



EC-21-458

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

October 12, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor *K*

SUBJECT: Ground Lease and Development Agreement between the City of Albuquerque and Amazon.com Services LLC

The attached Ground Lease and Development Agreement ("Agreement") between the City of Albuquerque and Amazon.com Services LLC ("Amazon") is submitted for consideration and action by City Council.

This Agreement will lease to Amazon approximately five (5) acres of land located at the Albuquerque International Sunport for construction and operation of an air cargo facility.

Immediate action is requested to allow Amazon to meet its construction schedule.

Approved:

SN
 Sarita Nair
 Chief Administrative Officer

10/14/21
 Date

Approved as to Legal Form:

Esteban A. Aguilar, Jr. 10/13/2021 | 1:06 PM MDT
 Esteban A. Aguilar, Jr. Date
 City Attorney

Recommended:

Nyika A. Allen 10/13/2021 | 9:56 AM MDT
 Nyika A. Allen, C. M.
 Director of Aviation

DS *RGM* DS *LR* DS *PHP* DS *PC* Date

FISCAL IMPACT ANALYSIS

TITLE: Ground Lease and Development Agreement between the
City of Albuquerque and Amazon.com Services LLC.

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:

	2022	Fiscal Years 2023	2024	Total
Base Salary/Wages				-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<hr/>				
[] Estimated revenues not affected				
[X] Estimated revenue impact				
Revenue from program	54,450	55,539	56,650	166,639
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ 54,450	\$ 55,539	\$ 56,650	\$ 166,639

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: This will be new revenue to the Aviation Division

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

Once signed, this lease will provide new economic base jobs for the city of Albuquerque.

PREPARED BY:

DocuSigned by:
Joshua Castellano 10/13/2021 | 3:10 PM MDT
FISCAL ANALYST

APPROVED:

DocuSigned by:
Nyika D. Allen 10/13/2021 | 9:56 AM MDT
DIRECTOR (date)

REVIEWED BY:

DocuSigned by:
Kevin E. Noel 10/13/2021 | 10:34 AM MDT
EXECUTIVE BUDGET ANALYST

DocuSigned by:

Lawrence D. Davis 10/13/2021 | 10:34 AM MDT
BUDGET OFFICER (date)

DocuSigned by:

Christina Barber 10/13/2021 | 12:38 PM MDT
CITY ECONOMIST

Cover Analysis

1. What is it?

A Ground Lease and Development Agreement (“Agreement”) between the City and Amazon.com Services LLC (“Amazon”).

2. What will this piece of legislation do?

Council approval of the Agreement will allow the Aviation Department to enter into an Agreement with Amazon to lease and develop approximately five (5) acres of land located at the Albuquerque International Sunport for the construction and operation by Amazon of an air cargo facility. The Agreement has an initial term of ten (10) years, with three (3) additional five (5) year renewals, providing for a maximum term of twenty-five (25) years.

The Agreement includes provisions for payment for the use of approximately 2.6 acres of cargo apron to be constructed by the City upon signing of the Agreement.

3. Why is this project needed?

The Agreement will allow for development of vacant land and expansion of cargo operations, and the Aviation Department will derive rents and fees from the leasing of airport property.

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

There is no cost to the City for the cargo facility development. The cargo apron project will proceed when this Agreement is executed. The Apron Project will cost approximately \$11,400,000, and the City will impose customary rates and charges to Cargo Airlines for use of the cargo apron.

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

The Agreement is estimated to generate Fifty-four Thousand Four Hundred Fifty and No/100 Dollars (\$54,450.00) of revenue per year to the Aviation Department, escalated annually by two percent (2%), and adjusted periodically by appraisal.

Albuquerque International Sunport
Ground Lease and Development Agreement
Amazon.com Services LLC

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Albuquerque International Sunport
Ground Lease and Development Agreement
Amazon.com Services LLC

This Ground Lease and Development Agreement ("Agreement" or "Lease") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **Amazon.com Services LLC**, a Delaware limited liability company ("Lessee" or "Tenant").

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

Section 1. Recitals.

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

1.2 City has approximately five (5) acres of land on the Airport available for commercial development located on Spirit Drive SE, and as specifically shown in **Exhibit B** ("Premises") attached hereto and incorporated herein; and approximately two point six (2.60) acres of undeveloped land adjacent to the Premises for development of aircraft apron as shown on **Exhibit B** ("Apron"); and

1.3 Lessee desires to lease the Premises from City for construction and operation of an approximately 31,000 square foot air cargo facility and other improvements to support the Allowable Uses of the Premises, and

1.4 City desires to lease the Premises to Lessee to allow for the highest and best use of the property through orderly construction of improvements and facilities; and

1.5 The Premises is not construction-ready; Lessee must perform significant earth work to prepare the land underlying the Premises for construction, and the lease value of the Premises has been adjusted accordingly; and

1.6 City and Lessee have the right and power to enter into this Agreement.

Section 2. Definitions.

2.1 "Airport" means the Albuquerque International Sunport, as shown in **Exhibit A**.

2.2 "Allowable Uses" means the uses of the Premises allowed under this Agreement as follows: The Premises shall be used as an air cargo facility, and include ancillary facilities and for other related supporting uses such as a tug lane, parking for employees, staging for trailers, ground support equipment ("GSE") and unit load device storage ("ULD") and maintenance, and for other uses of the Premises subject to the approval of City, which approval shall not be unreasonably withheld. Lessee shall not conduct or permit any public commercial activity of any nature on or from the Premises without City's prior written consent, which consent may be withheld in City's sole discretion. Public commercial activity is activity other than Allowable Uses involving the sale or other provision of goods or services directly to the general public from the Premises.

2.3 "Aviation Department" means the City of Albuquerque Aviation Department.

2.4 "Commencement Date" means the first day of the month following the Effective Date.

2.5 "Construction Period" means the period of time, as determined by mutual agreement between City and Lessee, in which construction of Lessee's Leasehold Improvements are expected to be completed.

2.6 "Development Guidelines" means the rules and regulations of the Aviation Department governing the development of the Airport through implementation of the Albuquerque International Sunport Airport Layout Plan, Minimum Standards and Requirements for Commercial Aeronautical Activities, the Albuquerque International Sunport Rules and Regulations, design standards, sustainability standards, and other non-technical requirements.

2.7 "Director" means the City of Albuquerque Director of Aviation, or authorized representatives of the Director.

2.8 "Effective Date" means the date this Agreement is executed by City's Chief Administrative Officer.

2.9 "Extraordinary Cost(s)" means any non-recurring expenditure or obligation of City that is reasonably allocable to the Premises including: a) any Operation and Maintenance Expense that is extraordinary, unanticipated by the Parties, and not a part of the normal and regular Operation and Maintenance Expenses, as determined by City, and b) any remediation costs or penalties incurred by City as a result of the release of any Contaminant from the Premises, except to the extent caused by an act or omission of City, its contractors, employees, agents, or City's tenants other than Lessee.

2.10 "Leasehold Improvements" means the improvements to the Premises

as contemplated in this Agreement, including Lessee's commercial facilities, constructed and affixed to the Premises and all fixtures and equipment affixed thereto in such a manner, as determined by City, that they cannot be readily removed without damage to the remainder of the Leasehold Improvements.

2.11 "Operation and Maintenance Expenses" means those current expenses, paid or accrued by City, of operating, maintaining, and repairing the Premises, if any. Such expenses shall include: a) the repair, maintenance, painting, striping, signing, lighting, landscaping and replacement of the common use roadways and adjacent sidewalks; b) cleaning and removal of snow, ice, dirt, and trash from common use roadways and adjacent sidewalks; c) maintenance, repair and replacement of bumper guards or other traffic control systems; d) operation and maintenance of gates, fences, and measures necessary to restrict access to the Airport Operations Area ("AOA"); and e) the operation, maintenance, repair, and replacement of equipment used in the operation and maintenance of common use roadways and adjacent sidewalks, and of the utilities and facilities serving the same.

2.12 "Premises" means that certain tract of land at the Airport as further described in **Exhibit B** attached hereto, and all Leasehold Improvements constructed or installed thereon.

2.13 Intentionally Deleted.

2.14 "Rules and Regulations" means 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.

2.15 "Term" means the Initial Term (as defined in Section 5) plus all Renewal Periods for which Lessee properly exercises its options.

2.16 "Unavoidable Delays" means delays caused by Force Majeure Events (see Exhibit G, General Conditions).

Section 3. Premises. City, for and in consideration of the rents and fees reserved in this Agreement and each of the covenants, conditions, and agreements set forth in this Agreement to be kept and performed by Lessee, hereby leases to Lessee for its exclusive use, and Lessee hires and takes from City upon the conditions, covenants, and agreements set forth in this Agreement, all of which Lessee accepts, the Premises, consisting of approximately five (5) Acres or 217,800 Square Feet, as shown in **Exhibit B**.

3.1 Acceptance of Premises. Lessee has inspected the Premises and,

without limiting any of the City's obligations under this Agreement, accepts the Premises in its present condition as of the Effective Date and agrees to make any changes on the Premises necessary to conform to this Agreement. Lessee further agrees to make any changes required by federal, state, and local law applicable to Lessee's use of the Premises and to obtain necessary permits for its use. If applicable law requires the approval of a subdivision plat for the Premises, and no exemption is available to Lessee or City, such subdivision approval shall be obtained by Lessee at its own expense, provided that prior to Lessee submitting such plat for approval, Lessee shall first obtain City's review and approval thereof. City will coordinate and cooperate with Lessee in the platting process to accommodate Lessee's plans for the Premises, including without limitation creating and configuring individual parcels and easements within the Premises in accordance with Lessee's plans. City will not apply for or accept any new easements or other restrictions or conditions on the Premises in the platting process without the prior written consent of Lessee. In addition, Lessee may, from time to time, create and configure individual parcels and easements, vacate easements, and take other similar action with respect to the Premises to accommodate Lessee's uses as permitted under this Agreement, including replatting the Premises (only if required by applicable law and if no exemption is available to Lessee or City). City shall join in and otherwise cooperate with all such actions as reasonably requested by Lessee, at no cost to City.

3.2 Lessee's Investigations; Apron Soil.

3.2.1 Except as set forth in this Agreement, and subject to the provisions of Section 4.5, Lessee hereby acknowledges that it has or will conducted all necessary due diligence and has independently determined that the Premises is suitable for the construction of its Leasehold Improvements and all uses permitted under this Agreement. Except as otherwise specifically set forth in this Agreement, it is understood and agreed that Lessee is accepting the Premises as is with respect to location, topography, and soil. Lessee acknowledges that City has not made any expressed or implied representations or warranties whatsoever with respect to the condition of the Premises, including without limitation any representation or warranty regarding compliance with Environmental Laws or the suitability for any purpose, use, or operation anticipated in this Agreement.

3.2.2 On or before January 15, 2022, City will begin depositing approximately 55,000 cubic yards of soil removed from "New Air Cargo Apron" ("Apron Soil") to the "Excess Cut Stockpile Area" identified on Exhibit B for Lessee's use on the Premises, and will complete such removal no later than February 15, 2022, with the foregoing dates subject to extension for Force Majeure Events (not to exceed thirty (30) days). City makes no representations or warranties as the suitability of the Apron Soil, and shall incur no costs in testing or engineering the soil, or relocating, preparing, and incorporating the Apron Soil on the Premises. City shall provide or otherwise ensure that Lessee has reasonable access to the Excess Cut Stockpile Area to perform the removal and transportation of the Apron Soil to the Premises. With respect to the activities and work contemplated by this Section 3.2.2, the parties will work cooperatively and in good

faith to ensure each parties activities and work does not unreasonably interfere with the others. For the avoidance of doubt, nothing in this Agreement imposes any obligation or requirement by Lessee to use any minimum amount of Apron Soil for the development of the Premises and the construction of the Leasehold Improvements, and Lessee, following completion of the Leasehold Improvements, shall have no responsibility to remove or facilitate the removal of any unused Apron Soil from the Excess Cut Stockpile Area.

3.3 No Representation or Warranty by City.

3.3.1 Lessee acknowledges that City has made only those representations specifically set forth in this Agreement and has made no other representations or warranties concerning the suitability of the Premises for Lessee's use or for any other use, including but not limited to the Allowable Uses, and that except as expressly provided in this Agreement, City shall have no obligation to repair, maintain, renovate, or otherwise incur any cost or expense with respect to the Premises or any Leasehold Improvements, utility lines or utility components, furnishings, fixtures, trade fixtures, or equipment constructed, installed, or used on, in, or otherwise benefitting the Premises.

