

Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE


Albuquerque, New Mexico

Office of the Mayor

## INTER-OFFICE MEMORANDUM

March 1, 2021

**TO:** Cynthia Borrego, President, City Council

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

**SUBJECT:** Ground Lease Agreement between Mary Beth Maloy and Dion Patrick Maloy and the City of Albuquerque located at 6325 Hanover Rd., NW and 1301 & 1010 64<sup>th</sup> Street NW

The Solid Waste Department wishes to continue to lease approximately a total 9.60 acres of vacant land located at 6325 Hanover Rd., NW and 1301 and 1010 64<sup>th</sup> Street NW from the Mary Beth Maloy and Dion Patrick Maloy. Parking will be limited during construction of the Edith Solid Waste Vehicle Maintenance Facility and the Westside Vehicle Maintenance Facility, and this property will provide additional parking for the Solid Waste Recycling Collection trucks and vehicles.


The proposed Lease Agreement is for a one (1) year and one (1) month period with the option to renew for two additional one (1) year period, if the City is in compliance with the lease and if properly exercised. The proposed monthly rent is \$11,000.00 and the total rental amount for the one (1) year and (1) one month lease period will be \$143,000.00.

This Lease Agreement is forwarded to City Council for approval.

TITLE/SUBJECT OF LEGISLATION: Ground Lease Agreement between Mary Beth Maloy and Dion Patrick Maloy and the City of Albuquerque located at 6325 Hanover Rd., NW and 1301 & 1010 64<sup>th</sup> Street NW

Approved:

Approved as to Legal Form:

 3/31/21  
Sarita Nair Date  
Chief Administrative Officer

DocuSigned by:  
Esteban A. Aguilar 3/16/2021 | 11:24 AM MDT  
7981D89D046F4DB...  
Esteban A. Aguilar, Jr. Date  
City Attorney

DS  


Recommended:

DocuSigned by:  
Matthew Whelan 3/16/2021 | 7:38 AM PDT  
A48F4B1G1344490...  
Matthew Whelan Date  
Director, Solid Waste Department

## **Cover Analysis**

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

Ground Lease Agreement between the City's Albuquerque Solid Waste Department and Mary Beth Maloy and Dion Patrick Maloy

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

Enter into a ground lease agreement with the City and Mary Beth Maloy and Dion Patrick Maloy for approximately 9.60 acres vacant land.

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

Due to the construction of the Edith Solid Waste Vehicle Maintenance Facility and the Westside Vehicle Maintenance Facility, this lease is needed to provide additional parking for the Solid Waste Recycling Collection trucks and vehicles.

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

The monthly rent is \$11,000.00 and the total rental amount for the one (1) year one (1) month lease period will be \$143,000.00. The funding source is from Solid Waste fund 651.

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

N/A

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

The Solid Waste Department will have no location to park the recycling collection trucks and vehicles.

### **7. Is this service already provided by another entity?**

No.

**GROUND LEASE AGREEMENT**  
**CITY OF ALBUQUERQUE AND MARY BETH MALOY**  
**AND DION PARTICK MALOY.**

THIS GROUND LEASE AGREEMENT ("Lease") is made and entered into by and between the City of Albuquerque ("City"), a New Mexico municipal corporation, and the Mary Beth Maloy and Dion Patrick Maloy (collectively, "Landlord").

**I. MISCELLANEOUS REPRESENTATIONS.**

A. WHEREAS, the Landlord is the owner of a certain tract of land located at 6325 Hanover Rd. NW, Albuquerque, NM 87121, 1301 64<sup>th</sup> Street NW, Albuquerque, NM 87121, and 1010 64<sup>th</sup> Street NW, Albuquerque, NM 87121 within Bernalillo County, New Mexico, as more specifically shown on **Exhibit A** attached hereto and made a part hereof; and

B. WHEREAS, the City wishes to utilize the Premises (defined below) for employee parking; and

C. WHEREAS, the Landlord and City wish to enter into a lease.

**II. BASIC LEASE PROVISIONS.**

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

A. **DEFINITIONS.**

1. "Land" means that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, located at the address specified in paragraph I(A), above, and as more specifically described on **Exhibit A**, attached hereto.

