



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

**EC-20-30**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

January 21, 2020

**TO:** Klarissa J. Peña, President, City Council


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

**SUBJECT:** Exclusive Lease Listing Agreement for the Albuquerque Aviation Center of Excellence

The City of Albuquerque Aviation Department, in conjunction with the Department of Finance and Administrative Services, Purchasing Division, request a contract for Lease Listing Agent for the Albuquerque Aviation Center of Excellence.

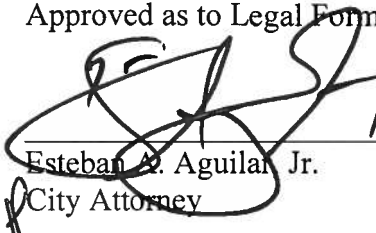
Approved:

Approved as to Legal Form:

  
\_\_\_\_\_  
Sarita Nair  
Chief Administrative Officer

2/11/20

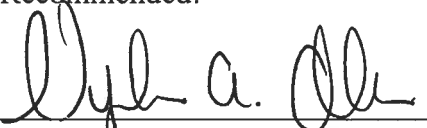
Date

  
\_\_\_\_\_  
Esteban A. Aguilar Jr.  
City Attorney

1-22-2020

Date

Recommended:

  
\_\_\_\_\_  
Nyika A. Allen, C.M.  
Director of Aviation Department

1/22/2020

Date

## Cover Analysis

**1. What is it?** Exclusive Lease Listing Agreement for certain parcels located at property known as Albuquerque Aviation Center of Excellence (ACE).

**2. What will this piece of legislation do?** The approval of this Agreement will allow for the Aviation Department to move forward in contracting with CBRE, Inc., as an Exclusive Leasing Agent for the ACE property.

**3. Why is this project needed?** Aviation Department requires an exclusive transaction broker with the right to list and market the property for lease and to negotiate leases for the property (which includes portions thereof). Contractor has significant resources and personnel with specific experience in the marketing and transactions for the development of airport properties who are licensed to provide the required services.

**4. How much will it cost and what is the funding source?** Commissions shall be earned and payable one-half (1/2) when the lease is executed by both parties and one-half (1/2) upon lease commencement, in accordance with the following rate:

6% of the total base rental for the first 60 months in which rent is to be paid, plus

4% of the total base rental for the next 60 months in which rent is to be paid, plus

2.5% of the total base rental for the remainder of the term.

Aviation Department funds shall be used to pay the commissions. The procurement methodology shall be an OEP (Other Exempt Procurement) pursuant to ROA §5-5-20(C) as approved by the Chief Procurement Officer.

**5. Is there a revenue source associated with this Plan? If so, what level of income is projected?** Yes, the commission payments will be based on lease payments to be received by the Aviation Department from the lessee during the lease term.

# FISCAL IMPACT ANALYSIS

TITLE: Lease Listing Agreement for Albuquerque Aviation Center of Excellence R: O: x  
FUND: 611  
DEPT: 1110000

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

	2019	Fiscal Years 2020	2021	Total
Base Salary/Wages				-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<hr/>				
<input type="checkbox"/> [ ] Estimated revenues not affected				
<input checked="" type="checkbox"/> [x] Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

\* Range if not easily quantifiable.

Number of Positions created

COMMENTS: The City of Albuquerque Aviation Department, in conjunction with the Department of Finance and Administrative Services, Purchasing Division, requested a contract for Lease Listing Agent for the Albuquerque Aviation Center of Excellence.

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

This will allow for the listing of the ACE property located on Aviation Property

PREPARED BY:

APPROVED:

FISCAL ANALYST

DIRECTOR

(date)

REVIEWED BY:

EXECUTIVE BUDGET ANALYST

BUDGET OFFICER (date)

CITY ECONOMIST

4/22/2020

Jim Smith, CCIM, SIOR      Brecken Mallette  
First Vice President      Associate



CBRE, Inc.  
Advisory & Transaction Services  
Industrial & Logistics Specialist

CBRE CENTRE  
6100 Uptown NE, Suite 300  
Albuquerque, New Mexico 87110

January 17, 2019

**BY ELECTRONIC MAIL:**

City of Albuquerque

**Re:    *Exclusive Lease Listing Agreement for certain parcels located at property know as Albuquerque Aviation Center of Excellence, Bernalillo County, Albuquerque, NM- ("Property") (See Exhibit D for parcel locations.)***

Dear **Nyika Allen**:

Thank you for selecting CBRE, Inc. ("CBRE") to represent you. The terms of our engagement are contained in this agreement ("Agreement").