3.3.2 Lessee hereby confirms that it has made its own investigation of the costs of doing business under this Agreement, including the costs of constructing improvements to the Premises and the costs of furnishings, fixtures, trade fixtures, signs, inventory, and equipment needed to operate from the Premises, and that it is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement.

3.3.3 All statements contained in this Agreement or otherwise made by City or anyone on its behalf concerning any measurement relating to the Premises or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by Lessee under or in connection with this Agreement.

3.3.4 City shall not be liable to Lessee for any loss of business or damages sustained by Lessee as a result of any change in the operation or configuration of, or any change in any laws, regulations, or procedures governing the use of the Airport by any governmental agency.

3.4. Expansion Rights. During the Term, Lessee will have the right of first offer/refusal for any available land immediately adjacent to the Premises ("Expansion Premises") as identified on Exhibit B; provided that Lessee's use of the Expansion Premises may only be used to support Lessee's Allowable Uses under the Agreement. During the Initial Term, City shall notify Lessee before marketing the Expansion Premises or entering into negotiations for the lease of the Expansion Premises with any third party. City's notice must include a proposed amendment to this Agreement to add the Expansion

Premises as part of the Premises to be co-terminus with the Term. Lessee shall waive its right of first offer/refusal if it fails to respond within thirty (30) days of receipt of the notice.

3.5 Apron Project.

3.5.1 City, at City's sole cost and expense, shall retain an architect/engineer selected by the City and shall design and construct (including, without limitation, obtaining all required permits and approvals) a cargo apron designed to accommodate Airplane Design Group IV ("ADG IV") aircraft ("Cargo Apron") for airside access to the Premises and an adjacent new taxiway ("Taxiway Connection"). City shall operate and maintain the Cargo Apron and the Taxiway Connection ("Apron Project") consistent with cargo cost center allocations. Prior to commencement of construction of the Apron Project, City will, at its sole cost and expense, relocate the existing AOA perimeter fence to the area designated on Exhibit B as the "Temp AOA Perimeter Fence". Following construction of the New Air Cargo Apron, the City will be responsible for installation of the new AOA perimeter fence; provided that the such new fence will not be located in such a manner as to (i) interfere with Lessee's transportation of the Apron Soil from the Excess Cut Stockpile Area to the Premises, or (ii) preclude Lessee's access from the Premises to the New Air Cargo Apron for the Allowable Uses.

3.5.2 Lessee and/or Lessee's Air Carrier (defined below) partner will have preferential use of approximately 112,380 square feet of the Cargo Apron ("Cargo Apron") as depicted on Exhibit B as New Air Cargo Apron, and common use rights to the Taxiway Connection for airside access to the Premises and hard-stand and remain overnight ("RON") positions.

3.5.3 City shall use its commercial best efforts, subject to Force Majeure Events, to deliver the Apron Project substantially complete prior to August 1, 2022 ("Apron Project Outside Date"). If the Apron Project is not complete by the Apron Project Outside Date then, until such time as the Apron Project is complete, City will provide Lessee use of a minimum of one (1) ADG-IV parking and RON position on the adjacent cargo apron ("Adjacent Cargo Apron") as shown on **Exhibit B-1**, and such greater number of aircraft parking positions on the Adjacent Cargo Apron as Lessee reasonably requests. During use by Lessee of the Adjacent Cargo Apron as contemplated in this Section 3.5.3, City will (i) pay the costs and expenses (or, as the case may be, reimburse Lessee for such costs and expenses) of all permits and approvals required to develop, construct, and maintain an area for ULD and GSE staging and storage, and (ii) provide Lessee with reasonable access between the Adjacent Cargo Apron and the Premises.

3.5.4 It is agreed and understood by the parties that Lessee's third-party air cargo carrier ("Air Carrier") will be responsible for payment of the charges associated with use of the Cargo Apron, which will be memorialized in a separate cargo airline signatory operating agreement between the City and such Air Carrier; provided that the

City agrees to charge the then prevailing rates and charges for signatory cargo Air Carriers using the Cargo Area.

Section 4. Use of Premises.

4.1 Limited Use. Lessee is hereby granted the right to develop and use the Premises for the Allowable Uses as defined herein. Lessee agrees that it may not use the Premises for any other purpose without the City's prior written consent, which consent may be withheld in City's sole discretion. Lessee further agrees to abide by the City of Albuquerque Aviation Department Airport Rules and Regulations, all applicable City ordinances, and all statutes, rules and regulations established by any federal, state or local government agency in connection with Lessee's occupancy and use of the Premises. City acknowledges and agrees that Lessee shall have the right to terminate this Agreement in the event the City of Albuquerque Zoning Department does not grant Lessee the right to use the Premises for the Allowable Uses.

4.2 Orderly Development of Premises. As consideration for this Agreement, Lessee agrees to expeditiously and orderly develop the Premises with Leasehold Improvements as described on **Exhibit H**, and pursuant to the process set forth in Section 9 herein.

4.3 Intentionally Deleted.

4.4 Termination of Use. If, following the issuance of a certificate of occupancy for the Leasehold Improvements (i) the Premises are not used by Lessee for the Allowable Uses for a continuous period of one hundred eighty (180) days (as may be extended for Force Majeure Events), and (ii) Lessee has not obtained written approval from the City to suspend operations, then the City may terminate this Agreement pursuant to the notice and cure provisions of Section 13.2 and compel Lessee to vacate the Premises and to remove all Lessee equipment and personal property.

4.5 Contingency. The City has obtained all federal, state and/or local environmental approvals for construction of the Leasehold Improvements, including but not limited to any FAA, NEPA or NMED requirements (collectively, the "Environmental Approvals"). Lessee, at its sole cost and expense, will be required to conduct its construction activities in conformance with all environmental requirements. Lessee will have until the later of (i) the Effective Date, and (ii) November 9, 2021, (the "Contingency Period") within which to inspect all aspects of the Premises and to determine in Lessee's sole discretion whether the Premises and the Cargo Apron are suitable for Lessee's proposed use and development, including finalizing any available economic incentives. During the Contingency Period, Lessee may pursue all permits, entitlements, economic incentives, etc. (collectively, "Entitlements"), as Lessee determines are necessary for its use and development, and City will cooperate with Lessee in connection with such efforts, including, without limitation, execution of such owner approval documents required to

permit Lessee to apply for Entitlements. At any time prior to the expiration of the Contingency Period, Lessee may, in its sole discretion, terminate the Agreement for any reason (a "Lessee Termination"). In the event of a Lessee Termination as contemplated in this Section 4.5, each party will be relieved of all liability and obligations under this Agreement, except for the obligations that specifically and expressly survive termination hereof.

Section 5. Term. The initial term of this Agreement ("Initial Term") shall be for a period of ten (10) years beginning on the Commencement Date and ending the day before the tenth (10th) anniversary of such date, unless earlier terminated pursuant to this Agreement. The Initial Term together with any properly exercised Renewal Periods constitutes the "Term" of this Agreement.

5.1 Option to Renew. Following the expiration of the Initial Term, Lessee shall have the option to renew this Agreement for three (3) additional five (5) year periods ("Renewal Periods"). Lessee must notify City in writing of its intent to exercise its option to renew not less than two hundred seventy (270) days prior to the end of the Initial Term, or any applicable Renewal Period (each, a "Lessee Renewal Deadline"). Such renewals shall be granted provided that no Events of Default exist at both the time of the exercise of the option to renew and at the start of the applicable Renewal Term.

5.2 Holding Over. Holding over by Lessee following the expiration or earlier termination of this Agreement shall not operate to extend or renew this Agreement.

Section 6. Rents and Fees. Commencing on the day immediately after Lessee receives all required certificates of occupancy for the Leasehold Improvements ("Rent Commencement Date"), Lessee agrees to pay City monthly, in advance without invoice, on the first day of each calendar month, for the use of the Premises and for the rights granted pursuant to this Agreement the rent ("Ground Rent") and fees set forth below.

6.1 Ground Rent. The initial Ground Rent shall be \$4,537.50 per month, based on the product of \$0.25 per square foot and 5.0 acres x 43,560 square foot divided by 12. The rent shall be absolutely net meaning that Lessee, except as otherwise specifically set forth in this Agreement, is responsible for the payment of any real estate/property taxes and development fees, insurance, all land and building/property maintenance, and all utilities.

6.1.1 Annual Rent Adjustment. Beginning on the first anniversary of the Rent Commencement Date, and at each successive one (1) year period thereafter through the Initial Term, the Rent payable to City will be increased by two percent (2%).

6.1.2 Periodic Rent Adjustment. At the beginning of any Renewal Period ("Adjustment Dates"), the fair market rental rate and escalation method for the entire leasehold will be determined based on an appraisal of fair market rental value of

the leasehold land as compared with other similarly used land at the Airport, assuming that the Lessee's land is vacant and contains none of the Leasehold Improvements constructed by Lessee. Each periodic rent adjustment as calculated on each of the Adjustment Dates shall not be less than the fair market rental value set by any proceeding Annual Rent Adjustment or on any preceding Adjustment Date.

6.1.2.1 Appraisal Process. At least twelve (12) months prior to the expiration of the Initial Term or applicable Renewal Period, City and Lessee shall work together to determine the fair market value of the Premises land to be used to determine the fair market rental rate for each Renewal Period by the procedures described below, which will be complete prior to the Renewal Lease Deadline.

Step 1: City Appraisal. City shall select an MAI appraiser to prepare an appraisal report in accordance with this section (the "City Appraisal"). City shall pay the fees and expenses of the appraiser it selects. If Lessee accepts the appraisal results and provides written notice of acceptance to City within thirty (30) calendar days of City providing the City Appraisal to the Lessee, the rent shall be adjusted accordingly.

Step 2: Lessee Appraisal. If the Lessee rejects City's appraisal in Step 1 above or otherwise fails to notify City of acceptance of appraisal results set forth in Step 1 above, Lessee shall promptly select an MAI appraiser to prepare a second appraisal ("Challenge Appraisal"). Lessee shall pay the fees and expenses of the appraiser it selects. A copy of the completed Challenge Appraisal shall be made available to the Director no later than sixty (60) calendar days following delivery of the City Appraisal to the Lessee, and the Director shall immediately fix the time and place for a conference ("Appraiser Conference") between City and the Lessee and the two appraisers that were selected. At the Appraiser Conference, City and Lessee shall attempt to reach an agreement on the rent. If City and Lessee reach an agreement, the rent shall be adjusted accordingly. If Lessee fails to provide the completed Challenge Appraisal within the period established in this Step 2, then the rent shall be adjusted in accordance with the City Appraisal.

Step 3: Third Appraiser. If Lessee and City fail to reach an agreement in Step 2, the two appraisers shall select another MAI Appraiser ("Third Appraiser") within ten (10) days following the Appraiser Conference. If the parties' respective appraisers do not reach an agreement on the selection of a Third Appraiser, the Director, after consultation with Lessee, shall appoint the Third appraiser. The City and Lessee shall each pay 50% of the fees and expenses of the Third Appraiser. The Third Appraiser will be allowed access to the City Appraisal and Challenge Appraisal reports, will prepare a third appraisal, and shall simultaneously submit a copy of the third appraisal to the City and Lessee. If the third appraisal is no greater than the higher and no less than the lower of the two values established by the City Appraisal and the Challenge Appraisal, the third appraisal shall be used to establish the rent commencing on the applicable Adjustment Date. If the third appraisal falls outside the range established by the City and Lessee's appraisals, the Rent commencing on the applicable Adjustment Date shall be established by the appraisal of

either whichever party that is closest to the third appraisal.

6.1.2.2 Retroactive Application. In the event the periodic adjustment of the rent is not completed prior to the Adjustment Date, Lessee shall continue to pay the rent as set by the annual rent adjustment as described above, and if rent is thereafter fixed in a different amount, such new rent shall take effect retroactively back to the beginning date of the adjustment period. Lessee shall promptly pay to City that sum, if any, which has accrued as a result of such retroactive application. If a rental reduction occurs, City shall provide a rent credit to Lessee's account equal to the sum which has accrued as a result of a retroactive application.

