property of any Hazardous Substances. Neither Party shall create or bring on the Property any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should Tenant become aware of the existence of any Hazardous Substance on the Property, Tenant shall immediately notify City of such Hazardous Substance.

2. Go Dark (Cessation of Operation) and City's Right to Recapture.

If, once operations begins, Tenant ceases to operate its business in the Property for a period in excess of one hundred eighty (180) consecutive days, and Tenant's cessation of operations is not due to remodeling, renovating, or reconstructing the improvements as a result of a casualty or condemnation or governmental regulatory requirements or other governmental order, City shall have the right to terminate this Lease and recapture the Property by delivering a thirty (30) days written notice to Tenant of City's intent to terminate. Upon City's termination of the Lease, Tenant shall pay all Rent and Additional Rent accrued as of the date of such termination, Tenant

shall Surrender (defined below) the Property in accordance with Article II, Section 12, and all obligations of Tenant and City under this Lease shall terminate, except for those which arise prior to the termination date, or which survive the expiration or earlier termination of this Lease.

3. Tenant Shall Not:

3.1 Use, occupy, or permit the Property to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.

3.2 Use, occupy, or permit the Property or any part of the Property to be used or occupied, or do or permit anything to be done in or on the Property in any manner, which will:

3.2.1. Cause or be likely to cause structural damage to the Property or any part thereof, or adversely affect the mechanical, electrical, plumbing, or other base building systems;

3.2.2 Constitute waste or a public or private nuisance;

3.2.3 Cause the cancellation of any insurance policies related to the Property. Tenant shall reimburse City for any increases in insurance premiums payable by City as a result of Tenant's use of the Property or the nature of Tenant's business. All property kept, stored or maintained by Tenant within the Property shall be there at Tenant's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or borne by City, unless due to the negligence or willful misconduct of City, its employees, agents or contractors.

3.2.4 Allow smoking on the Property at any time by any person in non-designated areas.

3.2.5 Allow political activities or campaigning by candidates for any elected office on the Property, except as upon prior written permission of City, which permission may be withheld at the sole discretion of the City.

4. Tenant May:

Tenant, at its expense, may install Tenant's standard signs and logos so long as they are in compliance with applicable signage codes and are approved by the City in writing in advance of fabrication and installation. Tenant shall pay all fees and costs associated with obtaining the approval of its sign package by the City of Albuquerque, including any necessary application for a variance or an appeal thereof. All signs shall be kept in good condition and in proper operating order at all times. City reserves the right to designate a uniform type of sign for the Property to be installed and paid for by Tenant.

5. Tenant Acknowledgement and Representation.

Tenant acknowledges and represents that it has examined the Property and has determined by its own independent evaluation that the Property, zoned MX-M, is suitable and usable for the purposes, uses and activities intended by Tenant and contemplated by this Lease. Tenant acknowledges that the City has made no representation, warranty, or guarantee, expressed or implied, that the Property is now, or during the Term of this Lease, suitable or usable for purposes or uses which Tenant intends to make of the Property or which are contemplated by this Lease.

6. Compliance with Law, Permits, and Licenses.

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

6.2 Tenant shall procure and maintain for the duration of the Term of the Lease, at its sole expense, any permits and licenses required for the transaction of business in the Property and otherwise comply with all applicable laws, ordinances and governmental regulations. Tenant shall immediately notify City in the event any permit, license or approval necessary for the operation of Tenant's business from the Property is revoked or suspended. If such revocation or suspension is not corrected within twenty (20) days after notice to City (or such longer period as is reasonable so long as Tenant initiates such correction within the twenty (20) day period and thereafter diligently and continuously works towards correcting the revocation or suspension) then it shall be an automatic event of Default under this Lease.

7. Ownership of Improvements.

The improvements placed in the Property by or on behalf of Tenant shall be and remain the property of the Tenant during the term of this Lease. Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant's improvements and restore the Property to the reasonable satisfaction of the City. Tenant may leave improvements at the expiration or earlier termination of the Lease only with expressed written approval of the City. The City will not compensate Tenant for any of the improvements. Notwithstanding the foregoing, any improvements paid for by the City during the Term shall upon expiration or earlier termination of the

Lease remain the property of the City and shall not be so removed by Tenant.

8. Tenant's Fixtures and Equipment.

8.1. City acknowledges and agrees that all furniture, fixtures, equipment, machinery, signs and any personal property bearing any of Tenant's trade names or trademarks, whether registered or unregistered, and all other items of personal property which Tenant utilizes to conduct its business on the Property, or which may be installed in or upon or incorporated into the Property at Tenant's cost (collectively, "Trade Fixtures") shall not be deemed to become a part of the Property, however attached to, or incorporated into the Property, and whether or not they become a component part of the Property, provided such Trade Fixtures are not paid for by City. The Trade Fixtures are and shall remain the property of Tenant and shall be treated as trade fixtures for the purposes of this Lease. Tenant may remove its Trade Fixtures from the Property at any time prior to the termination of the Lease so long as the Tenant repairs any damage to the Property resulting from such removal. Tenant at its own cost and expense, may install, place, reinstall or replace upon the Property, or remove from the Property, any such Trade Fixtures so long as Tenant repairs any damage to the Property, resulting from such installation, reinstallation, replacement or removal. Any replacement Trade Fixtures shall not become property of the City but shall remain Tenant's personal property the same as the original Trade Fixtures.