1.      This Agreement shall terminate **one year after the last signature on page four.** ("Term").
2.      During the Term, you appoint us your exclusive transaction broker with the right to list and market the Property for lease and to negotiate leases for the Property (which includes portions thereof).
3.      We will commit the appropriate number of qualified and licensed professionals to this engagement.
4.      We will offer the Property for lease at an initial rate that you approve in writing. However, it is your right to: (a) approve, modify, reject or disapprove lease proposals and offers; (b) approve prospective tenants; and (c) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's lease offering rate.
5.      We will work with you to create and implement a leasing strategy for the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure) and a written marketing plan outlining our strategy. In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate. You agree to

reimburse us for reasonable out-of-pocket marketing expenses pre-approved by you in writing. Reimbursement is due upon the receipt of an invoice.

6. The success of this engagement relies, in part, on cooperation and communication between us. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all leasing inquiries for the Property; and (iii) conduct all negotiations with prospective tenants exclusively through us.
7. You represent that you either are the fee owner of or otherwise have control over the Property. You further represent that you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
8. We will present all offers to you and assist you in developing and negotiating counteroffers until a lease is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of the documents related to this engagement and the tax consequences of any transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a lease. All final business and legal decisions shall be made solely by you. We will have no right, power, or authority to enter into any agreement with any prospective tenant, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
9. We will earn (and you agree to pay) a commission in accordance with this Agreement and the attached Commission Schedule (Exhibit "A") if either of the following occur:
  - (a) during the Term, you lease the Property to a tenant, whether procured by us, you or anyone else; or
  - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post-Term"), the Property is leased to, or negotiations continue, resume or commence and thereafter continue leading to a lease of the Property to any person or entity (including his/her/its successors, assigns or affiliates) with whom, during the Term, CBRE either negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term ("Existing Prospect"). You agree that CBRE is authorized to continue negotiations with Existing Prospects, and we will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
10. If you intend to voluntarily sell, transfer or otherwise dispose of your interest in the Property while this Agreement is in effect or during the Post Term, you agree to notify us in writing (including the name and address of the escrow or closing agent, if any) at least ten (10) days before that transaction closes. You agree to remain responsible for payment of commissions earned by us (or that may accrue in the future under this Agreement) unless

the person or entity to whom you transfer the Property assumes your obligations in writing in a form reasonably acceptable to us. Earned but unpaid commissions will be automatically accelerated and paid at the closing of such transfer regardless of any other installment payment timetable previously agreed upon. The parties understand that the Property deed to the City of Albuquerque contains a reverter clause in favor of the United States Air Force ("USAF"), giving it the right to retake the Property from the City of Albuquerque in the event it is no longer used for airport purposes. For the purpose of this Agreement, an exercised by the USAF of its reverter right shall not constitute a voluntary sale, transfer, or other disposition invoking the provisions of this Paragraph 10. Except as otherwise provided herein, this Agreement is an irrevocable instruction to the escrow or closing agent to pay commissions owed to us from deposited funds at closing, unless you or CBRE have entered into a satisfactory written agreement with the transferee to assume the obligation.