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

6.3 Extraordinary Cost Fee. Lessee agrees to pay to City, an Extraordinary Cost fee if Lessee fails to perform any of its obligations pursuant to this Agreement, for a period of thirty (30) days following written notice of non-performance from City, and City performs such obligation of Lessee. City's shall have the right but not the obligation hereunder to perform such unperformed Lessee obligations. Extraordinary Costs include all costs of City that are allocable to the Premises including, but not limited to: a) any operation and maintenance expense that is not a part of the normal and regular Operation and Maintenance Expenses, as determined by City, and b) any remediation costs, attorney fees, or penalties incurred by City as a result of the release of any contaminant by Lessee or its invitees or contractors. Lessee further agrees that if its failure to perform any of its obligations pursuant to this Agreement endangers public safety or operations at the Airport, including the Premises, and City so states in its notice of non-performance to Lessee, City may perform such obligation of Lessee at any time following such notice, without waiting for the expiration of the above-referenced thirty (30) day period, and may charge Lessee for all costs of such performance as an Extraordinary Cost. Extraordinary Costs do not include rents and fees identified in subsections 6.1, 6.3, and 6.5.

City shall invoice Lessee for its Extraordinary Cost Fees on or about the tenth (10th) day of the month immediately following the month in which such fees were incurred. Lessee shall pay such fees within thirty (30) days of the date of the invoice, unless otherwise specifically provided for in this Agreement. The Extraordinary Cost fee shall include City's costs related to City's performance of Lessee's obligations, plus ten percent (10%) of such cost for administrative overhead.

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

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

6.4.2 If, following applicable notice and cure periods as set forth in this Agreement, City is required or elects to pay any sum or sums, or incurs any obligation or expense, because of the failure, neglect, or refusal of Lessee to perform or fulfill any of the terms, conditions, or covenants required of it hereunder.

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

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

6.6 Place of Payment. Lessee shall deliver payments of rents and fees to the office of the Director or at such other place as may be designated by City from time to time. Payment shall be made payable to the order of the "City of Albuquerque."

6.7 Late Payment Fees. If rents and fees required by this Agreement are not received by City on or before the date specified in this Agreement, Lessee shall pay an interest charge to City of one percent (1%) per month (twelve percent (12%) annually) for each month or partial month that any payment due is not paid. In addition, Lessee shall pay an administrative fee to City of Fifty and 00/100 Dollars (\$50.00) each month City is required to Lessee a late payment notice. Nothing in this subsection limits the City's rights and remedies to terminate this Lease for non-payment of rents and fees, subject to provisions set forth in Section 13.

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

7.1 Exhibit C: Limited Parent Guaranty. Within thirty (30) days following the Effective Date Lessee shall execute and deliver to City a Limited Parent Guaranty ("Guaranty") substantially in the form set forth on **Exhibit C**.

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

7.2.1 Commercial General Liability Insurance. Lessee shall have liability limits in amounts not less than **Ten Million and No/100 Dollars (\$10,000,000.00).**

7.2.2 Commercial Automobile Liability Insurance. Lessee shall have automobile liability limits in amounts not less than **One Million and No/100 Dollars (\$1,000,000.00).** If Lessee is required to have airfield ground vehicle access, Lessee shall provide **Five Million and No/100 Dollars (\$5,000,000.00)** in coverage.

7.2.3 All Risk Property Coverage. Lessee shall be solely responsible for obtaining insurance policies that provide all risk property coverage in an amount not less than one hundred percent (100%) of the full replacement value of Leasehold Improvements and all personal property situated on the Premises. The replacement value of Leasehold Improvements and property shall be re-established at intervals of not more than three (3) years, following the end of the Construction Period, by an independent qualified appraiser employed by Lessee and approved by City.

The insurance policies required shall also provide coverage for the construction of temporary facilities should the Premises be damaged or destroyed to such an extent that it shall be untenable.

7.2.4 Builders Risk Insurance. During any period of construction or reconstruction by Lessee, Lessee shall carry, or shall require its contractor to carry, a policy of Builders Risk Insurance in an amount not less than one hundred percent (100%) of the full insurable value of the construction or reconstruction of Lessee's Leasehold Improvements.

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

7.3 Exhibit E: Environmental Provisions.

7.4 Exhibit F: Airport Security Provisions.

7.5 Exhibit G: General Conditions.

Section 8. Operational Requirements.

8.1 Utilities. All utility services to the Premises shall be separately metered and Lessee shall be responsible for initiating all such services, including payment of any required deposits, and shall cause bills to be sent directly from utility providers to Lessee; Lessee shall promptly pay for all such services when due. During the Term, City shall not be liable to Lessee for any interruption in or curtailment of any utility service. City shall not be liable for damages for any such interruption, nor shall such interruption in any way

be construed as cause for rents and fees to abate or operate to release Lessee from any of its obligations hereunder, except that, if the interruption is caused solely by the act or omission of City and the interruption continues for more than seventy-two (72) hours, rents and fees will be abated for the duration of the interruption. City reserves the authority to grant all easements necessary for utility purposes. Under no circumstances shall City be responsible for consequential damages claimed by Lessee arising out of or relating to the outage, including but not limited to interruption of business operations, spoiled food, and lost profit.

8.2 Refuse Disposal and Storage. Lessee shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate, sanitary handling and disposal away from the Airport of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with, Lessee's use of the Premises. Such arrangements shall include, but not be limited to, the procurement, placement, and use of suitable receptacles consistent with other first-class facilities of the same type in Albuquerque, New Mexico.

Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Lessee shall keep all garbage and recyclable materials in receptacles compliant with the generally applicable requirements of the City Zoning and Environmental Health Departments. Lessee shall not allow boxes, cartons, barrels, or other similar items to remain within view of public areas.

Lessee shall not store or permit to be stored any materials, parts, or vehicles in, on or about the Premises that are not incidental to Lessee's operations at the Premises. Director shall have discretion to limit, modify, relocate, or require removal of any materials, parts or vehicles stored on the Premises that Director reasonably determines are not incidental to those operations. Director may inspect the Premises from time to time for storage of such items throughout the Term. Director shall provide Lessee with written notification in the event Lessee is storing such unapproved trash, garbage, materials, or items in, on or about the Premises. Lessee shall have two (2) business days to remove from the Premises any such unapproved items that are identified in Director's written notification.

8.3 Maintenance of Premises. Lessee shall, at its sole cost and expense, maintain the Premises in a first-class manner pursuant to the provisions of this Agreement and in accordance with all applicable laws and regulations, whether now or hereafter enacted. Lessee shall:

8.3.1 At all times maintain the Premises in a clean, safe, and orderly condition and appearance including all Leasehold Improvements, landscaping, and personal property of Lessee;

8.3.2 Be solely responsible for the provision of any janitorial service, cleaning service, or necessary pest control service at the Premises;

8.3.3 Maintain the Premises and all approved Leasehold Improvements thereon, including but not limited to all preventative maintenance and painting, all structural repairs, replacements, and rebuilding, necessary to keep the Premises in the condition existing at the time the Leasehold Improvements were completed, excepting reasonable wear and tear not adversely affecting the structural integrity, or the efficient and proper utilization, or appearance of the Premises;

8.3.4 Be responsible for all snow and ice removal, and all preventative maintenance, repairs, and repainting of parking lots, driveways, walkways, and travel lanes within the Premises or that are part of the Leasehold Improvements;

8.3.5 Allow City or its authorized agents at any time, upon not less than forty-eight (48) hours prior written notice (except in emergencies, when only reasonable notice is required), to enter upon the Premises during normal business hours and subject to Lessee's commercially reasonable security protocols to determine if the maintenance required pursuant to this Section is being performed to the satisfaction of City. If City determines that the maintenance is not satisfactory in accordance with the requirements of this Agreement, City shall notify Lessee in writing. If Lessee does not perform the required maintenance within thirty (30) days after receipt of such written notice, City, or its agents, shall have the right to enter upon the Premises and perform the maintenance. The cost for the performance of any such maintenance by City, plus ten percent (10%) for administrative fees, shall be borne by Lessee. Any maintenance required in an emergency to avoid imminent harm to the Premises, its contents, or any person shall be performed immediately by Lessee, or City may, but shall not be obligated to perform such maintenance at Lessee's expense and without need of written notice.

8.4 Deliveries. In the event Director verbally notifies Lessee, Lessee's on-site facility manager, or a qualified supervisor of an emergency situation at the Airport requiring the curtailment of operations at the Premises for the Allowable Uses, Lessee shall immediately curtail its operations to the Premises until such time that the emergency situation has been resolved and City provides follow-up notice thereof.

8.5 Signs. Any advertising sign, pylon, identification sign, symbol, poster, or other similar device, regardless of content, shall comply with City laws and FAA regulations and shall not be erected, maintained, or displayed on the Premises or elsewhere at the Airport, without the prior written consent of Director. Lessee shall submit detailed drawings of all proposed signs at the Premises, which include height, location, dimensions, materials, and colors to Director for approval. Director shall approve or disapprove within ten (10) business days after submission.

8.6 Hazardous Use.

8.6.1 Lessee's Activities. Lessee agrees to use reasonable efforts to

ensure that there shall be no operations performed on the Premises, and no improvements, changes, alterations, additions, maintenance, or repairs shall be made to the Premises, which might be unreasonably hazardous to any person or property. Further, Lessee shall not do or permit to be done any act or thing upon the Premises which, in the opinion of City, may constitute or have the likelihood of resulting in a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement; provided, however, that nothing herein shall preclude Lessee from bringing, keeping, or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in the performance of its business, or the normal operations contemplated herein.

8.6.2 Notice to Director and Corrective Action. In the event Lessee discovers or creates a hazardous or potentially hazardous condition on the Premises or on the Airport, Lessee shall give immediate verbal notice to Director and, if required and/or appropriate pursuant to applicable law and regulations, to the New Mexico Environment Department.

8.7 Noise, Odors, and Annoyance. Lessee shall use reasonable efforts to conduct its operations in an orderly and proper manner consistent with the Allowable Uses and not commit any nuisance on the Premises or unreasonably annoy, disturb or be offensive to other users of the Airport and Air Force Base, and shall take all reasonable measures, using the most practicable devices and means, to eliminate any unusual, noxious, or objectionable noise, gases, vapors, odors, or vibrations, and to maintain the lowest reasonable sound level in its operations.

Section 9. Construction of Leasehold Improvements. Lessee intends during the Term of this Agreement and is authorized by City (as the landlord as opposed to its regulatory capacity as the permitting jurisdiction) pursuant to the terms of this Agreement, to oversee and manage the design, construction and installation of a building and related ancillary structures (the "Building") and other improvements (collectively with the Building, the "Leasehold Improvements") at Lessee's sole cost and expense (except as otherwise specifically set forth herein) as described/depicted on the Conceptual Site Plan attached as **Exhibit H**.

9.1 Planning

9.1.1 Construction Meetings. Prior to commencement of construction of the Leasehold Improvements, Lessee shall contact Director to schedule a pre-construction meeting to coordinate with City staff on construction operations, safety, and security with respect to such construction. During construction of the Leasehold Improvements, the designated City representative and Lessee agree to coordinate as necessary to permit City to attend Lessee's construction meetings weekly (or whatever alternative frequency such meetings occur) to facilitate communication and coordination of Lessee's construction of the Leasehold Improvements with Airport operations.

9.1.2 Plans. Prior to commencement of construction and submittal for permit approval of the Leasehold Improvements, Lessee shall deliver for approval by the Director Lessee's design packages, final construction plans and specifications and other material construction-related information (the "Plans"). So long as the Plans are materially consistent with the Conceptual Site Plan and not otherwise in violation of applicable laws, the Director will not disapprove the Plans. If the Director fails to approve or disapprove the Plans within sixty (60) days of their submission as contemplated above, then Lessee may terminate this Agreement on thirty (30) days' notice to City.

9.1.3 Final Approved Plans. The final construction plans and specifications approved by Director are referred to herein as the "Final Approved Plans". Lessee will have sole discretion in its selection of contractors, agents, vendors, and suppliers (collectively "Contractors"); provided that all Contractors shall be properly licensed by the State of New Mexico to perform work related to the construction of the Leasehold Improvements. Lessee, at its sole risk and expense, shall completely construct its Leasehold Improvements in strict compliance with the Aviation Department Development Guidelines and this Section, and shall obtain necessary permits, licenses, and approvals from City's building officials or other governmental agencies as required for such construction; provided that City agrees to cooperate with Lessee to obtain or comply with any licenses, permits or other governmental approval or permissions required in connection with the construction of the Leasehold Improvements. Any approval by the Director as contemplated in this Section 9 shall not be deemed to constitute a waiver or release by the City of any obligation or responsibility of Lessee under this Agreement, or an assumption of any risk or liability by City with respect thereto; and Lessee shall make no claim against City on account of such review, approval, or inspection.