8.2. City acknowledges and agrees that Tenant's Trade Fixtures may be leased from an equipment lessor ("Equipment Lessor") and that Tenant may execute and enter into an equipment lease with respect to the Trade Fixtures ("Equipment Lease"). If and to the extent required by any Equipment Lease, City shall execute and deliver to the Equipment Lessor a commercially reasonable consent or acknowledgment, in recordable form and in scope and substance reasonably satisfactory to the Equipment Lessor and City, in which City acknowledges and agrees that the Trade Fixtures which are the subject of the Equipment Lease constitute the personal property of Tenant, and shall not be considered to be part of the Property, regardless of whether or by what means they become attached thereto, agrees that it will not claim any interest in the Trade Fixtures, agrees that the Equipment Lessor may enter the Property for the purpose of exercising any right it may have under the provisions of the Equipment Lease, including the right to remove the Trade Fixtures, provided that the Equipment Lessor:

8.2.1. Will not take more than thirty (30) days to remove the Trade Fixtures and if Equipment Lessor does not remove the Equipment Fixtures within the thirty (30) day period, the Trade Fixtures will be deemed abandoned by the Equipment Lessor, and City may then dispose of the Trade Fixtures without liability to Equipment Lessor or Tenant;

8.2.2. Agrees to repair any damage resulting from the removal of the Trade Fixtures or to pay City for the reasonable cost of removal of the Trade Fixtures plus the reasonable cost of repairing any damage to the Property caused by the removal of the Trade Fixtures, plus fifteen percent (15%) of the total thereof;

8.2.3. Will indemnify and hold City harmless from any claims and damages arising out of Equipment Lessor's entering the Property to inspect or remove the Trade Fixtures;

8.2.4. Will concurrently provide to City a copy of any notice of Default to Tenant, and City shall, after written notice of Tenant's failure to cure such default, have the right, but not the obligation, for a period of sixty (60) days, in the case of a monetary Default, or thirty (30) days in all other cases, or except in the case of a monetary Default, such reasonable period of time to cure such Default provided City promptly commences the action necessary to cure the claimed Default within the thirty (30) day period and prosecutes the same to completion with diligence and continuity; and

8.2.5. Will not hold any auction or secured property sale at the Property. Notwithstanding anything in this Article II, Section 8 to the contrary, Tenant shall make good faith, diligent efforts to ensure that Equipment Lessor does not repossess or remove any item of or from Property constituting the structure, the front windows or doors, or any fixtures or otherwise that is incorporated or integrated into the improvements at the Property, including, but not limited to, lighting, electrical, wiring, HVAC units, supply fans, exhaust fans, air ducts, electric and utility lines, pipes, pumps, water heaters, tanks, conduits, switchboards, elevators, fire prevention equipment, attached carpeting and floor coverings, toilets, sinks, countertops, doors and windows, compressors, sign poles and lighting poles. Tenant shall be liable for and shall reimburse City for any damage to the Building and/or Property arising out of any such repossession or removal by Equipment Lessor.

8.3. Tenant agrees that it will not cause or allow to occur any Default under an Equipment Lease and any amounts expended by City to cure such Defaults shall be subject to prompt reimbursement by Tenant.

9. Repairs and Maintenance, Tenant's Negligence, and Substantial Damage.

9.1 Tenant Repair and Maintenance Obligations.

9.1.1 Tenant shall be responsible for general maintenance and repairs of the Property and Building, including the Property including the interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen including the same required to comply with building codes and other applicable municipal laws, rules, and/or regulations. Such maintenance shall include, but not be limited to,

painting, landscaping (including, but not limited to if applicable, the mowing of any grass and the trimming and care of shrubs, trees and flowers), lighting, signage, irrigation systems, paving, sidewalks, refuse area, service area, pest control, utilities, and drainage, subject to normal wear and tear, and keep the same reasonably free from snow, ice, and refuse, it being understood that City shall not be required to make any repairs to or perform maintenance of the improvements placed upon the Property by Tenant.

9.1.2 City shall not be required to make any repairs occasioned by the acts or negligence of Tenant, its invitees, agents, employees or volunteers, which repairs shall be made by Tenant.

9.1.3 Tenant shall provide janitorial service to the Property 4904 Fourth Street NW, Albuquerque, NM.

9.2 Tenant Obligations.

9.2.1 Tenant shall be responsible for general, daily upkeep of the Property in a clean and sanitary condition.

9.2.2 Tenant shall not permit offensive or unreasonably strong odors of any kind to emanate from the Property. If such odors are emanating from the Property, then upon notice from City, Tenant shall, within ten (10) days, install devices or put in place procedures to eliminate or contain such odors within the Property.

9.2.3 If Tenant allows the Property to deteriorate to a point that is reasonably unsatisfactory to City, City shall have the self-help right, upon written notice, or immediately in an Emergency, to enter the Property and take such action as the City deems reasonably necessary to remedy the situation and Tenant shall pay the costs incurred by City in so doing as Additional Rent within thirty (30) days after receipt of an invoice, together with interest. City shall not be liable to Tenant for any loss or damage that may accrue to Tenant's Property or business by reason of such work or its results.

9.3 Upon Surrender (defined below) of the Property and subject to **Article III, Section 12 "Surrender of Property,"** Tenant will transfer to City or otherwise make available any titles to the buildings, if applicable, and any construction or equipment warranties related to the Building(s) and the Property, including but not limited to warranties for the roof and for the heating and air conditioning systems. Notwithstanding anything here to the contrary, upon written notice by City, Tenant shall remove all improvements and restore the land to the original condition prior to Tenant's occupation.

9.4 Also, notwithstanding anything herein to the contrary, in no event shall Tenant be obligated by the provisions of this Article II, Section 9 to repair, replace or restore the Property or the Property in a situation covered under the other Section in this Lease entitled "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS", except as otherwise provided in such Section.

10. Mechanics' and Materialmen's Liens.

10.1 Tenant shall pay before delinquency all costs for alterations, maintenance, repair, replacement, or other work done by or caused to be done by Tenant at the Property and shall keep the Property and City's interest in the Property free of mechanics' and materialmen's liens and other liens of like nature other than liens created or claimed by reason of any work done by or at the request of City or its agents. Tenant shall protect, defend and indemnify City against all such liens or claims which may ripen into such liens on the Property, or City's interest in the Property, and against all attorney's fees and other costs and expenses caused by or incurred by reason of or on account of any such claim or lien.