2. "Building" or "Buildings" means the building(s) and other improvements constructed or placed on the Land and situated thereon at any time prior to or during the term of this Lease.

3. "Premises" means the approximate 9.60 acres of land located within the identified Land consisting of three (3) separate tracts of land, as specifically shown on **Exhibit A** attached hereto, and which includes a portion a Building.

B. **TERMS.**

1. **Effective Date:** This Lease will not be binding upon the parties until it is signed by City and approved by and signed by the Chief Administrative Officer or authorized designee ("Effective Date").

2. **Lease Commencement Date:** Upon full execution of Lease by Landlord and City, the "Lease Commencement Date" shall be June 1, 2021.

3. **Rent Commencement Date:** The "Rent Commencement Date" shall be the same as the Lease Commencement Date.

4. **Expiration Date:** This lease will terminate at midnight on May 31, 2022 unless terminated earlier as permitted hereunder. The time period between the Lease Commencement Date and the date on which the Lease terminates constitutes the "Term" of the Lease.

5. **Base Rent:**

- a. Monthly base rent for the Premises is ELEVEN THOUSAND DOLLARS AND NO CENTS (\$11,000.00) (the "Base Rent"). In the event that the City fails to pay monthly Base Rent within fifteen (15) days of the due date, City shall pay the Landlord a late charge equal to five percent (5%) of the monthly Base Rent.
- b. Base Rent and all other consideration to be paid or provided by City to Landlord shall constitute Rent and shall be paid or provided without offset.

6. **Place and Manner of Payments:**

- a. Rent shall be paid by check.
- b. Paid Payable to:  
Mary Beth Maloy or Dion Patrick Maloy  
535 Comanche Rd. NE  
Albuquerque NM, 87107

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

8. **City Holding Over.**

- a. **With Consent.** In the event City remains in possession of the Premises after the expiration of this Lease with City's written consent, but without the execution of a new Lease, it shall be deemed to be occupying said Premises as a tenant from month-to-month at a rental equal to the rent for the previous annual period plus an additional three percent (3%) paid in monthly installments with the annual rent prorated monthly for the period of the hold over plus any additional charges called for under the terms of this Lease, including, without limitation, and shall otherwise be subject to all the conditions, provisions and obligations of this

Lease insofar as the same are applicable to a month-to-month tenancy. Should the month-to-month hold over tenancy continue for more than a twelve (12) month period, the rent will increase three percent (3%) for each of the subsequent twelve (12) month periods. A holdover month-to-month tenancy may be terminated by either party upon at least a sixty (60) day prior written notice.

b. Without Consent. If City remains in possession of the Premises after the expiration or earlier termination of the Lease without Landlord's consent, City shall be in default hereunder without notice or opportunity to cure, and, in addition to any other right or remedy of Landlord, City shall be a tenant at will. A holdover tenancy at will is terminable at any time by Landlord without notice. In the event City remains in possession of the Premises after the expiration of this Lease without Landlord's consent, all other terms of this Lease shall continue to apply except that: (i) the Rent applicable during such tenancy shall be payable monthly in advance at a rate equal to 1.5 times the rate in effect immediately before the holdover began, plus any additional charges called for under the terms of this Lease, and (ii) City shall also pay to Landlord all direct and consequential damages sustained by City resulting from retention of possession by Tenant, including without limitation the loss of any proposed subsequent City for any portion of the Premises.

9. Option to Extend Term. City shall have the option to extend the Term of this Lease up to two (2) consecutive times (each an "Option to Extend"), provided that at the time each such Option to Extend is exercised Tenant is not in Default (as defined herein), with each Option to Extend providing for an additional one (1) year term (each a "Renewal Term"), subject to the following:

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

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

10. Termination for Convenience. Notwithstanding any other requirement, City may terminate this lease upon ninety (90) days' written notice to the other Landlord of the intent to terminate. Upon termination of this Lease, as provided below, the City and Tenant shall have no further rights, obligations, or liabilities as between the City and

Tenant as provided in this Lease and all future payment obligations and liabilities in this Lease will cease upon the date of termination, except as otherwise provided in this Lease, including, without limitation, as to liabilities expressly stated to survive termination of the Lease.