11. If a sale, exchange or option to purchase the Property is made or granted to anyone during the Term or Post-Term, you agree to pay CBRE a sales commission in accordance with Exhibit A.
12. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as tenant brokers). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective tenant pursuant to a written agreement, a copy of which is furnished to us prior to execution of the lease; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement. Market conditions may exist whereby the Cooperating Broker is offered an above-standard fee and/or broker bonus; if so, our commission shall be increased by (and you agree to pay) an amount such that we receive no less than 50% of the total fee in accordance with the Commission Schedule. This clause shall not apply if CBRE acts in a dual agency capacity as the tenant's broker and the lessor's broker.
13. CBRE will act as a Transaction Broker in this transaction(s). No agency relationship between Owner and Broker is created, unless otherwise in writing. You acknowledge that we are an international brokerage firm and that we may represent prospective tenants. You hereby consent to our representation of such prospective tenants.
14. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective tenants everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
15. To the extent legally permissible, we are authorized to deduct our commissions from any security deposits or rental payments made by a tenant in connection with a transaction contemplated by this Agreement. You hereby irrevocably assign those deposits and rental payments to CBRE to the extent necessary to pay us our commissions. In the event you fail to pay us our commissions within ten (10) days after they are due, we are authorized to provide a copy of this Agreement to the tenant of the subject lease, and that tenant is

hereby irrevocably instructed by you to pay our commissions from any deposits or rental payments. You will credit such tenant for any payments made to us pursuant to this paragraph against any payments due under their lease. Further, you waive any claim, action or right, whether at law or in equity, against the tenant arising or resulting from their payments to us pursuant to this paragraph in lieu of any payments to be paid by the tenant to you under their lease.

16. While we are confident that our relationship will be mutually satisfactory, if there is a dispute between us, then we agree to resolve it subject to the following:
  - (a) If either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages; and
  - (b) **This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, administrative or regulatory rule, or statute are governed by, and construed in accordance with, the laws of the State of New Mexico (including its statutes of limitations and applicable choice of law statutes), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New Mexico.**
  - (c) **The state courts of New Mexico located in Bernalillo County shall be the exclusive forums for litigation concerning this Agreement. All parties to this Agreement consent to personal jurisdiction in such courts as well as service of process by any means authorized by New Mexico law. The parties irrevocably waive any defense of *forum non conveniens*.**
17. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders, including but not limited to the Title VI List of Pertinent Nondiscrimination Acts and Authorities attached hereto as Exhibit E, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease to or from any person because of one's membership in a protected class, *e.g.*: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws. In the event of CBRE's noncompliance with the non-discrimination provisions of this Agreement, 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.

18. This Agreement is our entire agreement and supersedes all prior understandings between us regarding this engagement and is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the benefit of our lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Except as otherwise provided herein, nothing is or may be deemed a waiver or full statement of any of our rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. We each agree that we have both participated in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. You also acknowledge receipt of the attached Basic Broker Duties and Lease Disclosures attached as Exhibits B and C. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy or in counterparts.

**Agreed and Accepted:**

**CBRE, INC.**  
**Licensed Real Estate Broker**

By: \_\_\_\_\_  
Jim Chynoweth, Managing Director  
New Mexico Real Estate License #16374 Exp. 3/31/21

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

By: \_\_\_\_\_  
Jim Smith, CCIM, SIOR, First Vice President

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

By: \_\_\_\_\_  
Brecken Mallette, Associate

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

By: \_\_\_\_\_  
Katrín Gist, Vice President CBRE Bellevue, WA

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

Address: **6100 Uptown Blvd. NE, Suite 300**  
**Albuquerque, New Mexico 87110**  
Telephone: **505.837.4999**

**Agreed and Accepted:**

**Owner: City of Albuquerque**

By: \_\_\_\_\_  
Sarita Nair  
Chief Administrative Officer

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

Recommended:

By: \_\_\_\_\_  
Nyika A. Allen, C.M.  
Director of Aviation

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



**EXHIBIT A**  
**Commission Schedule**

- A. *Lease.* Commissions shall be earned and payable one-half (1/2) when the lease is executed by both parties and one-half (1/2) upon lease commencement, in accordance with the following rate:

6% of the total base rental for the first 60 months in which rent is to be paid, plus  
4% of the total base rental for the next 60 months in which rent is to be paid, plus  
2.5% of the total base rental for the remainder of the term.