10.2 Tenant shall immediately notify City of any such lien, claim of lien or other action of which it has knowledge that affects the title to the Property, or any part thereof. Tenant shall cause the same to be removed within five (5) days. Notwithstanding the foregoing, if Tenant contests the correctness or validity of any such lien and if the laws of the State of New Mexico provide for the release of real Property from such a lien by obtaining and/or recording a surety bond, then within twenty (20) days after written demand by City, Tenant shall obtain a surety bond and shall otherwise comply with the requirements of such laws, so as to affect the release of the Property from such lien. If Tenant fails to timely cure such liens, or to provide a surety bond as provided herein, City, in addition to all other available remedies hereunder, may take such action as City deems necessary to remove same and the entire cost thereof shall be immediately due and payable by Tenant to City as Additional Rent.

11. Damage to or Destruction of Improvements.

11.1 **Option to Terminate for Damage or Destruction.** If the Property or any improvements shall be partially or wholly damaged or destroyed by fire, windstorm, water, earthquake, flood or by any other means resulting in a material impact on Tenant's ability to conduct business from the Property in the reasonable opinion of Tenant, then Tenant may, at Tenant's option, to be evidenced by notice in writing given to City within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of such notice.

10.2 **Tenant Obligations if No Termination.** If Tenant does not elect to terminate this Lease, the Tenant shall commence to rebuild or repair any such damage at Tenant's sole cost and expense and restore the Property to

substantially the same condition that existed immediately prior to the damage or return the Property to its original state of the Property prior to Tenant's occupancy. All insurance proceeds payable under any Property insurance policies held by Tenant covering the Property shall be paid into escrow to be held for payment towards the cost of rebuilding or repair and, should Tenant fail to perform its obligation to rebuild or repair, such proceeds, plus any amount necessary to rebuild or repair that is not covered by insurance, shall be paid to City. Except as provided below, no damage or destruction by fire or other casualty shall cause a termination of this Lease or any abatement of Rent or Additional Rent. If Tenant elects not to restore the Property to substantially the same condition that existed immediately prior to the damage, Tenant shall, at City's election, either raze any remaining portion of the improvements and remove all debris or demolish only the damaged portions of the improvement and remove the debris, then restore the Property to its original condition prior to Tenant's occupancy if City elected to have all improvements removed, and assign to City all of the insurance proceeds for any casualty covered by Tenant's Special Form Insurance Coverage in connection with such event, plus deliver to City or directly to Tenant's insurer, the full cost of the deductible provided, however, that City shall have no right to receive any insurance proceeds attributed to Tenant's buildings, furniture, fixtures, and personal property.

12. Surrender upon Termination.

12.1 Expiration and Survival of Obligations Upon Termination. In the event that this Lease is terminated prior to the expiration of the term hereof for any reason other than Default by Tenant, this Lease shall be of no further force or effect subject, however, to the provisions of paragraph 12.2, below. Nothing in this paragraph 12.1 shall relieve any Party from its obligations under the provisions of this Lease entitled "Rent and Term", "Holding Over", "COMPLIANCE WITH LAW", "TENANT'S FIXTURES AND EQUIPMENT", "OWNERSHIP OF IMPROVEMENTS", "REPAIR AND MAINTENANCE", "MECHANICS' AND MATERIALMAN'S LIENS", "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS", "SURRENDER UPON TERMINATION", "UTILITIES", "DEFAULT AND REMEDIES", "HAZARDOUS SUBSTANCES", "FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY", "INDEMNIFICATION", "ASSIGNMENT AND SUBLETTING", "TAXES AND ASSESSMENTS", "INSURANCE", "BROKER", "RIGHT OF ENTRY", "CONDEMNATION", "Governing Law", "Surrender of Property", "Attorney's Fees", and "Security Deposit" with respect to any matter therein specified which occurred prior to the effective date of termination or that expressly survives the expiration or earlier termination of this Lease.

12.2 Surrender of Property. Upon the expiration or any earlier termination

of this Lease, Tenant shall surrender the Property to City, including any the Buildings and all other improvements located thereon in good condition, subject to the provisions set forth in Article III, Section 11 of this Lease entitled "DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS" and Article III, Section 9 entitled "REPAIRS AND MAINTENANCE", reasonable wear and tear excepted ("Surrender"), and the improvements shall be the property of the City (specifically excluding all of Tenant's Trade Fixtures, machinery, interior and exterior signs and any other removable personal property placed upon the Property by Tenant, provided that Tenant removes such Trade Fixtures and equipment and repairs any damage caused thereby. In such circumstances of Surrender, all other fixtures and improvements shall remain at the Property at the expiration or termination of this Lease without compensation, allowance, or credit to Tenant). In the event of Surrender pursuant to this paragraph 12.2, if Tenant fails to perform any repairs or restoration or fails to remove any of Tenant's property from the Property as required hereunder, City may do so, and Tenant shall pay City the cost thereof upon demand. All of Tenant's property that remains on the Property after the termination or expiration of the Lease, shall be deemed abandoned by Tenant and City shall have the right to remove and dispose of such Tenant property at Tenant's expense, and City shall in no event be responsible for the value, preservation, or safekeeping thereof. All such Tenant's property remaining on the Property after the termination or expiration of the Lease excluding any furniture, fixtures, equipment, and personal property leased to Tenant shall, at City's option, be conclusively deemed to have been conveyed by Tenant to City as if by bill of sale without payment by City. If City arranges for storage of any of Tenant's property, City shall have a lien against such property for costs incurred in removing and storing the same. As of the later of the termination/expiration date or the date of Surrender, all obligations of City and Tenant under this Lease shall terminate, and this Lease shall be of no further force and effect, except for any liability or obligation arising out of any indemnification provision of this Lease, or any obligation or liability which accrued prior to such expiration or earlier termination of the Lease or which survive such expiration or earlier termination of this Lease.