11. **Security Deposit.** City is not required to provide a security deposit to City.

### **III. LEASE EXEMPT FROM BATEMAN ACT; APPROPRIATIONS.**

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

### **IV. QUIET ENJOYMENT.**

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

### **V. USE OF THE PREMISES.**

#### **A. City shall:**

1. Operate and maintain the Premises in a safe, sanitary and operable condition.
2. Properly handle and dispose of all Hazardous Substances, pursuant to Environmental Laws, as defined in Section IX(A)(1) of this Lease. City shall take all appropriate measures necessary to prevent the release on or from the Premises of any Hazardous Substances. Neither party shall create or bring on the Premises any Hazardous Substances or permit any third party to do so in violation of Environmental Laws. Should

City become aware of the existence of any Hazardous Substance on the Premises, City shall immediately notify Landlord of such Hazardous Substance.

**B. City shall not:**

1. Use, occupy or permit the Premises to be used or occupied for any unlawful purposes or for purposes not specified in this Lease.
2. Use, occupy or permit the Premises or any part of the Premises to be used or occupied, or do or permit anything to be done in or on the Premises in any manner which will:
  - a. Constitute waste or a public or private nuisance; or
  - b. Cause the cancellation of any insurance policies related to the Premises. All property kept, stored or maintained by City within the Premises shall be there at City's sole risk, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or borne by Landlord, unless due to the negligence or willful Landlord, its employees, agents or contractors.
3. Allow smoking on the Premises at any time by any person in non-designated areas.
4. Allow political activities or campaigning by candidates for any elected office on the Premises, except as with prior approval from Landlord.

**C. Signs and Logos:** All of City's standard signs and logos existing on the Premises on the Lease Commencement Date shall be in compliance with applicable signage codes. City, at its expense, may install additional signs and logos so long as they are in compliance with applicable signage codes. If applicable, City upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair of any surface where signs are attached, affixed, or installed, and this obligation shall survive the expiration or earlier termination of this Lease. City acknowledges and represents that it has examined the Premises and has determined by its own independent evaluation that the Premises are suitable and usable for the purposes, uses and activities intended by City and contemplated by this Lease.

**VI. COMPLIANCE WITH LAW, PERMITS AND LICENSES.**

A. City shall at all times during the term of this Lease at its own expense, comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws, rules and regulations, now or hereafter enacted or amended, affecting the Premises, or occasioned by or affecting the use thereof by City, including but not limited, the Americans with Disabilities Act. City shall have the right to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, ordinance, order, rule, regulation or requirement affecting City's



use and/or occupancy of the Premises. If compliance by City may be legally held in abeyance during the contest without subjecting Landlord or City to any liability whatsoever for failure to so comply, City may postpone compliance until the conclusion of the proceedings.

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

## **VII. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

A. If the Land and/or the Building or any other improvements shall be partially or wholly damaged or destroyed by fire, windstorm, water, earthquake, flood or by any other means, City may, at its option, to be evidenced by notice in writing given to Landlord within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of such notice.

E. If City does not elect to terminate this Lease, the City shall commence to rebuild or repair any such damage at City's sole cost and expense and restore the Premises to substantially the same condition that existed immediately prior to the damage. All insurance proceeds payable under any Premises insurance policies held by City covering the Premises shall be paid into escrow to be held for payment towards the cost of rebuilding or repair and, should City fail to perform its obligation to rebuild or repair, such proceeds, plus any amount necessary to rebuild or repair that is not covered by insurance, shall be paid to Landlord. Except as provided below, no damage or destruction by fire or other casualty shall cause a termination of this Lease or any abatement of Rent.