The above rate is subject to the following provisions:

1. *Term of Less Than 1 Year.* If a lease term is less than 12 months, then the commission shall be prorated based upon the number of months included in the lease term.
  2. *Option or Right of First Refusal to Renew, Extend Lease or Occupy Additional Space.* If a lease for which a commission is earned and payable hereunder contains: an option or right of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then you shall pay a leasing commission in accordance with the provisions of this Commission Schedule on the additional leased space. Said commission shall be earned and payable at the time the extended term commences or the additional space is occupied, as applicable.
  3. *Purchase of Property by Tenant.* If a lease for which a commission is earned and payable hereunder contains an option, right of first refusal, or similar right, and a tenant, its successors or assignees, or any agent, officer, employee or shareholder of a tenant purchases the Property, whether strictly in accordance with the terms of such option, right of first refusal, similar right or otherwise during (a) the term of the lease, (b) any extension thereof, or (c) within ninety (90) days after the expiration thereof, then a sales commission shall be calculated and paid in accordance with the provisions of Section A above; provided, however, that there shall be a credit against such sales commission in the amount of lease commissions previously paid to CBRE relating to that portion of the purchaser's lease term which is canceled by reason of such sale. In no event shall such credit exceed the amount of such sales commission.
- B. *Sale.* The Property made the subject of this listing agreement may not be sold by the City of Albuquerque pursuant to the City's regulatory obligations.
- C. *New Mexico Gross Receipts Tax.* In addition to the rates set forth above, **Broker shall be paid the applicable gross receipts tax on all commissions.**

## **Exhibit B**

### **Broker Duties 2019 - Client**

Per New Mexico law, Brokers are required to disclose a specific set of applicable Broker Duties prior to the time the Broker generates or presents any written document that has the potential to become an express written agreement and obtain from the applicable party, written acknowledgement that the Broker has made such disclosures.

**Brokers owe the following broker duties to *all* parties to a transaction.**

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of potential conflict of interests that the broker has in the transaction, including, but not limited to:
  - A. any written brokerage relationship the broker has with any other parties to the transaction or;
  - B. any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

**In addition to the above duties, Brokers owe the following Broker Duties to the party to whom the broker is directly providing real estate services, regardless of the scope and nature of those services.**

1. Unless otherwise agreed in writing with the applicable party, assistance to the party in completing the transaction, including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advise to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship options available in New Mexico which include, but are not limited to;
  - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the

person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and sub-agency agreements.

**B. Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

**C. Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.

7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:
- A. that the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
  - B. that the seller/owner will agree to financing terms other than those offered;
  - C. the seller/owner's motivations for selling/leasing; or
  - D. any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:
- A. that the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
  - B. the buyer/tenant's motivation for buying/leasing; or
  - C. any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

## **PART II – OTHER REQUIRED DISCLOSURES**

***Broker shall update these and all other required disclosures as needed.***

**1. BROKERAGE RELATIONSHIPS WITH OTHER PARTIES:** Does Broker have a written brokerage relationship with any other party(ies) to the transaction?

YES ☐ NO If "YES" explain:

"Client" acknowledges that Broker is a national brokerage firm, and that in some cases it may represent prospective Seller/Landlord of prospective Properties. "Client" agrees and understands that the Property will be presented for their consideration. "Client" also agrees and understands that in the event of a prospective transaction involving "Client" and another person or entity represented by Broker, Broker may designate one or more licensees employed by Broker to act as "Client's" exclusive designated representatives in the transaction, and one or more other licensees to act as the other party's exclusive designated representative in the transaction. Neither designated representative may disclose the confidential information of their principal to the other designated representative or principal.