13. Utilities.

- 13.1** Utility services for water, gas, and electricity for the Property shall be provided by and paid for by the Tenant, including any deposits required by utility service providers.
- 13.2** Telephone and/or cable service shall be arranged directly by Tenant with the service provider, including the posting of any required deposits, and shall be paid directly by Tenant to the provider when due.

- 13.3** The Tenant shall provide for refuse removal from the Property, which collection will occur from the central dumpsters located on the Property. Tenant shall be responsible for ensuring that all refuse is removed from the Property and placed in the central dumpsters provided by City so that refuse may be collected and removed. Tenant shall ensure that all refuse is removed from the Property with sufficient frequency to prevent odors or accumulation.
- 13.4** Tenant shall not install any equipment or fixtures, or use the same, in any manner that exceeds the safe and lawful capacity of any utility equipment or lines serving the Property.
- 13.5** City shall not be liable in damages or otherwise for any failure, variation, shortage or interruption of any utilities or services, and Tenant shall not be entitled to terminate this Lease or abate any portion of the Rent as a result of such failure, variation, shortage or interruption.
- 13.6** The location of any refuse containers outside the Property shall be subject to City's prior, written approval.

14. Default and Remedies.

- 14.1 Default.** The occurrence of any one or more of the following events shall constitute a default by Tenant ("Default"):
 - 14.1.1.** Failure to make a payment when due.
 - 14.1.2** The abandonment of the Property by Tenant for a period of thirty (30) consecutive calendar days.
 - 14.1.3.** The failure by Tenant to observe or perform any of the express covenants or provisions of this Lease, where such failure shall continue for a period of ten (10) consecutive calendar days after written notice thereof from the City to Tenant, provided that if the nature of Tenant's default is such that more than ten (10) consecutive calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within the ten (10) day period, and thereafter diligently and continuously prosecutes such cure to completion.
 - 14.1.4.** Tenant **(a)** files, or consents by answer or otherwise to the filing against it, of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; **(b)** makes an assignment for the benefit of its creditors; **(c)** consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or **(d)** takes action for the purpose of any of the foregoing.
 - 14.1.5.** A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian,

receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within **180 days**.

14.1.6. This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within **180 days**.

14.1.7. Tenant assigns this Lease or subleases all or any portion of the Property without City's prior written consent.

14.2. City's Remedies. In the event of Default by Tenant, as defined above, the City, in addition to any other remedies set forth in this Lease, may without further notice or demand, exercise any one or more of the following remedies concurrently or in succession:

14.2.1. Terminate this Lease, in which event this Lease and the leasehold estate hereby created shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice was the day originally fixed in this Lease for the expiration of the Lease Term. City shall thereupon be entitled to take possession of the Property and at the election of the City, take title to all structures, and Tenant shall immediately surrender the Property to City and agrees to pay to City, on demand, the following damages:

a. Any unpaid Rent and other amounts due at the time of termination, including but not limited to any Additional Rent, plus interest thereon at the maximum lawful rate per annum from the due date until paid.

b. The net present value of the balance of the Rent for the remainder of the term, (had such term not been terminated by City prior to the date of expiration), less the net present value of the fair market value rental of the Property for said period taking into consideration a reasonable lease up period and reasonable expenses that would be incurred by City in re-letting the Property (spread evenly throughout the term of the new lease), however this sum shall not be less than zero as in no event shall City be obligated to pay Tenant if the difference is a negative number. Both future payments computed in accordance with this provision shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum.

c. Any other amount arising out of Tenant's failure to perform its obligations under the Lease, or which in the ordinary course of events would be likely to result therefrom, including the cost of recovering the Property restoring the Property to the original condition prior to Tenant's occupancy thereof, which costs shall not include the costs of demolition or remodeling the Property for a new tenant, and brokerage commissions, if applicable.

14.2.2. Continue this Lease in effect, and as long as the City does not terminate Tenant's right to possession, and City may enforce all its rights and remedies under the Lease, including the right to recover the rent. Actions to collect amounts due by Tenant to City as provided in this Section may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration of the Lease term.

14.2.3. Terminate Tenant's right of possession (but not this Lease) and repossess the Property pursuant to the laws of the State in which the Property is located, without demand or notice of any kind to Tenant, in which event City may, but shall be under no obligation to do so (except to the extent required by the laws of the State in which the Property is located), relet the Property for the account of Tenant for such rent and upon such terms as shall be satisfactory to City. Tenant shall be responsible for Rent for the period that the Property is vacant and all direct and reasonable costs of recovering possession, re-letting the Property, and collecting amounts owed, as provided in paragraph 14.2.7, below. Tenant shall be liable for any deficiency of such rent amount below the total Base Rent and all other payments herein provided for the unexpired balance of the Term of this Lease. City may, at its discretion, elect to accelerate all future payments due in this paragraph and such future payments shall be discounted to present value in accordance with accepted financial practices using a discount rate of 4% per annum. If said breach of the Lease continues, City may, at any time thereafter, elect to terminate the Lease as provided above.

14.2.4. From time to time, City may recover accrued and unpaid Rent, Additional Rent, and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 18% per annum or the highest lawful rate, whichever is less.

14.2.5. Subject to any subordination of lien expressly granted by City in writing, enforce the statutory City's lien on Tenant's property.