F. If City elects not to restore the Premises to substantially the same condition that existed immediately prior to the damage, then City shall, at Landlord's election, either raze any remaining portion of the improvements and remove all debris or demolish only the damaged portions of the improvement and remove the debris, then grade and restore the land to its original condition if Landlords elected to have all improvements razed and removed.

## **VIII. SURRENDER UPON TERMINATION.**

A. In the event that this Lease is terminated prior to the expiration of the Term hereof for any reason other than default by City, this Lease shall be of no further force or effect and all rights and obligations of the parties hereto shall cease and terminate concurrently with the effective date of such termination. Nothing in this subsection A shall relieve any party from its obligations

under the Sections of this Lease entitled “Rent and Term,” “Holding Over,” “COMPLIANCE WITH LAW,” “DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS,” “SURRENDER UPON TERMINATION,” “HAZADOUS SUBSTANCES,” “FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY,” “INDEMNIFICATION,” “ASSIGNMENT AND SUBLETTING,” “TAXES AND ASSESSMENTS,” “INSURANCE,” “RIGHT OF ENTRY,” “CONDEMNATION,” “Governing Law,” “Attorneys’ Fees,” and “Security Deposit” with respect to any matter therein specified which occurred prior to the effective date of termination or that expressly survives the expiration or earlier termination of this Lease.

## **IX. HAZARDOUS SUBSTANCES.**

A. **Definitions:** For the purposes of this Lease, the following terms have the following meanings:

1. “Environmental Law” means any Federal, State or local law, statute, ordinance or regulation, rules or guidelines, now or hereafter in effect, pertaining to or governing Hazardous Substances or which relate to the protection of human health, safety, or that of the environment, including, without limitation, **CERCLA** (Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (1980)), **RCRA** (Resources Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.(1976)) and **SARA** (Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.9601 et seq.(1986)).

2. “Hazardous Substance” means any substance, material, waste, pollutant, or oil, which is, or becomes designated, classified or regulated as being “toxic,” “hazardous,” “radioactive,” “dangerous,” or a “pollutant,” or any similar term, which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

3. **City’s Responsibilities:** At its own expense, City will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for City’s use of the Premises. City will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises by City, its agents, employees, contractors or invitees without the prior written consent of Landlord. The Landlord specifically exempts readily available art supplies used in the course of instruction (to include oil paints, pigments and solvents) as long as City properly handles and properly disposes of all art supplies used in the course of instruction. City will cause any and all Hazardous Substances brought upon the Premises by City to be removed from the Premises and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. City will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the term of the Lease, City will cause all

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

#### **X. RIGHT OF ENTRY.**

The Landlord, agents and other representatives shall have the right to enter into and upon the Premises or any part thereof at reasonable times for the purpose of inspecting the Premises, in the event of an emergency as determined by the Landlord, the Landlord, agents and other representatives may enter at any time, without notice and without the presence of City.

#### **XI. FIRE OR OTHER CASUALTY LOSS TO PERSONAL PROPERTY.**

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

#### **XII. INDEMNIFICATION.**

Landlord agrees to defend, indemnify, and hold harmless the City, its officers and employees against liability, claims, damages, losses or expenses arising out of bodily injury to person, including death or damage to property caused by or resulting from Landlord's and/or its employees and agents negligent, reckless or intentional act(s), errors or omission(s) in the course of performance of Landlord's obligations and duties pursuant to this Lease. Provided, however, Landlord is not required to indemnify the City for the negligence or intentional acts, errors, or omissions of the City or of its employees or agents. Any liability that may be incurred by the Landlord or its employees or agents in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

#### **XIII. ASSIGNMENT AND SUBLETTING.**

A. City shall not assign this Lease or sublet the whole or any part of the Premises at any time for any reason without the Landlord's prior written approval.

B. In the event that such consent is granted by Landlord and City does assign or sublease with the Landlord's approval pursuant to this provision, City and its guarantor(s), if any, shall be relieved of all liability and responsibility for all such interests and obligations so assigned, each approved assignee and sublessee shall automatically become liable for all obligations of City hereunder with respect to that portion of the Premises so transferred, and Landlord shall be required to enforce the provisions of this Lease directly against each such assignee or sublessee.