9.1.4 Material Deviations to Final Approved Plans. Any material deviation from the Final Approved Plans made by Lessee or arising out of the requirements of and following the review by the City of Albuquerque Code Enforcement Division, the New Mexico Environment Department, the City of Albuquerque Planning Department, Albuquerque Fire Department, or other governmental agencies having jurisdiction which change the purpose, configuration, or scale of the project, shall be submitted to the Director for approval prior to construction.

9.1.5 Construction Commencement. Lessee agrees to commence construction of its Leasehold Improvements within 180 days of the Commencement Date (the "Construction Commencement Deadline"), provided that the Construction Commencement Deadline shall be extended on a day for day basis for delays that are not reasonably within the control of Lessee including, without limitation, (i) Force Majeure Events, and (ii) any delay in the approval and/or issuance of any permit or approval by City, or a third party not under the direction or control of Lessee, that is necessary for Lessee to commence construction of the Leasehold Improvements. In the event Lessee fails to commencement construction of the Leasehold Improvements by the Construction

Commencement Deadline (as such date may be extended as contemplated above) City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect sixty (60) days following Lessee's receipt of the Notice of Termination unless such later date is stated otherwise in the Notice of Termination. If, however, Lessee diligently pursues commencement of construction prior to the end of the sixty (60) day period (or such later date as contemplated in the immediately preceding sentence), then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

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

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

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

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

9.1.6.4 City's approval of Lessee's Spill Prevention Controls and Countermeasures Plan, if applicable.

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

9.2.1 Lessee has delivered to Director for approval, and Director has approved, certificates of insurance for coverage evidencing Lessee's construction contractor's a) "all risk" type builders' risk insurance coverage and workers' compensation insurance coverage, and b) Lessee's and Lessee's contractor's compliance with the

applicable insurance provisions. Lessee shall ensure that its construction General Contractor(s) obtain(s) and maintain(s) General Liability, Auto, and Workers' Compensation Insurance, and Lessee shall contractually require that its General Contractor(s) ensures that all construction subcontractors also obtain and maintain such insurances; and

9.2.2 Lessee's construction contractor has duly executed a Labor and Materials Payment Bond with a surety authorized to do so in the State of New Mexico, in an amount equal to its contract for construction of the Leasehold Improvements to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport real property. Lessee shall provide City with a true copy of such executed bond. Lessee shall be solely responsible for payment and pay promptly, as due, all persons supplying labor and materials to such contractor for all elements of such construction of Leasehold Improvement on the Premises. Lessee shall keep the Premises free and clear of all mechanics liens resulting from any construction thereto by or on behalf of Lessee and shall permit no lien or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Lessee may contest the correctness or validity of any such lien, but Lessee shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien, or attorneys' fees; and

9.2.3 Lessee has delivered to Director a Performance Bond executed by Lessee's construction contractor and a surety acceptable to City, in a form acceptable to City, securing contractor's performance of its obligations relating to the construction of the Leasehold Improvements, in an amount equal to the value of its construction contract, naming City as obligee thereunder. In the alternative, Lessee may, submit to Director in lieu of a Performance Bond, a deposit in an amount equal to the total value of Lessee's construction contract, subject to the approval of City; and

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

9.2.5 Lessee shall submit to Director a copy of all building permits issued to Lessee by the City of Albuquerque Building Inspection Division; and

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

9.3 Contractor Indemnification. Lessee shall include in all construction contracts entered into in connection with the construction of the Leasehold Improvements, a provision requiring the contractor and subcontractors to indemnify, hold harmless, defend and insure Airport, City, and their directors, officers, councils,

employees, from and against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction work, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of the indemnified parties.

9.4 Coordination of Construction. Lessee shall cooperate with the Aviation Department in the construction of the Leasehold Improvements. Lessee agrees that all construction and installation of said Leasehold Improvements at the Airport shall be accomplished without interfering with other users of the Airport. Lessee shall be responsible for obtaining and paying for any temporary utilities needed during construction of the Leasehold Improvements. Lessee, its construction contractor, and construction contractor's subcontractors shall at all times keep the construction sites and surrounding areas clean, orderly, safe, free of accumulated construction debris, and waste materials, and shall be solely responsible for removal of all construction debris, and waste materials to a suitable licensed landfill off the Airport.

9.5 Certificate of Occupancy. Within ten (10) days following the completion of the construction of any Leasehold Improvements, Lessee shall submit a copy of the "Certificate of Occupancy" to Director. Within ten (10) days following receipt of the Certificate of Occupancy, Director may schedule an inspection of the Leasehold Improvements to be accompanied by Lessee for purposes of confirming compliance with the Final Approved Plans and any subsequent modifications to the Final Approved Plans.

9.6 Digital As-Built/Certified Drawings. Within sixty (60) days following receipt of a Certificate of Occupancy, Lessee shall furnish to City, digital drawings of the "as-built" Leasehold Improvements, dated and stamped by the engineer or architect of record. Delivery of the digital drawings shall be by means of a device or mechanism as directed by City, along with necessary printing/plotting information to allow City to reproduce drawings as originally designed. If Lessee fails to provide said "as-built" digital drawings after a 30-day notice and failure to cure, City may hire a registered architect or registered engineer to provide the same and shall recover the cost of the said drawings, plus a ten percent (10%) overhead administrative fee, from Lessee. Upon request of City, Lessee shall inspect the Leasehold Improvements jointly with City to verify compliance with the "as-built" drawings.

9.7 Alterations to Premises. Except as may be necessary to address emergency repairs, or as otherwise permitted in this Agreement, Lessee shall not add to, alter, modify, remove, or replace any material structural element of the Leasehold Improvements (collectively, an "Alteration") without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed. Director shall approve or disapprove within ten (10) business days after submission. All Alterations conducted by Lessee shall be conducted in accordance with all applicable laws. Lessee shall have no right and no obligation to remove an Alteration, but shall have the right,

subject to Lessee not then being in default under this Lease beyond applicable notice and cure periods, to remove any of Lessee's personal property, at the expiration, or earlier termination of the Agreement. Notwithstanding anything to the contrary herein, and whether or not Landlord's approval is required therefor, Lessee shall provide to Landlord, within thirty (30) days of completion of the installation of any Alterations, as built plans showing the Alteration, and any modifications thereto, for Landlord's records.

9.8 Removal of Unapproved Leasehold Improvements. Leasehold Improvements made on the Premises without Director's written approval as required herein, or portions of the Leasehold Improvements that are not constructed as indicated and specified on the Final Approved Plans (as may be modified pursuant to this Section 9) will be considered to be unapproved Leasehold Improvements constructed in violation of the provisions of this Agreement. Unapproved Leasehold Improvements shall be removed by Lessee, at Lessee's sole cost and expense, within ninety (90) calendar days following Lessee's receipt of written notice to do so from Director.

Section 10. Ownership of Leasehold Improvements. All Leasehold Improvements existing or constructed on the Premises by Lessee, shall be owned by Lessee until expiration or earlier termination of this Agreement. Lessee shall not, however, remove any of the Leasehold Improvements from the Premises, nor waste, destroy, demolish, or alter any of the Leasehold Improvements on the Premises except as permitted pursuant to this Agreement. Unless specifically rejected by the City, all Leasehold Improvements on the Premises at the expiration or earlier termination of this Agreement, shall automatically, **without compensation to Lessee**, become the property of City, free and clear of any and all rights to possession and all claims to or against them created by Lessee. Notwithstanding the above, all personal property installed, erected, or placed by Lessee in, on, or about the Premises shall be, and shall remain the property of Lessee, except as otherwise provided herein. Lessee shall have the right at any time during the Term to remove any or all of such personal property subject to Lessee's obligation to repair damage resulting from such removal.

Section 11. Damage or Destruction of Premises.

11.1 Lessee's Responsibility for Repair and Restoration. If at any time during the Term, the Leasehold Improvements constructed by Lessee upon the Premises, or any part thereof, shall be damaged or destroyed by fire or other occurrence, including an occurrence for which insurance coverage was not obtained or obtainable, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessee, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence, to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, including temporary repairs and work necessary to protect the Leasehold Improvements from further damage, subject to such changes or

alterations as may be approved by City.

11.2 Conditions for Repair and Restoration. The conditions under which the repair and restoration of the Leasehold Improvements are to be performed and the method of proceeding with and performing same shall be governed by the provisions contained in this Agreement, as applicable. The cost of the repair and restoration for which Lessee shall be responsible shall include any applicable permitting fees and the reasonable fees of an architect or engineer, if any, employed by City for the purpose of reviewing Lessee's plans and specifications to ensure that the repair and restoration conforms therewith, and such other reasonable costs as may be incurred by City in connection with such repair and restoration.

11.3 Payment of Insurance Proceeds. All proceeds paid on account of such damage or destruction of the Leasehold Improvements under the policies of insurance required, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof ("Insurance Proceeds"), shall be applied to the payment of the cost of the repair and restoration of the Leasehold Improvements, and shall be paid out to or for the account of Lessee from time to time as such repair and restoration progresses. Any excess proceeds remaining upon completion of the repair and restoration shall be the property of Lessee.

11.4 Insufficient Insurance Proceeds. If the Insurance Proceeds are not sufficient to pay the entire cost of the repair and restoration of the Leasehold Improvements, Lessee shall supply the amount of any such deficiency and apply the same to the payment of the cost of the repair and restoration. Under no circumstances shall City be obligated to make any payment, reimbursement, or contribution towards the cost of the repair and restoration, unless such damage was caused by the City, its employees, agents, or contractors.

11.5 Lessee's Obligation Continues. Except as specifically provided for in this Agreement, in no event shall Lessee be entitled to any abatement, allowance, reduction, or suspension of rents or fees because part or all of the Leasehold Improvements upon the Premises become untenable or unusable owing to partial or total damage or destruction thereof. No such damage or destruction shall affect in any way the obligation of Lessee to pay the rents and fees required, nor release Lessee from any obligation imposed upon Lessee in this Agreement, except as otherwise provided below.

11.6 Failure to Commence Repair and Restoration. City may terminate this Agreement, if the repair and restoration of the Leasehold Improvements has not commenced within one hundred twenty (120) days following the damage or destruction, or if the repair and restoration, after commencement, does not proceed expeditiously. Repair and restoration shall be deemed commenced when the plans and specifications therefor have been submitted to Director for approval pursuant to the process set forth in Section 9 herein, provided, however, if Lessee reasonably demonstrates to satisfaction

of City that any delay is caused by Unavoidable Delays or by complications in designing specialized aspects of the facility that cannot be completed within one hundred twenty (120) days, then City, shall grant an appropriate extension of the time for commencement or completion of such repair and restoration. If City elects to terminate this Agreement pursuant to this subsection, the Insurance Proceeds received by or payable to Lessee shall be first used to satisfy Lessee's mortgage obligation related to the Leasehold Improvements on the Premises, if such mortgage obligation shall have received prior approval from City, with the balance of such Insurance Proceeds being paid by Lessee to City. However, if Lessee's mortgage obligation related to the Leasehold Improvements on the Premises did not receive prior approval from City, the total amount of Lessee's Insurance Proceeds actually received by Lessee shall be paid by Lessee to City, and/or the Lessee may file an interpleader with respect to the Insurance Proceeds.

11.7 Exception to Repair and Restoration. If the Leasehold Improvements constructed by Lessee at the Premises are damaged or destroyed by casualty during the last three (3) years of the Term or of any Renewal Period, and the cost of repairing, restoring, replacing, or rebuilding exceeds seventy-five percent (75%) of the replacement value of the Leasehold Improvements constructed by Lessee at the Premises, Lessee may terminate this Agreement by providing written notice of termination to City within ninety (90) days after the occurrence of the damage or destruction.

If Lessee elects to terminate this Agreement pursuant to this subsection, any such notice of termination shall be accompanied by payment to City of (1) the total amount of Insurance Proceeds remaining following Lessee's payment to satisfy its mortgage obligations related to the Leasehold Improvements on the Premises, if such mortgage obligation shall have received prior approval from City, provided, however, if Lessee's mortgage obligation related to the Leasehold Improvements on the Premises is not received prior approval from City, Lessee shall pay to City the total amount of such Insurance Proceeds; and (2) the total amount of Premises rent for the unexpired Term of this Agreement.

