

CITY OF PHOENIX
AVIATION DEPARTMENT
UNSUBORDINATED GROUND LEASE

NO. _____

Between

CITY OF PHOENIX,
an Arizona municipal corporation,

Landlord,

and

[Tenant's full name],

[type of business entity],

Tenant,

at [name of the airport] Airport

TABLE OF CONTENTS

Recitals

ARTICLE 1 - EFFECTIVE DATE..... 4
ARTICLE 2 - DEFINITIONS..... 4
ARTICLE 3 - PREMISES..... 6
ARTICLE 4 - USE OF THE PREMISES 6
ARTICLE 5 – AVIGATION RIGHTS..... 9
ARTICLE 6 - RIGHT OF ENTRY RESERVED 10
ARTICLE 7 - TERM 11
ARTICLE 8 - LANDLORD RIGHT TO RECLAIM 12
ARTICLE 9 - NET RENT 13
ARTICLE 10 - TAXES 18
ARTICLE 11 – UTILITIES..... 18
ARTICLE 12 - PERFORMANCE GUARANTEE 19
ARTICLE 13 - INDEMNIFICATION 20
ARTICLE 14 - INSURANCE 20
ARTICLE 15 - ENVIRONMENTAL CONDITIONS 21
ARTICLE 16 - FORCE MAJEURE 22
ARTICLE 17 - ASSIGNMENTS, SUBLEASES, OR MORTGAGES..... 23
ARTICLE 18 - SIGNAGE..... 26
ARTICLE 19 - BREACH AND REMEDIES FOR BREACH 26
ARTICLE 20 - NO WAIVER..... 28
ARTICLE 21 - TENANT IMPROVEMENTS 28
ARTICLE 22 - TRADE FIXTURES 33
ARTICLE 23 - DAMAGE OR DESTRUCTION TO PREMISES 34
ARTICLE 24 - CONDEMNATION 36
ARTICLE 25 - MAINTENANCE AND CUSTODIAL..... 38
ARTICLE 26 – NO IMPAIRMENT OF LANDLORD’S TITLE 39
ARTICLE 27 – NOTICE 40
ARTICLE 28 - COMPLIANCE WITH LAWS 41
ARTICLE 29 – GENERAL PROVISIONS 42

Exhibit A Site Map of the Premises
Exhibit B Legal Description of the Premises
Exhibit C Letter of Credit Form
Exhibit D Cash Deposit for Performance Guarantee

Exhibit E	Insurance Requirements
Exhibit F	Supplemental Terms and Conditions to All Airport Agreements (Revised 2/2/19)
Exhibit G	Compliance with Environmental Laws (Revised May 2022)
Exhibit H	Memorandum of Lease
Exhibit I	Sustainability
Exhibit J	Small Business Outreach Agreement Clause
Exhibit K	Equal Opportunity Department Form EO2 Small Business Outreach Efforts Form

**CITY OF PHOENIX AVIATION DEPARTMENT
UNSUBORDINATED GROUND LEASE NO. _____**

This Unsubordinated Ground Lease (Lease) is made and entered into by and between the City of Phoenix, an Arizona municipal corporation (Landlord or City), and [Tenant's full name], [type of business entity] (Tenant). Landlord and Tenant are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. Landlord owns and operates Phoenix Sky Harbor International Airport (Airport) located at 3400 E. Sky Harbor Blvd. in Phoenix, Arizona.

B. Tenant was the Successful Respondent of the City of Phoenix Aviation Department's Revenue Contract Solicitation 23-018 (RCS) to design, finance, build, operate/lease and maintain a best-in-class air cargo facility on approximately 28 acres of City-owned land located on the northwest section of the Airport.

C. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord the Premises (as defined in Article 3 below) for the purpose of developing and constructing the air cargo facility at Tenant's expense and in accordance with the RCS.

D. On [month, day, year], the Phoenix City Council passed Ordinance S-[number], which authorized the City Manager to enter into a ground lease with Tenant.

AGREEMENT

THEREFORE, the Parties agree as follows:

ARTICLE 1 - EFFECTIVE DATE

This Lease is effective on the date it is executed by Landlord (Effective Date).

ARTICLE 2 - DEFINITIONS

For purposes of this Lease, the following words and terms have the following meanings:

2.1 *Aircraft* means any device that flies, including jet airplanes, propeller-driven airplanes, helicopters, gliders, ultra-lights, unmanned aerial vehicles (drones), model airplanes, hot air balloons, and blimps.

2.2 *Airport* means Phoenix Sky Harbor International Airport and all land, buildings, and facilities comprising the Airport, including terminals, runways, taxiways, Aircraft and vehicle parking areas, roadways, and sidewalks that exist on the Effective Date of this Lease and that may thereafter be expanded or developed.

2.3 *Applicable Law* means all federal, state, and local statutes, rules, regulations, ordinances, court orders and decisions, FAA advisory circulars, and FAA policy and guidance documents that apply to this Lease, the Premises, Tenant's use or occupancy of the Premises, and the Airport, including all future amendments, supplements, and revisions thereto. *Applicable Law* also includes all covenants, restrictions, easements, and agreements related to the Premises and the Airport; and all Airport Rules and Regulations, Aviation Department Minimum Standards Rules and Regulations 02-01 to 02-12, and Chapter 4 of the Phoenix City Code. *Applicable Law* also includes all present and future building restrictions and regulations, zoning laws, resolutions, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority now or hereafter having jurisdiction over Tenant or the Premises.

2.4 *Aviation Director* means the director of the City of Phoenix Aviation Department or his or her designee.

2.5 *Beneficial Occupancy Date* means the date of issuance stated on a Certificate of Occupancy for the Tenant Improvement(s).

2.5 *Day* means a calendar day.

2.6 *FAA* means the Federal Aviation Administration and any successor agency.

2.7 *Improvement* means all buildings, hangars, structures, utilities, plumbing, parking lots, roadways, and other fixtures on the Premises on the Effective Date of this Lease.

2.8 *Revenue Contract Solicitation (RCS)* means a solicitation for revenue contracts, including all amendments or supplements thereto.

2.8 *Successful Respondent (Tenant)* means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

2.8 *Tenant (Successful Respondent) and its Agents* means Tenant and its trustees, owners, officers, directors, managers, members, agents, employees, contractors, guests, invitees, subtenants, and all other persons under Tenant's direction or control.

2.9 *Tenant Improvement* means all structures and other items that Tenant affixes to, constructs on, or attaches to the Premises. *Tenant Improvement* includes any substantial alteration of an Improvement or Tenant Improvement. If a dispute arises as to what is or is not a Tenant Improvement, then Landlord's decision resolving the dispute shall be final. An item is deemed to be a Tenant Improvement if it is attached to the Premises by screws, nails, glue, or other similar form of attachment.

2.10 *Tenant Improvement Process* means the process that requires Tenant to submit to Landlord for approval all plans and specifications for any Tenant Improvement that Tenant intends to construct or install on the Premises. The Tenant Improvement Process is generally described in the Aviation Department's Tenant Improvement Handbook, which may be amended from time to time, and as described in Article 21 (Tenant Improvements) of this Lease. The Tenant Improvement Handbook and all amendments thereto are available at <https://skyharbor.com/pdf/TI-Handbook.pdf> and are incorporated herein and made a part of this Lease by this reference.

2.11 *Trade Fixture* means all non-affixed furniture, equipment, and other items of movable personal property that Tenant locates on the Premises. If a dispute arises as to what is or is not a Trade Fixture, then Landlord's decision resolving the dispute shall be final.

2.12 *TSA* means the Transportation Security Administration and any successor agency.

2.13 *Year* means a twelve- (12) month period beginning on the date the Term of this Lease commences and each successive anniversary thereof.

ARTICLE 3 - PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property comprised of approximately 28 acres (approximately 1,219,680 square feet) located at the Airport (Premises). A **Site Map** of the Premises is attached and marked **Exhibit A**. The **Legal Description** of the Premises is attached and marked **Exhibit B**. The Premises include the Improvements on the Premises on the Effective Date of this Lease.

ARTICLE 4 - USE OF THE PREMISES

4.1 Use. Tenant shall use and occupy the Premises as follows:

A. Tenant's use and occupancy of the Premises shall solely be for preparing (demolition), constructing, operating, and maintaining an air cargo facility (Tenant Improvements) as proposed as the Successful Respondent to AVN RCS 23-018. The storage of aircraft by the Tenant or subtenants must directly be associated with air cargo operations. Tenant shall not use or occupy the Premises for any other use or purpose whatsoever without Landlord's prior written approval.

B. Tenant shall comply with all Applicable Law that relate to the Premises and the Airport.

C. Tenant shall not install or connect any utility to the Premises without Landlord's prior written approval.

D. Tenant shall not use the Premises in any manner that is offensive, interferes with, or disturbs any other person's use or occupancy of the Airport.

E. Tenant shall use of the Premises in a manner that does not interfere with or hinder Landlord's use, operation, or maintenance of the Airport, including the effectiveness or accessibility of drains, sewers, utilities, communications, fire protection, radar, radio, and other systems at the Airport.

F. Tenant assumes the full and sole responsibility at its own expense for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including compliance with Tenant Improvement Handbook, and with all easements, covenants, restrictions, and other burdens that run with the land. Tenant is responsible for any repairs to or replacement of Tenant Improvements to the Premises. Any additional maintenance of the Premises including but not limited to displays, paint, decorative material, cleaning, and, removal of graffiti and debris is the sole responsibility of the Tenant.

G. In compliance with any FAA requirements, obstruction lighting required to be installed on Tenant Improvements due to the proximity to the runways at the Airport must remain on the improvement during the term of the Lease unless otherwise determined by the FAA. Tenant, at its expense, shall maintain the permanent obstruction lighting on the Tenant Improvement during the term of the Lease and if necessary, reinstall the obstruction lighting if the improvement is replaced during the Lease term.

4.2 AS IS Condition of Premises. Tenant agrees that it accepted the Premises in the AS IS condition that existed on the Effective Date of this Lease. Tenant further agrees that Landlord made no representation or warranty to Tenant that the Premises are fit or suitable for any particular use or purpose, except as expressly provide in this Lease.

A. Tenant agrees that it entered into this Lease after it conducted, or was given a fair opportunity to conduct a full and complete inspection of the Premises, including the use, ownership, environmental, and other conditions thereof.

B. Tenant agrees that Landlord is not required to furnish any service or facility to the Premises, to make any repair or alteration to the Premises, or to provide any off-site improvements, such as utilities or parking. Landlord is not required to furnish any access to the Premises other than the means of access that are available to the general public. Tenant assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including compliance with all easements, covenants, restrictions, and other burdens that run with the land.

4.3 General Access Privileges. Tenant may enter, exit, and use the Airport to the same extent as the general public. Tenant may use the Aircraft Movement Area, as

that term is defined in Section 4-1 of the Phoenix City Code, which includes ramps, aprons, and areas where Aircraft are parked and/or unloaded near the Premises.

4.4 Prohibited Activities. Tenant and its Agents shall not engage in any illegal or unauthorized activity on the Premises at any time.

4.5 Vehicle Parking. Tenant parking shall be limited to the Premises. Tenant shall not park or locate any vehicle in the Aircraft Movement Area of the Airport. Tenant has no right to reserved parking at the Airport.

4.6 Aircraft Parking. Tenant shall control all Aircraft on the Premises and shall control the movement of all Aircraft to and from the Premises to ensure that they do not obstruct any part of the Aircraft Movement Area of the Airport.

4.7 Utility Licenses. Tenant agrees that Landlord may grant to any utility supplier a license upon, over, across, and under the Premises where utilities are or will be installed. The license may grant to the utility supplier the right to enter, exit, occupy, and use the Premises for the purpose of installing, maintaining, repairing, servicing, enlarging, extending, modernizing, and upgrading any utility related to the Premises and/or the Airport. Tenant shall not hinder or interfere with the activities of any such utility supplier. As used in this Section, "utility" includes electricity, natural gas, water, sanitary sewers, telephone, cable television, and other facilities commonly regarded as utilities.

4.8 Waste. Tenant and its Agents shall not cause or allow others to cause waste or damage to the Premises.

4.9 Modification of the Premises. Landlord may modify the Premises and the authorized use or occupancy of the Premises in order to comply with any Applicable Law. If a dispute arises concerning any such modification, then Landlord's decision resolving the dispute shall be final. Landlord will give Tenant at least ten (10) Days' prior Notice (as that term is defined in Article 27) if Landlord needs access to the Premises, or any part thereof, to make any such modification. Tenant shall not obstruct or interfere with Landlord's access to or work on the Premises.

4.10 Modifications of Privileges. The use and general privileges described in Article 4 may be modified by Landlord at any time in order to carry out the purposes of this Lease or the Airport. If a dispute arises concerning the uses or activities authorized on the Premises, then Landlord's decision resolving the dispute shall be final and non-appealable.

4.11 Regulatory Requirement. Prior to entering the Premises, Tenant shall meet all regulatory requirements at no cost to the Landlord. Tenant is responsible for any items Tenant installs or is required to install by a regulatory agency for Tenant's use of the Premises existing as of the Effective Date, including all amendments.

ARTICLE 5 – AVIGATION RIGHTS

5.1 Avigation Rights. Tenant agrees that Landlord and the general public have the following rights:

A. Landlord and the general public have the free and unobstructed right to use the Airport's Airspace for Aircraft Operations. As used in this Lease, (i) *Airspace* means the airspace above, around, and near the Airport and (ii) *Airport Operations* means all existing and future activities that are inherent in the operation of the Airport and Aircraft using the Airport, including landing at, taking off from, and maneuvering about the Airport.

B. Tenant agrees that Aircraft operating in the Airspace may cause noise, vibrations, and other negative impacts, including bright lights, smoke, dust, noise, sleep loss, air currents, electronic and other emissions, vibrations, discomfort, inconvenience, and other interferences with the Tenant's use and quiet enjoyment of the Premises.

5.2 Enforcement of Avigation Rights. Tenant shall not interfere with the avigation rights granted under this Article. If Tenant and its Agents interfere with or violate any avigation right, then Landlord shall give Tenant Notice to cease the interference. If Tenant fails to cure its default within two (2) Days after receipt of Notice from Landlord, then Landlord may, without further Notice, enter and occupy the Premises for as long as necessary to do any or all the following:

A. Install, maintain, and repair one or more permanent markers, beacons, or lights related to Aircraft Operations at the Airport.

B. To cut and remove all plants and demolish and remove all buildings, structures, and other objects that extend into the Airspace more than fifty (50) feet above the surface of the ground.

C. Enter, exit, and occupy the Premises for the purpose of enforcing its avigation rights under this Article.

5.3 Right to Enter Without Notice. Landlord may enter the Premises without prior Notice to:

A. Eliminate or abate any source of interference with radio communications or radar operations between the Airport and any Aircraft.

B. Eliminate or abate any condition or remove any object that interferes with Airport Operations or that may constitute a hazard to any Aircraft or the Airport.

5.4 Restrictions on Use. Tenant and its Agents shall comply with the following:

A. Keep the Airspace fifty (50) feet or more above the surface of the Premises (Tenant's Airspace) free and clear of all objects of any kind or nature, including

buildings, trees, towers, tethered objects, smoke, unmanned aircraft systems (drones), and other objects.

B. Not use the Premises in any manner that interferes with the aviation rights granted to Landlord and the general public under this Article.

