

EC-23-343




**CITY OF ALBUQUERQUE**  
Albuquerque, New Mexico  
Office of the Mayor

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

08/18/2023

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

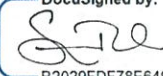
**SUBJECT:** Terminal Building Lease and Operating Agreement between the City of Albuquerque and Newman's Dedicated Delivery, LLC

I transmit herewith for City Council approval a proposed Terminal Building Lease and Operating Agreement between the City of Albuquerque and Newman's Dedicated Delivery, LLC, a New Mexico limited liability company.

This Terminal Building Lease and Operating Agreement will allow Newman's Dedicated Delivery, LLC to continue to lease office/operating space at the Albuquerque Sunport in furtherance of their business of delivering mis-checked baggage for the airlines.

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

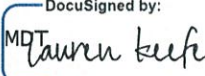
**Approved:**

DocuSigned by:  
  
B2029FDF78E649F...  
Lawrence Rael  
Chief Administrative Officer

8/25/2023 | 5:05 PM

Date

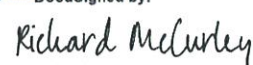
**Approved as to Legal Form:**

DocuSigned by:  
  
1A21D96D32C74EE...  
Lauren Keefe  
City Attorney

8/22/2023 | 12:03 PM MDT

Date

**Recommended:**

DocuSigned by:  
  
4E327E3E2466405...  
Richard G. McCurley  
Director of Aviation

8/21/2023 | 8:23 AM PDT

Date

## **Cover Analysis**

### **1. What is it?**

The subject of this Executive Communication is a Terminal Building Lease and Operating Agreement (“Agreement”) between the City of Albuquerque, as lessor, and Newman’s Dedicated Delivery, LLC (“Newman’s”) as lessee.

### **2. What will this piece of legislation do?**

Council approval of this Agreement will allow the Aviation Department to enter into a lease with Newman’s, LLC for 282 SF of office space on the baggage claim level of the Albuquerque Sunport Terminal Building. The lease has a term of ten years.

### **3. Why is this project needed?**

The Agreement will allow the Aviation Department to obtain revenue from the leasing of office space in the terminal building. Obtaining revenue from commercial leasing of airport properties to offset airport costs is a requirement to obtain grant funds from the Federal Aviation Administration.

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

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

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

The Agreement will generate revenue to the Aviation Department beginning at Four Thousand Nine Hundred Sixty-five and 60/100 dollars (\$4,965.60) per year, with annual escalations during the term.



**ALBUQUERQUE INTERNATIONAL SUNPORT**  
**TERMINAL BUILDING LEASE AND OPERATING AGREEMENT**  
**between**  
**THE CITY OF ALBUQUERQUE**  
**and**  
**NEWMAN'S DEDICATED DELIVERY, LLC**

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**ALBUQUERQUE INTERNATIONAL SUNPORT**  
**TERMINAL BUILDING LEASE AND OPERATING AGREEMENT**  
**between**  
**THE CITY OF ALBUQUERQUE**  
**and**  
**NEWMAN'S DEDICATED DELIVERY, LLC**

This **Terminal Lease and Operating Agreement** ("Agreement") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **Newman's Dedicated Delivery, LLC**, a corporation organized and existing under the laws of the state of Oklahoma ("Lessee" or "Operator"), and together with City, the "Parties", and each, a "Party").

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

**Section 1. Recitals**

**1.1** City owns and operates through its Aviation Department the Albuquerque International Sunport ("Airport") as shown in **Exhibit A** attached hereto and incorporated herein, located in the County of Bernalillo, State of New Mexico;

**1.2** Lessee desires to lease from City, and City is willing to lease to Lessee, Two Hundred Eight-two (282) square feet of office space on the baggage claim level of the Terminal Building ("Premises") located at the Airport as shown in **Exhibit B**, attached hereto and incorporated herein; and

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

**Section 2. Premises.**

City, for and in consideration of the rents, fees, covenants, conditions, and agreements hereafter set forth in this Agreement to be kept and performed by Lessee, hereby leases to Lessee for its exclusive use, and Lessee leases from City, upon the conditions, covenants, and agreements set forth in this Agreement, all of which Lessee accepts, the Premises.

Upon Occupation of the Premises, Lessee shall accept the Premises in its "as is" condition without any liability or obligation on the part of City to make any alterations, improvements, or repairs of any kind on or about the Premises. Lessee has inspected the Premises and has deemed same suitable for the intended use of Lessee. City shall not be liable to Lessee or its officers, employees, agents, contractors, or invitees for any damage or injury caused by the condition of the Premises.

**Section 3. Lessee's Use of Premises.** The Premises shall be used and occupied by Lessee for the purpose of providing office space for the purpose of temporary storage of lost, mishandled,

and mischecked baggage by the airlines as well as necessary office space in which to operate the delivery service.

**Section 4. Assignment and Subletting.** Lessee shall not assign, sublet, mortgage, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of City.

**Section 5. Term.** The Initial Term of this Agreement ("Initial Term") shall begin on the first day of the month immediately following the month in which this Lease is executed by City's Chief Administrative Officer ("Effective Date"), and shall continue for a period of (5) years, unless earlier terminated pursuant to any provision of this Agreement.

**5.1 Option Term.** Following the expiration of the Initial Term, Lessee shall have the option to renew this Agreement for five (5) additional one (1) year periods ("Renewal Periods"). Such renewals shall be granted provided that Lessee is current in its payments to City, and has complied with all conditions, covenants, and agreements set forth in this Agreement at the start of each Renewal Period.

**5.2 Holding Over.** Holding over by Lessee following the expiration of the Initial Term or Renewal Periods, if applicable, whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy on the same terms and conditions of this Agreement then in effect; provided, however, that the monthly rent during such tenancy shall be equal to one hundred ten percent (110%) of the monthly rent paid by Lessee during the final month of the Initial Term or Renewal Periods, if applicable.

## **Section 6. Rents and Fees**

**6.1 Rent.** Commencing on the Effective Date, and continuing throughout the term, Lessee agrees to pay City monthly rent, in advance without invoice, on the first day of each calendar month, for the use of the Premises and for the rights granted pursuant to this Agreement. The initial monthly rent shall be **FOUR HUNDRED THIRTEEN AND 80/100 DOLLARS (\$413.80)** ("Base Rent"). Said rent is based on \$17.6085 per square foot per year for Two Hundred Eighty-two (282) square feet of space.

**6.2 Rent Adjustment.** Beginning on the first (1<sup>st</sup>) anniversary of the Effective Date, and at each successive one (1) year period thereafter during the Initial Term and Renewal Terms, if any, the Rent payable to City will be adjusted by an amount equal to the average of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 as published by the U.S. Bureau of Labor Statistics Division of Consumer Prices for the immediately preceding one (1) year period. City shall notify Lessee, via invoice, of the adjustment to the Rent. In no event shall the Rent for any subsequent one (1) year period be less than the Rent for the immediately preceding one (1) year period of the Term.

**6.3 Percentage of Gross Revenues Fee.** Lessee agrees to pay monthly to City, a Percentage of Gross Revenues fee of **TEN PERCENT (10%)** of the gross revenues derived from Lessee's business activities at the Airport, as further defined in **Exhibit C**. Immediately upon

Lessee's receipt of revenues from such services by Lessee, the percentage of the revenues belonging to City shall immediately vest in and become the property of City. Lessee shall be responsible as trustee for the revenues until the revenues are delivered to City.

**6.3.1 Payment of Percentage of Gross Revenues Fee.** Lessee agrees to pay to City monthly, the Percentage of Gross Revenues Fee for the preceding month's applicable services performed. The Percentage of Gross Revenues Fee is due and payable without invoice, no later than the fifteenth (15th) day of each month for the preceding month, and shall be reported on the Monthly Statement of Gross Revenues Form in conformity with **Exhibit C**.

**6.4 Parking.** If Lessee requires parking for its employees at the Airport, City will assess a reasonable monthly fee for employee parking.

**6.5 Airport Identification ("ID")/Access Card Fees.** Lessee shall pay to City, all fees assessed for the issuance of an Airport ID/Access card. Lessee shall also pay, as required, replacement fees for Airport ID/Access cards lost, stolen, or unreturned to City.

**6.6 Miscellaneous Fees.** Within thirty (30) days following receipt of invoice from City, Lessee shall pay to City additional fees in the event of any of the following:

**6.6.1** If City has paid any sum or sums, or has incurred any obligation or expense, for which Lessee has agreed to pay or reimburse City.

