



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

May 1, 2020

TO: Pat Davis, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK', is written over the name 'Timothy M. Keller'.

SUBJECT: Second Amendment to the Aerospace Technology Park Facility Lease and Agreement between the City of Albuquerque Aviation Department and the Southwest Aeronautics, Mathematics, and Science Academy ("SAMS").

Attached for Council action is a copy of the Second Amendment to an original agreement #201200324 between the City of Albuquerque Aviation Department and the Southwest Aeronautics, Mathematics, and Science Academy ("SAMS") for lease of property at the Double Eagle II Airport.

PURPOSE: This Second Amendment is submitted with mutual agreement between the Aviation Department and SAMS. The rental fee schedule established in the original agreement is not sustainable by SAMS and if not modified, SAMS will seek other leasable space.

SAMS rents a building and grounds at the Double Eagle II Airport as the site of its school campus. SAMS has been an excellent tenant since the inception of the lease in 2011. The SAMS curriculum includes aeronautical courses that emphasize aeronautical careers and training, which benefits greatly from the close proximity to the Double Eagle II Airport. No other rental locations are in close proximity to Double Eagle II Airport, and it behooves both SAMS and the City to maintain this lease arrangement at the reduced rate.

This Second Amendment also updates the original lease agreement bringing it into compliance with required City contract language, and updating required federal civil rights provisions.

TERM: This Second Amendment provides an earlier beginning of the Second Renewal Period, but does not extend the ultimate termination date established in the original agreement, which extends through June 30, 2027.

Cover Analysis

1. What is it?

This legislation is a Second Amendment to the Aerospace Technology Park Facility Lease and Agreement between the City of Albuquerque Aviation Department and the Southwest Aeronautics, Mathematics, and Science Academy (“SAMS”).

2. What will this piece of legislation do?

This Second Amendment modifies the Facility and the Option Areas rent, adds required City contract language, as well as updates the required federal civil rights provision language.

3. Why is this project needed?

SAMS will not be able to continue to lease at this location under the current rental schedule. Reducing its rental rates will enable it to continue leasing the building.

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

There are no costs associated with this Second Amendment beyond the reduction in rental revenue. This Second Amendment allows for the following reductions:

1. Increases to the rental rates are delayed in the short term and slightly reduced, allowing SAMS more time to manage its expenses. These changes reduce the building rent payments by \$694,054, assuming a 20% enrollment in the aviation track over the remaining term of the Lease through June 30, 2027.

2. The rate charged for vacant property which SAMS uses as a sports field has been decreased to seven cents per square foot, escalated by 2% annually, which is more in line with fair market value for vacant land at DEII. The original Agreement required twenty cents per square foot until June 30, 2022, and thirty cents per square foot from July 1, 2022 to June 30, 2027. These changes reduce the rental payments for the vacant land by a total of \$277,518 over the remaining term of the Lease through June 30, 2027.

The Aviation Department has already budgeted for the reductions described above in the total amount of \$971,572 over the remaining term of the lease.

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

With the rent modification, the amount of revenue generated from the rental of this property over the life of the contract, July 1, 2012 through June 30, 2027, will be \$333,348 for the sports field and \$3,603,756 for the building for a total of \$3,937,104, assuming a 20% enrollment in the aviation track.

FISCAL IMPACT ANALYSIS

TITLE: Second Amendment to the Aerospace Technology Park Facility Lease and Agreement between the City of Albuquerque Aviation Department and the Southwest Aeronautics, Mathematics, and Science Academy ("SAMS"). R: O:
 FUND: 611
 DEPT: 700611

- 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	\$ -	\$ -	\$ -	\$ -
[] Estimated revenues not affected				
[] 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: This reduction in revenue will not effect appropriations.


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


This will allow SAMS to continue to operate at DEII.

PREPARED BY:
 DocuSigned by:

 5/4/2020
 FISCAL ANALYST

APPROVED:
 DocuSigned by:

 5/4/2020
 DIRECTOR

REVIEWED BY:
 DocuSigned by:

 5/4/2020
 EXECUTIVE BUDGET ANALYST

DocuSigned by:

 5/4/2020
 BUDGET OFFICER (date)

DocuSigned by:

 5/4/2020
 ECONOMIST

Double Eagle II Airport
Second Amendment
Aerospace Technology Park
Facility Lease and Agreement

Southwest Aeronautics, Mathematics, and Science Academy

This Second Amendment to the **Aerospace Technology Park Facility Lease and Agreement** ("Second Amendment") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **Southwest Aeronautics, Mathematics, and Science Academy** ("School"), a state-chartered public school organized and existing under the laws of the state of New Mexico ("Tenant").