C. Not use any device, and prevent others from using any device, on the Premises that causes any electrical or electronic interference with radio communications or radar operations between the Airport and any Aircraft.

D. Not use the Premises, and prevent others from using the Premises, in any manner that impairs visibility at the Airport or interferes with Aircraft Operations, including laser lights and other objects that reflect or emit light.

E. Not use the Premises, and prevent others from using the Premises, in any manner that constitutes a hazard to the Airport or any Aircraft, including landfills, water retention ponds, wetlands, and any activity that may attract birds.

F. When applicable, Tenant shall submit to the FAA an FAA 7460-1 (Notice of Proposed Construction or Alteration) and send a copy to Landlord.

5.5 Release and Waiver. Tenant hereby releases and agrees not to sue Landlord on any claim, damage, loss, liability, and expense that Tenant has now or may have in the future arising from or incurred in connection with the burdens imposed upon Tenant or the Premises by the aviation rights granted under this Article. Tenant shall not attempt to enjoin or interfere with any burdens imposed upon Tenant and the Premises by this Article or with any Airport Operations in Tenant's Airspace. Tenant hereby waives any claim for the diminution in the value of the Premises and of Tenant's business use of the Premises caused by or related to the aviation rights granted by this Article.

ARTICLE 6 - RIGHT OF ENTRY RESERVED

6.1 Inspections. At any time between the hours of 7:00 a.m. and 7:00 p.m. Phoenix time and after giving Tenant at least twenty-four (24) hours' prior Notice, Landlord may enter the Premises, and all parts thereof, to observe Tenant's performance under this Lease; service, post, or keep posted notices required by Applicable Law; to make repairs and conduct maintenance on the Premises; post notices and Signage that Landlord deems necessary or appropriate; make alterations, additions, and improvements and install any equipment that Landlord deems necessary or appropriate; show the Premises to a prospective tenant; and conduct an environmental assessment to determine whether any Regulated Substance (as that term is defined in the attached Compliance with Environmental Laws Exhibit) exists on or under the Premises.

6.2 Breach. Landlord may enter the Premises at any time and without prior Notice to cure any breach of this Lease by Tenant and at the request of the FAA, TSA, or

any other federal agency or any federal, state, county, or City of Phoenix law enforcement officer.

6.3 Emergency. Landlord may enter the Premises at any time and without prior Notice to respond to any matter that Landlord determines to be an emergency.

6.4 Police Power. Nothing in this Lease limits, or may be construed to limit, the exercise of the City of Phoenix's police powers.

6.5 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 7 - TERM

7.1 Development Period. The Development Period shall consist of a Due Diligence Period and a Construction Period as specified below.

7.1.1 Due Diligence Period. -Tenant shall have twelve (12) months after the Effective Date to conduct due diligence on the Premises (Due Diligence Period). Tenant's due diligence includes, but is not limited to, conducting site investigation, environmental assessments, surveys, National Environmental Policy Act (NEPA) approvals, any archaeological requirements as identified by the City of Phoenix Archaeological Office, and securing all necessary licenses, permits, and approvals required for all Tenant Improvements located on the Premises. Tenant will be solely responsible, at its own expense, for securing all necessary licenses, permits, and approvals required for construction of Tenant Improvements. The Landlord will use its best efforts to promptly review and approve any submitted plans and specifications for Tenant Improvements. The Landlord's approval of the proposed Tenant Improvements shall not be unreasonably delayed, conditioned, or withheld. The Due Diligence Period shall end upon the completion of Environmental assessments, NEPA approvals, and any Archaeological requirements, or twelve months from the effective date, whichever occurs soonerfirst.

7.1.2 Construction Period. Tenant shall have twenty-four (24) months after the Due Diligence Period to obtain a Certificate of Occupancy for the Tenant Improvements on the Premises (Construction Period). Tenant's failure to do so is a breach of this Lease.

7.2 Term. The Term of this Lease is forty (40) years (Term) and shall begin on the Beneficial Occupancy Date of the Premises or thirty-six (36) months from the Effective Date, whichever occurs first (Term Commencement Date). As used in this Article, "Beneficial Occupancy" means the date the core and shell certificate of occupancy is issued for any improvement within the Parcel.

~~7.3 Options to Extend Term. The Term is subject to one (1) ten-year option to extend the Term that may be exercised in the Aviation Director's sole discretion.~~

7.3 Surrender of Possession. Upon the expiration or earlier termination of this Lease, Tenant's right to occupy the Premises shall cease and Tenant shall immediately and peaceably vacate and surrender possession of the Premises to Landlord in a broom-clean condition free of damage. Reasonable wear and tear are not considered damage. If a dispute arises as to what is or is not damage, then Landlord's decision resolving the dispute shall be final.

7.4 No Right to Holdover. Nothing in this Lease gives, or may be construed to give, Tenant any right to holdover after this Lease expires or is terminated.

7.5 Wrongful Holdover. If Tenant continues to occupy the Premises after the expiration or earlier termination of this Lease without Landlord's prior written approval, then Tenant's occupancy shall be deemed a trespass and Tenant shall pay, for as long as Tenant holds possession, an occupancy fee equal to 200% of the monthly Net Rent and Additional Payments in effect on the date this Lease expired or was terminated. During the wrongful holdover period, Tenant shall comply with all other provisions of this Lease. A wrongful holdover does not create, and may not be construed to create, a month-to-month tenancy or any other leasehold estate or interest in the Premises. During the holdover period, Landlord may exercise any or all rights and remedies available to it under this Lease and Applicable Law to recover possession of the Premises, delinquent Net Rent and Additional Payments, holdover fees, and any other costs and damages incurred by Landlord in recovering possession, including attorney fees, court costs, expert fees, and other expenses.

7.6 Permissive Holdover. If Tenant continues to occupy the Premises after the expiration or termination of this Lease with Landlord's prior written approval, then Tenant's occupancy shall be deemed a tenancy from month-to-month and Tenant shall pay the monthly Net Rent and Additional Payments in effect when this Lease expired or was terminated. During the permissive holdover period, Tenant shall comply with all provisions of this Lease. Either Party may terminate the month-to-month tenancy at any time and for any reason or no reason by giving the other Party at least thirty (30) Days prior Notice stating the date the tenancy will terminate. Tenant shall vacate and surrender possession of the Premises to Landlord not later than the termination date stated in the Notice.

7.7 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 8 - LANDLORD RIGHT TO RECLAIM

8.1 Right to Reclaim. If Landlord or any federal, state, or county agency or department determines that it is necessary for the efficient operation of the Airport or to preserve the public health or the environment, then Landlord may terminate this Lease and recover possession of the Premises without penalty, cost, or liability to Tenant.

Tenant shall vacate and abandon the Premises within ninety (90) Days after receipt of Notice from Landlord terminating this Lease.

8.2 Right to Develop. Landlord reserves the right to further expand and/or develop the Airport as it sees fit and regardless of the desire or views of Tenant and without interference or hindrance from Tenant. Landlord will attempt to conduct its development work in a manner that does not unreasonably interfere with Tenant's use or occupancy of the Premises. If Landlord determines that it is necessary for the future expansion or development of the Airport, then Landlord may terminate this Lease and recover possession of the Premises without penalty, cost, or liability to Tenant, including lost profits. Tenant shall vacate and abandon the Premises within ninety (90) Days after receipt of Notice from Landlord terminating this Lease.

8.3 Substitute Site. If Tenant makes a written request to relocate to a substitute site within ten (10) Days after receiving Landlord's Notice of termination under this Article, then Landlord shall make reasonable efforts to find a mutually acceptable substitute site for Tenant at the Airport. If Tenant determines that the proposed substitute site is acceptable and Tenant is in good standing, as determined by Landlord, then Landlord shall reimburse Tenant for the then fair market value of the Tenant Improvements on the Premises according to a straight-line depreciation schedule. Landlord is not responsible for any other costs associated with relocating Tenant or making any modification or improvement to the substitute site. If applicable, Tenant shall complete the construction or installation of its Tenant Improvements on the substitute site within twelve (12) months after accepting the substitute site.

8.4 No Substitute Site. If a mutually acceptable substitute site cannot be located or agreed upon within thirty (30) Days after the date of Tenant's request to relocate, then this Lease shall terminate and Tenant shall vacate and abandon the Premises within ninety (90) Days after the termination date of this Lease. Landlord shall reimburse Tenant for the then fair market value of the Tenant Improvements on the Premises according to a straight-line depreciation schedule. Landlord is not responsible to reimburse Tenant for any other costs associated with the Tenant Improvements or the termination of this Lease under this Article.

ARTICLE 9 - NET RENT

9.1 Net Rent. The payment of Net Rent will commence on the Term Commencement Date (Rent Commencement Date). Tenant shall pay to Landlord net annual rent in the amount of \$1,280,664 per Year (*i.e.*, \$1.05 per square foot), plus applicable taxes (Net Rent).

9.2 Monthly Installments. Tenant shall pay Net Rent to Landlord in twelve (12) equal monthly installments in the amount of \$106,722 without notice, demand, deduction, or setoff in advance on the first Day of each month during the Term of this Lease. If the Term begins on a Day other than the first Day of the month, then the first installment shall be prorated to the end of the month based on 1/30th of the installment for each Day.

Tenant shall pay each installment by a business check or personal check, unless Landlord specifies another form of payment, such as a certified check, cashier's check, electronic transfer, or cash. Net Rent installments shall be remitted to:

City of Phoenix Aviation Department
P.O. Box 29110
Phoenix, AZ 85038-9110

or such other place as Landlord may designate from time to time.

9.3 Unencumbered Net Rent. Tenant shall pay Net Rent and Additional Payments (as that term is defined below) to Landlord without notice, demand, deduction, or setoff in advance and free of any claim, assessment, or imposition of any kind whatsoever. Tenant shall pay all costs, expenses, and obligations related to the maintenance, security, and operation of the Premises, including the costs of construction, alterations, repairs, and replacements that are conducted during the Term, and Tenant shall indemnify, defend, and hold harmless Landlord from and against all such costs, expenses, and obligations.

9.4 Triple Net Lease. This is a triple net Lease to Landlord. Tenant shall pay all expenses related to the Premises, including taxes, insurance, utilities, maintenance, repairs, inspection costs, and custodial expenses. Tenant shall pay all taxes to Landlord each month along with Net Rent. Tenant shall pay all expenses related to the Premises directly to the supplier that furnished the service.

9.5 Additional Payments. *Additional Payments* means all the following:

A. All fines, penalties, interest, and costs that become due or are imposed by operation of law for the nonpayment of Net Rent or other charges.

B. All sums, impositions, costs, expenses, and other payments and all taxes, including leasehold tax; sales tax; transaction privilege tax; taxes on Net Rent, this Lease, or Tenant's occupancy of the Premises; use taxes; government property lease excise tax; and all federal, state, and local real and personal property taxes and business taxes that are now or may hereafter be levied on the Premises, Tenant, Tenant's interest in this Lease, Landlord's interest in the Premises, Tenant's use or occupancy of the Premises, and Tenant's Trade Fixtures and other personal property used in connection with the Premises.

C. All assessments, special assessments, and water and sewer rents; all rates and charges; charges for public utilities; excise, levy, license, and permit fees; and other expenses incurred by Landlord on Tenant's behalf.

D. All governmental and quasi-governmental charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of any kind and nature whatsoever that are assessed, levied, confirmed, imposed upon, or become due and

payable arising out of or with respect to, or becomes a lien on, the Premises or any appurtenance thereto, including any use or occupation of the Premises and franchises as may be appurtenant to the use of the Premises, whether or not such charge is levied, charged, or assessed on Landlord or Tenant, provided that:

(1) If any Additional Payment may be paid in installments, then Tenant may pay the Additional Payment, and any accrued interest thereon, in installments. Tenant shall pay the installments as they become due and before any fine, penalty, further interest, or cost is assessed.

(2) Additional Payments relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in the period of time after the expiration or earlier termination of this Lease, shall be adjusted between Landlord and Tenant as of the expiration or termination date of this Lease so that Tenant shall pay that portion of the Additional Payment attributable to the tenancy period and Landlord shall pay the remainder.

E. If an Additional Payment is due and payable to Landlord and Tenant contests the validity or amount of the Additional Payment, then Tenant must pay the Additional Payment to Landlord while the validity or amount thereof is being contested. If the Additional Payment is due and payable to an outside person or authority, then Tenant must deposit with Landlord an amount equal to the Additional Payment, together with any interest and penalties thereon, while the validity or amount thereof is being contested. Landlord shall use the deposited amount to pay the Additional Payment when its validity is determined or the amount is fixed. If the amount deposited by Tenant exceeds the amount determined to be due, then the excess shall be paid by Landlord to Tenant. If there is a deficiency, then the amount of the deficiency, together with all interest, penalties, and other charges related thereto, shall be paid by Tenant to Landlord.

F. If the Additional Payment is due and payable to an outside person or authority, then Tenant may petition the outside person or authority in an attempt to reduce the amount of an Additional Payment, but Landlord is not required to cooperate with Tenant and Landlord may oppose the attempt. If Tenant is entitled to a refund as a result of its attempt, then the refund shall be paid to Tenant. However, if Tenant is not current in the payment of Net Rent, Additional Payments, and all other amounts due under this Lease and Tenant is not otherwise in default or breach of this Lease, then the refund shall be paid to Landlord and applied to Net Rent, Additional Payments, and all other amounts due under this Lease or held by Landlord until Tenant cures its default or breach of this Lease.

9.6 No Joinder Required. Unless required by Applicable Law, Landlord is not required to join in any action or proceeding that Tenant initiates under this Article. Tenant shall indemnify, defend, and hold harmless Landlord from and against all attorney fees, court costs, expenses, claims, and damages Landlord incurs in connection with or related to such action or proceeding.

9.7 Net Rent Adjustments. The annual Net Rent paid by Tenant shall increase (but never decrease) beginning on the third year anniversary of the Rent Commencement Date and then continuing on every three- (3) year anniversary thereafter, Landlord shall adjust Net Rent upward according to the Consumer Price Index or three percent (3%), whichever is greatest, subject to the following:

A. Landlord shall select the method of adjusting Net Rent.

B. Net Rent will not be adjusted to be less than the then current Net Rent.

C. CPI means the Phoenix-Mesa-Scottsdale, AZ, All Items, All Urban Consumers (December 2001=100) Index published by the U.S. Department of Labor, Bureau of Labor Statistics (Department), or the revised index that may be subsequently published by the Department. If the Department ceases to issue the foregoing CPI, then the monthly CPI, All Urban Consumers, All Cities, or any other measure employed in lieu thereof by the Department, or any successor agency issuing such indices or data, shall be used.

D. Under the CPI method, the amount of the adjustment will be determined by multiplying the previous Year's Net Rent by the percentage change in the CPI. The percent change will be computed by comparing the CPI figure that was published at least two (2) months prior to the date on which the next adjustment takes effect against the CPI figure published for the same half year for the preceding Year.

9.8 Market Adjustments to Net Rent. Notwithstanding the Net Rent increases referenced in Section 9.7, the annual Net Rent shall be adjusted (but never decreased) on each ten (10) year anniversary of the Rent Commencement Date of this Lease (Adjustment Date(s)) as hereinafter set forth in this Section. On each such Adjustment Date, the Net Rent shall be adjusted to the fair market base rental rate of the Premises, in relation to comparable (in quality, size, and value) Airport-related leases.