11.8 Damage caused by City. If the damage is caused by the City (or its employees, contractors, or agents), the City shall be responsible to reimburse Lessee for any reconstruction, repair, or replacement costs not covered by applicable insurance proceeds that Lessee was required to obtain under this Agreement. Further, Lessee shall receive a pro rata abatement of the rents and fees due based on the reduction of usable Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed to the reasonable satisfaction of Lessee.

Section 12. Right of Relocation. City, at its sole discretion, shall have the right to relocate the Premises if necessary to accommodate the overall growth of the Airport. If relocation becomes necessary, Lessee shall be assigned a replacement area, which is generally equivalent in size and amenities to the Premises, and City shall bear all costs of relocation related to the replacement of, or relocation of, existing buildings, including all

site amenities. Should Lessee disagree with the replacement location or the condition of the replacement improvements, Lessee shall have the right, within thirty (30) calendar days of receipt of Director's written notice of impending relocation, to provide written notice to Director that Lessee disagrees with the replacement location and/or the replacement improvements. Upon such notice by Lessee, the Parties shall, for a period not to exceed thirty (30) days from the date of such notice, negotiate in good faith in an attempt to resolve the matter to the satisfaction of both Parties; however, if for any reason the disagreement is not resolved within the thirty (30) days, Director shall have the right to unilaterally decide the matter. In such case, Lessee may terminate this Agreement, which shall be deemed an early termination hereof, or may agree to abide by Director's decision. In the event Lessee exercises the foregoing termination right, the City will reimburse Lessee for the unamortized portion of the Leasehold Improvements minus Ground Rent due measured as of the date of such termination through the end of the Initial Term, or any Renewal Period exercised by Lessee.

Should Director serve notice to Lessee that Lessee is to be relocated, Lessee agrees to take any and all actions as may be required to vacate the Premises and move to the relocated area prepared by City, upon ninety (90) days prior written notice. Lessee shall be responsible for moving its personal property and personnel, provided however, that City shall reimburse Lessee for its documented, actual, and reasonable direct costs incurred to move to the relocated area. In no event shall City be liable for any consequential or incidental costs or damages arising out of such relocation.

Section 13. Energy and Communications Equipment; Generator.

13.1 Energy and Communications Equipment. For Lessee's own use and not for sale, sublease, or other revenue generation, City will permit Lessee or Lessee's third-party vendor, at no cost or expense to City, to install, operate, test, and maintain in the Building, on the roof or exterior of the Building, or on the Premises, in locations, and where applicable on terms mutually acceptable to City and Lessee, the following (collectively, the "Energy and Communications Equipment"): (i) satellite dishes, cellular antennae, and related equipment; (ii) equipment related to renewable energy systems, including solar energy systems ("Solar Energy Systems"), and one or more hydrogen or other fuel cells, tanks, and other associated equipment, in each case which may include ducts, risers, closets, pipes, lines, conduits, and distribution systems connecting the Energy and Communications Equipment to the utilities serving the Premises and/or directly to Lessee's equipment in the Premises; and (iii) improvements appurtenant to the Energy and Communications Equipment, including parking lot canopies, concrete pads, and concrete or asphalt driveways serving the Energy and Communications Equipment (collectively, the "Energy and Communications Related Improvements"). Lessee or its third-party vendor will be permitted to erect and maintain the Energy and Communications Equipment for a term which will expire on the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Lessee's installation of Solar Energy Systems and Energy and Communications Equipment shall be consistent

with and subject to all applicable laws and Federal Aviation Administration regulations, including 14 CFR Part 77.

13.2 Generator. At Lessee's sole cost and expense, Lessee may install and maintain one or more battery storage systems, electrical generators, and fuel tanks in or adjacent to the Building in a location reasonably acceptable to City (collectively, the "Generator"). The Generator and Generator pads will be constructed in accordance with plans and specifications approved in advance by City, which plans will include fencing and such curbing as is necessary to contain any fuel spill. Lessee will be responsible for maintenance and repair of the Generator. At Lessee's sole cost and expense, Lessee will have the right to test the Generator from time to time. City specifically reserves the right, upon notice to Lessee delivered no later than nine (9) months prior to the scheduled expiration date of the Term, to require Lessee, at its sole cost and expense, to remove prior to the expiration of the Term then in effect all or any part of the Generator, except for the Generator pads.

Section 14. Termination of Agreement.

14.1 Termination by City: 15-Day Cure Period. This Section shall govern Lessee's failure to comply with the following obligations as set forth herein ("Events of Default"):

- 14.1.1** Pay rents and fees,
- 14.1.2** Provide and maintain the Guaranty, or
- 14.1.3** Provide and maintain insurance pursuant to the terms of Section 7 and Exhibit D.

In the event Lessee fails to comply with any or all of the aforementioned subsections for a period of fifteen (15) days following receipt of City's written notice of an Event of Default, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully cured all Events of Default identified in the fifteen (15) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

14.2 Termination by City: 30-Day Cure Period. Except for Events of Default, if Lessee fails to comply with any covenant or provision of this Agreement for a period of thirty (30) days following receipt from City of written Notice of Non-Compliance, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's

receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully cured all Events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. If compliance reasonably requires more than thirty days to achieve, Lessee shall not be considered to be in default if it commences to cure within thirty days of the notice and diligently pursues the same. In the event this Agreement is terminated, Lessee shall remain liable to City for damages in an amount equal to the payment obligation for outstanding rents and fees.

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

14.4 Termination by Lessee: 30-Day Cure Period. Lessee shall be entitled to terminate this Lease if City fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt from Lessee of written notice of non-compliance, by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination, City has fully cured all Events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. If compliance reasonably requires more than thirty days to achieve, City shall not be considered to be in default if it commences to cure within thirty (30) days of the notice and diligently pursues the same.

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

Section 15. Condemnation.

15.1 Partial Taking. In the event less than all of the Premises is taken or condemned by any competent authority such that Lessee may reasonably continue its operations thereafter, this Agreement shall remain in full force and effect with a reduction of rents and fees, if appropriate, commensurate with the reduced useable area of the Premises, upon the date of such partial taking.

15.2 Total Taking. In the event the entire Premises is taken or condemned by any competent authority such that the Premises are unusable for the continuation of Lessee's operations thereafter, then this Agreement shall terminate as of the date of the total taking.

15.3 Termination of Agreement. Termination of this Agreement because of condemnation shall be without prejudice to the rights of either City or Lessee to recover from the condemning authority, compensation and damages for the injury and loss sustained by either party as a result of such total taking. Lessee shall have the right to make a separate claim against the condemning authority for the fair market value of the leasehold estate. In the event the law at the time of the condemnation does not provide or allow for separate condemnation awards for landlords and Lessees, then Lessee shall be entitled to receive the portion of the condemnation award allocable to the leasehold estate and the remainder of the award shall be paid to City.

Section 16. Depreciation and Investment Credit for Federal Income Tax Purposes. In order to preserve the tax-exempt status of City Airport Bonds, it is a condition of this Agreement that Lessee, its successors and assigns in interest under this Agreement hereby agrees that for federal income tax purposes, a) it shall not claim depreciation or any investment credit, and b) it shall make and file an irrevocable election not to claim depreciation or an investment credit, with respect to the land comprising the Premises furnished by City. Lessee agrees to send a copy of its election to the office of Director. Nothing contained herein to the contrary shall prevent Lessee from claiming a depreciation or investment credit with respect to Lessee's Leasehold Improvements or other expenditures made by Lessee.

Section 17. Approvals, Consents, and Notices. All approvals, consents, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, by personal delivery, or by electronic mail with confirmation of delivery. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

To City:

City:

Director of Aviation

Certified Mail:	Albuquerque International Sunport PO Box 9948 Albuquerque, New Mexico 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
Email:	

To Lessee

c/o Amazon.com, Inc.
Attention: Real Estate Manager (NA Ops: KABQ)
Attention: General Counsel (Real Estate (NA Ops): KABQ)
Attention: NA Ops Asset Management (KABQ)

Each with an address of:
410 Terry Ave. N
Seattle, WA 98109-5210
Telephone: (206) 266-1000

With copies to:
naops-propmgmt@amazon.com; OpsRELegalnotice@amazon.com;
na-realestate@amazon.com; naops-rent@amazon.com

using the subject line—Re: KABQ and reason for the notice (e.g., default, cease & desist, bribery or anti-corruption)

Notice Conditions:

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

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

Section 18. Reasonableness. The Parties intend to act in a cooperative manner with respect to this Agreement and their respective activities in and around the Premises. Unless a provision of this Lease explicitly indicates a decision in in one party's sole discretion, each party's acts and decisions (including, without limitation and as applicable, the decision by the City to impose Extraordinary Costs) toward one another will be subject to a reasonableness standard.

Section 19. Savings. City and Lessee acknowledge that they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary to form a full and complete understanding of all rights and obligations herein. City and Lessee further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 20. Administration of Agreement. The Chief Administrative Officer of the City of Albuquerque or their authorized representative shall administer this Agreement for the City of Albuquerque.

Section 21. Approval and Signing of Agreement. This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the Chief Administrative Officer of the City of Albuquerque. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

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

City of Albuquerque:

By: _____ Date: _____
Sarita Nair
Chief Administrative Officer

Recommended:

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

Lessee:

By: _____ Date: _____
Amazon. com Services LLC
 Name: _____
 Title: _____

Acknowledgments

(see next pages)

State of New Mexico)
) **ss.**
County of Bernalillo)

This instrument was acknowledged before me this _____ day of _____, 2021,
by **Sarita Nair, Chief Administrative Officer**, City of Albuquerque, a New Mexico
municipal corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

(continued on next page)