**6.6.2** If City is required or elects to pay any sum or sums, or incurs any obligation or expense, because of the failure, neglect, or refusal of Lessee to perform or fulfill any of the terms, conditions, or covenants required of it hereunder after applicable notice and cure periods.

**6.6.3** If City provides any services to Lessee other than those expressly provided for in this Agreement following Lessee's written request for such services and agreement as to the cost of the services.

**6.6.4** If City has imposed a fine or penalty on Lessee for its violation(s) of any terms or conditions of this Agreement

**6.6.5** If other fees for services are rendered, which may include, but are not limited to, utilities, telephone, internet, trash removal, delivery access fees, and similar fees.

**6.7 Rents and Fees Prorated.** If the Effective Date, expiration of the Term, or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, Rents and Fees shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

**6.8 Place of Payment.** Lessee shall deliver payments of Rents and Fees to the office of the Director or at such other place as may be designated by City from time to time. Payment shall be made to the order of the "City of Albuquerque."



**6.9 Late Payment Fees.** If rents and fees required by this Agreement are not received by City on or before the date specified in this Agreement, Lessee shall pay an interest charge to City of one and one-half percent (1½%) per month (eighteen (18%) annually) for each month or partial month that any payment due is not paid. In addition, Lessee shall pay an administrative fee to City of **FIFTY AND NO/100 DOLLARS (\$50.00)** if City sends Lessee a late payment notice.

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

**7.1 Exhibit C: Gross Revenues, Reporting Requirements and Monthly Gross Revenues Reporting Form.**

**7.2 Exhibit D: Security Deposit Provisions.** Prior to the Effective Date, Lessee shall deposit at the Office of Director an Irrevocable Letter of Credit ("LOC") issued exclusively to the City or a Performance Bond ("Bond"), or cash/check in the amount OF **FOUR THOUSAND AND NO/100 DOLLARS (\$4,000.00)**. The Bond or LOC shall conform to the requirements provided in **Exhibit C**, attached hereto and incorporated herein.

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

**7.3.1 Commercial General Liability Insurance.** The Lessee shall have liability limits in amounts not less than:

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

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

**7.3.2 Commercial Automobile Liability Insurance.** The Lessee shall have automobile liability limits in amounts not less than **ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)** \* combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles, and other equipment both on and off work.

**\*Note:** If the Lessee is required to have airfield ground vehicle access, the Lessee shall provide **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)** in coverage.

**7.3.3 Workers' Compensation and Employers Liability Insurance** as required by New Mexico Law.

**7.4 Exhibit F: Environmental Provisions.**

**7.5 Exhibit G: Airport Security Provisions.**

**7.6 Exhibit H: General Conditions.**

## **Section 8. Termination of Agreement.**

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

**8.1.1** Pay rents and fees;

**8.1.2** Provide and maintain a security deposit;

**8.1.3** Provide and maintain insurance.

In the event Lessee fails to comply with any or all of the Sections for a period of fifteen (15) days after receipt by Lessee of City's written notice of an Event of Default, City shall be entitled to terminate this Agreement by written notice to Lessee after the expiration of such fifteen (15) day period, provided that no notice of termination shall be effective if Lessee has fully cured all Events of Default identified in the fifteen (15) day notice prior to Lessee's receipt of the notice of termination. Termination of this Agreement will take effect immediately upon Lessee's receipt of notice of termination unless stated otherwise in the notice of termination.

**8.2 Termination by City: 30-Day Cure Period.** Except for Events of Default, if Lessee fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt from City of written Notice of Non-Compliance describing in detail the failure, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination by written notice to Lessee after the expiration of such thirty (30) day period. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully cured all events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

In the event this Agreement is terminated, Lessee shall remain liable to City for damages in an amount equal to the payment obligation for outstanding rents and fees required, discounted to net present value to the date of termination.

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

**8.4 Termination by Lessee: 30-Day Cure Period.** Lessee shall be entitled to terminate this Agreement if City fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination, City has fully cured all events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

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

**Section 9. Notices, Consents, and Approvals.** All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile or email transmission to the "FAX" number or e-mail address given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address and/or FAX number and e-mail address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

<b>City:</b>	Director of Aviation
<b>Certified Mail:</b>	Albuquerque International Sunport PO Box 9948 Albuquerque, NM 87119-1048
<b>Personal Delivery:</b>	2200 Sunport Blvd. SE - 3rd Floor Albuquerque, NM 87106
<b>Telephone:</b>	(505) 244-7700
<b>FAX Transmission:</b>	(505) 842-4278
<b>Email:</b>	rmccurley@cabq.gov
<b>Lessee:</b>	Newman's Dedicated Delivery, LLC
<b>Lessee Official:</b>	David Bemis

**Title:** CEO  
**Certified Mail and Personal Delivery:** 3311 Highland Meadow Dr.  
Farmer's Branch, TX 75234  
**Telephone:** (214) 226-2525  
**Email:** Davidb.ctc@gmail.com

If notice, consent, or approval is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such notice, consent, or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the email or facsimile transmission, unless provided otherwise in this Agreement.

**Section 10. Savings.** City and Lessee acknowledge that they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Lessee further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

**Section 11. Approval of Agreement.** This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the Chief Administrative Officer of the City of Albuquerque.

**[SIGNATURE PAGE FOLLOWS]**

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

**City of Albuquerque:**

By: \_\_\_\_\_  
**Lawrence Rael**  
**Chief Administrative Officer**

Date: \_\_\_\_\_

**Recommended:**

By: \_\_\_\_\_  
**Richard G. McCurley**  
**Director of Aviation**

Date: \_\_\_\_\_

**Newman's Dedicated Delivery, LLC:**

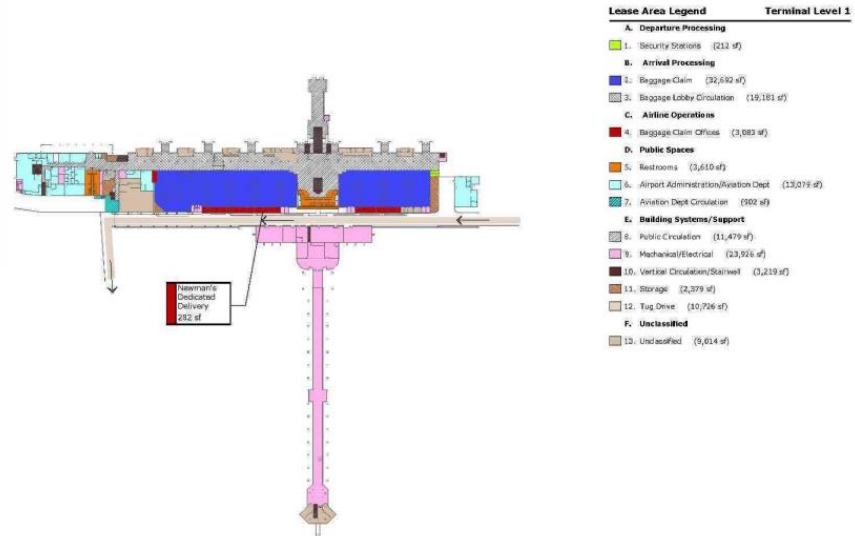
By: \_\_\_\_\_  
**David Bemis**  
**CEO**

Date: \_\_\_\_\_

## Exhibit A Airport



## Exhibit B Premises



**Exhibit B**  
**Terminal Building Space**  
**Albuquerque International Sunport**

**Exhibit C**  
**Gross Revenues, Reporting Requirements**  
**and**  
**Monthly Gross Revenues Reporting Form**

**1. Definition of Gross Revenues.** Gross Revenues means the total amount of money or the value of other considerations received from the performance of Operator's services anticipated under this Agreement, whether for cash or on credit, whether collected or not.

**1.1 Specific Inclusions.** Gross Revenues include, but are not limited to, the following:

**(a)** The total amount of money or the value of other consideration received, whether payment is for cash or on credit and whether or not such amount is collected.

**(b)** All credit losses, credit charges, or credit deductions incurred by Operator or imposed on Operator by reason of Operator's acceptance or use of credit cards or other credit or charge arrangement.

**(c)** All Aviation Department Airport fees and charges required of Operator under the terms and conditions of this Agreement with Operator shall remain part of the Gross Revenues and shall not be deducted or excluded from Gross revenues. Under no circumstances shall Airport fees and charges required of Operator be added to customer charges.

**1.2 Specific Exclusions.** Excluded or deducted from Gross Revenues are the following:

**(a)** Federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Operator directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Operator to any governmental agency.