**2. MATERIAL INTEREST/REALTIONSHIP:** Does Broker have any material interest or relationship of a business, personal, or family nature in the transaction? ☐ YES ☒ NO If "YES" describe that relationship:

**3. ADVERSE MATERIAL FACTS:** Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

☒ NONE OR explain adverse material facts:

**Note: By signing the Agreement to which this Exhibit is Attached, you acknowledge that you have reviewed this information.**

## Exhibit C

### New Mexico Sale/Lease Disclosures

**Property:** Parcels Albuquerque Aviation Center of Excellence as shown in Exhibit D

**Seller/Landlord Disclosure of Material Facts, Delivery of Reports, and Compliance with Laws.** Sellers/landlords are hereby requested to disclose directly to buyers/tenants all facts known to sellers/landlords that materially affect the value or desirability of the Property and are not readily observable nor known to the buyer/tenant, including, but not limited to, facts regarding hazardous materials, zoning, construction, design, engineering, soils, title, survey, fire/life safety, proneness to natural hazards such as earthquakes, and other matters, and to provide buyers/tenants with copies of all reports in the possession of or accessible to sellers/landlords regarding the Property. Sellers/landlords and buyers/tenants must comply with all applicable federal, state and local laws, regulations, codes, ordinances and orders, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

**Americans with Disabilities Act (ADA).** The Americans With Disabilities Act (42 United States Code §12101 et seq.) and other federal, state and local requirements may require changes to the Property. Have your experts investigate and evaluate these matters.

**Taxes.** Sales, leases and other real estate transactions can have federal, state and local tax consequences. In sales transactions, Internal Revenue Code §1445 requires buyers to withhold and pay to the IRS 15% of the gross sales price within 20 days of the date of a sale unless the buyers can establish that the sellers are not foreigners, generally by having the sellers sign a Non-Foreign Seller Affidavit. Depending on the structure of the transaction, the tax withholding liability can exceed the net cash proceeds to be paid to sellers at closing. Have your experts investigate and evaluate these matters.

**Flood Zones.** Many lenders require flood insurance for properties located in flood zones, and government authorities may regulate development and construction in flood zones. Whether or not located in a flood zone, properties can be subject to flooding and moisture problems, especially properties on a slope or in low-lying areas. Buyers/tenants should have their experts confirm whether the Property is in a flood zone and otherwise investigate and evaluate these matters.

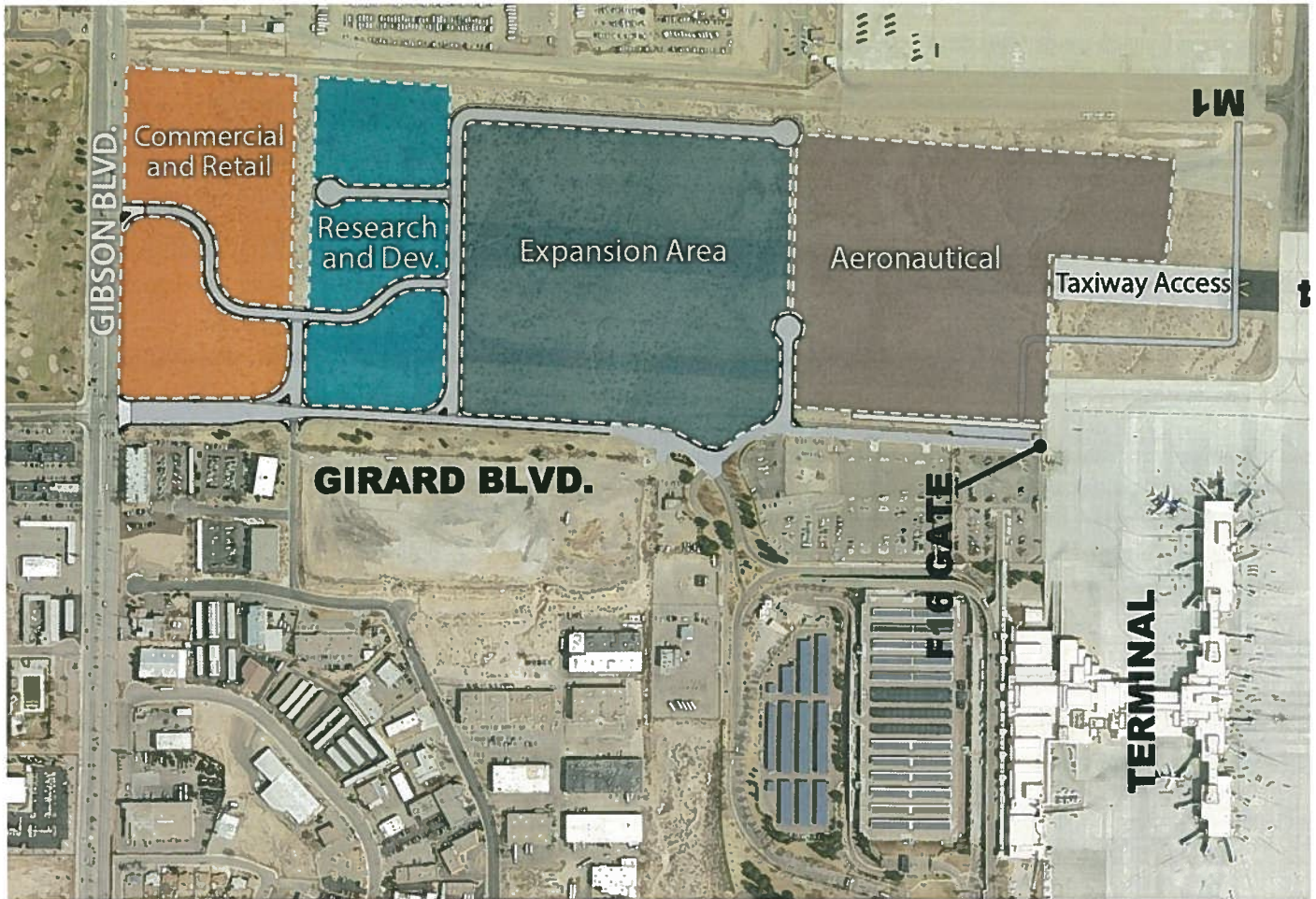
**Fires.** Properties, whether or not located in a fire hazard zone, are subject to fire/life safety risks and may be subject to state and local fire/life safety-related requirements, including retrofit requirements. Have your experts investigate and evaluate these matters.