14.2.6. With or without having terminated the Lease, enter upon and take possession of the Property and expel or remove Tenant and any other person who may be occupying or using said Property or any part thereof, by

force, if necessary, without incurring liability to Tenant or to any person occupying or using the Property for any damage caused or sustained by reason of such entry or such removal.

14.2.7. In case of any event of Default or breach by Tenant, Tenant shall also be liable for and shall pay to City, at the address specified for notice to City herein, in addition to any sum provided to be paid above, brokers' fees incurred by City in connection with re-letting the whole or any part of the Property; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property into condition acceptable to a new tenant or tenant's and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies, recovering possession, re-letting the Property, or collecting amounts owed, including reasonable attorneys' fees (including, but not limited to, the reasonable fees and disbursements of City's legal counsel and the reasonable charges of City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees).

14.2.8. Enter upon and/or take possession of the Property and perform any obligation on Tenant's behalf, including but not limited restoring the Property to its original vacant state, and recover from Tenant, upon demand, the entire amount paid or incurred by City for such purpose, plus 15% for special handling, supervision and overhead, which Tenant hereby acknowledges constitutes reasonable liquidated damages and not a penalty.

14.2.9. Alter all locks and other security devices at the Property without terminating this Lease. City shall not be obligated to provide a key or other means of ingress to the Tenant or Tenant's agents, or to pay for any damage to any security system, or to provide re-entry for any reason or under any circumstances whatsoever.

14.2.10. In the event that City shall have taken possession of the Property pursuant to the authority herein granted, then City shall have the right to keep in place and use all of the structures, furniture, fixtures, and equipment at the Property, including that which is owned by or Leased to Tenant at all times prior to any foreclosure thereon by City or repossession thereof by a lessor thereof or third party having a lien thereon. City shall also have the right to remove from the Property (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such structures, furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the County of Bernalillo; and in such event, Tenant shall be liable to City for costs incurred by City in connection with such removal and storage and shall indemnify and hold City harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. City

shall also have the right to relinquish possession of all or any portion of such structures, furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to City a copy of any instrument represented to City by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such structures, furniture, fixtures, equipment or other property, without the necessity on the part of City to inquire into the authenticity of said instrument's copy of Tenant's or Tenant's predecessor's signature thereon and without the necessity of City's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Tenant agrees to indemnify and hold City harmless from all cost, expense, loss damage and liability incident to City's relinquishment of possession of all or any portion of such titled structures, furniture, fixtures, equipment or other property to Claimant. The rights of City herein stated shall be in addition to any and all other rights which City has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted City are commercially reasonable.

14.2.11. Seek injunctive relief, including, if applicable, a mandatory injunction.

14.2.12. Pursue any other remedies provided in specific provisions of this Lease, available at law, or provided in equity.

14.2.13. If Tenant fails more than twice within and twelve month period to observe or perform any covenant, condition, or agreement of the Lease (including, without limitation, the payment of Rent, Additional Rent, or performance of the in-kind Services and other obligations set forth in Article II, paragraph 2.6.1), regardless of whether such failures have been cured by Tenant, the third failure will at the election of City, in its sole and absolute discretion, be deemed an automatic event of Default, without notice to Tenant or an opportunity to cure.

14.2.14. Once a failure to make a payment of Rent or Additional Rent, or a failure to perform or observe any other term or condition contained in this Lease has occurred, City, in its sole discretion, may at any time require that all future payments from Tenant pursuant to this Lease be in certified funds or made by automatic electronic bank transfers.

14.2.15. All of the remedies provided in this Article III, Section 14.2 shall survive the termination of this Lease.

15. Hazardous Substances.

15.1 Tenant's Responsibilities.

15.1.1 At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other

governmental and regulatory approvals required for Tenant's use of the Property. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Property or Property by Tenant, its agents, employees, contractors or invitees without the prior written consent of City. Tenant will cause any and all Hazardous Substances brought upon the Property by Tenant to be removed from the Property and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant will, in all respects, handle, treat, deal with, and manage any and all Hazardous Substances in, on, under or about the Property in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances.

15.1.2 Upon expiration or earlier termination of the term of the Lease, Tenant shall:

- a. Cause all Hazardous Substances placed on, under or about the Property by Tenant or at Tenant's direction to be removed and transported for use, storage or disposal in accordance and compliance with all applicable Environmental Laws; and
- b. Not take any remedial action in response to the presence of any Hazardous Substances in or about the Property or the Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Property without first notifying City of Tenant's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assert and protect City's interests with respect thereto.

15.2 Environmental Audit.

At any time and from time to time, City may retain an environmental consultant or engineer to conduct an environmental audit or environmental assessment of the Property and Tenant's compliance with applicable laws, rules and regulations. Tenant shall extend its full cooperation with such audit or investigation. If Tenant is found not to be substantially in compliance with applicable law, then Tenant shall pay all reasonable costs associated with such audit or assessment to City upon demand; otherwise, all costs shall be borne by City. In addition, Tenant, at City's request from time to time, shall complete such questionnaires and provide such information with respect to Tenant's activities and operations on the Property as City shall reasonably require.

15.3 Environmental Indemnification.

If the Property becomes contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify City of the release or discharge of the Hazardous Substance. Tenant shall defend, indemnify and hold City harmless from and against any and all costs, claims, demands and damages, including attorneys' fees (including without limitation the reasonable fees and disbursements of City's legal counsel and the reasonable charges of City's internal legal counsel, litigation expenses, expert witness fees, and service of process fees) and court costs and investigatory and laboratory fees, related to any breach of this Article II Section 15 by Tenant, its agents, contractors, or employees, including, without limitation, any adverse health or environmental condition (including without limitation any violation of Environmental Laws) occurring during the Term. This indemnification obligation shall survive the expiration or earlier termination of this Lease.