Exhibit A Airport

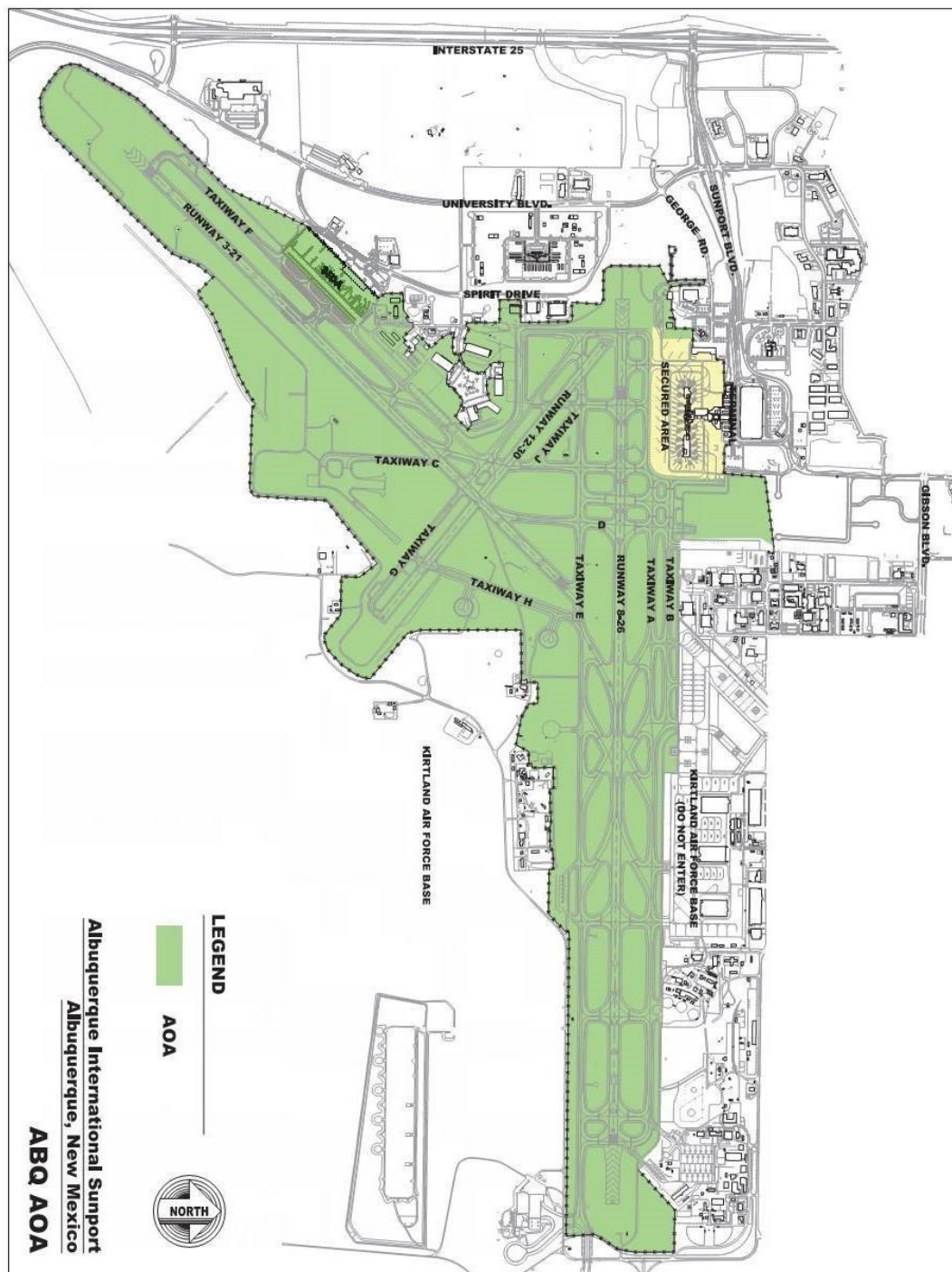


Exhibit B Premises

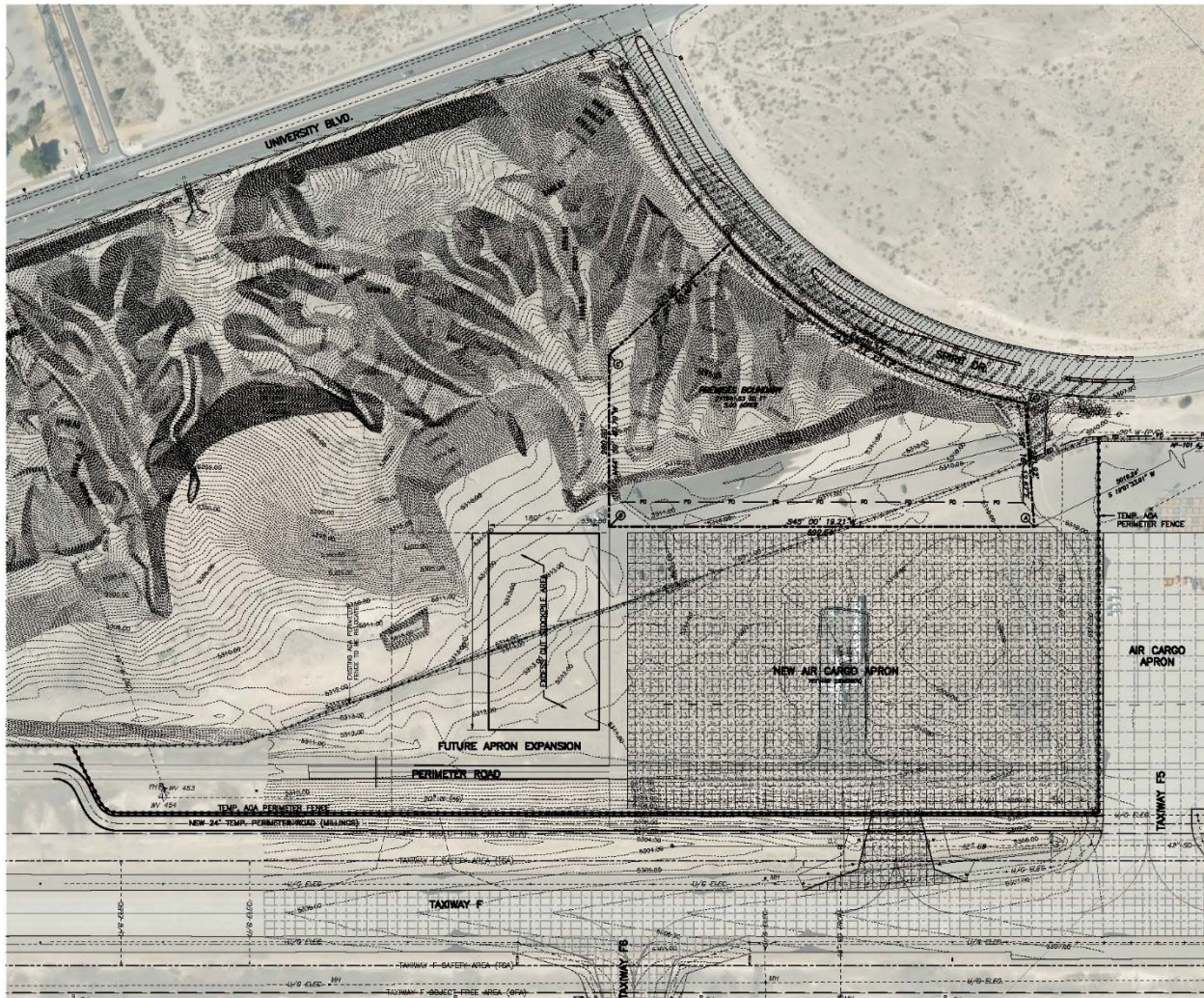


Exhibit B-1 Adjacent Cargo Apron

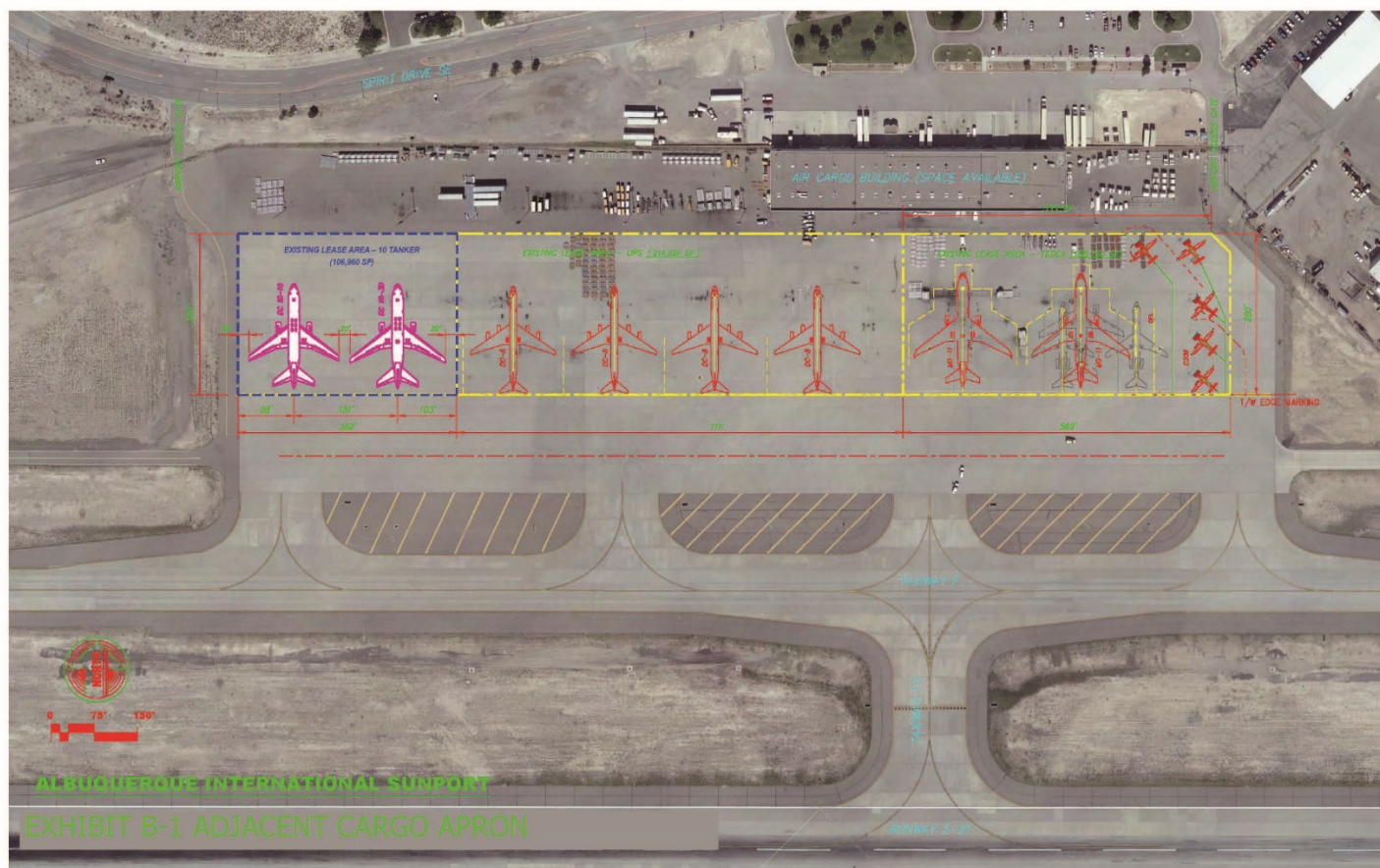


Exhibit C

FORM OF LIMITED PARENT GUARANTY

LIMITED PARENT GUARANTY

This Limited Parent Guaranty (this "Guaranty"), effective as of the date of the Contract (as defined below), is made by Amazon.com, Inc., a Delaware corporation ("Amazon.com"), to and for the benefit of **City of Albuquerque, a New Mexico municipal corporation** ("Beneficiary"). Capitalized terms not otherwise defined herein have the meanings specified in the Contract (defined below).

Recitals

- A. Amazon.com Services LLC, a Delaware limited liability company, a directly or indirectly wholly owned subsidiary of Amazon.com ("Subsidiary"), and Beneficiary are parties to that certain Lease Agreement (the "Contract") for property located at Albuquerque International Sunport Airport as further specified in the Contract.
- B. In order to be assured of payment under the Contract, Beneficiary desires that Amazon.com guaranty the performance of certain payment obligations as set forth herein.

Guaranty

In consideration of the foregoing and to induce Beneficiary to enter into the Contract, Amazon.com agrees as follows.

1. Amazon.com unconditionally and absolutely guarantees to Beneficiary Subsidiary's performance when due and owing of all present and future payment obligations, which are not paid in accordance with the terms of the Contract by Subsidiary. Notwithstanding anything to the contrary set forth in this Guaranty, Amazon.com's maximum cumulative liability under this Guaranty will be 100% of remaining Base Rent owing under the Contract, but not less than the Base Rent due from Tenant for the final twelve (12) months of the Contract term.
2. Under this Guaranty, Amazon.com shall perform (or cause Subsidiary to perform) all payment obligations in accordance with the terms and conditions of the Contract.
3. Amazon.com promises to pay all amounts guaranteed promptly upon receipt of a written notice from Beneficiary which evidences (a) Subsidiary's non-performance of its payment obligations under the Contract; and (b) Beneficiary's first having demanded payment from Subsidiary in writing, which Subsidiary has not honored. Beneficiary's demand upon Subsidiary does not need to include the initiation of legal proceedings and is deemed satisfied if demand upon Subsidiary would violate any stay of collection in effect in an insolvency proceeding. Except to the extent of the demand requirement set forth in this Section 3, Amazon.com waives protest and notice of dishonor or default. This is a guaranty of payment only, and not of collection.
4. This Guaranty is governed as to its validity, construction and performance by the laws of the State of New Mexico, without regard to its conflict of law provisions.

5. Amazon.com agrees that this Guaranty is a continuing guaranty and will remain in full force and effect until all payment obligations under the Contract have been performed as set forth in the Contract, subject to Section 1 above.

6. This Guaranty is binding upon and inures to the benefit of Amazon.com and Beneficiary and their respective successors and assigns.

7. Amazon.com has all rights and defenses that Subsidiary may have to any payment obligation, except that the liability of Amazon.com is not affected by (a) any defense based upon an election of remedies by Beneficiary that destroys or otherwise impairs the subrogation rights of Amazon.com or the right of Amazon.com to proceed against any Subsidiary for reimbursement; (b) any duty on the part of Beneficiary to disclose to Amazon.com any facts Beneficiary may know about any Subsidiary, it being agreed that Amazon.com is fully responsible for being and keeping informed of the financial condition of Subsidiary and of all circumstances bearing on the risk of non-payment of the payment obligations; or (c) any defense arising from the bankruptcy or insolvency of any Subsidiary.