**Hazardous Materials and Underground Storage Tanks.** Due to prior or current uses of the Property or in the areas or the construction materials used, the Property may have hazardous or undesirable metals (including but not limited to lead-based paint), minerals (including but not limited to asbestos), chemicals, hydrocarbons, petroleum-related compounds, or biological or radioactive/emissive items (including but not limited to electrical and magnetic fields) in soils, water, building components, above or below-ground tanks/containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. If the Property was built before 1978 and has a residential unit, sellers/landlords must disclose all reports, surveys and other information known to them regarding lead-based paint to buyers/tenants and allow for inspections (42 United States Code §4851 et seq.). Have your experts investigate and evaluate these matters.

**Property Inspections and Evaluations.** Buyers/tenants should have the Property thoroughly inspected and all parties should have the transaction thoroughly evaluated by the experts of their choice. Ask your experts what investigations and evaluations may be appropriate as well as the risks of not performing any such investigations or evaluations. Information regarding the Property supplied by the real estate brokers has been received from third party sources and has not been independently verified by the brokers. Have your experts verify all information regarding the Property, including any linear or area measurements, the availability of all utilities, applicable zoning, and entitlements for the intended use. All work should be inspected and evaluated by your experts, as they deem appropriate. Any projections or estimates are for example only, are based on assumptions that may not occur, and do not represent the current or future performance of the property. Real estate brokers are not experts concerning, nor can they determine if any expert is qualified to provide advice on, legal, tax, design, ADA, engineering, construction, soils, title, survey, fire/life safety, insurance, hazardous materials, or other such matters. Such areas require special education and, generally, special licenses not possessed by real estate brokers. Consult with the experts of your choice regarding these matters.

**CONSULT YOUR ADVISORS** – This document has legal consequences. No representation or recommendation is made by Broker as to the legal or tax consequences of this Agreement or the transaction(s) which it contemplates. This form is not intended to substitute for any disclosures the law requires that the parties make to each other. These are questions for your attorney and financial advisors.

**Exhibit D**  
**Available Parcels**





## **Exhibit E**

### **Nondiscrimination Acts and Authorities**

**Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, each party to the Agreement, 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.*).