16. Right of Entry.

The City, its employees, agents, and other representatives shall have the right to enter into and upon the Property or any part thereof at reasonable times for the purpose of inspecting the Property and making repairs. In the event of an emergency as determined by the City, the City, its employees, agents, and other representatives may enter at any time, without notice and without the presence of Tenant.

17. Fire or Other Casualty Loss to Personal Property.

The City shall not be liable for any damage or loss of the Tenant's personal property on the Property from any cause, including, but not limited to, bursting or leaking of water pipes, leaking roof, fire, theft and negligence of co-tenants. Tenant shall be solely responsible for obtaining and paying for insurance covering Tenant's personal property in, on and/or associated with the Property, operations losses and liability insurance. Tenant shall not be insured for such losses by the City and shall not be entitled to make loss claims under the insurance coverage of the City.

18. General Indemnification.

Tenant agrees to indemnify, defend and hold harmless the City, its officers, agents and employees against liability, claims, damages, losses, penalties, expenses, suits, actions or proceedings arising out of bodily injury to person, including death or damage to property caused by or resulting from Tenant's and/or its employees and agents act(s) or omission(s) while Tenant and/or its employees or agents perform(s) or fails to perform its obligations and duties under the terms and conditions of this Lease.

Provided, however, Tenant is not required to indemnify the City for the negligence or intentional acts, errors, or emissions of the City or of its employees or agents.

19. Assignment and Subletting.

Tenant shall not assign the rights or responsibilities under this Lease or sublet the whole or any part of the Property at any time for any reason without the City's prior written approval. Tenant acknowledges that the terms of this Lease are unique to Tenant and Tenant's situation, and that the City may not grant such terms to a potential assignee or sublessee, it being further understood that it shall be reasonable for City, among other things, to withhold consent if City is not satisfied with the financial responsibility, identity, reputation or business character of the proposed assignee or subtenant. Notwithstanding any consent by City, Tenant and its guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Property so transferred), and City shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment or sublease, contemporaneously with the granting of City's consent, Tenant shall cause the assignee or sublessee to expressly assume in writing and agree to perform all of the covenants, duties, and obligations of Tenant hereunder and such assignee or sublessee shall be jointly and severally liable therefore along with Tenant. Unless approved by City, no use of the Property different from the uses as provided for and specified herein, shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. City shall have the right to assign or transfer, in whole or in part, City's rights and obligations hereunder and in the Property.

20. Taxes and Assessments.

Tenant shall promptly pay all taxes and other exactions assessed or assessable and shall pay all license and permit fees applicable to the Tenant's operation and acquire and keep current all licenses and registrations, whether municipal, state, or federal, required as a result of the Tenants' operation on the Property, and shall not allow any of said taxes, excises or fees, or any registration required to be eligible for an exemption therefrom, to become delinquent.

21. Insurance.

21.1 Types and Kinds of Insurance Required. At its expense, the Tenant shall procure and maintain insurance in the kinds and amounts set forth below:

21.1.1. Comprehensive General Liability Insurance. Commercial general liability insurance applying to third party claims for bodily injury or property damage, including coverage for “premises/operations”, “products and completed operations”, and “blanket contractual” liabilities, written on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 personal or advertising injury, \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate, or such higher amounts and additional coverages as City may reasonably require from time to time.

21.1.2 The policies of insurance must include coverage for all operations, Services and other obligations performed by the Tenant, as well as contractual liability coverage which shall specifically insure the hold harmless provisions of the Lease.

21.1.3. Workmen’s Compensation Insurance. Workmen’s Compensation Insurance for its employees in accordance with the provisions of the Workmen’s Compensation Act of the State of New Mexico, and employer’s liability insurance with a limit not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease - each person and \$1,000,000 bodily injury by disease - policy limit, or such higher amounts and additional coverages as City may reasonably require from time to time.

21.1.4 Automobile Liability Insurance. A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy shall include coverage for the use of all owned, non-owned or hired automobiles, vehicles and other equipment both on and off road, The City shall be named an additional insured.

21.2 Policy Requirements. Tenant’s insurance policies shall:

21.2.1. Cover all Services and other obligations of Tenant performed under this Lease, whether performed by Tenant, its agents, or its sublessee(s).

21.2.2. Provide at the Tenant’s expense, bodily injury and property damage liability insurance covering all work on the Property with limits of liability in the amount of \$300,000 BI and \$200,000 PD. The City shall be shown on such policies as additional named insured.

21.2.3. As to liability policies, name City, its property managers, and any mortgagee(s), and their respective directors, officers, partners, agents,

employees, members, trustees, and shareholders as additional insureds, by endorsement approved by City.

21.3 Evidence of Coverage. Annually, Tenant shall deliver to City certificates of insurance, if required by City, including certified copies of each such insurance policy as soon as practicable after the placing of the required insurance and periodically thereafter upon renewal or replacement of the policies then in force, which shall occur at least thirty (30) days prior to the expiration or cancellation thereof. A certificate of insurance that states that the failure to give the City notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For example, certificates or policies stating that the insurance company shall “endeavor to notify” and that the “failure to give such notice imposes no obligation” on the insurance company are not in compliance with the insurance requirement of this Lease. All certificates of insurance shall provide those thirty (30) days written notice be given to the Risk Manager, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103 and the Real Property Manager, Real Property Division, P.O. Box 1293, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. City shall have the right to request current confirmation of insurance coverage from time to time. No review or approval of any such insurance certificate by City shall derogate or diminish City’s rights or Tenant’s obligations. Tenant shall not take possession of the Property without having complied with the requirements of this Section. If at any time Tenant fails to provide satisfactory evidence of all required coverages, City may but shall have no obligation to purchase such insurance for Tenant and at Tenant’s sole cost and expense, which shall be immediately due and payable by Tenant upon demand.