Tenant's determination of such fair market base rental rate for the Premises shall be delivered to Tenant no later than ninety (90) calendar days prior to the Adjustment Date. If Tenant disputes Landlord's determination of such fair market base rental rate, Tenant shall deliver written notice of such dispute, together with Tenant's determination of such fair market base rent rate, to Landlord within thirty (30) calendar days of Tenant's receipt of Landlord's determination. The Parties shall then attempt in good faith to agree upon such fair market base rental rate. If the Parties fail to agree within fifteen (15) business days, they shall, within seven (7) calendar days thereafter, mutually appoint an appraiser to determine the fair market base rental rate. Said appraiser shall have at least five (5) years of full-time commercial appraisal experience and be a member of the Appraisal Institute or comparable professional organization. If the Parties are unable to agree upon an appraiser within such seven (7) calendar days, they shall, within five (5) business days thereafter, apply to the president of the local Board of Realtors for the selection of an appraiser. The president of the Board of Realtors shall, within fifteen (15) business days,

select an appraiser with the above qualifications who has not acted in any capacity for either party within the prior two (2) years. Within seven (7) calendar days of the appointment (either by agreement or selection) of the appraiser, the Parties shall submit to the appraiser their respective determinations of the fair market base rental rate and any/all substantiated information. Within twenty (20) business days thereafter, the appraiser shall review each Party's submittal (and such other information as the appraiser deems necessary) and shall select one Party's submittal as representing the most reasonable approximation of such fair market base rental rate, and the appraiser's fees and expenses shall be paid by the Party whose submittal was not selected.

9.9 No Rent Credits. There are no rent credits available to Tenant under this Lease.

9.10 Obligation to Pay. The expiration or earlier termination of this Lease will not relieve Tenant of its obligation to pay Net Rent, Additional Payments, and all other amounts that accrued and became due during the Term of this Lease and during any period of time that Tenant had possession of the Premises or any part thereof.

9.11 No Release of Obligations. Except as expressly provided in Article 16 (Force Majeure), no event, occurrence, or situation, whether foreseen or unforeseen and however extraordinary, authorizes or entitles Tenant to (i) vacate, abandon, or surrender possession of the Premises, (ii) terminate this Lease, except as provided in Article 7.3, if applicable, (iii) be released from Tenant's obligation to pay Net Rent, Additional Payments, and all other amounts due and that becomes due under this Lease, or (iv) to be released from any other obligation under this Lease.

9.12 Right to Audit Books and Records. After giving Tenant at least ten (10) Days' prior Notice, Landlord may conduct an audit of Tenant's books and records related to this Lease or the Premises or both. Landlord may use its own staff to conduct the audit or may hire an independent certified public accountant. Tenant shall cooperate with Landlord's audit and shall make its books and records readily available to Landlord and its auditors.

9.13 Audit Process. If Landlord's audit of Tenant's books and records finds that additional amounts are due to Landlord, then Landlord shall give Tenant Notice of the findings and an invoice for the amounts due. Within ten (10) Days after receipt of the Notice, Tenant shall either (i) pay the amounts due or (ii) give Landlord Notice that Tenant disputes Landlord's audit findings and deliver to Landlord an audit conducted at Tenant's expense by a qualified independent certified public accountant approved in advance by Landlord. Tenant's failure to dispute Landlord's audit findings and deliver its own audit to Landlord within the ten- (10) Day period constitutes Tenant's conclusive acceptance of Landlord's audit findings and a waiver of Tenant's right to appeal or otherwise dispute the audit findings. If Landlord's audit finds a deficiency of two percent (2%) or greater of the amount due, then Tenant shall reimbursement Landlord for the cost for the audit, pay the deficient amount, and pay interest on the deficient amount at the rate of 18% per annum pursuant to Article 29.8 of this Lease.

9.14 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 10 - TAXES

10.1 Taxes. On or before the date due, Tenant shall pay to the appropriate collecting authority all leasehold taxes, sales taxes, personal property taxes, real property taxes, income taxes, transaction privilege taxes, business taxes, and all other federal, state, and local taxes assessed on Tenant, the Premises, Tenant use or occupancy of the Premises, and all Trade Fixtures and any other property used in connection with the Premises. If any Applicable Law results in the imposition of a tax on Landlord's interest in the Premises, then Tenant shall pay that tax when due.

10.2 GPLET. Pursuant to A.R.S. § 42-6206(A), notice is given of Tenant's potential tax liability under the Government Property Lease Excise Tax provisions of A.R.S. §§ 42-6201, *et seq.* Tenant's failure to pay the tax when due is a default under this Lease.

10.3 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 11 – UTILITIES

11.1 Utilities. Tenant shall pay for all utilities used in connection with the Premises, including water, sewer, gas, and electric services. On or before the date the utility is due, Tenant shall pay to each supplier all utility charges related to the Premises. Tenant shall start and end service with each supplier and Tenant shall be liable for all utility charges billed to Landlord. Tenant shall pay all costs to relocate, modify, and improve the utilities that exist in, on, under, and over the Premises on the Effective Date of this Lease.

11.2 Telecommunication Services. If Tenant commences telephone, cable, Internet, or other telecommunication services at the Premises, Tenant shall do so at its own expense and shall pay to each supplier all charges related to the services.

11.3 Interference. Tenant shall ensure that all utilities, cabling, wiring, hookups for telephones, cable and Internet services, and computers on the Premises do not cause any interference with the Airport's utilities infrastructure or communications, including Airport Operations, radio and radar operations at the Airport, and wireless users at the Airport. If Landlord detects any such interference, then Tenant shall cooperate with Landlord to immediately identify and eliminate the cause of the interference. If Landlord determines that a wireless access point or other electronic device is the cause of any interference, then Tenant shall immediately cease operating the wireless access point or electronic device and take immediate action to eliminate the interference.

11.4 Landlord Not Liable. Tenant agrees that Landlord is not liable for any blackout, brownout, cessation, interruption, or failure of any utility, whether located on or off the Premises. Tenant agrees that Landlord is not liable for any direct, indirect, incidental, consequential, punitive, or special damages (including lost profits, loss of use, loss of or damage to data, or economic loss) or for any other losses or damages that Tenant incurs as a result of any blackout, brownout, cessation, interruption, or failure of any utility, whether foreseeable or not, and even if Landlord is advised of the possibility that Tenant may incur such damages.

ARTICLE 12 – PERFORMANCE GUARANTEE

12.1 Performance Guarantee. On or before the Rent Commencement Date, Tenant shall deliver to Landlord a form of security approved in advance by Landlord that guarantees Tenant's timely payment of Net Rent, Additional Payments, and all other amounts due under this Lease (Performance Guarantee). Tenant shall continuously maintain the Performance Guarantee during the Term of this Lease. The Performance Guarantee shall be in an amount of \$320,166, which equals three (3) months Net Rent. The Performance Guarantee may be an **Irrevocable Letter of Credit (LOC)** in the form attached and marked **Exhibit C**, a **Cash Deposit** in the form attached and marked **Exhibit D**, or other form of security approved in advance by Landlord. The Performance Guarantee is Landlord's security for Tenant's timely performance under this Lease and the payment of all other claims Landlord may have against Tenant relating to this Lease. Landlord is not obligated to pay interest to Tenant on the Performance Guarantee.

12.2 Irrevocable Letter of Credit. If the Performance Guarantee is in the form of an LOC, then it shall be issued by a financial institution in the Phoenix metropolitan area and Landlord must be able to draw upon the LOC at any of the financial institution's counters in the Phoenix metropolitan area. If Tenant fails to provide Landlord with a written extension of the LOC, in a form acceptable to Landlord, at least sixty (60) Days before the end of the term of the LOC, then, without Notice to Tenant, Landlord may draw upon the full amount of the LOC and retain all proceeds as a cash Performance Guarantee.

12.3 Adjustment. Landlord may increase the amount of the Performance Guarantee by giving Tenant at least thirty (30) Days' prior Notice of the increase. The Performance Guarantee may be increased for any reason Landlord deems appropriate, including (i) Tenant's financial obligations under this Lease increase, (ii) Tenant failed to pay Net Rent, Additional Payments, or any other amount in full and when due, or (iii) Tenant's financial condition changes to the extent that Landlord is concerned about Tenant's ability to perform under this Lease. Tenant shall pay the amount of the increase to Landlord within thirty (30) Days after Tenant receives the Notice of increase from Landlord.

12.4 Duty to Restore under Performance Guarantee. Landlord may draw on the Performance Guarantee if Tenant defaults under or breaches any provision of this Lease. If Landlord draws on or makes a claim against the Performance Guarantee, then Tenant

shall replenish the Performance Guarantee to its previous amount within thirty (30) Days of Landlord's draw.

ARTICLE 13 - INDEMNIFICATION

Tenant (Indemnitor) must indemnify, defend, and hold harmless Landlord and its officers, officials (elected or appointed), agents, and employees (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including, but not limited to, court costs, attorney fees, expert fees, and costs of claim processing, investigation, and litigation) of any nature or kind whatsoever (Losses) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent, or willful acts, errors, or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or contractors (Indemnitor's Agents) arising out of or related to Tenant's occupancy and use of the Premises or the Airport. This defense and indemnity obligation include holding Indemnitee harmless for any Losses or other amounts arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Premises, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the use, occupancy, or condition of the Premises or the Airport. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Lease.

ARTICLE 14 - INSURANCE

14.1 Tenant Obligation to Insure. Tenant shall procure, and continuously maintain throughout the Term of this Lease, insurance against claims for injuries to persons or damages to property that arise out of or are caused by the acts or omissions of Tenant or its Agents relating to this Lease and/or the Premises. Tenant shall strictly comply with the Insurance Requirements attached and marked Exhibit E.

14.2 Risk of Loss. Landlord is not required to carry any insurance covering the Premises or any Improvement, Tenant Improvement, Trade Fixture, or any other property on the Premises. Tenant assumes the risk of all losses and damages related to the Premises and the contents thereof.

14.3 Failure to Maintain Insurance. If Tenant fails to provide a copy of the renewal insurance certificates required by the attached **Insurance Requirements** or Tenant fails to procure and maintain the required insurance coverages, then Landlord may, without prior Notice to Tenant, procure and maintain such insurance coverages.

Landlord shall give Tenant Notice of the amount of all deductibles and premiums paid and the name of each insurer and insured. Tenant shall reimburse Landlord for all deductibles, premiums, and other amounts paid by Landlord to procure and maintain the insurance coverages upon demand.

ARTICLE 15 - ENVIRONMENTAL CONDITIONS

15.1 Environmental Site Assessment. Prior to the Term Commencement Date, Tenant will conduct a Phase I and Phase II Environmental Site Assessment (ESA) of the Premises in accordance with the current standard of the American Society of Testing and Materials (ASTM) E1527-21 Standard Practice for Environmental Site Assessments, ASTM E1903-19 Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process, Landlord's Modified Scope of Services, and EPA All Appropriate Inquiries Rule. The ESAs shall specifically state the Landlord may rely upon the ESAs. Landlord will have the opportunity to review and comment on the Phase II ESA workplan and each Phase I and Phase II ESA draft documents. The ESA shall serve as the baseline for the environmental condition of the Premises prior to the Term Commencement Date. Tenant shall incur the cost for the Phase I and Phase II. Upon receipt of the Phase II report of the Premises, Landlord and Tenant shall agree on how to remediate any contamination to the Premises. Landlord shall incur the cost for any pre-existing conditions that shall require remediation. If Landlord and Tenant are unable to agree on how to remediate the Premises within sixty (60) days of receipt of the report, then either Landlord or Tenant, at their discretion, may terminate this Lease. Tenant shall not perform any construction on the Premises until it and Landlord agree on how to remediate the Premises.

15.2 Lead and Asbestos Testing. All materials removed in connection with the demolition of existing buildings and pavement during the Construction Period shall be tested for Lead and Asbestos. Tenants shall incur the cost for the testing and possible abatement, disposal, and oversight reporting.

15.3 Archaeology. The Premises is within a known archeologically significant area. The Tenant must adhere to all federal, state, and local laws and regulations regarding the identification and proper treatment of historic and cultural districts, properties and objects and other archeological resources. The Tenant will coordinate with the City Archeology Office before all development activities and implement the City Archaeologists Office recommendations, at the Tenant's expense.

15.4 Subsequent ESAs and Remediation Completion Reports. Within ninety (90) Days before the expiration of the Term of this Lease, within sixty (60) Days after the termination of this Lease, or within thirty (30) Days after a release of any Regulated Substance (as that term is defined in the **Compliance with Environmental Laws** attached and marked **Exhibit G**), Tenant shall deliver to Landlord, for its review and approval, subsequent ESA reports prepared by an independent registered professional licensed by the state of Arizona and in compliance with current ASTM standards (E1527-21 and E1903-19) stating that (i) the Premises are free of all Regulated Substances not

listed in the ESA conducted by Tenant per Section 15.1 and (ii) the concentration of any Regulated Substance listed in the ESA conducted by Tenant per Section 15.1 has not increased. Landlord encourages tenant to consult with Landlord when developing tenant's workplan for the Subsequent ESAs. If Landlord determines an ESA report is inaccurate, incomplete, or misleading, then Tenant shall have the entire report, or the deficient parts thereof, corrected at Tenant's expense and without delay. If the Subsequent ESA report shows the presence of any Regulated Substance that was not in the Section 15.1 ESA or the concentration of any Regulated Substances listed in the Section 15.1 ESA has increased, then Tenant, at its expense, shall remediate the Regulated Substance(s), provide a Remediation Completion Report to Landlord, and leave the Premises in the same or better condition than existed on the Effective Date of this Lease.

15.5 Failure to Correct Conditions. If Tenant fails to deliver to Landlord the Subsequent ESA's required by this Article, then Landlord may cause a similar report to be prepared and Tenant shall pay to Landlord an amount equal to 150% of the cost of the Subsequent ESAs. If a subsequent ESA shows the presence of or elevation in concentration of any Regulated Substance that was not in the ESAs conducted by Tenant per Section 15.1, then Tenant, at its expense, shall remediate the Regulated Substances, provide a Remediation Completion Report to Landlord, and leave the Premises in the same or better condition than existed on the Effective Date of this Lease. After Tenant's remediation work is finished, Tenant shall pay to Landlord an amount equal to 200% of annual Net Rent and Additional Payments then in effect to compensate Landlord for damages caused by Tenant's contamination of the Premises. Tenant agrees that Landlord's actual damages are not reasonably calculable and that the foregoing damages represent a reasonable estimate of Landlord's damages and that the agreed-upon amount is not a penalty. Landlord's rights under this Article are in addition to all other rights and remedies available under this Lease and Applicable Law. After this Lease expires or is terminated, Tenant may only enter the Premises with Landlord's prior written approval and only to the extent necessary to remediate any Regulated Substance and for no other purpose whatsoever without Landlord's prior written approval.

15.6 Tenant Entry to Correct Conditions. After the expiration or earlier termination of this Lease, Tenant shall correct any dangerous or hazardous condition that arises on the Premises during the Term of this Lease or while Tenant has possession of the Premises. Tenant may only enter the Premises with Landlord's prior written approval and only to the extent necessary to correct the dangerous or hazardous condition(s) and for no other purpose whatsoever without Landlord's prior written approval.