**(b)** Receipts from the sale or trade-in value of any equipment used on the Airport and owned by Operator.

**(c)** The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Operator where such exchanges or transfers are not made for the purpose of avoiding a sale by Operator which otherwise would be made from or at the Airport.

**(d)** Receipts in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers.

**(e)** Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Operator, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.



(f) Receipts from the sale to Operator's employees of uniforms or clothing to Operator's employees where such uniforms or clothing are required to be worn by such employees as a condition of their employment.

**2. Monthly Statement of Gross Revenues.** Within fifteen (15) days after the close of each calendar month during the term of this Agreement, Operator shall submit to City, on the Monthly Statement of Gross Revenues Form provided herewith, information concerning its Gross Revenues derived from Operator's services performed at the Airport for the preceding month. This form shall include all Gross Revenues for the preceding month upon which the Administrative Fee payment required was computed. Operator must submit the Administrative Fee payment with the Monthly Statement of Gross Revenues Form. This statement shall be signed by a responsible and authorized accounting officer of Operator. City shall have the right to change the format of the Monthly Statement of Gross Revenues Form and to require Operator to submit other information pertaining to its Gross Revenues, and Operator agrees to use such form and provide such additional information.

**3. Annual Reporting.** Not later than ninety (90) days following the end of each Calendar Year throughout the Term, Operator shall furnish to City a statement of its Gross Revenues ("Annual Report") for that Calendar Year, prepared by an independent Certified Public Accountant ("CPA").

Operator's Annual Report must be itemized for each month of the Calendar Year, and detail Operator's: (a) Gross Revenues as previously reported to City, (b) Gross Revenues as reported by the independent CPA, (c) total monthly fees due to City, and (d) schedule of Operator's payments made to City. If such Annual Report shows an underpayment of the required fees due to City, Operator shall submit payment for such underpayment to City with the Annual Report.

**3.1** For each Calendar Year in which Operator's Gross Revenues do not exceed **FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00)**, Operator shall furnish to City, at its sole expense, a compiled Annual Report prepared in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

**3.2** For each Calendar Year in which Operator's Gross Revenues exceed **FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00)**, Operator shall furnish to City, at its sole expense, an Annual Report prepared in accordance with Generally Accepted Auditing Standards. Such Annual Report shall contain an unqualified opinion on the financial information presented.

Within a reasonable period of time following City's receipt of Operator's Annual Report, City's Auditor shall perform an independent reconciliation of Operator's monthly reports against the Annual Report. If such reconciliation reveals an Operator overpayment or underpayment of the required fees, City's Auditor shall notify Operator, in writing, of such overpayment or underpayment and issue the appropriate credit or invoice to Operator. If a credit is issued, it shall be taken in the month immediately following such notification.

**4. Accounting Records.** Operator agrees to keep full and accurate books showing all of its Gross Revenues derived from its operations at the Airport, and City shall have the right to inspect, examine, copy, and audit such books and records including, but not limited to, Operator's federal, state, and local tax returns and New Mexico Gross Receipts tax return records as filed with the State of New Mexico, as further provided in subsection 6.5 below. Such books and records shall include separately maintained original records including the following: (a) daily dated cash register tapes, including tapes from temporary registers; (b) serially numbered sales slips; (c) Operator's bank account statements; (d) daily and/or weekly transaction reports; and (e) such other records, if any, which an independent CPA performing an examination of Operator's Gross Revenues in accordance with Generally Accepted Auditing Standards would normally examine.

**5. Auditing by City.** City shall have the right at any time within three (3) years after receipt of Operator's Annual Statements or Monthly Statements to have a CPA audit the Operator's books and records during reasonable hours including, but not limited to, the Aviation Department's Auditor, the City's Office of Internal Audit, or its successor agency, or a private CPA. In the event that such audit shows Operator's Gross Revenues as reported in the certified Annual Statements to be more than one percent (1%) in error detrimental to City, Operator shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional fees found due by such audit shall be paid to City within thirty (30) days of the audit and shall bear interest at the Late Payment Fee interest rate from the date such payment was due until paid. If the audit reveals that Operator has overpaid any additional fees, Operator shall deduct such overpayments from the monthly fees due to City during Operator's next billing due date, if any. In the instance that Operator does not have any fees due during the next monthly billing cycle, then City will refund and pay for such overpayment within thirty (30) days of discovery that such refund is required. Operator shall not be entitled to charge City any interest on such overpayments.

Operator shall maintain records of its Gross Revenues for a period of at least three (3) years following the end of each Calendar Year, and such records shall be available to City for audit or review on request during usual office hours. Operator shall maintain such records at its corporate office and provide them to City, in Albuquerque, New Mexico, upon fifteen (15) days written request.

**6. Copying of Records.** Operator shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support their audit. Operator shall provide City's representatives with retrievals of computer-based records or transactions the representatives determine to be necessary to conduct the audit. Operator shall not charge City for reasonable use of Operator's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transactions stored in magnetic, optical, microform or other media.

**7. Failure to Record.** In the event Operator fails to create and preserve part or all of the Gross Revenues records required in this Agreement, Operator shall pay City the Administrative Fee based on an estimated amount of Gross Revenues for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues shall be made by City and shall be based on historical Gross Revenues of Operator, or

other operators situated in similar circumstances as Operator. Failure of Operator to create and preserve such records shall be Operator's material breach of this Agreement.



Albuquerque International Sunport  
Monthly Gross Revenues Report

COMPANY NAME:		Newman's Dedicated Delivery, LLC
MONTH/YEAR:		
(Due by the 15th day of the following month)		
City of Albuquerque Aviation Department P.O. Box 9948 Albuquerque, NM 87119-1048		Email To: <a href="mailto:aviar@cabq.gov">aviar@cabq.gov</a>
<b>MONTHLY GROSS REVENUES REPORTING</b>		
List each Airline		Monthly Revenues Amount
1.)		\$ -
2.)		\$ -
3.)		\$ -
4.)		\$ -
5.)		\$ -
6.)		\$ -
7.)		\$ -
8.)		\$ -
9.)		\$ -
10.)		\$ -
11.)		\$ -
12.)		\$ -
*Attach List for Additional Companies		
Monthly Gross Revenues Before Exclusions:		\$ -
Less: Exclusions from Gross Revenues - See Page 2 of 2		Exclusions Amount
a.)	Deductible taxes	\$ -
b.)	Equipment sales/trade-in (receipts required)	\$ -
c.)	Equipment or merchandise exchanged	\$ -
d.)	Supplies/merchandise exchanged (receipts required)	\$ -
e.)	Refunds to customers (receipts required)	\$ -
f.)	Sales of uniforms to employees (receipts required)	\$ -
Total Exclusions:		\$ -
TOTAL Gross Amount Revenues After Exclusions:		\$ -
<b>COMPUTATION OF % FEE DUE:</b>		
10 % of Monthly Gross Revenues:		\$ -
Payment included in Check No:		#
Amount Paid:		
Date:		
Oath of Operator: The undersigned, being first duty sworn, deposes and says that the gross revenues detailed of this statement are true and just, and the percentage fee shown is due the City of Albuquerque in accordance with the Operating Agreement.		
Authorized Officer:		Signature & Date:



## Albuquerque International Sunport Percentage of Gross Revenues Fee

**Gross Revenues** - means the total amount of money or the value of other considerations received from the performance of Operator's services anticipated under this Agreement, whether for cash or on credit, whether collected or not.

**Specific Inclusions** - Gross Revenues include but are not limited to the following: (a) the total amount of money or the value of other consideration received whether payment is for cash or on credit and whether or not such amount is collected; (b) all credit losses, credit charges, credit deductions incurred by Operator or imposed on Operator by reason of Operator's acceptance or use of credit cards or other credit or charge arrangements.

**Specific Exclusions - Excluded or deducted from Gross Revenues are the following:**  
*(not all may be applicable)*

- a.) Federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Operator directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Operator to any governmental agency;
- b.) **Receipts** from the sale or trade-in value of any equipment used on the Airport and owned by Operator;
- c.) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Operator where such exchanges or transfers are not made for the purpose of avoiding a sale by Operator which otherwise would be made from or at the Airport;
- d.) **Receipts** in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers;
- e.) **Receipts** with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Operator, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
- f.) **Receipts** from the sale to Operator's employees of uniforms or clothing where such uniforms or clothing are required to be worn by such employees as a condition of their employment;

**Note:** Receipts for exclusions b), d), e) and f) must accompany payment in order for exclusion to be considered.

The Aviation Department reserves the right to modify this form at any time.