C. In the event of an assignment or sublease, contemporaneously with the granting of Landlord's consent, City shall cause each such assignee or sublessee to confirm in writing that party's specific, express assumption of and agreement to perform all of the covenants, duties and obligations of City hereunder to the extent being so assigned or subleased, and each such assignee or sublessee shall further confirm that party's understanding its assumption of liability hereunder as set forth in this Section XIII.

D. Unless approved by Landlord, no usage of the Premises, different from the usage provided for in Section I and V, above, shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease.

E. Landlord shall have the right to assign or transfer, in whole or in part, Landlord's rights and obligations hereunder and in the Land and the Premises.

#### **XIV. TAXES AND ASSESSMENTS.**

Landlord shall promptly pay all taxes and other exactions assessed or assessable and pay all license and permit fees applicable to the Landlord's operation, and acquire and keep current all licenses, municipal, state or federal, required as a result of the City's operation on the Premises, and shall not allow any of said taxes, excises or fees to become delinquent.

#### **XV. INSURANCE.**

A. Tenant represents that it is adequately self-insured, and that Tenant's municipal self-insurance program includes the following types of coverage in appropriate amounts:

1. Special Form property insurance covering the contents owned by Tenant in the Premises.
2. Comprehensive General Liability Insurance.
3. Workmen's Compensation Insurance.
4. Automobile Liability Insurance.

B. **EVIDENCE OF COVERAGE.** Tenant shall deliver to Landlord a letter evidencing self-insurance, if required and requested by Landlord at the time of or following execution of the Lease.

## **XVI. CONDEMNATION**

A. **OPTIONAL TERMINATION.** If during the Term any part of the Premises or the Land is taken or purchased by right of eminent domain or in lieu of condemnation, whether or not any portion of the Premises is taken, and if in the reasonable opinion of Landlord substantial alteration or reconstruction of the portion of the Premises or Land is necessary or desirable as a result thereof, or the amount of parking available to the portion of the Premises or Land is materially and adversely affected, Landlord shall have the right to terminate this Lease by giving City at least thirty days written notice of such termination.

B. **AWARD.** Landlord shall be entitled to receive and retain the entire award or consideration for the affected lands, City shall retain any award for improvements, and City shall not have, or advance, any claims against Landlord for (i) the value of its property or its leasehold estate, (ii) the unexpired term of this Lease, (iii) costs of removal or relocation, or (iv) business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give Landlord any interest in or preclude City from seeking and recovering on its own account from the condemning authority any separate award of compensation attributable to the taking or purchase of City's chattels or trade fixtures or attributable to City's relocation expenses provided that any such separate claim by City shall not reduce or adversely affect the amount of Landlord's award. If any such separate award made or compensation paid to City specifically includes an award or amount for Landlord, City shall promptly account therefor to Landlord.

## **XVII. ETHICS AND CAMPAIGN PRACTICES BOARD, FAIR DEALING AND CONFLICT OF INTEREST; RECORDS: AUDITS AND INSPECTIONS.**

A. Landlord agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Lease whenever such records or information are within Landlord's custody, are germane to an investigation authorized by the Board and are requested by the Board. Landlord 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. Landlord agrees to require that all contractors, subcontractors, or sub-consultants employed by Landlord for any of the services performed under the terms of this Lease will agree in writing to comply with the provisions of this paragraph. Landlord will not be compensated for its time or any costs it incurs in complying with the requirements of this paragraph.

C. Upon execution of this Lease, or within five (5) days after the acquisition of any interest described in this Section XVII during the Term of this Lease, the Landlord shall disclose in writing to the City whether any City Councilor or other officer or employee of the City has or

hereafter acquires any direct, indirect, legal or beneficial interest in the Landlord or in any contract, Lease or agreement between the City and Landlord or in any franchise, concession, right or privilege of any nature granted by the City to the Landlord in this Lease.