15.7 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 16 - FORCE MAJEURE

16.1 Definition. *Force Majeure* means an unforeseen fire, hurricane, tornado, or flood in Arizona or a declared state or national emergency that directly prevents a Party from performing under this Lease. Force Majeure does not include financial matters and

does not excuse, release, or suspend Tenant's obligation to pay Net Rent, Additional Payments, and all other amounts due and that become due under this Lease.

16.2 Effect of Force Majeure. If Tenant is unable to perform under this Lease because of a Force Majeure, then Tenant's performance shall be extended for a period of time equal to the duration of the Force Majeure, provided Tenant first provides Notice to Landlord (i) that the Force Majeure is the direct and sole cause of Tenant's inability to perform and written evidence supporting that assertion and (ii) the date the Force Majeure first prevented Tenant from performing under this Lease. Tenant may not assert Force Majeure as an excuse not to perform under this Lease more than ten (10) Days after the Force Majeure first occurred. If a Force Majeure continues for sixty (60) consecutive Days, then this Lease shall terminate on the 61st Day, unless Landlord, in its sole discretion, extends the period of time to perform. Landlord may extend the time from time to time and at for whatever period of time Landlord deems appropriate.

ARTICLE 17 - ASSIGNMENTS, SUBLEASES, OR MORTGAGES

17.1 Landlord Approval Required. Tenant shall not assign, convey, mortgage, pledge, encumber, or in any manner transfer this Lease or any interest in this Lease without Landlord's prior written approval and any attempt by Tenant to do so shall be void.

17.2 Assignment. The following are deemed assignments of this Lease that require Landlord's prior written approval:

A. If Tenant is a corporation, the sale or transfer of more than fifty percent (50%) of Tenant's voting shares of stock that exist on the Effective Date of this Lease, whether the sale or transfer is voluntary or involuntary or occurs at one time or over a period of time.

B. If Tenant is a business entity and merges into or is consolidated with another business entity and Tenant is not the surviving business entity.

C. Tenant sells or transfers all or substantially all its assets to another business entity, whether the sale or transfer is voluntary or involuntary or occurs at one time or over a period of time.

D. If Tenant is a general partnership, joint venture, or limited partnership, a change in a majority of its partners as they existed on the Effective Date of this Lease.

E. If Tenant is a member-managed limited liability company, a change in a majority of its members as they existed on the Effective Date of this Lease. If Tenant is a manager-managed limited liability company, a change in a majority of its managers as they existed on the Effective Date of this Lease.

The foregoing list of assignments is not exhaustive. A name change is not an assignment.

17.3 Sublease. Tenant shall not sublease the Premises, or any part thereof, without Landlord's prior written approval. Landlord-approved subleases are subordinate to this Lease and shall terminate on the date this Lease expires or is terminated. Subleases shall not be recorded. If there is any conflict between the provisions of a Landlord-approved sublease and this Lease, then the provisions of this Lease shall control.

17.4 Continuing Liability. An assignment of this Lease or a sublease of the Premises, or any part thereof, shall not relieve Tenant from its obligations under this Lease, including the payment of Net Rent, Additional Payments, and all other amounts due and that become due under this Lease and to perform under this Lease through the end of the Term and while Tenant, or its assignee or sublessee, has possession of the Premises. Tenant agrees that Landlord and an assignee of this Lease may amend, modify, and supplement this Lease without Notice to Tenant and Tenant agrees to be bound by the amendment, modification, or supplement.

17.5 Leasehold Mortgage. If Tenant borrows money in order to construct or install its Tenant Improvements or to refinance any debts and the lender requires a leasehold mortgage or similar security as collateral for the loan, then Tenant may enter into one or more leasehold mortgages provided the following conditions are satisfied:

A. A leasehold mortgage shall not become a lien or encumbrance on the Premises or the Airport and shall not be filed or recorded against the Premises, the Airport, or Landlord's interest in the Premises or Airport or any part thereof. A leasehold mortgage may only affect and is specifically limited to Tenant's leasehold interest in the Premises, Tenant Improvements, trade fixtures, and other personal property.

B. Tenant promptly delivers to Landlord a complete and accurate copy of the prior leasehold mortgage and a copy of any assignment and satisfaction thereof.

17.6 The Term "First Leasehold Mortgage" shall mean only the holder of the outstanding Leasehold Mortgage that is the first to be recorded in the office of the Maricopa County Recorder. The term "Second Leasehold Mortgage" shall mean only the holder of the outstanding Leasehold Mortgage that is the second to be recorded in the office of the Maricopa County Recorder.

17.7 Landlord's Notices to Lender or Beneficiary. Landlord shall give to the Lender or the Beneficiary, whose name and address Tenant has previously provided to Landlord, a copy of each notice of default, each notice of termination, and each summons and complaint related to this Lease and served on Tenant at the same time as Landlord serves the notice or summons on Tenant.

17.8 Foreclosure of a Leasehold Mortgage. A leasehold mortgage is not an assignment of this Lease or of Tenant's interest in this Lease, and does not make Landlord a principal or surety on any loan or other financial obligation secured by a

leasehold mortgage. If there is a foreclosure of a leasehold mortgage, then the purchaser at the foreclosure sale or the transferee under any transfer in lieu of the foreclosure of a leasehold mortgage shall be deemed an assignee of this Lease and shall be deemed to have assumed Tenant's obligations to perform under this Lease from and after the date of the purchase and or transfer. The foreclosure will not affect or encumber Landlord's fee title or other interests in the Premises or this Lease, including the right to continue to receive Net Rent and other amounts that become due throughout the Term of this Lease. The only right acquired by a purchaser at a foreclosure sale or a transferee in lieu of foreclosure is the right to be an assignee of Tenant under this Lease.

17.9 New Lease with Leasehold Mortgagee. If this Lease is terminated prior to its expiration date, then Landlord shall give a copy of the notice of the termination to each leasehold mortgagee and, in Landlord's sole discretion, may enter into a new lease for the Premises with a leasehold mortgagee. The term of the new lease will be for the remainder of the Term of this Lease and shall contain the same or similar terms and conditions as contained in this Lease, provided (A) the leasehold mortgagee gives Landlord a written request for a new lease within thirty (30) days after the date of Landlord's notice of termination (if Landlord receives a request from more than one leasehold mortgagee, then Landlord may select one of the requesting leasehold mortgages to enter into a new lease with), (B) the request is accompanied by payment to Landlord of all amounts that would have been due under this Lease from the date of termination through the effective date of the new lease, and (C) at the time of the execution of the new lease, the leasehold mortgagee pays to Landlord all attorney fees, court costs, and other expenses incurred by Landlord in connection with the termination of this Lease and the preparation and execution of a new lease.

17.10 Assignment of Rents to Landlord. Upon the occurrence of any default and for so long as the default remains uncured, if a cure period is allowed, Tenant hereby assigns to Landlord, as collateral and security for its performance under this Lease, the right to collect all rent and other amounts the subtenants owe to Tenant and apply the amounts collected to the Net Rent, Additional Payments, and other charges due under this Lease. The assignment of rents shall not impose upon Landlord any duty or obligation to perform any obligation of Tenant as sublandlord under any sublease. The collection of rents by Landlord is not and may not be construed as a waiver of any provision of this Lease or Landlord's acceptance of any subtenant as a new tenant.

17.11 Estoppel Certificate. Tenant may request from Landlord and Landlord may request from Tenant an estoppel certificate stating:

- A. That this Lease is in full force and effect.
- B. The amount and current status of the Net Rent, Additional Payments, and other charges due.
- C. Whether this Lease has been modified or amended and, if so, describing with specificity the modifications or amendments.

D. Whether, to the Party's current knowledge, there is a default or breach of this Lease or any matter exists that, with the passage of time, will result in a default or breach, and describing with specificity the nature of the default or breach.

17.12 Memorandum of Lease. If, as a condition to lending money to Tenant, a lender requires a memorandum of lease to be recorded, then Tenant shall use the Memorandum of Lease form attached and marked Exhibit H. The memorandum of lease may only be recorded in the Office of the Maricopa County Recorder. This Lease shall not be recorded as a stand-alone document or as an exhibit to a memorandum of lease.

ARTICLE 18 - SIGNAGE

Tenant shall not install, post, or erect any sign, banner, flag, poster, or similar item (Signage) on or about the Premises without Landlord's prior written approval. Tenant's request to install Signage shall be submitted to Landlord in writing. Tenant shall immediately remove all unapproved Signage upon demand by Landlord. If the Signage is not removed as demanded, then Landlord may enter the Premises, with or without prior Notice to Tenant, and remove the Signage at Tenant's expense. Tenant shall maintain all Landlord-approved Signage in good condition and repair at all times.

ARTICLE 19 - BREACH AND REMEDIES FOR BREACH

19.1 Events of Breach. The occurrence of any of the following events shall be deemed a material breach of this Lease by Tenant:

A. Tenant fails to pay Net Rent, Additional Payments, or any other amount when due and the failure continues for ten (10) Days after Notice (as that term is defined in Article 27) from Landlord.

B. Except for the events of breach listed below, Tenant fails to perform any non-monetary obligation under this Lease and the failure continues for ten (10) Days after Notice from Landlord.

C. Tenant fails to procure and maintain the insurance coverages required under this Lease and the failure continues for one (1) Day after Notice from Landlord.

D. If Tenant vacates or ceases to use and occupy the Premises for ten (10) consecutive Days or for a total of thirty (30) Days in any Lease Year without first providing Notice of such to Landlord. Tenant has no right to cure this breach and Notice from Landlord is not required.

E. Tenant abandons or surrenders possession of the Premises. Tenant's failure to use and occupy the Premises for thirty (30) consecutive Days is

deemed an abandonment of the Premises. Tenant has no right to cure this breach and Notice from Landlord is not required.

F. Tenant's use or occupancy of the Premises creates a condition that Landlord determines is a danger to the health, safety, or welfare of the Airport or the public and the condition remains uncorrected within one (1) Day after Notice from Landlord.

G. Tenant or its Agents cause any lien or encumbrance to be filed or recorded against the Premises or the Airport, or any part thereof, that is not completely discharged and released within ten (10) Days after the date the lien or encumbrance was filed or recorded. Tenant has no right to cure this breach and Notice from Landlord is not required.

H. Tenant files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; takes the benefit of any law applicable to bankrupt or insolvent debtors; files a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any Applicable Law; seeks or acquiesces to the appointment of a trustee, receiver, or liquidator of all or a substantial part of Tenant's assets; or makes any general assignment for the benefit of creditors. Tenant has no right to cure this breach and Notice from Landlord is not required.

I. A petition or action is filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Applicable Law and the petition or action remains undismissed or unstayed for ninety (90) Days from the date the petition or action was filed. Notice from Landlord is not required.

J. A trustee, receiver, or liquidator of Tenant is appointed and the appointment remains unvacated and unstayed for ninety (90) Days from the date of appointment. Notice from Landlord is not required.

K. Tenant breaches any other lease, license, permit, contract, or other agreement with Landlord. Tenant has no right to cure this breach and Notice from Landlord is not required.

L. Tenant's use or occupancy of the Premises or the Airport violates any Applicable Law. Unless expressly provided otherwise in this Lease, Tenant has no right to cure this breach and Notice from Landlord is not required.

19.2. Remedies. Upon the occurrence of any breach by Tenant, Landlord may elect to do any or all the following:

A. Terminate this Lease and Tenant's right to possession of the Premises.

B. Without terminating this Lease, file a civil action or actions to, among other things, enforce this Lease; recover Net Rent, Additional Payments, and all other amounts due and that become due under this Lease; recover all attorney fees, court costs, and other costs incurred; and recover possession of the Premises and all Tenant Improvements thereon without terminating this Lease.

C. Use self-help to recover possession of the Premises and all Tenant Improvements thereon without terminating this Lease.

D. Terminate this Lease and file a civil action or actions to recover Net Rent, Additional Payments, and all other amounts due through the date of termination and recover all attorney fees, court costs, and other costs incurred by Landlord.

E. Without terminating this Lease, use self-help to enter the Premises and seize Tenant's Trade Fixtures and other nonexempt personal property thereon in order to secure Landlord's possessory lien and statutory lien and then foreclose the liens pursuant to Arizona law.

F. Exercise any and all other remedies available under Applicable Law.

The foregoing list of remedies is not exhaustive and Landlord's remedies are cumulative. Landlord's decision to exercise one or more remedies is not a waiver of its right to exercise any other remedy. Landlord's decision to exercise a remedy does not terminate this Lease. This Lease is not terminated unless Landlord signs a writing expressly terminating this Lease.

ARTICLE 20 - NO WAIVER

Landlord's failure to insist on Tenant's strict performance of any provision of this Lease or to exercise any right or remedy upon Tenant's default or breach of this Lease is not, and may not be construed as, a waiver of the default or breach or the enforceability of the provision. Landlord's acceptance of full or partial Net Rent, Additional Payments, or any other amount while Tenant is in default or breach of this Lease is not, and may not be construed as, a waiver of the default or breach. Landlord's rights and remedies under this Lease and Applicable Law can only be waived, altered, or modified by a written instrument signed by Landlord expressly for that purpose. Landlord's waiver of a default or breach is not, and may not be construed as, a waiver of Tenant's subsequent default or breach of that provision or Tenant's default or breach of any other provision of this Lease.

ARTICLE 21 - TENANT IMPROVEMENTS

21.1 Tenant Improvements. Tenant shall design, construct, and install the Tenant Improvement, which are estimated to cost \$, on the Premises,

in accordance with, the RCS Response submitted by Tenant, and in compliance with all Applicable Law and the terms and provisions set forth in this Lease, in Landlord's Tenant Improvement Process, and the Aviation Department's Tenant Improvement Handbook. Tenant shall not construct or install any other Tenant Improvement without the Landlord's prior written approval. In addition, all subsequent modifications to Tenant Improvements are subject to the Tenant Improvement Process, the Tenant Improvement Handbook, and all applicable regulatory requirements.

21.2 Sustainability. Tenant shall incorporate into the design and construction of its Improvements the sustainability [LEED Level or sustainability response from Successful Respondents RCS] it proposed in its RCS Response, attached as Exhibit I.

21.2 Building Laws. Tenant shall comply with all building restrictions and regulations, zoning laws, ordinances, resolutions, and regulations of the City of Phoenix and of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority now or hereafter having jurisdiction over Tenant or the Premises. Tenant acknowledges that certain rules and regulations of the FAA and the U.S. Environmental Protection Agency apply to Tenant and the Premises.

21.3 Construction. Construction of the Tenant Improvements cannot begin until FAA Part 77 Form 7460-I has been submitted by Landlord and approved by the FAA. Any construction by Tenant outside the Premises but within the boundary of the Airport, as delineated upon the then current Airport Layout Plan as approved by the FAA, shall be subject to approval by Landlord and shall be in accordance with any additional requirements the Director may prescribe.

21.4 Approved Tenant Improvements. If Landlord approves a Tenant Improvement, then Tenant shall comply with the Tenant Improvement Process and the Tenant Improvement Handbook, as amended from time to time, and shall comply with each the following:

A. Tenant shall furnish conceptual information, including a written description of the Tenant Improvement, conceptual drawings, site plans, schedules, color or material palettes, specifications, and any other information requested by Landlord to the address below:

City of Phoenix Aviation Department
Corporate Office Building
Business and Properties Division
2458 East Buckeye Road
Phoenix, Arizona 85034
Attn: Real Estate

B. After Landlord determines that the proposed Tenant Improvement is acceptable and meets all Lease requirements, Landlord shall provide Tenant with a Tenant Improvement conceptual approval letter to sign and return, a Tenant Improvement

submittal sheet to fill out and return, and an online link to the Tenant Improvement Handbook. The conceptual approval letter will enclose an insurance agreement that must be signed by Tenant's general contractor. Tenant shall submit the Construction Documents to the Aviation Tenant Improvement Coordinator. Review by Landlord does not constitute approval to commence construction or installation of the proposed Tenant Improvement.