## **Exhibit D**

### **Security Deposit Provisions**

**1. Purpose of Security Deposit.** City will hold an Irrevocable Letter of Credit ("LOC") or Secure Performance Bond ("Bond") as security for the full and faithful performance of all terms, covenants, and conditions Lessee is required to perform under this Agreement.

**2. Form of Security Deposit.** Such Security Deposit shall be a Bond LOC in a form substantially the same as attached hereto and incorporated herein. The Bond shall be made payable on demand to the "City of Albuquerque." The LOC shall be made to the order of the "City of Albuquerque."

The LOC or Bond shall expressly permit partial payment and shall be issued exclusively to City of Albuquerque. The LOC or Bond shall allow presentment of City's claims via United States Postal Service First Class mail and shall not restrict such presentment to in-person appearances at a particular place. If a Bond is provided, such Bond shall be issued with City of Albuquerque as obligee by a surety licensed to conduct business in the State of New Mexico that has sufficient bonding capacity for the amount of the Bond. The surety shall be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the U.S. Treasury Department Federal Register, or its successor agency.

Documents evidencing the security deposit shall provide that it shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement, and shall allow City to make a partial draw on such security deposit. In the event of a partial draw, Lessee shall immediately reinstate the security deposit to the full amount required. Documents establishing the continuation or replacement of an LOC or Bond shall be received by the Aviation Department no less than thirty (30) days prior to the expiration of the existing LOC or Bond. If payments required by Lessee under the terms of this Agreement are not made in accordance with the payment provisions set forth, City shall have the right to forfeit, take, and use as much of such security deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. The City shall release the LOC or Bond within sixty (60) days following expiration or termination of this Agreement, provided Lessee has fully performed.

City shall have the option of accepting cash security deposits. City shall not be required to place cash security deposits into interest-bearing accounts; however, should City elect to do so, City shall be entitled to all interest earned as compensation for handling such account. City shall not be required to keep cash security deposits in separate accounts.

At any time, this Agreement requires the return of the security deposit, such provision shall be deemed to require the return of all deposits held by City under the terms of this Agreement, and the release of any supporting rights and documentation, including Uniform Commercial Code security interests and control agreements.

**Performance Bond**  
(sample format)

**Bond No.** \_\_\_\_\_

**Know All Men By These Present,** that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of \_\_\_\_\_ **DOLLARS (\$\_\_\_\_\_)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**Whereas**, the above bonded Principal has signed an Operating Agreement ("Agreement") with the City of Albuquerque, dated \_\_\_\_\_.

**Now, Therefore**, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of \_\_\_\_\_ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section \_\_ of the above referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque a thirty (30) day notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

In Witness Whereof, the Principal and Surety have hereunto set their Bonds and seals this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

Attest: \_\_\_\_\_ Principal

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_ Surety

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid,  
do hereby certify that \_\_\_\_\_ of the \_\_\_\_\_ who is  
personally known to me, appeared before me this day and acknowledged that he/she signed,  
sealed and delivered the foregoing instrument as his/her free and voluntary act as  
\_\_\_\_\_ of the \_\_\_\_\_, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**Irrevocable Letter Of Credit**  
(sample format)

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

City of Albuquerque  
Aviation Department  
Albuquerque International Sunport  
P. O. Box 9948  
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of:

\_\_\_\_\_ **DOLLARS (\$ \_\_\_\_\_)** for the  
account of

**[Name of Lessee]** available by your draft at sight when accompanied by:

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that **[Name of Lessee]** has failed to perform the terms, covenants and conditions to be performed as required by the **[Exact Title of the Agreement]** ("Agreement") dated \_\_\_\_\_.

**This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.**

Drafts under this credit must bear upon their face the words:

Drawn under \_\_\_\_\_ Bank \_\_\_\_\_

Letter of Credit No. \_\_\_\_\_ Dated \_\_\_\_\_.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before \_\_\_\_\_.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

\_\_\_\_\_  
[name of bank]

By: \_\_\_\_\_  
Authorized Signature

## **Exhibit E**

### **Insurance and Indemnity Provisions**

#### **1. Insurance**

**1.1 General Requirements.** For the term of this Agreement Operator shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Operator will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII or its equivalent, or as approved by City, covering all operations under this Agreement, whether performed by it or its agents. Various types of required insurance may be written in one or more policies.

When requested by City, Operator shall allow City to review in the presence of Operator's insurance representatives any or all policies of insurance for the insurance coverage required herein. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided in subsection F below.

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

**1.2 Additional Insured.** With respect to all coverage required other than workers' compensation, the City shall be a certificate holder and endorsed as an additional insured or loss payee. All coverage afforded shall be primary and non-contributory with respect to operations provided. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not make City a partner or joint venturer with Operator in its operations on the Airport.

Coverage for an additional insured shall **not** be limited to its vicarious liability, and coverage shall extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Operator, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

**1.3 Insurance Certificates and Endorsements.** Before commencing the Services, and on the renewal of all coverage, Operator shall furnish to the Director, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119-1048, all necessary certificates and additional insured endorsements in form satisfactory to the City showing that it has complied with this Section. All insurance certificates shall provide that thirty (30) days written notice, seven (7) days in the case of War & Allied Perils, ten (10) days for non-payment of premium, be given to the Director before a policy is canceled, materially changed, or not renewed. Acceptance of the Certificates of Insurance and endorsements by City shall not relieve Operator of any of the insurance requirements set forth herein, nor decrease the liability of Operator. Neither Operator nor any contractors, assignees, or other transferees of Operator shall begin any

operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director.

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

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

**1.4.1 Aircraft Liability Insurance.** The Operator shall procure and maintain policies of insurance for aircraft liability in an amount not less than as required by this Agreement for bodily injury and property damage including passengers, which shall include but not necessarily be limited to all of the following coverages: Contractual Liability, Hangarkeepers Legal Liability, Motor Vehicle Liability within the confines of the Airport, Mail and Cargo Legal Liability, and Fueling and Refueling (if such operations are conducted by Operator). Such coverage shall include War & Allied Perils.

**1.4.2 Commercial General Liability Insurance.** The Operator shall procure and maintain policies of insurance for aviation commercial general liability in an amount not less than as required by this Agreement including bodily injury and property damage, Premises, Products, Completed Operations, Mobile Equipment, Independent Contractors, Personal and Advertising Injury and Contractual Liability. Such coverage shall include War & Allied Perils.

**1.4.3 Commercial Automobile Liability Insurance.** The Operator shall procure and maintain policies of insurance for commercial automobile liability in an amount not less than as required by this Agreement covering owned, non-owned, and hired autos for bodily injury and property damage arising from activities on, or operations with respect to Airport premises, both on and off work.

**1.4.4 Environmental Impairment Liability Insurance.** The Operator shall procure and maintain policies of insurance of not less than the amount required in this agreement per occurrence, as necessary to insure the indemnification provisions of this Agreement. Environmental Impairment Liability Insurance shall be obtained by Operator and evidence of compliant coverage provided to the City no less than fifteen (15) days prior to the start of fueling operations. Operator shall not perform fueling operations before City has acknowledged and approved evidence of Environmental Impairment Liability Insurance in writing.

City reserves the right to review and modify the limits stated above at one (1)-year intervals to give effect to the changing risk management environment, statutory requirements, and inflationary trends.

The liability insurance required in paragraphs 1.4 above must:

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

- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

#### **1.4.5 Workers' Compensation and Employer's Liability Insurance.**

Operator shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Operator shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

With respect to Workers' Compensation Insurance, if Operator elects to be self-insured, Operator shall comply with the applicable requirements of law. If any portion of the work is to be subcontracted, Operator shall require the subcontractors similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Operator hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Operator's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Operator are not City employees for any purpose.

**1.4.6 Commercial Property Insurance.** Operator shall purchase and maintain Commercial Property Insurance in an amount equal to the replacement cost of Operator's improvements and all personal property situated on the Airport.

**1.4.7 Builders Risk Insurance.** Operator shall purchase and maintain Builders Risk Insurance during any period of construction or reconstruction for which Operator contracts. Operator shall carry, or shall require its contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work performed.

**1.5 Minimum Insurance.** The insurance requirements of this Agreement shall be the greater of: (a) the minimum coverage limits specified in this Agreement, or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Operator under this Agreement.

**1.6 Self-Insurance Retention.** In the event any of the insurance policies required in this Section, except as allowed by New Mexico law regarding Workers' Compensation, contain a self-insurance retention provision, for each such amount Operator shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico that is acceptable to City, or provide City with evidence that Operator's net worth as shown by independently audited financial statements is in excess of the amount of the total self-insurance retentions.