8. All notices hereunder will be given in writing, will refer to this Guaranty and will be personally delivered or sent by overnight courier, or registered or certified mail (return receipt requested). Notices to Amazon.com will be delivered at the following addresses:

Mail

Amazon.com, Inc.
P.O. Box 81226
Seattle, WA 98108-1226
Attn: Real Estate Manager (NA Ops: KABQ)

Courier

Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
Attn: Real Estate Manager NA Ops:KABQ

With a copy to:

Amazon.com, Inc.
P.O. Box 81226
Seattle, WA 98108-1226
Attn: General Counsel (RE NA OPS KABQ)

With a copy to:

Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
Attn: General Counsel (RE NA Ops KABQ)

Amazon.com may from time to time change such address by giving Beneficiary notice of such change in accordance with the notice provisions of the Contract.

AMAZON.COM, INC.

By: _____

Printed Name: _____

Its: _____

Date Signed: _____

Exhibit D

Insurance and Indemnity Provisions

1. Insurance

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

Tenant shall not violate the terms or prohibitions of insurance policies required to be furnished by Tenant.

Notwithstanding any other provision of this Agreement, City and Lessee each waives its right against the other party (the "Benefitted Party") for any loss of, or damage to, any of the waiving party's property located at the Premise to the extent the loss of damage is or would be covered by the ISO special causes of loss form with the property in question insured for the full replacement cost, whether or not the waiving party actually carries such insurance, recovers under such insurance, or self-insures the loss or damage, and whether or not the loss is due to the negligence acts or omissions of the Benefitted Party.

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

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

1.3 Intentionally Deleted.

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

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

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

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

1.4.4 Reserved.

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

The liability insurance required in paragraphs 1-3 above must:

- a) be written on an occurrence basis;
- b) include coverage for Tenant's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provisions of this Agreement; and
- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

1.4.5 Workers' Compensation and Employers Liability Insurance. Tenant shall comply with the provisions of the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law. Tenant shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include

coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

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

1.4.6 Commercial Property Insurance in an amount equal to the replacement cost of Tenant's improvements and all of Tenant's personal property situated on the Tenant's Premises.

1.4.7 Builders Risk Insurance during any period of construction or reconstruction for which Tenant contracts. Tenant shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

1.5 Minimum Insurance. The insurance requirements of this Agreement shall be the greater of (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Tenant under this Agreement.

1.6. Self-Insurance; Requirements. Tenant may self-insure some or all of the risks covered by the insurance that it is otherwise obligated to maintain under this Agreement and, accordingly, not to maintain the policies that are otherwise required hereunder, subject to the following requirements: (i) Tenant or any entity of which Tenant is a wholly-owned subsidiary ("Tenant's Parent") having a tangible net worth of at least Three Hundred Million Dollars (\$300,000,000.00); (ii) no bankruptcy of Tenant or Tenant's Parent having occurred; and (iii) Tenant or Tenant's Parent, as applicable, maintaining appropriate loss reserves as required by legal requirements. If Tenant does not meet the foregoing requirements and desires to self-insure then, in the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Tenant shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which

is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total self-insurance retentions.

2. Indemnification

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

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

2.2.1 any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Tenant or its agents;

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

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

2.2.4 any violation by Tenant of any Environmental Laws.

Tenant's obligations and liabilities under this subsection shall survive the termination of

this Agreement and the transactions contemplated in this Agreement. Tenant's obligations set forth in this paragraph and its subparagraphs shall not be limited to only those claims covered by insurance.

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

2.4 Intentionally Deleted.

2.5 Miscellaneous. City shall, promptly upon receipt, give Tenant every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. City shall cooperate in Tenant's defense of any claim, including preserving evidence and providing information, witnesses, and documents to Tenant in its possession regarding the demand or claim. Tenant shall keep City apprised of and shall provide regular updates regarding the status of any such claims or proceedings and Tenant's actions in pursuit of the defense or resolution thereof. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Tenant from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Tenant indemnified City.

3. Non-liability of City. City shall not in any event be liable for any acts or omissions of Tenant or any subtenant or either of their respective agents, servants, employees, independent contractors or invitees, or for any condition resulting from the operations or activities of Tenant, Tenant's agents, servants, employees, or independent contractors working for, or on behalf of, Tenant.

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

Exhibit E

Environmental Provisions

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

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

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

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

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

3. Waste Disposal. Tenant shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste

material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Tenant shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 2 above or Section 4 below of this Exhibit F.

4. Federal Stormwater Regulations.

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

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

4.3 Tenant acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Tenant agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Tenant to participate in the development of the terms of the Stormwater Permit and follow the procedures provided below in subsection 4.4 of this Exhibit F.

4.4 City shall provide Tenant with written notice of those Stormwater Permit requirements that Tenant shall be obligated to perform from time to time with respect to the Premises, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or "Best Management Practices"; corrective actions to identified findings or noted violations as a result of an inspection; and maintenance of necessary records. Such written notice shall include applicable deadlines. Tenant within twenty (20) days of receipt of such written notice, shall notify City in writing if it disputes any of

the Stormwater Permit requirements it is being directed to undertake. If Tenant does not provide such timely notice, it is deemed to assent to undertake such requirements. If Tenant provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Tenant agree to negotiate a prompt resolution of their differences. Tenant agrees that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

4.5 Subject to the dispute resolution provision of subsection 4.4 of this Exhibit E above, Tenant agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Tenant, those Stormwater Permit requirements for which it has received written notice from City. Tenant warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Tenant. Tenant agrees that time is of the essence.

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

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

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

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

5. Prior Written Consent. Tenant shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees without providing notice to the Aviation Department Environmental Manager. City may require removal of a Hazardous Substances unless Tenant demonstrates to City's reasonable satisfaction that such Hazardous Substance is necessary or useful to Tenant's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Substance brought upon, used, or kept in or about the Premises. City hereby consents to the presence of (i) Retail Motor Vehicle Fuels, (ii) retail packages of motor oil and other lubricants, automotive antifreeze/coolant, cleaning compounds, and other ordinary household and automotive products, and (iii) such office supplies, cleaning compounds and other substances used and stored in accordance with applicable law as may be necessary or useful in the conduct of Tenant's business operations on the Premises.

6. Liability and Remediation. If Tenant breaches the obligations stated in the preceding paragraph, or if the presence of a Hazardous Substance on the property caused

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

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused or permitted by Tenant results in any Contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to remediate the release on the Premises to the extent required by government agencies having jurisdiction. Tenant shall not have any liability to City for any environmental, investigatory, monitoring, or cleanup costs except as ordered by a federal, state, or local agency of competent jurisdiction. In the event such an order is issued, City shall immediately notify Tenant and provide it the opportunity to negotiate with the acting government authority and enter the Premises to conduct investigatory, monitoring, or cleanup work. In the event Tenant is responsible for any investigatory remediation or cleanup work on the Premises after expiration or earlier termination of this Agreement, Tenant shall have the right to enter the Premises for performance of such obligation. In no event shall City be responsible for any damages or costs of Tenant.

Any indemnification by Lessee in favor of City required under this Agreement shall in no event apply to any Hazardous Substance existing on, under or about the Premises prior to the Effective Date, except to the extent that such Hazardous Substance(s) are released as a result of the negligent, willful, or intentional actions or omissions of Lessee. However, the parties recognize that the City has not conducted an environmental assessment establishing the presence or absence of any Hazardous Substance on, under or about the Premises as of the Effective Date. The parties agree that, as of the Effective Date, they are not aware of the existence of any Hazardous Substance on, under or about the Premises. Without limiting the foregoing, either party may terminate this Agreement prior to commencement of construction of the Leasehold Improvements upon either party's discovery of prior existing Hazardous Substances located in, on, and under the Premises. In the alternative, City shall have the option prior to commencement of construction of the Leasehold Improvements at its sole cost, promptly and diligently investigate, remove, monitor, mitigate, and/or remediate ("City Remediation") any and all prior existing Hazardous Substances located in, on, and under the Premises and Lessee may not exercise the foregoing termination right provided that the City commences and diligently pursues completion of the City Remediation. In addition to the foregoing obligations, City shall also be responsible to remediate Hazardous Substances, other than those for which Lessee is responsible under this Agreement or that are caused by

unrelated third parties not otherwise under the direction or control of City, to the extent required by Environmental Laws.

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

8. Environmental Notices; Indemnification Notices. Each party will provide the other party with a copy of any written release notices or reports that such party is required to submit to any environmental agency with respect to releases of any and all Hazardous Substances or Contaminants at the Premises during the Term. Tenant shall immediately provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Tenant each shall promptly provide the other with a copy of 1) any claim or demand for corrective action that any environmental agency issues and 2) any other claim giving rise to indemnification obligations herein.

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

10. Tenant's Corrective Action Obligation. Tenant shall undertake corrective action to remove Contaminants released by Tenant, its agents, employees, contractors, or representative during Tenant's occupancy of the Premises, if and to the extent required by any environmental agency. Tenant shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action, subject to environmental agency requirements and approval, provided, however that Tenant may contest and appeal any environmental agency decision or directive. Tenant shall have no further obligations for corrective action under this Agreement following receipt by Tenant and City of a "No Further Action" letter or equivalent written directive, if applicable, from the appropriate regulatory agency(ies) indicating that no further corrective action is required to satisfy applicable law and regulations.

11. Tenant's Environmental Access Right. In the event Tenant's Remediation Equipment remains on the Premises following the expiration or earlier termination of this Agreement, Tenant and its representatives and contractors will have the right of access to the Premises during normal business hours and business days, to install additional Remediation Equipment; to maintain, modify, monitor, operate, or repair Tenant's Remediation Equipment; and to verify with the applicable environmental agency that Tenant's corrective action has been completed. Tenant or its representative or contractor

shall provide City written notice of its intent to exercise its access right at least two (2) business days prior to exercising such right. Tenant will attempt to minimize, to the extent reasonably possible, any interference with the operation of any business conducted at the Premises, except in the case of an emergency as determined by Tenant. In conducting its operations at the Premises following the expiration or earlier termination of this Agreement, City shall attempt to minimize, to the extent reasonably possible, any interference with Tenant's corrective action. The access right will terminate when the applicable environmental agency issues a letter to Tenant stating that, based on certain assumptions and conditions, no further corrective action will be necessary and Tenant removes its existing Remediation Equipment. If, however, following the environmental agency's issuance of such letter, the environmental agency requires Tenant to perform further corrective action, then the access right provided herein will resume.

12. Post Termination Restoration of Affected Areas. If Tenant is required to perform corrective action to remove Contaminants, Tenant shall restore the areas at the Airport containing or impacted by such Contaminants ("Affected Areas") as closely as reasonably possible to the state that the Affected Areas were in when Tenant, its employees, agents, or contractors first entered upon the Affected Areas following execution of this Agreement, unless the restoration is prohibited by applicable law.

13. Holdover Tenancy. In the event Tenant requires possession of the Affected Areas in excess of thirty (30) days following the expiration or earlier termination of this Agreement in order to install Remediation Equipment, or perform any corrective action that would materially impair ingress, egress, parking, business operations, or City's redevelopment of the Airport, or if a law, governmental order, or court order requires Tenant to be in possession of the Affected Areas after such thirty (30) day period, this Agreement will not be considered to be renewed. Instead, Tenant will be considered to be in possession of the Affected Areas under a month-to-month holdover tenancy until Tenant can surrender the Affected Areas to City in a condition that will not materially impair City's redevelopment or use of the Affected Areas. For each month during such holdover tenancy, Tenant shall perform and be bound by all terms, conditions, and covenants contained in this Agreement.

Exhibit F

Airport Security Provisions

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

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

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

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

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

3. Security Measures. Tenant shall implement and maintain, and shall cause its personnel (employees and contractors) to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Airport:

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

3.2 Tenant's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

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

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

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

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

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

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

4. Payment of Fees and Fines.

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

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

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

Exhibit G General Conditions

1. Maintenance of Premises. During the term of this Agreement, it shall be Lessee's obligation, without cost to City, to maintain and provide for ordinary upkeep and repair of the Premises and all Leasehold Improvements and landscaping. In addition, Lessee shall, at Lessee's sole discretion, maintain, repair, and when necessary, replace all personal property, trade fixtures, equipment, and other Leasehold Improvements placed or installed on the Premises by Lessee.