C. Tenant shall submit complete designs and plans to the Aviation Tenant Improvement Coordinator at:

City of Phoenix Aviation Department
Design and Construction Services Division
500 South 24th Street
Phoenix, Arizona 85034-4405
Attn: Tenant Improvement Coordinator

D. Landlord shall review the Construction Documents, including architectural and aesthetic matters. Landlord may reject any Construction Document and may require Tenant to resubmit the Construction Documents until they meet Landlord's approval. Only after Landlord gives its written approval may Tenant proceed to obtain required regulatory approvals, such as building permits. Landlord's approval does not constitute a representation or warranty of any kind that the Construction Documents comply with applicable federal, state, and local laws, rules, regulations, and ordinances, which Tenant must comply with at all times.

E. Construction Documents shall comply with all Aviation Department Rules and Regulations and applicable City of Phoenix ordinances and building codes. Construction Documents must be prepared by an architect or engineer registered and licensed to practice in the state of Arizona. All construction work shall be performed by contractors who are licensed and bonded by the state of Arizona.

F. Tenant shall make no material change to the Construction Documents after they have been approved by Landlord. Tenant's request for Landlord's approval of a change to previously approved Construction Documents shall be made in accordance with the Tenant Improvement Process.

G. Within thirty (30) days after construction or installation of the Tenant Improvements is deemed substantially complete pursuant to Article 4.2, Tenant shall furnish the Aviation Tenant Improvement Coordinator with detailed drawings of the work completed. One (1) complete set of the drawings shall be on computer disc in CAD and one (1) complete set shall be on computer disc using the GIS specifications.

H. Tenant shall construct and install the Tenant Improvements in a professional, workmanlike manner that does not cause any damage to the Airport or any other property. If any damage does occur, then Tenant shall repair the damage at its expense and to Landlord's satisfaction.

I. Tenant: shall provide Payment and Performance Bonds as follows:

(i) Tenant shall cause its contractors to provide a payment bond in an amount equal to the construction costs of the Tenant Improvements (Payment Bond) to ensure that materials and labor are paid for. The bond may be recorded in the Office of the Maricopa County Recorder to the extent required by Arizona law. Upon completion of the project, Tenant shall record a release of the Payment Bond and provide Landlord with a copy.

(ii) Tenant shall cause its contractors to provide a performance bond in an amount equal to the total cost of the Tenant Improvements (Performance Bond) to ensure that the work is completed according to the Construction Documents approved by Landlord.

(iii) Tenant shall provide the Payment Bond to Landlord prior to the start of any work. The Payment Bond shall name Tenant and Landlord as "obligees" and must be consistent with Title 34, Arizona Revised Statutes.

(iv) The surety company providing the Payment Bond shall have an A.M. Best Rating of B+ VI or better for the past four (4) calendar quarters.

(v) All contracts for the construction or installation of the Tenant Improvements shall include provisions of insurance and suretyship satisfactory to Landlord for the protection of Landlord; Tenant's laborers, suppliers, and subcontractors; and the public.

(vi) Duty to Restore under Performance Bond. In the event of a Default by Tenant (after the expiration of any applicable notice and cure periods) as specified in Article 19 or any other provision in this Lease, and Landlord has terminated this Lease upon written notice by Landlord to Tenant as provided in Article 8, Landlord may draw on the Performance Bond. The Landlord, in its sole discretion, may use such draws to pay costs incurred by the Landlord to complete the construction of the planned air cargo facility and Improvements as contemplated in the RCS and this Lease, or restore the Premises to same condition as of the Effective Date.

J. If applicable, Tenant shall obtain prior FAA approval under 14 C.F.R. Part 77, Objects Affecting Navigable Air Space. Tenant shall also coordinate with Landlord regarding FAA approval under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq.

K. Tenant shall provide Landlord with copies of all licenses, permits, approvals, and all other actions of any federal, state, local, and other governmental authority that authorizes the construction, installation, maintenance, and operation of the Tenant Improvements. Tenant shall also obtain approval of the final plans and specifications by all federal, state, local, and other governmental authorities having jurisdiction in the

matter. Tenant shall provide conformed copies of the executed approvals to Landlord along with a certificate of construction costs.

L. If Landlord determines that a modification of a Tenant Improvement is necessary for the safety of air navigation or the public, then Tenant shall modify the Tenant Improvement to Landlord's satisfaction. If the FAA requires the modification or relocation of any air navigation facility as the result of Tenant's activities on the Premises, then Tenant shall pay the cost to modify or relocate the air navigation facility.

M. Tenant shall construct and install any Tenant Improvement that is necessary to use and occupy the Premises.

21.5 Duty to Maintain. Tenant shall repair and maintain all Tenant Improvements in good order and repair throughout the Term of this Lease, including any option and holdover period. If any Tenant Improvement is damaged or worn out beyond reasonable repair, then Tenant shall immediately replace the Tenant Improvement with one of equal or better appearance, performance, and quality. All Tenant Improvements installed or constructed on the Premises shall be of high quality, safe, and fire-resistant.

21.6 Title to Tenant Improvements. Title to all Tenant Improvements shall remain in Tenant (or its permitted successors and assigns) until the expiration or earlier termination of this Lease, at which time all of Tenant's rights, title, and interest in and to the Tenant Improvements shall automatically be transferred to Landlord at no cost and free and clear of all claims, liens, encumbrances, and security interests. However, Landlord may choose not to accept title to any or all Tenant Improvements, in which case Tenant shall, within ten (10) Days of Landlord's Notice of refusal, remove the Tenant Improvement(s) and Tenant shall repair all damage caused by the removal at Tenant's expense and to Landlord's satisfaction.

21.7 No Right to Remove. Tenant shall not remove, damage, or tamper with any Tenant Improvement, unless Landlord gives Tenant Notice to remove any or all Tenant Improvements, in which case Tenant shall, within ten (10) Days of Landlord's Notice, remove the Tenant Improvement(s) and Tenant shall repair all damage caused by the removal at Tenant's expense and to Landlord's satisfaction. If Tenant fails to remove the Tenant Improvement(s) as directed by Landlord, then Landlord may enter the Premises and remove the Tenant Improvement(s) and Tenant shall reimburse Landlord for all costs incurred, including overhead and administrative costs upon demand. Tenant shall execute and deliver to Landlord a bill of sale and any other instrument necessary to evidence the transfer of title to the Tenant Improvements to Landlord.

21.8 Failure to Repair. If Tenant fails to repair any damage caused by the removal of any Tenant Improvement to Landlord's satisfaction, then Landlord may enter the Premises and make the repairs and Tenant shall reimburse Landlord for all costs incurred, including overhead and administrative costs upon demand.

21.9 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 22 - TRADE FIXTURES

22.1 Trade Fixtures. Tenant may not locate any Trade Fixture on the Premises without Landlord's prior written approval. Landlord's approval may be subject to any term or condition that Landlord deems appropriate. Title to all Trade Fixtures shall remain in Tenant, unless title is transferred to Landlord as provided in this Article.

22.2 Duty to Maintain. Tenant shall repair and maintain all Trade Fixtures in good order and repair throughout the Term, including any option and holdover period. If any Trade Fixture is damaged or worn out beyond reasonable repair, then Tenant shall immediately replace the item with one of equal or better appearance, performance, and quality. All Trade Fixtures located on the Premises shall be of high quality, safe, and fire-resistant. Tenant shall not remove any Trade Fixture from the Premises without Landlord's prior written approval. Tenant may replace a damaged or worn out Trade Fixture with a Trade Fixture of equal or greater quality without Landlord's prior approval.

22.3 Removing of Trade Fixtures. Provided Tenant is not in default or breach of this Lease, not more than ten (10) Days before the expiration date of this Lease or within five (5) Days after the termination of this Lease, Tenant shall remove its Trade Fixtures from the Premises in a manner and at times that do not interrupt or interfere with the Airport Operations. If any Trade Fixture cannot be removed without damaging the Premises, then it shall not be removed, unless Landlord gives its approval to remove the item, in which case Tenant shall remove the Trade Fixture at its expense and shall repair any damage caused by the removal to Landlord's satisfaction.

22.4 Failure to Remove Trade Fixtures. Any Trade Fixture not removed by Tenant before the expiration date of this Lease or within five (5) Days after the termination of this Lease shall be deemed abandoned by Tenant and title thereto shall automatically be transferred to Landlord at no cost and free and clear of all claims, liens, encumbrances, and security interests. However, Landlord may refuse to accept title to any or all Trade Fixtures, in which case Tenant shall, within ten (10) Days of Notice of Landlord's refusal, remove the Trade Fixtures and Tenant shall repair all damage caused by the removal at Tenant's expense and to Landlord's satisfaction. If Tenant fails to remove the Trade Fixture(s) as directed by Landlord, then Landlord may enter the Premises and remove the Trade Fixture(s) and Tenant shall reimburse Landlord for all costs incurred, including overhead and administrative costs, upon demand. Tenant shall execute and deliver to Landlord a bill of sale and any other instrument necessary to evidence the transfer of title to the Trade Fixtures to Landlord.

22.5 Failure to Repair. If Tenant fails to repair any damage caused by the removal of any Trade Fixture to Landlord's satisfaction, then Landlord may enter the Premises and make the repairs and Tenant shall reimburse Landlord for all costs incurred, including overhead and administrative costs, upon demand.

22.6 Restore Condition. Prior to the expiration date of this Lease or within five (5) Days after the termination of this Lease, Tenant shall restore the Premises to the state of repair that existed on the Effective Date, normal wear and tear excepted.

22.7 Survival. This Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 23 - DAMAGE OR DESTRUCTION TO PREMISES

23.1 Damage or Destruction. If Landlord determines that less than fifty percent (50%) of the Premises has been damaged or destroyed by any cause, then Tenant shall continue to perform under this Lease and Tenant, at its expense and whether or not insurance proceeds are sufficient for the purpose, shall cause the Premises to be reconstructed, repaired, or replaced with due diligence and as nearly as possible to the value, condition, and character that existed immediately prior to the damage or destruction. Tenant may make commercially reasonable alterations and changes, subject to Landlord's prior approval. Tenant shall reimbursement Landlord for all costs incurred in reviewing and approving Tenant's Work (as that word is defined below). Tenant shall comply with the Tenant Improvement Process and the Tenant Improvement Handbook in making the repairs. The repair, alteration, restoration, replacement, and rebuilding work, including temporary repairs for the protection of the Premises and other property pending completion of the repairs, is referred to in this Article as the "Work". Tenant shall immediately secure the Premises and begin all Work as soon as possible.

23.2 Payment of Insurance Proceeds. All insurance proceeds related to the damage or destruction of the Premises shall be paid to Landlord and held in an account. All insurance proceeds shall be applied by Landlord to pay for the cost of the Work to the extent the insurance proceeds are sufficient to do so. Insurance proceeds shall be paid out of the account as the Work progresses. Landlord shall make the payments only upon receipt of written request by Tenant, which shall include all the following:

A. A certificate, dated not more than fifteen (15) Days prior to the request, signed by Tenant and an architect in charge of the Work setting forth that:

(i) The amount requested either has been paid by Tenant or is due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work. The certificate shall contain a brief description of the services and materials and the amounts paid or that are due. The certificate shall state that no part of the amount requested is part of any previous or pending request or has been paid out of any insurance proceeds received by Tenant, and that the amount requested does not exceed the value of the services and materials described in the certificate. If amounts are sought by way of reimbursement, then Tenant's request shall be accompanied by a lien release.

(ii) Except for the amount stated in the certificate to be due and after conducting a reasonable inquiry, there is no outstanding indebtedness known to the persons signing the certificate that might become the basis of a vendor, mechanic, or materialman's lien or similar lien upon the Work, the Premises, or Tenant's leasehold interest.

B. After receiving and approving the certificate, Landlord, out of the insurance proceeds, shall pay to Tenant, or the persons named in the certificate, the respective amounts stated therein to have been paid by Tenant or to be due to Tenant, as the case may be.

C. Upon receipt by Landlord of a lien release from every contractor and subcontractor working on the project and such other evidence satisfactory to Landlord of the character required by this Article that the Work is complete and paid for in full and that there are no liens, and if Tenant is not then in default or breach of this Lease, then Landlord shall pay to Tenant any remaining balance of the insurance proceeds, if any.

D. If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of the Work, then Tenant shall pay the amount of any deficiency. Landlord is not obligated to make any payment, reimbursement, or contribution toward the cost of the Work.

23.3 Failure to Commence Repairs. If the Work has not commenced within ninety (90) Days after the date of the damage or destruction or if the Work, after it commenced, does not proceed expeditiously, then Landlord may give Tenant a ten- (10) Day Notice to complete the Work. If Tenant fails to complete the Work within the ten- (10) Day period, then Landlord may terminate this Lease. If this Lease is terminated, the insurance proceeds shall be paid to Landlord and all policies of insurance and insurance proceeds receivable shall belong to and be retained by Landlord without any claim thereon by Tenant.

23.4 Lease Obligations Continue. Tenant shall not receive any abatement, allowance, reduction, or suspension of Net Rent, Additional Payments, or any other amount that is due or becomes due under this Lease because the Premises, or any portion thereof, is untenable because the Premises have been partially or totally destroyed. Any damage or destruction to the Premises shall not release Tenant from its obligation to perform under this Lease.

23.5 Distribution of Insurance Proceeds upon Lease Termination. If Landlord determines that fifty percent (50%) or more of the Premises are damaged or destroyed, then Landlord shall determine whether Tenant shall reconstruct, repair, or replace the Premises. If, within thirty (30) Days of the damage or destruction, Landlord determines that the Premises will not be reconstructed, repaired, or replaced, then this Lease shall terminate and the insurance proceeds shall be divided as follows:

A. Landlord Improvements: All proceeds shall be paid to Landlord.

B. Tenant Improvements: Proceeds shall be divided as follows:

(i) Tenant shall receive the percentage equal to the number of months remaining in the Term of this Lease after the date of the damage or destruction, as the numerator, and the number of months in the Term, as the denominator.

(ii) Landlord shall receive the percentage equal to the number of months from beginning of Term of this Lease to the date of the damage or destruction, as the numerator, and the number of months in the Term, as the denominator.

ARTICLE 24 - CONDEMNATION

24.1 Total. If the Premises are taken in a condemnation proceeding, by any right of eminent domain, or by agreement in lieu of such proceedings, then this Lease shall terminate on the date possession of the Premises is transferred to the condemning authority, and Net Rent and Additional Payments owed by Tenant shall be apportioned and paid to that date.

24.2 Substantial. If a substantial portion of the Premises is taken in a condemnation proceeding, by any right of eminent domain, or by agreement in lieu of such proceeding, and Landlord determines that Tenant cannot use or convert the remaining portion of the Premises for use in an economically feasible manner, then this Lease shall terminate on the date possession of the Premises is transferred to the condemning authority, and Net Rent and Additional Payments owed by Tenant shall be apportioned and paid to that date.