## **2. Indemnification**

**2.1 General Indemnification.** Operator agrees to defend, indemnify, and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs, and expenses, including, but not limited to consultants' fees, reasonable fees of attorneys, court costs, and litigation expenses of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of Operator, its agents or its employees arising out of the operations of Operator under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

**2.2 Environmental Harm Indemnification.** Without limiting any provisions of this Agreement, Operator shall also defend, indemnify, and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses, including but not limited to reasonable attorneys' and consultants' fees, court costs, and litigation expenses, of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

**2.2.1** any actual or alleged contamination by Hazardous Substances of the Airport by Operator or its agents;

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

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

**2.2.4** any violation by Operator of any Environmental Laws.

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

**2.3 Limitations.** To the extent, if at all, NMSA 1978 § 56-7-1, *et seq.*, is applicable to this Agreement, these Insurance and Indemnity Provisions shall not extend to or be construed to require Operator to defend, indemnify, and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses, or expenses, including attorneys' fees, arising out of bodily injury or damage to persons or property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

**2.4 Scope of Indemnification.** In addition, with respect to any claims, actions, suits, damages, or judgments caused by or resulting from the negligent acts, omissions, or operations of Operator, its agents, servants, or employees, Operator shall: (a) investigate or cause the investigation of accidents involving such injuries; (b) negotiate or cause to be negotiated all claims made as may be deemed expedient by Operator, and defend, or cause to be defended, suits for damages, even if groundless, false, or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (c) pay and satisfy judgments finally establishing the liability of City in all actions defended by Operator pursuant to this Section; (d) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (e) pay or cause to be paid: i) all costs taxed against City in any legal proceeding defended or caused to be defended by Operator as aforesaid; ii) any interest accruing up to the date of payment by Operator; iii) all premiums charged upon appeal bonds required in such proceedings; and iv) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Operator fail to provide the defense and indemnification required herein.

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

**2.5 Miscellaneous.** City shall, promptly upon receipt, give Operator every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Operator notice of any such demand, notice, summons, or other process received by City, and such failure to give notice shall result in prejudice to Operator in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Operator of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Operator from seeking contribution or indemnity from any third party, which may have caused or contributed to the event for which Operator indemnified City.

**3. Non-liability of City.** City shall not in any event be liable for any acts or omissions of Operator, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Operator, Operator's agents, servants, employees, or independent contractors working for, or on behalf of, Operator.

City shall not be liable for Operator's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

## **Exhibit F**

### **Environmental Provisions**

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

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

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

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

**2. Compliance with Environmental Laws.** In connection with its operations or any other activity at the Airport, Operator shall at all times and in all respects comply with all applicable Environmental Laws including federal, state, and local laws, ordinances, and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Operator's operations at the Airport. Upon expiration or earlier termination of this Agreement, Operator shall cause all Hazardous Substances introduced to the Premises and the Airport by Operator or its agents or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable Environmental Laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

**3. Waste Disposal.** Operator shall not dispose of, or permit any other person to dispose of, any waste material taken from or products used, whether liquid or solid, into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Operator shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste

material, and shall immediately notify Director, City Aviation Department, if a governmental agency approval is required for such disposal. All disposal shall comply with applicable regulations of the United States Department of Agriculture, Environmental Laws, and Federal Stormwater Regulations.

#### **4. Federal Stormwater Regulations.**

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

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

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

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

**4.5** Subject to the dispute resolution provision above, Operator agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Operator, those



Stormwater Permit requirements for which it has received written notice from City. Operator warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Operator. Operator agrees that time is of the essence.

**4.6** City and Operator agree to provide each other upon request with any non-privileged information collected and submitted to any government entity pursuant to applicable stormwater regulations.

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

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

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

**5. Prior Written Consent.** Operator shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Premises by Operator, its agents, employees, contractors, or invitees without providing notice to the Aviation Department Environmental Manager. City may require removal of Hazardous Substances unless Operator demonstrates to City's reasonable satisfaction that such Hazardous Substance is necessary or useful to Operator's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Substance brought upon, used, or kept in or about the Premises.

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

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused or permitted by Operator results in any Contamination of the Premises, Operator shall promptly take all actions at its sole expense as are necessary to remediate the release on the Premises to the extent required by government agencies having jurisdiction. Operator shall not have any liability to City for any environmental, investigatory, monitoring, or cleanup costs, except as ordered by a federal, state, or local agency of competent jurisdiction. In the event

such an order is issued, City shall immediately notify Operator and provide it the opportunity to negotiate with the acting government authority and enter the Premises to conduct investigatory, monitoring, or cleanup work. In the event Operator is responsible for any investigatory remediation or cleanup work on the Premises after expiration or earlier termination of this Agreement, Operator shall have the right to enter the Premises for performance of such obligation. In no event shall City be responsible for any damages or costs of Operator.

The indemnification required by these provisions shall not apply to any Hazardous Substance existing on, under, or about the Premises prior to the date of full execution of this Agreement. However, the Parties recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Substance on, under, or about the Premises as of the date of full execution of this Agreement. The Parties agree that, as of the date of full execution of this Agreement, they are not aware of the existence of any Hazardous Substance on, under, or about the Premises.

**7. Notices.** Operator shall immediately notify City in writing of any enforcement, clean-up, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws related to its operations on the Premises. Except as otherwise provided below, Operator shall also provide City as promptly as possible, and in any event within ten (10) business days after Operator first receives or sends the same, with copies of all claims, reports, complaints, notices, or warnings or asserted violations relating in any way to the Premises or Operator's use thereof.

**8. Environmental Notices; Indemnification Notices.** Operator shall provide City with a copy of any written release notices or reports that Operator is required to submit to any Environmental Agency with respect to releases of any and all Hazardous Substances or Contaminants at the Premises during the Term. Operator shall, within twenty-four (24) hours, provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Operator each shall promptly provide the other with a copy of (a) any claim or demand for Corrective Action that any Environmental Agency issues; and (b) any other claim giving rise to either Party's indemnification obligations herein.

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

**10. Operator's Corrective Action Obligation.** Operator shall undertake Corrective Action to remove Contaminants released by Operator, its agents, employees, contractors, or representative during Operator's occupancy of the Premises, if and to the extent required by any Environmental Agency. Operator shall, in consultation with City, determine the schedule, technique, method, and design of the Corrective Action, subject to Environmental Agency requirements and approval, provided, however, that Operator may contest and appeal any Environmental Agency decision or directive. Operator shall have no further obligations for Corrective Action under this Agreement following receipt by Operator and City of a "No Further

Action" letter or equivalent written directive, if applicable, from the appropriate regulatory agency indicating that no further Corrective Action is required to satisfy applicable law and regulations.

**11. Operator's Environmental Access Right.** In the event Operator's Remediation Equipment remains on the Premises following the expiration or earlier termination of this Agreement, Operator and its representatives and contractors will have the right of access to the Premises during normal business hours and business days, to install additional Remediation Equipment; to maintain, modify, monitor, operate, or repair Operator's Remediation Equipment; and to verify to the applicable Environmental Agency that Operator's Corrective Action has been completed. Operator or its representative or contractor shall provide City written notice of its intent to exercise its access right at least two (2) business days prior to exercising such right. Operator will attempt to minimize, to the extent reasonably possible, any interference with the operation of any business conducted at the Premises, except in the case of an emergency, as determined by Operator. In conducting its operations at the Premises following the expiration or earlier termination of this Agreement, City shall attempt to minimize, to the extent reasonably possible, any interference with Operator's Corrective Action. The access right will terminate when the Environmental Agency issues a letter to Operator stating that, based on certain assumptions and conditions, no further Corrective Action will be necessary and Operator removes its existing Remediation Equipment. If, however, following the Environmental Agency's issuance of such letter, the Environmental Agency requires Operator to perform further Corrective Action, then the access right provided herein will resume.

## **Exhibit G**

### **Airport Security Provisions**

**1. Compliance.** Throughout the term of this Agreement, Operator and its employees shall strictly comply with the Airport Security Plan and all other Airport security regulations, as from time to time may be adopted or required by the TSA or other governmental agencies. If a breach of the Airport Security Plan or such other Airport security regulation occurs as a result of the acts or omissions of Operator and its employees in any manner or form at any time during the term of this Agreement, Operator shall immediately remedy such breach or assist City, TSA, or other governmental agencies in remedying such breach, regardless of the circumstances.