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

2. Surrender of Premises. Lessee covenants and agrees that upon expiration or earlier termination of this Agreement, Lessee will peaceably surrender possession of the Premises in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Premises. Lessee will leave with the Premises all operation and maintenance manuals pertaining to the Premises and all Leasehold Improvements. City shall not be required to give notice to quit possession at the expiration of the Agreement.

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

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

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

of Lessee's covenant to remove.

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

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

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

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

6. Non-Discrimination.

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

6.2 Federal Compliance.

6.2.1 General Civil Rights Provision. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates Lessee for the period during which the property is used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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

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

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

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

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

appropriate, and will set forth what efforts it has made to obtain the information.

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

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

6.2.3. Title VI Clauses for Lease of Real Property. Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below. In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

6.1 Nondiscrimination Acts and Authorities. During the performance of this Agreement, Lessee, for itself, its assignees and successors in interest, and contractors agree to comply with all applicable State, Federal non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

7. Disability Laws and Accessibility Requirements. Lessee shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Lessee constructs on the Premises, Lessee agrees to meet all the requirements of the ADA which are imposed directly on the Lessee or which would be imposed on the City as a public entity. Lessee agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees

from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any acts or omissions of Lessee or its contractors or agents in violation of the ADA.

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

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

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

The Premises are, and this Agreement is, subject to and subordinate to the terms of that certain deed from the United States of America to City dated December 15, 1962, and

filed for record on December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

10. Other Subordination. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by City in the Airport, or impairing, exercising, or defining governmental rights and the police powers of City. This Agreement is subject to and subordinate to any and all City Ordinances codified in the Revised Ordinances of City of Albuquerque, New Mexico, 1994. This Agreement is subject to and subordinate to any and all bond ordinances adopted by City authorizing the issuance and sale of Airport Revenue Bonds and any successor bond ordinance(s) that may be enacted by City with respect to future series of bonds.

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

12. Economic Non-Discrimination. In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Lessee agrees, (1) to furnish said services on a fair, equal, and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

13. Intentionally Deleted.

14. City's Right to Enter. City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances (but not less than forty-eight hours' notice except in emergencies) and with as little interruption of Lessee's operations as possible, to enter upon the Premises, accompanied by an authorized Lessee representative if practicable to inspect such space to determine whether Lessee is in compliance with the terms and conditions of this Agreement, including inspection for safety, environmental, fire protection, or security purposes. Lessee may condition entry and inspection on execution by the City of a non-disclosure agreement which shall specify the basis for exemption from disclosure by the City under the New Mexico Inspection of Public Records Act, NMSA 1978 §14-2-1 et seq. Lessee further agrees to make any and all corrections of violations observed by City as a result of this inspection; however, in no event shall Lessee be required to correct any violations that precede the Effective Date.

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

15. Public Records. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act NMSA 1978 §14-2-1 et seq). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Lessee for any disclosure of information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions, or other legal requirement.

16. Intentionally Deleted.

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

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

19. Assignment and Subletting. Lessee shall have the right to assign, sublet, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement (each a "Transfer") with the prior written approval of City, which approval shall not be unreasonably withheld or delayed, provided that any such transfer would be subject to all terms of the Agreement. City will approve or disapprove any Transfer request within thirty (30) days following receipt of the request and will provide reasons for any disapproval. If City does not respond within thirty (30) days, then Lessee may send City an additional copy of the notice, stating "FAILURE TO RESPOND WITHIN 3 BUSINESS DAYS WILL CONSTITUTE DEEMED APPROVAL", and if City fails to respond to such additional notice within three (3) business days, then the Transfer request will be deemed approved. Notwithstanding anything to the contrary, Lessee may effect a Transfer with notice to the City, but without City's consent, to (i) any entity controlling, controlled by, or under common control with Lessee (as "Affiliated Entity"); (ii) any entity resulting from

the merger or consolidation of or with Lessee or any Affiliated Entity; (iii) any entity that acquires all (or substantially all) of the assets of Lessee or an Affiliated Entity (iv) any successor of Lessee or an Affiliated Entity by reason of public offering, reorganization, dissolution, or sale of stock, membership, or partnership interests or assets (each of the scenarios described in clauses (i) – (iv) above, a “Lessee Affiliate”); or (v) any third party doing business with Lessee or an Affiliated Entity, including vendors, consultants, contractors, service providers or joint venture partners, provide such party is or will be doing business at the Premises with a cargo-based carrier (collectively “Permitted Transferees”). Provided that the Guaranty remains in place, Lessee will be automatically released from all obligations under this Agreement after the effective date of any Transfer, and City agrees to execute a document evidencing such release if requested by Lessee.

20. Financial Responsibility.

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

20.2 Liens. Lessee shall not permit any judgment, execution or mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Premises by reasons of work, labor performed, or materials or equipment furnished to Lessee.

21. Construction Inconvenience. Lessee agrees that from time to time during the term of this Agreement, the Aviation Department and City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure, and facilities on the Airport (“Airport Construction”), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Lessee agrees that it shall not hold the Aviation Department or City, including its officers, agents, employees and representatives, liable for damages of any nature whatsoever, including all damages arising out of or caused by inconveniences and/or interruptions of its business activities at the Airport, loss of business, and personal injury, including death, and property damage due to the Airport Construction, unless such damages are caused in whole or in part by the negligence or other fault of the Aviation Department or City or its officers, agents, employees and representatives. Lessee acknowledges receipt of adequate consideration by City in support of this waiver. Notwithstanding the above, City will provide aircraft and roadway access to the Premises during Airport Construction.

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

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

24. Force Majeure. Except as expressly provided in this Agreement, neither City nor Lessee shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rents and fees hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, pandemics or epidemics, acts of a public enemy, acts of terrorism or threatened acts of terrorism, weather conditions or the results of acts of nature, riots, rebellion, sabotage or other causes similar to those enumerated for which it is not responsible or which are not within its reasonable control ("Force Majeure Events").

25. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules, and regulations of the City of Albuquerque.

26. Forum Selection. City and Lessee agree that the state and federal courts residing in Bernalillo County, New Mexico, will have exclusive jurisdiction and venue over any claim arising from this Agreement, and consent to the exclusive jurisdiction of such courts.

27. Ethics.

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

27.2 Fair Dealing. Lessee covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Lessee without collusion on the part of Lessee with any person or firm, without fraud and in good faith. Lessee also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be, offered or given by

Lessee or any agent or representative of Lessee to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

27.3 Board of Ethics and Campaign Practices. Lessee agrees to comply with all laws related to the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board"). If applicable, Lessee agrees to require that all subcontractors employed by Lessee for services performed for this Agreement shall agree to comply with the provisions of this subsection. Lessee and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this subsection.

28. Audits and Inspections. The Contractor 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.

29. Contract Interpretation.

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

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

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

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

29.5 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This

Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

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

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

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

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

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

32. Confidentiality. City will make no announcements regarding Lessee's proposed or actual occupancy of the Premises without Lessee's prior written consent, which Lessee may withhold in its sole discretion, and City and its agents and representatives will maintain the confidentiality of all non-public information that is learned by or disclosed to City with respect to City's business. Lessee acknowledges that portions of this Agreement and the materials, communications, data and information related to this Agreement may constitute public records subject to disclosure under the applicable public records laws, including the New Mexico Inspection of Public Records Act (NMSA (1978) 14-2 et. Seq.), and agrees that City may disclose such portions of this Agreement and the materials, communications, data and information related to this Agreement as required by law, provided that City agrees to (a) give Lessee prior written notice sufficient (in no event less than 10 business days and directed to foia@amazon.com) to allow Lessee to seek a protective order or other appropriate remedy, (b) disclose only such information as is

required under the applicable law, (c) cooperate with Lessee in responding to any such records request, and (d) limit disclosure, refuse to disclose, and redact and/or omit portions of materials to the maximum extent permitted by applicable law.

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

34. Code of Conduct. Each party has a code of business conduct and ethics. City acknowledges Lessee's Code of Business Conduct and Ethics posted at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-govConduct> (the "Code"). Section 7 of the Code prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. City represents and warrants that neither it nor any employee, agent or other person acting on its behalf will:

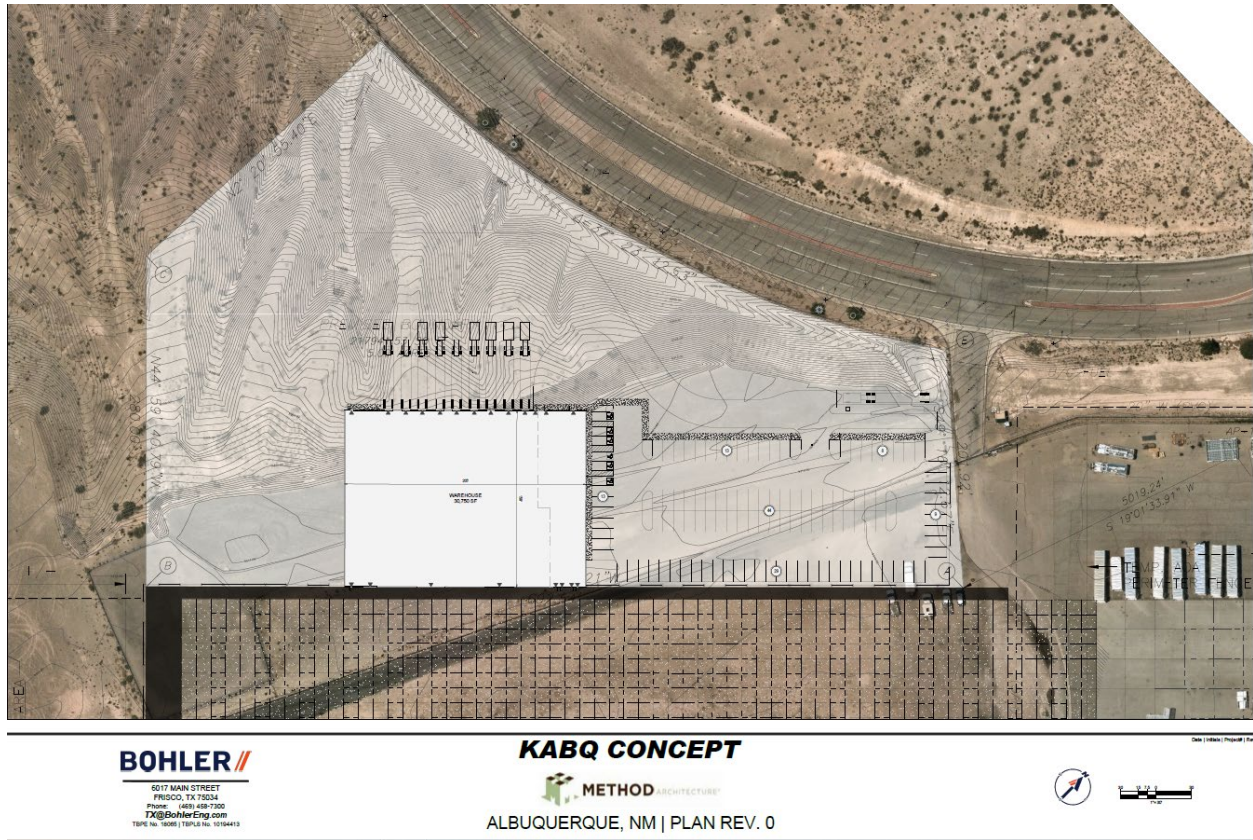
(a) undertake, cause, or permit any act which would violate any applicable anti-corruption law, including, but not limited to, the U.S. Foreign Corrupt Practices Act, and the UK Bribery Act, or

(b) make, cause, or permit any offer, promise, or payment of money or any other thing of value to any third party, directly or indirectly, to improperly influence the actions of any person, or to obtain any improper advantage in favor of Tenant in connection with any services provided by Landlord under the Agreement.

City will report promptly to Lessee all pertinent facts relating to any improper solicitation, demand or other request for a bribe, improper gift or anything of value, made by any party in connection with any activities performed by City pursuant to the Agreement. City will fully assist and cooperate with any investigation of actual or suspected breach of this provision. Lessee may immediately terminate or suspend performance under the Agreement if City breaches this provision.

35. Waiver of Consequential Damages. Notwithstanding anything to the contrary, neither City nor Lessee will be liable to the other for consequential damages, such as lost profits or interruption of either party's business.

Exhibit H Conceptual Site Plan*



*The Conceptual Site Plan may be substituted by Lessee prior to execution of the Agreement.