24.3 Proceeds. If the condemnation award (Condemnation Proceeds) does not specify the amount to be paid to each Party, then:

A. Landlord shall be entitled to receive (i) the portion of the Condemnation Proceeds, with interest thereon, that represents compensation for the value of the land, or the portion taken, considered as improved vacant land unencumbered by this Lease, (ii) the portion of the Condemnation Proceeds, with interest thereon, if separately stated in the award or the decree, that represents consequential damages, if any, to the portion of the land not so taken, considered as improved vacant land unencumbered by this Lease, and (iii) an amount equal to the estimated cost of demolition and removal of the untaken portion of the Tenant Improvements, unless such costs are included in the consequential damages above mentioned.

B. The remaining balance of the Condemnation Proceeds shall be divided by the number of Years in the Term of this Lease, with Tenant receiving an amount equal to the quotient times the number of Years remaining in the Term and Landlord receiving the balance.

24.4 Partial Taking-Lease Continues. If there is a taking of less a substantial portion of the Premises and, if the taking is not of the character described in this Article, then this Lease shall not terminate and:

A. Landlord shall be entitled to receive (i) the portion of the Condemnation Proceeds, with the interest thereon, that represents compensation for the value of the land, or the portion taken, considered as improved vacant land unencumbered by this Lease and (ii) the portion of the Condemnation Proceeds, with the interest thereon, if separately stated in the award or the decree, that represents consequential damages, if any, to the portion of the land not so taken, considered as improved vacant land unencumbered by this Lease.

B. The Condemnation Proceeds shall be deposited with Landlord for disbursement to Landlord and Tenant pursuant to the provisions of this Lease.

C. If Landlord determines that Tenant cannot use or convert the remaining portion of the Premises for use in an economically feasible manner, then Tenant, at its expense and whether or not the Condemnation Proceeds payable after disbursement to Landlord are sufficient for the purpose, shall proceed with reasonable diligence to repair and restore the remaining portion of the Premises to substantially its former condition. The repairs or restoration, and the protection of other property pending the completion of any thereof, are referred to in this Article as the "Work".

D. After the Condemnation Proceeds are deposited with Landlord, Landlord shall first pay to Landlord those amounts required under this Article and then shall hold, apply, and pay to Tenant the remaining Condemnation Proceeds in the same manner as provided with respect to insurance proceeds under the provisions of this Lease, and provided that upon the completion and payment of the cost of the Work, the remaining balance of the Condemnation Proceeds shall be paid to Tenant.

E. Tenant is not entitled to any abatement, allowance, reduction, or suspension of Net Rent, Additional Payments, or other amounts required to be paid by Tenant or a release from any obligation imposed upon Tenant under this Lease as a result of a condemnation or other taking of a portion of the Premises.

24.5 Division of Award. If the order or decree in any condemnation or similar proceeding fails to separately state the amount to be awarded to Landlord and the amount to be awarded to Tenant by way of compensation; damages; rent; cost of demolition, removal, or restoration; or otherwise, and if Landlord and Tenant cannot agree on the amounts within thirty (30) Days after the final award(s) have been fixed and determined, then the value shall be determined by using the following valuation process:

A. Landlord and Tenant, at their respective costs and by Notice to the other, shall each appoint a qualified M.A.I. real estate appraiser with at least five (5) years, full-time commercial appraisal experience in Maricopa County to appraise and set the fair market value of the land upon which the Tenant Improvements have been constructed.

B. If a Party does not appoint an appraiser within ten (10) Days after the other Party has given Notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser and shall set the fair market value of the land.

C. If two (2) appraisers are appointed by the Parties, then the appraisers shall meet promptly and attempt to arrive at the fair market value of the land. If the two appraisers are unable to agree on the fair market value of the land within thirty (30) Days after the second appraiser has been appointed, then they shall attempt to elect a third appraiser who meets the qualifications stated in this Article within ten (10) Days thereafter. If the two (2) appraisers are unable to agree on the third appraiser, either Party, by giving ten (10) Days' Notice to the other Party, may apply to the president of the Arizona Chapter of the American Institute of Real Estate Appraisers, or any successor association or body of comparable standing if such institute is not then in existence, or a court for the selection of a third appraiser who meets the qualifications stated in this Article. Landlord and Tenant shall each bear one-half (1/2) the cost of appointing the third appraiser and the third appraiser's fee.

24.6 Fair Market Value. Within thirty (30) Days after the selection of the third appraiser, a majority of the appraisers shall determine the fair market value of the land. If a majority of the appraisers are unable to determine the fair market value of the land within thirty (30) Days, then the three (3) appraisals of fair market value shall be added together and the sum shall be divided by three (3) and the resulting quotient shall be the fair market value of the land. If the low and/or high appraisal of fair market value is more than fifteen percent (15%) lower and/or higher than the middle appraisal of fair market value, then the low and/or high appraisal shall be disregarded. Then the remaining two (2) appraisals of fair market value shall be added together and the sum shall be divided by two (2) and the resulting quotient shall be the fair market value of the land. If both the low and the high appraisals are disregarded, then the middle appraisal shall constitute the fair market value of the land. In establishing the fair market value of the land, the appraisers shall appraise the land as improved vacant land without regard to the Tenant Improvements located thereon. The fair market value of the land shall be determined by the appraisers as of the date of the taking.

24.7 Rights of Participation. Landlord and Tenant, at their own expense, may appear in any condemnation proceeding and participate in hearings, trials, and appeals.

24.8 Notice of Proceeding. If Landlord or Tenant receives notice of any proposed or pending condemnation proceeding affecting the Premises, then the Party receiving the notice shall immediately notify the other Party of the receipt and contents of the notice.

ARTICLE 25 - MAINTENANCE AND CUSTODIAL

25.1 Maintenance. Tenant shall keep the Premises, Tenant Improvements, and Trade Fixtures on the Premises in good order, condition, repair, and appearance. Tenant shall periodically inspect and refurbish the Tenant Improvements and Trade Fixtures as

their condition requires. If Tenant fails to maintain high standards of maintenance, then Landlord may, among other things, perform the maintenance work and Tenant shall reimbursement Landlord for all costs incurred upon demand.

25.2 Stormwater. Tenant and its Agents shall not cause or allow any water or stormwater containing any Regulated Substance to enter the stormwater drainage system at the Airport. Tenant shall test all water and stormwater according to Applicable Law. In accordance with Landlord's Stormwater Pollution Prevention Plan, which may be amended from time to time and which is incorporated herein by this reference, Tenant shall not cause any track-out mud or soil onto any public road. Tenant shall maintain all storm drains and stormwater treatment devices on the Premises to Landlord's satisfaction.

25.3 Fluids. Tenant shall not locate or drain any fluid that contains any Regulated Substance on or around the Premises without Landlord's prior written approval. Tenant shall use drip pans and absorbent pads to contain incidental drips, leaks, and releases. Tenant shall inspect, clean, and replace the drip pans on a regular basis. Tenant shall transport all such fluids off the Airport according to Applicable Law.

25.4 Janitorial Services. Tenant shall provide custodial, janitorial, trash, cleaning services, and landscape maintenance services (Janitorial Services) to the Premises. Whether Tenant elects to furnish the Janitorial Services itself or use a janitorial or landscaping service, all Janitorial Services shall be commensurate with the level of the services provided by Landlord at the Airport. If Tenant fails to maintain a high level of Janitorial Services, then Landlord may, among other things, perform the Janitorial Services and Tenant shall reimbursement Landlord for all costs incurred upon demand.

ARTICLE 26 – NO IMPAIRMENT OF LANDLORD'S TITLE

26.1 No Liens. Tenant and its Agents shall not cause or allow any person or entity to cause any lien, cloud, charge, or encumbrance (collectively, Encumbrance) to be filed, recorded, or imposed on the Premises or the Airport, or any portion thereof, or on Net Rent, Additional Payments, or any other income to Landlord. If an Encumbrance is filed, recorded, or imposed, then Tenant shall cause the Encumbrance to be discharged and released within ten (10) Days after the date it was filed, recorded, or imposed. Tenant shall indemnify, defend, and hold harmless Landlord from all Encumbrances and other claims, losses, demands, costs, expenses, attorney fees, and liability in connection with or related to any Encumbrance or other claim.

26.2 No Subordination. Landlord's right, title, and interest in and to the Premises and this Lease are not subject or subordinate to any Encumbrance affecting Tenant's interest in this Lease or the Premises.

26.3 Discharge. Tenant shall immediately notify Landlord in writing of any Encumbrance. The Notice shall describe in detail the nature of the Encumbrance and what action Tenant has taken and will take to have the Encumbrance discharged or

released. Tenant shall give Landlord Notice of the status of the Encumbrance on a weekly basis until it is discharged or released. If Tenant fails to cause the Encumbrance to be discharged or released within ten (10) Days after the date it was filed, recorded, or imposed, then Landlord may, among other things, cause the Encumbrance to be discharged or released by paying the amount claimed to be due or by procuring a deposit or bond and Tenant shall reimburse Landlord for all costs incurred upon demand.

26.4 Survival. This Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 27 – NOTICE

27.1 Notice. All notices, consents, approvals, and other communications (collectively, Notices) between Landlord and Tenant that are required under this Lease shall be in writing and given by (A) personal delivery, (B) email with return receipt requested (read receipt), (C) facsimile transmittal with delivery confirmation, (D) prepaid delivery to any commercial air courier or express delivery service, or (E) registered or certified mail, postage prepaid and return receipt requested, through the United States Postal Service.

27.2 Notice to Landlord shall be sent to:

City of Phoenix Aviation Department
Corporate Office Building
Business and Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034
Attention: Deputy Aviation Director
FAX: 602-273-4083
Email: aviation.business@phoenix.gov

27.3 Notices to Tenant shall be sent to:

[name of Tenant]
[address]
FAX: [FAX number]
Email: [email address]

27.4 Receipt. Notice given in compliance with this Article is deemed received (A) on the Day it is personally delivered, (B) on the Day it is sent by email, (C) on the Day it is sent by facsimile transmittal, (D) two (2) Days after it is deposited with any commercial air courier or express delivery service, or (E) five (5) Days after it is sent by registered or certified mail as provided above. Actual receipt is not required, provided the Notice is sent in compliance with this Article.

27.5 Duplicate Notice. If Notice is sent by email and facsimile transmittal, then a paper copy shall be sent by prepaid, regular first-class mail through the United States Postal Service to the recipient at the address listed above. Duplicate Notice is merely a courtesy and does not change or extend the effective date of the Notice. The failure to receive the duplicate Notice does not affect the validity of the Notice sent by email or facsimile transmittal.

27.6 Change of Address. If Landlord or Tenant changes the person or address for Notice, then the Party making the change shall give Notice of the change to the other Party in compliance with this Article. Unless there is a proper change of address, the Parties are not required to give Notice to any person or address other than as set forth above. A Party may not raise failure of or of defect in Notice as a defense if the Party failed to give the other Party proper Notice that it had changed the person or address for Notice.

27.7 Written Notice Only. Notice given orally is invalid and a Notice may not be proved with parol evidence.

27.8 Calculating Time Periods. A time period to perform after receipt of a Notice shall be calculated as follows: The Day the notice is given shall not be included in calculating the Notice period. The last Day of the Notice period is included. A Party has until midnight Phoenix time on the last Day of the Notice period to cure its default. If the Notice period is ten (10) Days or fewer, then intermediate Saturdays, Sundays, and legal holidays listed in A.R.S. § 1-301 are not included. If the Notice period is eleven (11) Days or more, then intermediate Saturdays, Sundays, and legal holidays are included. If the last Day of the Notice period is a Saturday, Sunday, or legal holiday, then the time to perform is extended to the next Day that is not a Saturday, Sunday, or legal holiday.

ARTICLE 28 - COMPLIANCE WITH LAWS

28.1 General. Tenant shall comply with all Applicable Law that apply to this Lease and Tenant's use and occupancy of the Premises and the Airport. Upon request, Tenant shall provide Landlord with a copy of all permits, licenses, and other evidence of Tenant's compliance with such laws.

28.2 Supplemental Terms and Conditions. Tenant agrees that the Airport is part of the national transportation system and, as such, is operated for the benefit of the public and is, from time to time, the recipient of federal funds. As a recipient, Landlord is obligated to make certain assurances to the FAA or other federal agencies that Landlord is in compliance with the requirements of federal law, which requirements also become the obligations of Landlord's contracting parties. Tenant shall comply with all the applicable requirements set forth in the **Supplemental Terms and Conditions to All Airport Agreements (Revised 2/1/19)** attached and marked **Exhibit F**.

28.3 Subordination to Agreements with the United States. This Lease is subject and subordinate to any agreement currently in force or subsequently entered into

between Landlord and the FAA or any other federal agency related to the operation or maintenance of the Airport, whether or not the agreement is required as a condition to Landlord receiving federal rights or property for Airport purposes or is required for Landlord to spend federal funds to improve or further develop the Airport in accordance with the Federal Aviation Act of 1958 (49 U.S.C. §§ 1301, *et seq.*). Landlord's federal grant assurances and affirmative action requirements are listed in the **Supplemental Terms and Conditions to All Airport Agreements (Revised 2/1/19)** attached and marked **Exhibit F**.

28.4 Compliance with Environmental Laws. Tenant shall comply with all present and subsequently enacted environmental laws that relate to the Premises and affect Tenant's use or occupancy of the Premises, including the requirements set forth in the **Compliance with Environmental Laws (Revised May 2022)** attached and marked **Exhibit G**.

28.5 Airport Security Program. The City has implemented an Airport Security Program (ASP) in a form acceptable to the Transportation Security Administration pursuant to Title 49 Code of Federal Regulations. The Airport reserves the right to modify the ASP from time to time as it deems necessary to accomplish its purposes. Tenant shall at all times comply with the Security Program and defend, indemnify and hold harmless the Airport from any violations of such ASP caused, or alleged to have been caused, by the acts, errors or omissions of Airline, its employees, agents, invitees or contractors.

28.6 Unauthorized Access to Airport. Tenant shall prevent any unauthorized access to the Premises and to the Airport by or through the Premises. Tenant shall protect the integrity of the security of the Premises and the Airport perimeter by taking whatever measures are necessary to prevent any unauthorized person from gaining access to the Airport Operation Area or any other restricted area of the Airport by or through the Premises. Tenant shall immediately report to Landlord's Airport security personnel the seizure or removal of any unauthorized person from the Premises or any person's attempt to gain unauthorized access to the Airport by or through the Premises. Upon request, Landlord shall assist Tenant in removing an unauthorized person from the Premises. Tenant shall comply with all Applicable Law governing Airport security. If Tenant and its Agents violate Airport security, Tenant shall pay any fine assessed.

28.7 Notice of Violation Program. According to the Aviation Department's Rule and Regulation 03-07 and Notice of Violation Program, this Lease is subject to suspension or revocation for any violation of the Aviation Department's Rules and Regulations, including the operation of any unauthorized commercial activity on the Premises or the failure to comply with any Applicable Law.

28.8 Survival. This Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 29 – GENERAL PROVISIONS

29.1 Small Business Outreach Requirements.

29.1.1 The Landlord strongly encourages Tenant to use reasonable efforts to obtain and utilize the services of Small Business for this Lease. Specifically, the Tenant is encourage to: (1) identify small-business-participation opportunities; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

29.1.2 Despite the absence of a race- and gender-conscious participation goal for this Lease, Landlord must track and report all small business participation that occurs as a result of any procurement, joint venture, goods/services, or other arrangement involving a small business. For this reason, the Tenant shall provide all relevant information to enable the required reporting according to **Small Business Outreach Agreement Clause** attached and marked **Exhibit J**.