**2. Airport Security Access Media (Airport ID Card, Keys and/or Key Fobs) ("Access Media").** As a requirement for the execution of this Agreement by Operator, and in order to perform the duties and obligations pursuant to the terms of this Agreement, the Operator and their employees, contractors, or agents shall be required to obtain Access Media. Individuals who have been convicted of certain categories of crimes during the past ten (10) years will not be issued Access Media. In addition, individuals who have been charged with any of these crimes will not be issued any Access Media until disposition of the charges has been resolved to the Director's satisfaction. Operator and its employees may not begin any work of any nature until the required Access Media has been issued. All persons who are issued an Airport ID must display it at all times while at the Airport.

All persons applying for Airport Security Access Media must pass a ten (10)-year FBI fingerprint-based Criminal History Records Check ("CHRC"), a Security Threat Assessment ("STA"), and attend a security/ramp driving training class sponsored by the City before such Access Media will be issued. In conjunction with Operator's right and privilege to use the Airport, unescorted access may be authorized for Operator and its employees via Electronic key Fob controlled doors and gates to the Airport Operating Area ("AOA"), the Airport's Security Identification Display Area ("SIDA"), and all secured areas of the Airport.

All Access Media issued to Operator and its employees, contractors, and agents are the property of City. Operator shall be obligated to return to City all Access Media in the event of: (a) the termination of this Agreement; (b) the termination of employment or resignation of Operator's employee/contractor; or (c) the suspension of Operator employee/contractor. Operator requesting Access Media shall be fully responsible for the replacement cost of all lost, stolen, or non-returned Access Media.

City reserves the right to confiscate or suspend any Access Media of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542, or for a violation of the Airport Security Plan or other Airport security regulations, as from time to time may be promulgated. In addition, City, TSA, or other governmental agencies as may be authorized, shall have the right to search any person, including Operator and its employees who have been issued an Airport ID/Access card.

**3. Security Measures.** Operator shall implement and maintain, and shall cause its personnel such as employees, contractors, and agents, to implement and maintain, at a minimum,

the following security measures with regard to access control to and from the secured areas of the Airport:

**3.1** During all hours, access points to secure areas of the airport shall be secured and locked.

**3.2** Operator and their personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

**3.3** Operator shall restrict the activities of its personnel who are authorized to be on the AOA to the portion of those areas in which Operator is authorized to operate.

**3.4** Operator is responsible for ensuring that all of its personnel attend Airport Security Training, that they comply with all Airport security requirements and access control procedures outlined in the training, and, because security requirements and access control procedures change, that Operator's personnel are made aware of, and comply with, all changes to Airport security requirements and access control procedures of which the Operator is made aware.

**3.5** Operator shall not allow any non-badged person under its control to enter the AOA unless that person is properly escorted at all times.

**3.6** Operator shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Operator's personnel.

**3.7** Operator shall immediately notify the aviation police of any suspicious activity observed on the AOA of the Airport.

**3.8** Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Airport Security Coordinator.

#### **4. Payment of fees and fines.**

**4.1** Operator agrees to pay City for any and all applicable Airport Security Access Media fees incurred in connection with Operator's use of the Airport.

**4.2** Operator further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Operator's failure to abide by the security measures described herein, provided however, Operator shall have the right, to the extent allowed pursuant to federal regulations, to defend against such agency action.

**5. Compliance with Revisions.** Director or the Director's designated representative will periodically evaluate the procedures set forth in this Section, and make revisions as required to comply with federal regulations. Failure of Operator or Operator's personnel to fully comply with the procedures set forth in this Section or as later revised, shall be sufficient grounds for City to immediately take any necessary corrective measures until security acceptable to City is restored.

## **Exhibit H General Conditions**

**1. Maintenance of Premises.** During the term of this Agreement, it shall be Lessee's obligation, without cost to City, to maintain the Premises, ordinary preventative maintenance, and ordinary upkeep and repair of the Premises. In addition, Lessee shall, at Lessee's sole discretion, maintain, repair, and when necessary, replace all personal property, trade fixtures, equipment, and other Lessee Improvements that Lessee placed or installed on the Premises. City shall maintain and repair the ramp and parking area, electrical system, HVAC system, and structural components of the Premises provided that Lessee shall be responsible for repairing any damage to these areas, systems, and components caused by Lessee's operations and activities at the Premises.

Lessee shall at all times keep the Premises neat, orderly, sanitary, and presentable. Lessee shall provide for snow and ice removal, and cause to be removed at Lessee's own expense from the Premises all safety hazards and all waste, garbage, debris, and rubbish, collectively referred to herein as "Refuse," and agrees not to deposit same on any part of Airport. City shall be entitled to remove Lessee's Refuse from the Premises and charge Lessee a reasonable fee if Lessee fails to remove such Refuse within five (5) business days after receiving written notice from City of improper disposal.

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

**2.1 Removal of Personal Property.** Upon expiration or earlier termination of this Agreement, Lessee shall, immediately, remove any and all non-permanent equipment, trade fixtures, materials, supplies, and other personal property on or about the Premises, subject to any valid lien that City may have thereon for unpaid rents and fees, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of this Agreement. Following the removal of the personal property, Lessee shall be required to return the Premises in broom clean condition, reasonable wear and tear excepted.

**2.2 Ownership of Property Not Removed.** In the event Lessee fails to remove its personal property, City shall have the options of: (a) removing Lessee's personal property at Lessee's expense but only in the event Lessee takes possession of such personal property immediately upon such removal; or (b) if Lessee refuses to take possession of Lessee's personal property within forty-five (45) calendar days, taking title to Lessee's personal property in lieu of Lessee's removal.

In the event City takes title to such personal property, City shall be entitled to all proceeds of sale of such Lessee personal property as liquidated damages for the breach of Lessee's covenant to remove.

**3. Title to Real Property.** Fee simple title to the real property comprising the Airport premises is and shall remain vested in City. Nothing contained in this Agreement or any action or inaction by City shall be deemed or construed to mean that City has granted to Lessee any right, power or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, charge or other encumbrance upon the fee simple title of City of such property.

**4. Compliance with Law.** Lessee shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, contractors, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable regulations, ordinances, and laws of any city, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof, which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Lessee shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Lessee or Lessee's operations and activities under this Agreement.

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

**6. Non-Discrimination.**

**6.1 State and Local Compliance.** Lessee agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, and City's affirmative action policies and practices.

**6.2 Federal Compliance.**

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

Lessee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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

**(1) Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

**(3) Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**(4) Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

**(a)** Withholding payments to the Contractor under the contract until the Contractor complies; and/or

**(b)** Cancelling, terminating, or suspending a contract, in whole or in part.



**(6) Incorporation of Provisions:** The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**6.2.3 Title VI Clauses for Lease of Real Property.** Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below.

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

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and

Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**7. Disability Laws and Accessibility Requirements.** Lessee shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Lessee constructs on the Premises from and after Lessee's execution of this Agreement, Lessee agrees to meet all the requirements of the ADA which are imposed directly on the Lessee that relate to Lessee's use of the Premises or which would be imposed on the City as a public entity as a result of Lessee's use of the Premises. Lessee agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any acts or omissions of Lessee or its contractors or agents in violation of the ADA requirements set forth in this Paragraph 7.

**8. Lessee's Compliance with Environmental Laws.** In connection with its operations or any other activity by Lessee at the Airport, Lessee shall at all times and in all respects comply with all environmental laws including federal, state and local laws, ordinances and regulations pertaining to hazardous substances. Environmental laws shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, or rules now or hereafter in effect, as the same may be amended from time to time, which govern hazardous substances or relate to the protection of human health, safety or the environment. Hazardous substances shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the environmental laws. Upon expiration or earlier termination of this Agreement, Lessee shall cause all hazardous substances introduced at the Airport by Lessee, its personnel, or its agents

(acting in such capacity of Lessee) to be removed from the Airport and transported for use, storage, or disposal in accordance and compliance with all applicable environmental laws. Lessee shall further comply with any environmental provisions provided as an exhibit to this Agreement.

**9. City's Right of Inspection/City's Right to Enter.** City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances and with as little interruption of Lessee's operations as possible, to enter upon the Premises, accompanied by an authorized Lessee representative, if practicable, to inspect such space to determine whether Lessee is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection, or security purposes. Lessee further agrees to make any and all corrections of violations observed by City as a result of this inspection; however, in no event shall Lessee be required to correct any violations that precede the Effective Date.