22. Condemnation.

22.1. Optional Termination. If during the Term any part of the Property is taken by right of eminent domain or in lieu of condemnation, whether or not any portion of the Property is taken, and if in the reasonable opinion of City substantial alteration or reconstruction of the portion of the Property is necessary or desirable as a result thereof, or the amount of parking available to the portion of the Property is materially and adversely affected, City shall have the right to terminate this Lease by giving Tenant at least thirty (30) days’ written notice of such termination.

22.2. Award. City shall be entitled to receive and retain the entire award or consideration for the affected lands and improvements and Tenant shall not have, or advance, any claims against City for (i) the value of its property or its leasehold estate, (ii) the unexpired term of this Lease, (iii) costs of removal or relocation, or (iv) business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give City any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority

any separate award of compensation attributable to the taking or purchase of Tenant's chattels or trade fixtures or attributable to Tenant's relocation expenses provided that any such separate claim by Tenant shall not reduce or adversely affect the amount of City's award. If any such separate award made or compensation paid to Tenant specifically includes an award or amount for City, Tenant shall promptly account therefor to City.

23. Ethics and Campaign Practices Board, Fair Dealing and Conflict of Interest.

23.1. Tenant 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 Lease whenever such records or information are within Tenant's custody, are germane to an investigation authorized by the Board and are requested by the Board. Tenant 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. Tenant agrees to require that all contractors, subcontractors, or sub-consultants employed by Tenant for any of the Services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Tenant, will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

23.2 Upon execution of this Lease, or within five (5) days after the acquisition of any interest described in this Section during the Term of this Lease, the Tenant shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or hereafter acquires any direct, indirect, legal or beneficial interest in the Tenant or in any contract, Lease or agreement between the City and Tenant or in any franchise, concession, right or privilege of any nature granted by the City to the Tenant in this Lease.

23.3 Tenant covenants and warrants that the only person or firm interested in this Lease as principal or principals is named in this Lease, and that this Lease is entered into by the Tenant without collusion on the part of the Tenant with any person or firm, without fraud and in good faith. The Tenant also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Lease, will be offered or given by the Tenant or any agent or representative of the Tenant to any officer or employee of the City with a view towards securing this Lease or for securing more favorable treatment with respect to making any determinations with respect to performing this Lease.

24. Discrimination Prohibited.

In the operation and use of the Property, the Tenant shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as

amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or physical or mental handicap. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

25. Americans with Disabilities.

Tenant agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on Tenant or that would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable requirements of the ADA 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 said parties as a result of any acts or omissions of Tenant or its agents in violation of the ADA.

25. Broker.

Tenant warrants and represents that it has not consulted or negotiated with any broker or finder with regard to the Property or this Lease. If Tenant shall be in breach of the foregoing warranty, Tenant shall indemnify the City against any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with the Tenant.

IV. MISCELLANEOUS.

1. Waiver of Default.

No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Lease or to exercise any right or remedy available on the breach thereof, and no acceptance of full or partial Rent or Additional Rent during the continuance of any breach will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Lease that Tenant is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City.

2. Relation to Other Leases.

This Lease is separate and distinct from and shall be construed separately from any other agreement between City and Tenant or the City and any other Tenant.

3. Time is of the Essence.

Time is of the essence in the performance of this Lease.

4. Governmental Right and Powers.

Nothing in this Lease shall be construed or interpreted as (i) limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Property; (ii) waiving or limiting the City's control over the management, operations or maintenance of the Property except as specifically provided in this Lease; or (iii) impairing exercising or defining governmental rights and the police powers of the City.

5. Exhibits.

All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease, are hereby incorporated into this Lease by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

6. No Partnership or Agency.

Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of City and Tenant, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Tenant the general representative or agent of City for any purpose whatsoever.

7. Non-Liability of City.

City shall not in any event be liable for any acts or omissions of Tenant or its agents, servants, employees or independent contractors or for any condition resulting from the operations or activities of Tenant, its agents, servants, employees or independent contractors either as to Tenant or to any other person. City shall not be liable for Tenant's failure to perform any of its obligations under this Lease, or for any delay in the performance thereof, nor shall any such delay, or failure, be deemed a default by City. Notwithstanding anything to the contrary in this Lease, neither the City, nor City's administration, councilors, directors, employees, agents, representatives, successors or assigns (collectively, "City's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking, or agreement contained in the Lease, and the sole right and remedy of Tenant or any subsequent sublessee or assignee shall be against City's interest in the Property. Neither Tenant nor any subsequent sublessee or assignee shall seek to obtain any judgment imposing personal liability against the City, City's Affiliates, or their successors or assigns, nor execute upon any judgment or place any lien against any property other than City's interest in the Property. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

8. Force Majeure.

In the event City or Tenant is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, public health crises or pandemics, riots, insurrection, war, acts of God, or other causes beyond the reasonable control of City or Tenant, neither Party shall be liable for the delay, and the period for the performance by either Party shall be extended for a period equivalent to the period of such delay. In the event such *force majeure* event delay lasts six (6) months or more, either Party shall have the right to terminate this Lease without penalty by providing the other Party with written notice. The foregoing shall be inapplicable to the payment of rent by Tenant and to the delivery of the Property by City.