29.1.3 Within 60 calendar days of the Effective Date of this Lease, Tenant shall fulfill all required small business outreach requirements and submit all required outreach efforts documentation as specified in **Equal Opportunity Department Form EO2 Small Business Outreach Efforts Form** attached and marked **Exhibit K**.

29.1.4 Tenant is encouraged to track and report all small business participation that occurs at the Airport as a result of contracts, procurements, purchase orders, subleases, joint ventures, goods/services or other arrangements involving sub-tier participation. Such documentation is encouraged to be entered monthly into the internet-based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

29.1.5 This Lease shall be subject to review for completion of small business outreach requirements prior to any Lease extension.

29.1.6 Failure of Tenant to fulfill its small business outreach requirements, may be a material breach of the Lease.

29.2 Amendments and Approvals. All approvals, consents, and amendments required by this Lease shall be in writing, signed by the Parties, and may not be established by oral testimony. This Lease cannot be modified or amended by any verbal agreement or communication with Landlord either before or after this Lease was entered into. Except as otherwise expressly provided in this Lease, where Landlord's approval or consent is required, Landlord may withhold its approval or consent in its sole and absolute discretion and its decision is final, non-appealable, and without liability to Tenant.

29.3 Attorney Fees and Costs. In any contested action related to or arising out of this Lease, the prevailing Party shall recover its attorney fees, court costs, and other expenses from the other Party. Where there are no competing claims, "prevailing Party"

means the Party that substantially obtained the relief sought. Where there is a competing claim, the prevailing Party is the net winner or the Party who prevailed in a totality of the litigation. Where a dispute arises between Landlord and Tenant relating to this Lease, the Premises, or the Airport, Tenant shall pay Landlord's attorney fees and costs incurred in connection with the dispute whether a lawsuit or other proceeding is filed or not.

29.4 Business Certification. If Tenant is a trust, then Tenant certifies that it is authorized to do business in the state of Arizona. If Tenant is a corporation, limited liability company, or other business entity regulated by the Arizona Corporation Commission (ACC), then Tenant certifies that it is authorized to do business in the state of Arizona, is in good standing with the ACC, and shall remain in good standing with the ACC throughout the Term of this Lease. If Tenant is a foreign limited partnership, foreign limited liability company, or other business entity regulated by the Arizona Secretary of State (ASOS), then Tenant certifies that it is registered with the ASOS, is in good standing with the ASOS, and shall remain in good standing with the ASOS throughout the Term of this Lease. If Tenant is an individual or any other unregulated business entity, then Tenant certifies that it is authorized to transact business in the state of Arizona and shall remain authorized throughout the Term of this Lease. Tenant certifies that the person signing this Lease on its behalf is authorized to bind Tenant to this Lease.

29.5 City Council Approval and Cancellation. This Lease is subject to prior approval by the Phoenix City Council and may be cancelled by Landlord pursuant to A.R.S. § 38-511.

29.6 Claims Against Landlord. Tenant agrees to comply with the procedures set forth in Chapter XVIII, § 14 of the Charter of the City of Phoenix (claims or demands against the City) and A.R.S. § 12-821 and § 12-821.01 (notice of claim statutes) for presenting claims or demands against Landlord. Nothing in this Lease constitutes a contractual term, an alternative dispute resolution procedure, or an administrative claims process or review process, as those terms are used in A.R.S. § 12-821.01(C), so as to affect the date on which a cause of action accrues under A.R.S. § 12-821.01(A) and (B).

29.7 Continuation During Disputes. The Parties shall continue to perform under this Lease during the period of any dispute between them. This provision does not apply to Landlord when Tenant is in default or breach of this Lease.

29.8 Damage to City Property. Tenant and its Agents shall not cause any damage to the Premises, the Airport, or any other Landlord-owned property. Tenant is liable for all damage caused by the wrongful, negligent, or willful acts or omissions of Tenant or its Agents. Tenant shall repair such damage at its expense and to Landlord's satisfaction.

29.9 Delinquent Account Fee. Net Rent, Additional Payment, or any other amount that is not paid by Tenant when due is deemed delinquent. If the delinquent amount remains unpaid for ten (10) Days, then interest at the rate of eighteen percent (18%) per annum shall be assessed according to Phoenix City Code § 4-7. Interest shall

be computed and accrued on a daily basis and assessed until the account balance, including accrued interest, is paid in full.

29.10 Entire Agreement. This Lease constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Lease and the Premises. The Parties are not bound by any obligation not expressed in this Lease. Tenant certifies that it was not induced to enter into the Lease by any misrepresentation, undue influence, or coercion by Landlord or any of its officers, officials, agents, or employees.

29.11 Fair Interpretation. Tenant agrees that the rule that any ambiguity in a contract is construed against the drafter is waived and does not apply to this Lease. Tenant agrees that this Lease shall be interpreted fairly and not against Landlord simply because Landlord drafted this Lease.

29.12 Governing Law, Forum, and Venue. This Lease shall be interpreted and enforced according to the laws of the state of Arizona (without reference to choice of law principles). Any action or proceeding related to or arising out of this Lease shall be filed and maintained in a state or federal court located in Maricopa County, Arizona, and the Parties consent to the jurisdiction and venue of such courts.

29.13 Headings. Headings for all articles, sections, and paragraphs are for reference only and do not, and shall not be construed to, limit the content or scope of any provision of this Lease.

29.14 Inspections. All approvals, reviews, and inspections by Landlord under this Lease are for Landlord's benefit and not for the benefit of Tenant or any other person.

29.15 Landlord's Liens. Tenant hereby conveys to Landlord a possessory lien on all Trade Fixtures on the Premises to secure the payment of Net Rent, Additional Payments, and any other amount that is due and that may become due under this Lease. Tenant agrees that Landlord also has a statutory landlord's lien on all Trade Fixtures on the Premises pursuant to A.R.S. § 33-361 and § 33-362. If Tenant fails to pay Net Rent, Additional Payment, or any other amount when due, then Tenant agrees that Landlord may seize and hold the Trade Fixtures to secure the payment of all overdue amounts. The seizure neither terminates this Lease nor waives Tenant's default or breach of this Lease. If delinquent Net Rent, Additional Payment, or any other amount due is not paid within sixty (60) Days after seizure, then Landlord may sell the property pursuant to A.R.S. § 33-1023. These lien and foreclosure rights are in addition to all other rights and remedies available to Landlord under Applicable Law. If this Lease is assigned or the Premises are subleased, then Landlord shall have the same possessory lien and statutory landlord's lien against all non-exempt personal property owned by the assignee(s) and subtenant(s) as Landlord has against Tenant.

29.16 Landlord's Officials Not Liable. Landlord's officers, officials, agents, and employees are not personally liable to Tenant for any default or breach of this Lease by Landlord, are not liable for any amount that may become due to Tenant and are not obligated to perform under any provision of this Lease.

29.17 Landlord Improvements. Tenant agrees that Landlord may make improvements to the Premises at any time during the Term of this Lease. Landlord will attempt to make the improvements in a manner that does not unreasonably interfere with Tenant's use or occupancy of the Premises. Tenant hereby waives all claims against Landlord for damages of any kind related to the installation or construction of the improvements, including direct, indirect, incidental, consequential, punitive, and special damages, and for all damages that result from lost business, lost profits, loss of use, lost or damaged data, or damages for pure economic loss, however caused, whether foreseeable or not, and even if Landlord is advised of the possibility of such damages and losses.

29.18 National Emergency. This Lease is subject to the right of the United States to control, operate, and regulate the Airport and to use Airport property during the time of war or declared national emergency.

29.19 No Conflicts. Tenant represents to Landlord that the execution, delivery, and consummation of this Lease by Tenant is not prohibited by and does not conflict with any other agreement or instrument to which Tenant is a party or is otherwise subject. Tenant further represents that it has not received any notice asserting that Tenant is not in compliance with any Applicable Law. Tenant further represents that it is not in default under any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority with respect to the Premises or Tenant's use or occupancy of the Premises.

29.20 No Exclusive Rights. Except as otherwise expressly provided in this Lease, Tenant has no right or privilege to exclusively conduct any activity on the Premises or at the Airport.

29.21 No Liability to Third Parties. Landlord has no liability to any third party for Tenant's negligence or failure to comply with any provision of this Lease, including the absence or inadequacy of any insurance coverages required to be maintained by Tenant.

29.22 No Third-Party Beneficiaries. Except as otherwise expressly provided in this Lease, this Lease does not create, and may not be construed as creating, any right in any person that is not a Party to this Lease.

29.23 Nuisances. Tenant and its Agents shall not cause or allow any other person or entity to cause any nuisance, annoyance, or hazardous or potentially hazardous activity or condition to exist on or to emanate from the Premises. Tenant shall immediately correct any such condition upon learning of the condition or upon receipt of oral or written Notice from Landlord, whichever occurs first.

29.24 Recitals and Exhibits Incorporated. The Recitals and Exhibits attached to this Lease are material parts of this Lease and are incorporated herein by this reference. All documents expressly incorporated herein by reference are also material parts of this Lease.

29.25 Relationship of the Parties. The relationship of the Parties is solely that of landlord and tenant. Nothing in this Lease creates, or may be construed to create, a principal-agent, employer-employee, partnership, joint venture, or similar relationship between the Parties. Tenant agrees that it is not an agent or employee of Landlord. Tenant agrees that its employees and contractors are not employees of Landlord and that Landlord's civil service, retirement, or personnel rules and benefits do not accrue or apply to Tenant's employees or contractors. Tenant shall pay all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation, other benefits, taxes, and premiums appurtenant thereto concerning Tenant's employees, and Tenant shall indemnify, defend, and hold harmless Landlord with respect thereto.

29.26 Right to Amend. If the FAA or any federal agency requires any amendment, modification, revision, supplement, or deletion of any provision of this Lease as a condition to granting funds to Landlord, then Tenant hereby consents to the amendment, modification, revision, supplement, or deletion to the extent necessary to satisfy the FAA's or other federal agency's requirements. At Landlord's request, Tenant shall execute and deliver to Landlord all instruments and other documents necessary to evidence its consent.

29.27 Savings Clause. If any provision of this Lease is ruled invalid or unenforceable by a court, then the provision shall be modified to the extent necessary to make it valid or enforceable, if practicable. If a provision is ruled invalid or unenforceable, then the remaining provisions of this Lease shall remain unchanged and in full force and effect, provided that elimination of the provision by the court does not materially prejudice either Party's rights and obligations under this Lease, in which case this Lease will terminate.

29.28 Successors and Assigns. This Lease binds the Parties and their trustees, owners, officers, directors, managers, members, agents, employees, representatives, trustees, executors, personal representatives, successors, and assigns.

29.29 Tenant Liability Continues. For as long as Tenant is in possession of the Premises, or any part thereof, Tenant's obligation to perform under this Lease shall survive the expiration or earlier termination of this Lease.

29.30 Time of Essence. Time is of the essence in Tenant's performance of all its obligations under this Lease.

29.31 Travel Reduction Programs. If applicable, Tenant shall comply with the requirements of A.R.S. §§ 49-581 to -593 and Maricopa County Trip Reduction Ordinance

No. P-7 and develop and implement a travel reduction plan to encourage employees to use public transit, rideshare, walk, or ride a bike for the commute to and from the Premises. The program shall include a provision of preferential parking spaces for carpoolers and vanpoolers.

(The remainder of this page was intentionally been left blank.
The signature page follows.)

THEREFORE, the Parties caused this Lease to be executed.

LANDLORD
CITY OF PHOENIX, an Arizona municipal corporation
JEFFREY BARTON, City Manager

By: _____
Chad R. Makovsky, C.M.
Director of Aviation Services

Date: _____

ATTEST:

City Clerk

Date: _____

APPROVED AS TO FORM,
[name], City Attorney

By: _____
Carolina Potts
Assistant City Attorney

TENANT
[name],
[type of entity]

By: _____
[full name of signor]
[title]

Date: _____

1317767

Exhibit A
Site Map of Premises



Exhibit B
Legal Description of the Premises

[To be added after Boundary Survey Completed]

**Exhibit C
Letter of Credit Form**

[BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. _____

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4301
Attn: Deputy Aviation Director

Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

We hereby establish our irrevocable Standby Letter of Credit No. _____ in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (insert address of bank), accompanied by the following documents:

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. _____, or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ _____.

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. _____ as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. _____ or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ _____.

C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. as City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$.

2. This original Standby letter of credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile ("fax"). Documents to be directed to our counters at: [insert address as to counter location]. Drawing presented to us via fax must be sent to our fax number [insert – bank's fax number] (each such drawing, a "Fax Drawing") provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. [insert – bank's telephone number(s)].

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) 273-4083 that the demand was not effected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not effected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

Partial drawing and multiple presentations are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least sixty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail or overnight courier that we elect not to renew this Standby Letter of Credit.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: _____
Authorized Signature

Exhibit D
Cash Deposit for Performance Guarantee

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4405
Attn: Deputy Aviation Director

Tenant: Tenant Full Legal Name
Address 1
Address 2
City, State, Zip

Date: [Insert Date]

Amount: [Insert Amount]

As required by [Lease Agreement No. TBD – dated] or [Permit No. _____], [Insert Tenant Full Legal Name (_____)] is providing a cash deposit to the City of Phoenix (City) as security for the faithful performance by [Insert Tenant Name] to secure payment of all amounts owed by [Insert Tenant Name] to City and its performance of other obligations under the [Lease No. TBD – dated] or [Permit No. _____]. [Insert Tenant Name]'s cash deposit is for the initial amount of (Insert Printed Dollar Amount) (Insert Numerical Dollar Amount), representing three months of payments under its [Lease No. TBD – dated] or [Permit No. _____].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated] or [Permit No. _____] may become inadequate during the [Lease No. TBD – dated] or [Permit No. _____] term and [Insert Tenant Name]'s agrees that it will increase the amount as the City may reasonably prescribe from time to time on at least thirty (30) days prior written notice to [Insert Tenant Name]. The City may commingle the performance guarantee with the City's other funds and City shall have no obligation to pay or account to [Insert Tenant Name] for any interest that may be earned on the performance guarantee.

If [Insert Tenant Name] defaults with respect to any provision of the [Lease No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so

used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated] or [Permit No. _____].

If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease No. TBD – dated] or [Permit No. _____] to be performed by it, the performance guarantee or any balance thereof shall be returned to [Insert Tenant Name]'s within a reasonable time after the expiration of the [Lease No. TBD – dated] or [Permit No. _____], provided, however, that the City may retain the performance guarantee until such time as any amount due from [Insert Tenant Name] under the [Lease No. TBD – dated] or [Permit No. _____] has been determined and paid in full.

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____

**Exhibit E
Insurance Requirements**

INSURANCE SPECIFICATIONS

Tenant must procure and maintain for the duration of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

The City in no way warrants that the limits stated in this section are sufficient to protect the Tenant from liabilities that might arise out of Tenant's operations. Tenant may purchase additional insurance as Tenant determines necessary.