The failure of City to inspect or monitor or give Lessee notice of a default or a notice of a hazardous or unsafe condition with respect to Lessee's operations under this Agreement shall not release Lessee from its liability to perform its obligations under this Agreement or impose any liability on City.

**10. Construction of Improvements.** Lessee may not construct any improvements to the Premises without written approval from the Director of Aviation.

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

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

**10.2 Coordination of Construction.** Lessee shall cooperate with the Aviation Department in the construction of the improvements. Lessee agrees that all construction and installation of said improvements at the Airport shall be accomplished without unreasonably interfering with other users of the Airport, and that Lessee and its construction contractor and subcontractors shall at all times keep the construction site and surrounding areas clean, orderly, safe, free of accumulated construction debris and waste materials, and shall be solely responsible for removal of all construction debris and waste materials to a suitable licensed landfill away from the Airport.

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

**10.3 Construction Plans and Specifications.** No Improvements of any kind shall be erected, placed, assembled, constructed, or permitted on the Premises until preliminary and final plans showing the type of use, location, size, and design have been approved by City. When applicable, an architect and/or engineer licensed to practice in the State of New Mexico must prepare and stamp such plans. Prior to the preparation of preliminary plans, Lessee shall contact Director to schedule a pre-project meeting to brief City staff on the proposed Improvements.

**10.3.1 Preliminary Plans.** In the event the Improvements proposed by Lessee are of a nature such that the services of an architect and/or engineer are required, then four (4) sets of preliminary plans prepared and stamped by the architect and/or engineer must be submitted to the Director. Such preliminary plans shall show the full extent of the Improvements to be constructed, including but not limited to, grading, drainage, landscaping, paving, signs, structural details and utility locations, showing the relationship of the proposed Improvements to all adjacent Airport parcels, public roadways, or service roadways. Civil engineering plans shall include drawings submitted on a scale not smaller than one (1) inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no event shall the scale be smaller than one sixteenth (1/16) inch equal to one (1) foot. Plans shall include complete specifications in sufficient detail for Director to determine compatibility with Aviation Department Development Guidelines, and their overall objectives for the aesthetic character and quality of the Improvements. Architectural submittals shall include an accurate architectural perspective color rendering of the Improvements, including the proposed exterior color scheme, style, materials, and wording and placement of all signs.

Within ten (10) days following receipt thereof, Director shall review such preliminary plans, and transmit to Lessee written approval or rejection thereof, in whole or in part. In the event of rejection, within fifteen (15) days after receipt of the rejection notice, Lessee shall amend such plans to comply with the items set forth in the rejection notice, and re-submit them to Director for approval. Director shall notify Lessee within ten (10) days thereafter of his decision regarding the revised plans.

**10.3.2 Final Plans and Construction Schedule.** Within thirty (30) days following Lessee's receipt of Director's approval of the preliminary plans, Lessee shall deliver to Director for approval four (4) sets of final construction plans and specifications for construction of the Improvements, together with a schedule for construction of the Improvements. Such final plans and specifications shall substantially conform to the preliminary plans previously approved by Director and shall be submitted to Director prior to submitting the plans to other applicable agencies. There shall be no substantial changes or alterations made in the final plans and specifications after the approval by Director without the advance written approval of Director. Director's approval of such plans shall not infer approval by other City or controlling agencies. After approval of the plans by Director, Lessee shall have complete responsibility for obtaining all other required approvals and permits for the Improvements.

Lessee warrants that City may use all plans and specifications submitted by or on behalf of Lessee only for purposes relevant to and consistent with this Agreement.

**10.3.3 Modification of Final Plans.** Any modifications to the approved final

plans and specifications, which may be required following review by the City of Albuquerque Code Enforcement Division, the New Mexico Environment Department, the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, or other governmental agencies, shall be submitted to Director for approval prior to construction.

**10.4 Permits, Licenses, and Approvals.** Lessee shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of the Improvements on the Premises from City, State, and Federal agencies. These shall include, but not be limited to:

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

**10.4.2** Permits, licenses, and approvals of: (a) the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, and the City of Albuquerque Building and Safety Division; and (b) the National Board of Fire Underwriters or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions;

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

**10.4.4** Submittal of a Notice of Intent ("NOI") to the Federal Environmental Protection Agency ("EPA") prior to the start of site development and construction and shall provide, implement, and be responsible for a Storm Water Pollution Prevention Plan ("SWPPP") during all phases of the work. Lessee shall provide a copy of the NOI to City prior to the start of any work at the site. Upon completion of the construction, Lessee shall be responsible for submitting a Notice of Termination ("NOT") to the EPA, and shall provide a copy of the NOT to City; and

**10.4.5** City's approval of its Spill Prevention Controls and Countermeasures Plan.

**10.5 Notice to Proceed, Construction Bonds, and Insurance.** Director's approval of Lessee's final plans and specifications and time schedule shall constitute Lessee's notice to proceed with construction of Improvements, provided that all the following requirements have been satisfied:

**10.5.1** Lessee has delivered to Director for approval, and Director has approved, certificates of insurance for coverage evidencing Lessee's construction contractor's: (a) "all risk" type builders' risk insurance coverage and workers' compensation insurance coverage; and (b) compliance with the applicable insurance provisions of **Exhibit E**;

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

**10.5.3** Lessee shall be solely responsible for payment and pay promptly, when due, all persons supplying labor and materials to its contractor for all elements of construction of Improvement on the Premises. Lessee shall keep the Premises free and clear of all mechanics liens resulting from any construction and shall permit no lien or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Lessee may contest the correctness or validity of any such lien, but Lessee shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien and related attorneys' fees;

**10.5.4** Lessee's construction contractor has duly executed a Performance Bond with a surety authorized to do so in the State of New Mexico securing contractor's performance of its obligations relating to the construction of the Improvements, in an amount equal to the value of its construction contract, naming City as obligee thereunder. Lessee shall provide City with a true copy of such executed bond, upon request by Director. In the alternative, subject to the approval of City, Lessee may submit to Director in lieu of a Performance Bond, a cash deposit in an amount equal to the total value of Lessee's construction contract;

**10.5.5** Lessee has obtained at its sole expense all necessary licenses and permits required for construction of Improvements on the Premises;

**10.5.6** Lessee shall provide City with copies of the building permits issued to Lessee by the City of Albuquerque Building Inspection Division, upon request by Director; and

**10.5.7** Lessee shall notify Director of Lessee's intention to commence construction of the Improvements at least forty-eight (48) hours prior to commencement of such work or delivery of any material to be used in such work at the Premises.

**10.3 Removal of Unapproved Improvements.** Improvements made on the Premises without the Director's written approval as required, or portions of the improvements that are not constructed as indicated and specified on approved plans will be considered to be unapproved improvements constructed in violation of the provisions of this Agreement. Unapproved improvements shall be removed by Lessee, at Lessee's sole expense, within sixty (60) calendar days following Lessee's receipt of written notice to do so from the Director.

**10.4 Improvements by Lessee to Remain Throughout Term.** All of Lessee's improvements shall remain on the Premises throughout the term of this Agreement, unless otherwise approved in writing by the Director.

**10.5 Ownership of Improvements.** All improvements constructed on the Premises by Lessee, shall be, and shall remain, the property of Lessee until expiration or earlier termination of this Agreement. Lessee shall not, however, remove any of the improvements from the Premises, nor waste, destroy, demolish, or alter any of the improvements on the Premises except as permitted by this Agreement.

Upon expiration or earlier termination of this Agreement, Lessee shall be obligated to remove all improvements constructed or installed upon the Premises unless City has consented that said improvements may remain upon the Premises. If City has not provided such consent,

and if Lessee fails to remove said improvements within thirty (30) days following expiration or earlier termination of this Agreement, City shall become the owner thereof, and may exercise any and all of its legal rights or remedies, including the right, with or without legal process, to remove and dispose of said improvements without notice to, or consent of, Lessee. Lessee shall have the right to remove any and all trade fixtures on the Premises below, provided, however, that Lessee shall repair any damage caused by such removal at its sole cost and expense.

**10.6 Real Time Crime Center.** If Lessee installs security cameras on its premises, Lessee agrees to cooperate in establishing camera links to the Albuquerque Police Department Real Time Crime Center to the extent feasible.

**11. Signs.** With the exception of any signage currently in existence as of Lessee's execution of this Agreement that is hereby approved by Landlord, any other advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content, shall not be erected, maintained, or displayed on the Premises, or elsewhere at the Airport, without the prior written consent of the Director, which consent shall not be unreasonably withheld. Lessee shall submit to the Director for approval, detailed drawings indicating dimensions, location, materials, and colors for all proposed signs at the Premises.