9. Contract Review.

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

10. Notices.

Any notice from one Party to the other must be in writing and shall be deemed duly given three (3) days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other Party at the address set below, or such other address as either Party may designate in writing. The Parties shall be responsible for notifying each other of any change of address. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. If and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Tenant. All parties included with terms "City" and "Tenant" respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effects as if each had received such notice or payment.

a. Notice to Tenant:

Albuquerque Sign
Language Academy
Attn: Raphael Martinez,
Executive Director
225 Griegos Road NW

Albuquerque, NM 87107

b. Notice to City:

City of Albuquerque
One Civic Plaza, 11th Floor
Attn: Chief Administrative Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

c. With a copy to:

Real Property Division Manager
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

11. Estoppel Certificates.

Tenant shall at any time within ten (10) days after written request from City execute, acknowledge and deliver to City a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the term; (c) confirming the amount of the security deposit held by City; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of City hereunder, or specifying such defaults if any are claimed; and (e) confirming such other matters as City may reasonably request. A prospective purchaser or encumbrancer of the Property may conclusively rely upon any such statement. If Tenant fails to respond within the required period, Tenant shall conclusively be deemed to have certified, confirmed and acknowledged all matters requested by City. If City desires to finance or refinance the Property, Tenant hereby agrees to deliver to any lender designated by City such financial statements of Tenant and any Guarantors named in this Lease as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant and any guarantors. All such financial statements shall be received by City in confidence and shall be used only for the purposes herein set forth.

12. Binding Effect.

Once this Lease is made, upon the Effective Date the covenants, terms and conditions of this Lease will be binding upon and inure to the benefit of the Parties, their successors, assigns, subtenants, and subleases.

13. Further Actions.

At any time and from time to time, each Party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Lease.

14. Severability.

In the event any covenant, condition or provision herein is held to be void, voidable, 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 material altering the intention of the Parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Lease shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Tenant in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Lease.

15. Authorization.

If Tenant executes this Lease as a corporation or partnership, then Tenant and the person(s) executing this Lease on behalf of Tenant, represent and warrant that such entity is duly qualified to do business in the State in which the Property is located and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on Tenant's behalf. City represents and warrants that it is the fee simple owner of the Property and that it has all requisite authority and approval to enter into this Lease.

16. Joint and Several Liability.

In the event that more than one person or entity executes the Lease as Tenant, all such persons and entities shall be jointly and severally liable for all of Tenant's obligations hereunder.

17. Headings and Captions.

Captions of articles, sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

18. Attorneys' Fees.

If either Party to this Lease institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, each Party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

19. Governing Law and Venue.

This Lease shall be construed under the laws of the State of New Mexico. The Parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The Parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The Parties further acknowledge that they have fully and fairly bargained for the terms of this Article IV, Section 19. The terms of this provision shall survive the expiration or earlier termination of this Lease.

20. Final Dates.

If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word “days” is used herein, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

21. Multiple Counterparts.

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

22. Public Document.

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

23. Entire Agreement and Modification.

23.1 Entire Agreement. This Lease, including the attached Exhibits, constitutes the full and final agreement of the Parties and 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 written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Lease.

23.2 Modification. No subsequent agreement may modify this Lease unless it is in writing and signed by the Parties or their authorized agents. This Lease 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.

24. Electronic Signatures.

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

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 his authorized designee.

CITY OF ALBUQUERQUE:

A New Mexico Municipal Corporation

Approved by:

Chief Administrative Officer:

Approved by:

City Council:

Dr. Samantha Sengel

Date

EC #

Date

Recommended by:

Dr. Shelle Sanchez, Director
Department of Arts & Culture

Date

TENANT:

Albuquerque Sign Language Academy

Raphael Martinez, Executive Director

Date

EXHIBIT A
The Property-Legal Description

That certain tract of land situated within Projected Section 32, T11N, R3E, N.M.P.M., Bernalillo County, New Mexico and within the Town of Albuquerque Grant, being identified as Middle Rio Grande Conservancy District (M.R.G.C.D.) tracts 147 a1b and 147 a2a, Property Map No. 32, and being more particularly described by metes and bounds survey as follows:

BEGINNING for a tie at the ACS monument "11-F14" having New Mexico State Plane Coordinate values (Central Zone) of $x=383,008.58$ and $y=1,054,549.75$, whence the ACS monument "12-F14" having New Mexico State Plane Coordinate values (Central Zone) of $x=383,173.22$ and $y=1,505,910.06$ bears N 06 deg. 45' 13" E.;

Thence, S09 deg. 08; 16" W., 1222.19 feet distance to a point on the easterly right-of-way line of Fourth Street, N.W., (fnd. 1/2 iron pipe) being 1) the southwest corner of said Tract 147a2a, 2) the northwest corner of M.R.G.C.D. Tract 147a2b Property map No. 32, and 3) the Southwest corner and true point of beginning of the parcel of land herein described;

Thence, N 09 deg. 21' 04" E., 180.60 feet distance along said easterly right- of- way line to the northwest corner of said parcel of land (fnd. chiseled "x") being

1) the northwest corner of said Tract 147a1b and 2) the southwest corner of said Lot 2, R.L. Gaul Addition, of which was filed for record in the office of the county Clerk of Bernalillo County, New Mexico, on December 17, 1946, Volume B1, folio 121;

Thence, S 73 deg. 32' 35" E., 277.49 feet distance leaving said easterly right- of-way line along the line common to the northerly boundary line of said parcel and to the southerly boundary line of said Lot 27, a Public Alley and Lots 24, 25 and 26 of said R.L. Gaul Addition, to the northeast corner of said parcel being 1) the corner of said Tract 147 a1b and 2) the northwest corner of the M.R.G.C.D. Tract 8a to a point;

Thence, S 17 deg. 33' 00" W., 126.59 feet distance along the line common to the easterly boundary line of said parcel and the westerly boundary line of said Tract 8a to a point;

Thence, S 18 deg. 12' 18" W., 52 feet distance continuing along said common line to the southeast corner of said parcel being 1) the southeast corner of said Tract 147a2a and 2) the northeast corner of said Tract 147 a2b;

Thence, N 73 deg. 41' 45" W., 251.15 feet distance along the line common to the southerly boundary line of said parcel and the northerly boundary line of said Tract 147 a2b to the southwest corner and true point of beginning of said parcel.