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

E. Establishment and Maintenance of Records. Records shall be maintained by Landlord in accordance with applicable law and requirements prescribed by the City of Albuquerque with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

## **XVII. AMERICANS WITH DISABILITIES.**

City agrees to meet all applicable requirements of the American with Disabilities Act of 1990, as amended, and all applicable rules and regulations, as amended, (the "ADA"), that are imposed directly on City.

## **XVIII. MISCELLANEOUS**

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

B. **RELATION TO OTHER LEASES.** This Lease is separate and distinct from and shall be construed separately from any other agreement between Landlord and City or the City and any other landlord.

C. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Lease.

D. **GOVERNMENTAL RIGHT AND POWERS.** Nothing in this Lease shall be construed or interpreted as impairing exercising or defining governmental rights and the police powers of the City.

E. **EXHIBITS.** All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Lease, including but not limited to the exhibits referred to in this Lease,

are hereby incorporated into this Lease by reference and are made a part hereof as though set forth in full in this Lease to the extent they are consistent with the terms and conditions of this Lease.

F. **NO PARTNERSHIP OR AGENCY.** Nothing contained in this Lease is intended or shall be construed in any respect to create or establish any relationship other than that of tenant and landlord, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Landlord the general representative or agent of City for any purpose whatsoever.

G. **FORCE MAJEURE.** In the event Landlord or City is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, public health crisis or pandemic or other causes beyond the reasonable control of City or Landlord, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of rent by City and to the delivery of the Premises by Landlord.

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

I. **NOTICES.**

A. Any notice from one party to the other must be in writing and shall be deemed duly given three days after deposit in the United States Mail if mailed by registered or certified mail, return receipt requested, or upon receipt or refusal to accept if personally delivered or deposited with a national overnight deliver courier who obtains written confirmation of delivery, addressed to the other party at the address set below, or such other address as either party may designate in writing. The parties shall be responsible for notifying each other of any change of address. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

B. If and when included within the term " City" as used in this instrument there are more than one person, firm, or corporation, all shall jointly arrange amongst themselves and specify some individual at some specific address for the receipt of notices and payments to Landlord. All parties included with terms "City" and " Landlord" respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effects as if each had received such notice or payment.

1. **Notice to Landlord:**  
Saylor Family Trust LLC  
5565 Eakes Rd N.W.  
Albuquerque NM, 87107-5529

2. **Notice to the City:**

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

With a copy to:

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

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

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

M. **AUTHORIZATION:** The person(s) executing this Lease on behalf of City represent and warrant that the individuals executing this Lease on City's behalf are duly authorized to execute and deliver this Lease on City's behalf. Landlord represents and warrants that it is the fee simple owner of the Premises and that it has all requisite authority and approval to enter into this Lease.

N. **HEADINGS AND CAPTIONS.** Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

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

P. **GOVERNING LAW AND VENUE.** This Lease shall be construed under the laws of



the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section XVIII, paragraph P. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

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

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

S. **PUBLIC RECORD.** City and Landlord acknowledge that this Agreement does not have a specific exemption within and may be subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and may be a “public record” within the meaning of said Act.

T. **ENTIRE AGREEMENT AND MODIFICATION.**

1. **Entire Agreement.** This Lease, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Lease. All prior negotiations and agreements are merged into this Lease. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

2. **Modification** No subsequent agreement may modify this Lease unless it is in writing and signed by the parties or their authorized agents. This Lease represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

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

**IN WITNESS WHEREOF,** the parties hereto have signed this agreement as of the date indicated by each signature, and the Lease is effective after approval by the City Council and then only upon the signature of the City’s Chief Administrative Officer or authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**CITY:**  
**CITY OF ALBUQUERQUE**  
**A New Mexico Municipal Corporation**

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

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

Recommended by:

\_\_\_\_\_  
Matthew Whelan, Director  
Solid Waste Department

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

**LANDLORD:**  
**MARY BETH MALOY &**  
**DION PATRICK MALOY**

\_\_\_\_\_  
Mary Beth Maloy

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

\_\_\_\_\_  
Dion Patrick Maloy

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

EXHIBIT "A"  
The Premises