Section 1. Recitals.

1.1 The City and Tenant entered into a Lease and Agreement, with a commencement date of November 1, 2012 ("Agreement"), whereby the Tenant agreed to lease from City, an existing facility ("Premises") located within the Double Eagle II Airport Aerospace Technology Park to be used as a state-chartered public school hereafter known as the Southwest Aeronautics, Mathematics, and Science Academy; and

1.2 The City and Tenant entered into a First Amendment to the Agreement which expanded the Premises by approximately One Hundred Eighty-five Thousand One Hundred Eleven square feet (185,111 SF) of land located adjacent to the western boundary of its Premises for use as an athletic field at a rate of twenty cents per square foot until June 30, 2022, to increase to thirty cents per square foot from July 1, 2022 to June 30, 2027; and

1.3 The City and Tenant entered into a First Renewal to the Agreement in which the Tenant exercised its first of two renewal periods, thereby extending the Term of the Contract through June 30, 2022, and anticipates seeking a Second Renewal Period; and

1.4 The Tenant seeks to renegotiate the renewal periods and rent increases to allow for a more sustainable business plan, and desires to reduce the Option Area rent consistent with fair market values for vacant land in the area; and

1.5 Currently, twenty percent (20%) of the students enrolled in the School are active in the School's aviation and aeronautical courses and programs, and pursuant to Federal Aviation Administration Policy and Procedures Concerning the Use of Airport Revenue, the City may make adjustments to the rent of the School facility to the extent

warranted by these aeronautical courses and programs. The rate of reduction will be determined at three-year intervals based on the percentage of students enrolled in the School's aviation and aeronautical courses and programs as necessary to satisfy FAA guidelines; however, the maximum adjustment to the rent will not exceed a thirty percent (30%) reduction at any given time.

1.6 The athletic field comprising the Option Area is not eligible for a reduction in rent based on aeronautical use, but can be reduced based on current fair market value.

1.7. The City is willing to adjust Tenant's rent to preserve the school at the premises, and the parties have the right and power to enter into this Second Amendment.

Section 2. Amendment. In consideration of the premises and mutual obligations herein, the parties mutually agree as follows:

2.1 Section 6.1 of the Agreement is hereby deleted and replaced in its entirety to read as follows:

6.1 Facility Rent. Commencing on July 1, 2012, as consideration for the rights granted to Tenant pursuant to this Lease, Tenant agrees to pay facility rent to City monthly, in advance without invoice, on the first day of each calendar month throughout the Term, as described in the following table.

Initial Term	Price/SF	Rental Reduction	Adjusted Price/SF	Monthly Rent	Annual Rent
July 1, 2012 – June 30, 2017	\$6.00/SF	N/A	\$6.00/SF	\$20,792.50	\$249,510.00
First Renewal Period	Price/SF	Rental Reduction	Adjusted Price/SF	Monthly Rent	Annual Rent
July 1, 2017 – June 30, 2019	\$6.50/SF	N/A	\$6.50/SF	\$22,525.20	\$270,302.50
July 1, 2019 – June 30, 2022	\$6.90/SF	20%	\$5.52/SF	\$19,129.10	\$229,549.20
Second Renewal Period	Price/SF	Rental Reduction	Adjusted Price/SF	Monthly Rent	Annual Rent
July 1, 2022 – June 30, 2025	\$7.93/SF	TBD	TBD	TBD	TBD
July 1, 2025 – June 30, 2027	\$7.93/SF	TBD	TBD	TBD	TBD

Effective July 1, 2019 through June 30, 2022, the price per square foot for the facility rent will be reduced by a percentage amount equivalent to the percentage of students enrolled in the School's aviation and aeronautical courses and programs. The Tenant will track and report to the City the total number of students enrolled in the School and the total number of students in the School's aviation and aeronautical courses and programs as necessary to satisfy FAA guidelines by September 30th of each year.

Rent reduction for the three-year period from July 1, 2022 through June 30, 2025, will be determined based on the average enrollment in the School's aviation and aeronautical courses and programs between January 1, 2019 and December 31, 2021. Rent reduction for the remaining contract years will be determined based on the average enrollment in the School's aviation and aeronautical courses and programs between January 1, 2022 and December 31, 2024.

Rent reduction will not exceed 30%, and will not occur absent tracking and reporting of enrollment data as indicated above. The City will review enrollment data produced and will notify the Tenant in writing of the Adjusted Price/SF and Monthly Rent by October 31 in the years 2021 and 2024. Annual Facility Rent Adjustments will be approved by the Director of Aviation and memorialized in an addendum to this Agreement.