**12. Damage or Destruction of Premises.** If, for any reason the Premises are damaged to such an extent that it is untenable in whole or in substantial part, then:

**12.1 Minor Damage.** If the repairs, rebuilding, or construction necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the commercially reasonable judgment of City, be completed within ninety (90) days, City shall so notify Lessee, in writing promptly after the damage, consult with Lessee, and shall proceed promptly with such repairs, rebuilding, or construction at City's sole cost and expense, provided that Lessee shall be responsible for, and bear the cost of, replacing its trade fixtures and equipment. In such event, Lessee shall receive a pro rata abatement of the rents and fees due based only on the reduction of usable square feet in the Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed so that Lessee may again use the Premises for its intended purpose. Thereafter, the rents and fees due shall be calculated without regard to the period of time that the fee was reduced.

Notwithstanding the above provisions, if the damage described above in this Section 12.1 is caused by the intentional or grossly negligent act or omission of Lessee, its officers, agents, employees, contractors, subcontractors, licensees or invitees (all acting in such capacity), Lessee shall be responsible for reimbursing City for the reasonable cost and expense incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction described in the preceding sentence, Lessee shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Lessee shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction.

**12.2 Extensive Damage.** If repairs, rebuilding, or construction would, in the judgment of City, exceed ninety (90) days to complete, City or Lessee, at their option, to be evidenced by notice in writing to the other promptly after the damage, may:

**12.2.1** Seek consent and cooperation, and request that the City proceed promptly with repairs, rebuilding, or construction at City's sole cost and expense, in which event abatement of rents and fees shall be allowed, or

**12.2.2** Terminate the letting of the Premises, in which event the rents and fees due shall be eliminated beginning from the date of the occurrence of the damage. Neither Lessee nor City shall be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises.

**12.2.3** In the event the Premises are destroyed or so damaged and rendered untenable as a result of the intentional or grossly negligent act or omission of Lessee, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees (all acting in such capacity), City may repair, rebuild, or construct, and Lessee shall be responsible for reimbursing City for the reasonable costs and expenses incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction as described in the preceding sentence, Lessee shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Lessee shall either elect to pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction, or elect to terminate this Agreement.

**12.3 Alternative Space.** In the event repairs, rebuilding, or construction is required, City shall use reasonable efforts to provide Lessee with alternative space, if necessary as reasonably determined by Lessee, during any repairs, rebuilding, or construction of the Premises. City shall advise Lessee as soon as may be practicable after the date of damage regarding City's intention with respect to any necessary repairs, rebuilding, or construction.

In the event City provides alternative space to Lessee, City shall be responsible for those costs directly associated with moving Lessee to the temporary space and back to restored space, except in the event that such repair, rebuilding, or construction is required as a result of the intentional or grossly negligent act or omission of Lessee, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, in which case Lessee shall bear the entire cost of moving. Should smaller square footage space be provided by City to Lessee, then the rent due shall be reduced *pro rata* to the reduction of square footage of the alternative space. All reductions of rent shall be allowed only for the period from the date of the occurrence of such damage to the date repairs and rebuilding are completed. Thereafter, the rent due shall be calculated without regard to the period of time that the rent was reduced.

**12.4 Limits of City's Obligations Defined.** City shall not be obligated to repair, rebuild, or construct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.



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

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

**14. Subordination to Agreements with the U.S Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts.

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

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

agreements or deeds made between the City and the United States. This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

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

**17. Economic Non-Discrimination.** In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Lessee agrees: (a) to furnish said services on a fair, equal, and not unjustly discriminatory basis to all users, and (b) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that Lessee may make reasonable and non-discriminatory discounts, rebates, or other similar price reductions to volume purchasers.

**18. Amendment and Waiver.** This Agreement may be amended in writing as allowed by City Ordinance, except that Director shall have the authority to waive requirements and prohibitions or otherwise modify this Agreement by written supplement signed by the Parties, to address changes in circumstances which will benefit the Parties and the traveling public, provided that such modifications are non-discriminatory, do not extend the term of the Agreement, or modify rent, Lessee liability, and fee provisions. No custom or practice, or waiver of default, which may evolve between the Parties in the administration of the terms of this Agreement, may be construed to waive or lessen the right of either Party to insist upon the performance of the other Party in strict accordance with the terms of this Agreement.

**19. Relation to Other Tenants and Lessees.** This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between City and any other tenant or lessee at the Airport. The fact that such other agreement contains provisions which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

**20. Assignment and Subletting.** Lessee shall not assign, sublet, mortgage, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement except as otherwise permitted under this Agreement.

**21. Financial Responsibility.**

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

**21.2 Liens.** Lessee shall not permit any judgment, execution, mechanic's, or materialman's, or any other lien, to become attached to or be foreclosed upon the Premises by reasons of work, labor performed, or materials or equipment furnished to Lessee, and if such lien is attached or filed upon the Premises, Lessee shall have such lien removed within thirty (30) days of Lessee becoming aware of the lien filing.

**22. Construction Inconvenience.** Lessee agrees that from time to time during the term of this Agreement, the Aviation Department and City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure, and facilities on the Airport ("Airport Construction"), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Lessee agrees that it shall not hold the Aviation Department or City, including its officers, agents, employees, and representatives, liable for damages of any nature whatsoever, including all damages arising out of or caused by inconveniences and/or interruptions of its business activities at the Airport, loss of business, and personal injury, including death, and property damage due to the Airport Construction, unless such damages are caused in whole or in part by the negligence or other fault of the Aviation Department or City or its officers, agents, employees, and representatives. Lessee acknowledges receipt of adequate consideration by City in support of this waiver. Notwithstanding the above, if construction inconvenience interferes with Lessee's business to the extent that remaining at the Premises is not possible and the City cannot provide alternative premises, Lessee may either terminate this Agreement upon payment of all outstanding rents and fees due through the date of termination or elect to abate rent for the period of time Lessee's business is affected by the construction.

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

**24. No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture, or association, or to make Lessee the general representative or agent of City for any purpose whatsoever.

**25. Force Majeure.** Neither Party shall be liable for any failure of or delay in performance of its obligations, except for payment obligations, under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, pandemics, epidemics, quarantine restrictions, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the Party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a Party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor,

materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither Party shall be liable to the other for any liability claims, damages, or other loss caused by or resulting from a Force Majeure Occurrence.

**26. Dispute Resolution, Remedies, and Forum Selection.** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state or federal district court located in the County of Bernalillo, State of New Mexico. The Parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination of this Agreement.

**27. Ethics.**

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

**27.2 Fair Dealing.** Lessee covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Lessee without collusion on the part of Lessee with any person or firm, without fraud and in good faith. Lessee also covenants and warrants that no gratuities, in the form of entertainment, gifts, or otherwise, were, or during the term of this Agreement, will be, offered or given by Lessee or any agent or representative of Lessee to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**27.3 Board of Ethics and Campaign Practices.** Lessee agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement whenever such records or information are within Lessee's control or custody, are germane to an investigation authorized by the Board, and are requested by the Board. Lessee further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. If applicable, Lessee agrees to require that all subcontractors employed by Lessee for services performed for this Agreement shall agree to comply with the provisions of this subsection. Lessee and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this subsection.

**28. Audits and Inspections.** Lessee understands and will comply with the City's Accountability in Government Ordinance, §2-10-1, *et seq.*, and the Inspector General Ordinance, §2-17-1, *et seq.*, R.O.A. 1994, and also agrees to provide requested information and records and

appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

**29. Public Records.** The Parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1, *et seq.*, NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Lessee for any disclosure of records pursuant to the Act or pursuant to City of Albuquerque public records ordinance, rules, regulations, instructions, or other legal requirement.

### **30. Contract Interpretation.**

**30.1 Severability.** In the event any covenant, condition, or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the Parties, it shall be stricken. If stricken, all other covenants, conditions, and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions, or provisions does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

**30.2 Non-waiver of Rights.** No waiver of default by either Party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other Party.

**30.3 Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**30.4 Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

**30.5 Entire Agreement.** This Agreement represents the entire contract between the Parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the Parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the Parties concerning the subject matter of this contract, and all such conditions, understandings, and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

**30.6 Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

**30.7 Exhibits, Certificates, Documents Incorporated and Attachments.**

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

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

**30.9 Successors.** All covenants, stipulations, and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective Parties hereto.

**30.10 Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

**30.11 Cross References.** References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

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

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

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