2.2 Section 6.3 of the Agreement is hereby deleted and replaced in its entirety to read as follows:

6.3 Option Areas Rent. In the event Tenant exercises its option to lease the Option Areas pursuant to subsection 3.1 above, rent for such Option Areas shall be paid monthly based on the rates established in the table below. The monthly Option Areas rent obligation shall be calculated based on the total square footage of Tenant's Option Areas.

Term	Price/ SF	SF	Annual Rent	Monthly Rent
July 1, 2013 – June 30, 2019	\$.20	185,111	\$37,022.20	\$3,085.19
July 1, 2019 – June 30, 2020	\$.07	185,111	\$12,957.77	\$1,079.81
July 1, 2020 – June 30, 2021	\$.0714	185,111	\$13,216.93	\$1,101.41
July 1, 2021 – June 30, 2022	\$.0728	185,111	\$13,476.08	\$1,123.01
July 1, 2022 – June 30, 2023	\$.0743	185,111	\$13,753.75	\$1,146.15
July 1, 2023 – June 30, 2024	\$.0758	185,111	\$14,031.41	\$1,169.28
July 1, 2024 – June 30, 2025	\$.0773	185,111	\$14,309.08	\$1,192.42
July 1, 2025 – June 30, 2026	\$.0788	185,111	\$14,586.75	\$1,215.56
July 1, 2026 – June 30, 2027	\$.0804	185,111	\$14,882.92	\$1,240.24

2.3 Section 20.1 of Agreement is hereby deleted and replaced in its entirety to read as follows:

20.1 Compliance with Laws, Rules, Regulations and Procedures. Tenant shall not use the Airport or any part thereof, or

knowingly permit the same to be used by any of its employees, officers, agents, sub-lessees, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with and conform to all present and future statutes and ordinances, and rules and regulations promulgated thereunder, of all federal, state, city and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Tenant, Tenant's Premises, or Tenant's operations and activities under this Agreement. Tenant 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.

20.1.1 Non-Discrimination Provisions. Tenant shall at all times comply with the City, State and Federal Non-Discrimination Provisions attached hereto as Exhibit E and incorporated herein as if set forth in full.

2.4 Section 20.11 of the Agreement is hereby amended to add after subsection 20.11.3 the following new subsection 20.11.4:

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

Section 3. Effect of Second Amendment. Except as herein expressly amended, the terms and conditions of the Agreement shall remain unchanged and shall continue in full force and effect unless there is a conflict between the terms and conditions of the Agreement and this Second Amendment, in which event, the terms and conditions of the Second Amendment shall control.

Section 4. Approval of Second Amendment. This Amendment 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.

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

City of Albuquerque:

By: _____
Sarita Nair
Chief Administrative Officer

Date: _____

Recommended:

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

Date: _____

Tenant: Southwest Aeronautics, Mathematics, and Science Academy

By: _____

Date: _____

Exhibit E

Non-Discrimination Provisions

1. State and Local Compliance. Tenant 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.

2. Federal Compliance.

2.1 General Civil Rights Provision. Tenant 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 Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant. This provision obligates Tenant for the period during which the property is used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.2 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, Tenant, 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.

2.3 Title VI Clauses for Lease of Real Property. Tenant, 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 Tenant 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.

2.4. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Tenant, 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).

3. Disability Laws and Accessibility Requirements. Tenant shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Tenant constructs on the Premises, Tenant agrees to meet all the requirements of the ADA which are imposed directly on the Tenant or which would be imposed on the City as a public entity. Tenant 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 Tenant or its contractors or agents in violation of the ADA.



SOUTHWEST
AERONAUTICS
MATHEMATICS &
SCIENCE ACADEMY

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www.samsacademy.com

May 1, 2020

Dear Albuquerque City Council,

Southwest Aeronautics Mathematics and Science Academy's Governing Council approved the Lease amendment between us and the City of Albuquerque at our March 26th, 2020 Governing Council meeting. The Governing Council of Southwest Aeronautics Mathematics and Science Academy would appreciate approval of the amendment by the City Council and execution of the amendment of the City no later than June 30, 2020.

Sincerely,

Coreen Carrillo, Director of SAMS Academy
4100 Aerospace Parkway N.W.
Albuquerque, NM 98109
Phone: 338-8601 / Cell: 615-4072

Larry Kennedy, Governing Council President for
Southwest Aeronautics Mathematics and Science Academy