A. **SCOPE AND LIMITS OF INSURANCE:** Tenant must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

1. Commercial General Liability – Occurrence Form

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Each Occurrence	\$5,000,000
Fire Damage (Damage to Rented Premises)	\$ 100,000

- a. The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the use and/or occupancy of the property subject to this Lease.
- b. Policy must not contain any restrictions of coverage for operations on or near airport premises.
- c. There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- d. City of Phoenix is an additional insured to the full limits of liability purchased by the Tenant.
- e. The Tenant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance.

2. Builders' Risk Insurance (During Construction Period)

Tenant shall provide Builders Risk insurance for the construction of the Project in an amount equal to the full Project construction cost. Tenant may require his general contractor or to procure the Builders Risk insurance on the entire project.

- a. Coverage shall be written on a special causes of loss (all risk) form, replacement cost value basis and shall include coverage for flood and earth movement unless otherwise waived by the City.
- b. If the policy is purchased by the general contractor, Tenant must also be a named insured under the policy.
- c. A standard Loss Payable Endorsement naming the City of Phoenix shall be endorsed onto the policy.
- d. A Permit to Occupy endorsement shall be included if Subtenants can move in before construction is completed.
- e. The policy must provide coverage from the time any covered property becomes the responsibility of the Tenant, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction/installation site, or awaiting installation, whether on or off site.
- f. Policy shall contain a waiver of subrogation against the City of Phoenix.
- g. Tenant is responsible for the payment of all policy deductibles.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the Tenant's operations.

Combined Single Limit (CSL)	\$5,000,000
-----------------------------	-------------

- a. Policy must not contain any restrictions of coverage for the operations on airport premises.
- b. The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Tenant, relating to this Lease.
- c. City of Phoenix is an additional insured to the full limits of liability purchased by the Tenant.
- d. The Tenant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

3. Pollution Legal Liability [To be included if fueling facility is on Premises]

The policy must cover claims caused by pollution on, at, under or emanating from Tenant's activities and/or operations of fueling facilities on Airport Premises which may include, but is not limited to, the acceptance, transport, dispensing, storage or disposal of any hazardous materials or regulated substances.

Per Occurrence:	\$1,000,000
Annual Aggregate:	\$2,000,000

- a. Tenant warrants that any retroactive date under the policy must precede the effective date of this lease; and that either continuous coverage will be maintained, or extended reporting period will be exercised for a period of two (2) years beginning at the time work under this lease is completed.
- b. Such insurance must name the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the

Tenant.

- c. The policy must include coverage for:
1. On and off-site cleanup of sudden and gradual pollution conditions arising from the Tenant's fueling facility.
 2. Third-party claims for on and off-site bodily injury including sickness, disease, mental anguish or shock sustained by any person, including death and medical monitoring costs.
 3. Third-party claims for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed and diminution of value.
 4. Claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo if the Scope of Services in the Lease requires the transportation of any hazardous materials.
 5. Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.

4. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy must contain a waiver of subrogation against the City of Phoenix.
- b. This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. 23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

5. Property Insurance (After Construction Period)

Coverage for Tenant's tenant improvements	Replacement Value
Coverage on building (<u>only</u> if Tenant is the sole occupant of building)	Replacement Value

- a. If Tenant is the sole occupant, Tenant must purchase property insurance for the building Coverage must be written on a Special Causes of Loss property insurance form with replacement value, including coverage for flood and earth movement.
- b. Tenant's tenant improvements must be insured. Coverage must be written on a Special Caused of Loss insurance form with replacement cost value.
- c. The City of Phoenix must be named as a loss payee IF Tenant is a sole occupant and/or if Tenant is making tenant improvements
- d. Policy must contain a waiver of subrogation in favor of the City of Phoenix.

- B. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Lease, the Tenant must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to:

City of Phoenix, Aviation Department
Business and Properties Division
2485 E. Buckeye Road
Phoenix, AZ 85034
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

- C. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

- D. **VERIFICATION OF COVERAGE:** Tenant must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Lease must be in effect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of contract.

The City Department, Lease number and location or description are to be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies and endorsements required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

The **initial certificates** required by this Lease shall be sent directly to:

City of Phoenix, Aviation Department
Business and Properties Division
2485 E Buckeye Road
Phoenix, AZ 85034
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix, Aviation Department
c/o Exigis Insurance Compliance Services
PO Box 4668 – ECM #35050
New York, NY 10163-4668
Email: certificates-cityofphoenix@riskworks.com

- E. **SUBLESSEES:** If Tenant is approved by Lessor to sublease any part of the Leased Premises, sublease must adhere to the insurance specifications stated in this Lease.
- F. **CONTRACTORS & SUBCONTRACTORS:** Tenant's certificate(s) shall include all contractors and subcontractors (Contractors) as additional insureds under its policies or Tenant shall be responsible for ensuring and verifying that all Contractors have valid and collectable insurance. At any time throughout the life of the Lease, the City of Phoenix reserves the right to require proof from the Tenant that its Contractors have insurance coverage. All Contractors providing services included under this Lease are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Tenant may, on behalf of its Contractors waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the Lease. Tenant assumes liability for all Contractors with respect to this Lease.
- G. **APPROVAL:** Any modification or variation from the insurance coverages or conditions in this Lease must be documented by an executed contract amendment.

Exhibit F
Supplemental Terms and Conditions to All Airport Agreements (Revised 2/2/19)

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor 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. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by 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 Contractor of Contractor's obligations under this Contract and

the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, 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 City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

(i) Withholding payments to Contractor under this Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for

noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor 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. This provision binds Contractor and subtier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor 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, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.4 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.5 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

2.6 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will

require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). Therefore, Contractor agrees that:

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

B. 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).

C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).

E. 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 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).

F. The Civil Rights Restoration Act of 1987 (Public Law 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 the programs or activities are federally funded or not).

G. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), 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 as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).

H. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination 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.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and 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).

J. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*), as amended, which prohibits you from discriminating because of sex in education programs or activities.

Exhibit G
COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.

F. Clean Air Act, 42 U.S.C. §§ 7401-7515.

G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.

H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.

I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.

J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.

K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.

L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.

M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).

N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.

O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.

P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.

Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.

R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).

S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.

T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).

U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act, including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law"

has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid, rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001)

(AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization

from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City's project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a "co-permittee" with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor's written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports' SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor's use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Exhibit H
Memorandum of Lease

WHEN RECORDED, RETURN TO:

City of Phoenix
Aviation Department Headquarters
2485 East Buckeye Road
Phoenix, Arizona 85034
Attn: Law Department

Exempt under A.R.S. § 11-1134(A)(2)

MEMORANDUM OF LEASE

When duly recorded, this Memorandum of Lease constitutes constructive notice that the following-described ground lease has been entered into by and between the City of Phoenix, an Arizona municipal corporation (Landlord), and [Tenant], an [organization type] (Tenant), for leased premises at Phoenix Sky Harbor International Airport.

1. **Ground Lease.** On [date], Landlord and Tenant entered into Unsubordinated Ground Lease No. _____ (Ground Lease) for the leased premises (Premises) described below. The Ground Lease is incorporated herein by this reference.

2. **Premises.** The Premises are located at Phoenix Sky Harbor International Airport located at 3400 E. Sky Harbor Blvd. in Phoenix, Arizona. A **Site Map of the Premises** is attached and marked **Exhibit A**. The **Legal Description** of the Premises is attached and marked **Exhibit B**.

3. **Tenant Improvements and Trade Fixtures.** Tenant constructed and installed certain Tenant Improvements on the Premises. At the expiration or earlier termination of the Lease, title to the Tenant Improvements will automatically be conveyed to Landlord free and clear of all encumbrances and security interests and at no cost to Landlord.

4. **Use.** Tenant shall use the Premises solely for constructing and operating the Tenant Improvements; subleasing the hangars to third parties, storing non-commercial aircraft in the hangars; occupying the office space; parking the personal vehicles of Tenant and its Agents; and for no other use or purpose whatsoever. The storage of non-commercial aircraft used only for corporate travel or other business use by Tenant or subtenants is not considered a commercial use of the Premises. Tenant shall not store anything on or around the Premises.

5. **Term.** The Term of the Lease is 30 years. The Term shall commence on the date of Beneficial Occupancy of the Premises or eighteen (18) months after the Effective Date, whichever occurs first. This Lease does not contain an option to renew or extend the Term. As used herein, "Beneficial Occupancy" means the date the core and

shell certificate of occupancy is issued. "Effective Date" means the date the Ground Lease was signed by Landlord. The Lease does not contain an option to extend or renew the Term.

6. **The Parties.** The addresses of the Parties are:

Landlord: City of Phoenix
Aviation Department
Business and Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034

Tenant: [company]
Attn: [name, title]
[address]
[address]

7. **Conflicts.** If there is a conflict between the provisions of this Memorandum of Lease and the Lease, the Lease shall control.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease.

(The remainder of this page is intentionally left blank.
The signature page follows.)

LANDLORD
CITY OF PHOENIX, an Arizona municipal corporation
JEFFREY BARTON, City Manager

By: _____
Chad R. Makovsky, C.M.
Director of Aviation Services
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM,
_____, City Attorney

By: _____
Carolina Potts
Assistant Chief Counsel

State of Arizona

County of Maricopa

This Memorandum of Lease was acknowledged before me this ____ day of _____, 202__, by Chad R. Makovsky, C.M. in his representative capacity as the Director of Aviation Services for the City of Phoenix Aviation Department, on behalf of the City.

(seal)

Notary Public

TENANT
[company],
an [organization]

By: _____
[name]
[title]

Date: _____

State of Arizona

County of Maricopa

This Memorandum of Lease was acknowledged before me this _____ day of _____, 202_, by [name] in his representative capacity as [title] of [company], an [organization], on behalf of the limited liability company.

(seal)

Notary Public

**Exhibit I
Sustainability**

[LEED Level or sustainability response from Successful Respondents RCS]

Exhibit J
Small Business Outreach Agreement Clause

SECTION I DEFINITIONS

The following definitions shall apply to this Exhibit,

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City acting as a member of the Arizona Unified Certification Program pursuant to the criteria contained in 49 Code of Federal Regulations (CFR) Parts 23 and 26.

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: www.adot.dbesystem.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix.

Compliance Specialist means an EOD employee.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

Contract is a written agreement between any of the following parties: Respondent and JV partner, sublessee, subcontractor, or a Goods and Services Provider.

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services directly to airport concessionaires as an or small business.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Agreement. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Lease is a written agreement for a direct concession opportunity with the City.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Respondent to solicit participation from Small Businesses. Respondent shall: identify and document potential business opportunities for Small Businesses; describe what efforts were undertaken to solicit Small Business participation; disclose results of negotiations with Small Businesses; and communicate and record Respondent's selection decisions and notifications relating to Small Business participants.

Respondent means an individual, partnership, JV, corporation or firm that submits a Response to the City to perform services requested by a RCS.

Response is a written proposal to the City prepared by a Respondent to perform services.

Revenue Contract Solicitation (RCS) is a solicitation or procurement issued by the City.

Small Business means, a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which meets the Small Business Administration size standard.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the Agreement, including a vendor under a purchase order.

Sublease is an agreement between the Respondent and another entity or entities [sublessee(s)].

Successful Respondent means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

SECTION II GENERAL REQUIREMENTS

- A. **Small Business Participation**. For this solicitation, the City has *not* established a race- or gender-*conscious* participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of Small Businesses. The City *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- B. **Counting Small Business Participation**. The City will count Small Business participation based on the Small Business Outreach documentation submitted by the Successful Respondent. This documentation will be reviewed by the Equal Opportunity prior to approval.

C. Civil Rights Assurances.

As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Agreement signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, the Successful Respondent is the “contractor.”

SECTION III ENCOURAGED OUTREACH EFFORTS

The City strongly encourages Respondents to use good faith and reasonable efforts to obtain and utilize the services of Small Business for this Agreement. Specifically, the Successful Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

SECTION IV SUBMITTAL OF SMALL BUSINESS DOCUMENTS

Documentation due with initial Response.

There are no Small Business Outreach Efforts documents required to be submitted with initial Response.

SECTION V SMALL BUSINESS OUTREACH GENERAL REQUIREMENTS

Respondent are encouraged to actively contact Small Businesses for each scope of work or business opportunity identified for its Small Business Outreach Efforts. Respondent’s contact with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Agreement.

- A. At time of submission**, there are no Small Business Outreach documents to be submitted with initial response.
- B. Following the award of the contract**, documentation of Small Business Outreach efforts (Forms EO2) must be submitted to the Equal Opportunity Department within 60 days after contract award:

1) Form EO2 Small Business Outreach Efforts. The Successful Respondent shall complete and submit Form EO2 documenting its diligent, earnest Small Business Outreach Efforts.

1. To document its Outreach Efforts, Respondent shall Identify all Small Businesses contacted by Respondent on Form E02. Form EO2 shall be completed with the following minimum information:
 - i. **COLUMN A.** Each business's full legal name and contact information
 - aa. Respondent shall ask each firm to indicate its number of employees
 - bb. For each Small Business, Respondent shall indicate the **Range of Annual Gross-receipts** (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) *rather than requesting* an exact figure from the firm.
 - ii. **COLUMN B.** Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - iii. **COLUMN C.** Scope of work solicited (brief description, percentage of contract value);
 - aa. Respondent shall detail each scope of work or business opportunity selected for each Small Business;
 - iv. **COLUMN D.** Solicitation method (personal contact, telephone, fax, e-mail, other);
 - v. **COLUMN E.** Selection decision
 - aa. Respondent must indicate if a firm was selected or not. If Respondent does not select an identified Small Business to participate in the Agreement, Respondent must explain the reason why.
 - vi. **COLUMN F.** Communication of selection outcome to each participant.
 - aa. Respondent shall notify each Small Business contacted whether or not Respondent selected the firm within 15 days after the initial contact. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm.

The Compliance Specialist will evaluate all documented information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts

B. Form EO2 Supporting Documentation. Respondent shall complete and submit supporting documentation of its Outreach efforts related to Form EO2 for Small Businesses participating under this Lease Agreement.

1. Respondent shall submit with Form EO2 and all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
2. This documentation should include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
3. Respondent shall submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each Small Business *not* selected for this Agreement. This documentation may be in the form of a letter, e-mail, fax, or a telephone log and must show the name of the person contacted and date.
4. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call and the names of the respective persons representing Respondent and the Small Business.

C. Subcontracting Commitment. The Successful Respondent shall submit to City copies of all executed contracts, purchase orders, subleases, joint venture (JV) agreements, and other arrangements formalizing agreements between Successful Respondent and any Small Businesses.

SECTION VI. RECORDS & REPORTING REQUIREMENTS

A. Records. During performance of the Agreement, the Successful Respondent shall keep all records necessary to document Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the Agreement. The City will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation.

B. Reports. The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com

**Exhibit K
Equal Opportunity Department Form EO2 Small Business Outreach Efforts Form**

Name of Company (Respondent):	Solicitation Name:	Contract Name:
Email:	Phone #:	Point of Contact:

Successful Respondent is encouraged to conduct outreach efforts and submit supporting documentation of those outreach efforts as described in the Contract Clause. Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for columns D and F. Successful Respondent should make additional copies of this form as needed.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision	(F) Communication Final Selection Outcome*										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts:	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____ _____	Date Firm was Notified: _____ Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:															
Address:															
City, State, Zip:	Number of Employees:														
Phone Number:	Email or Fax:														
Number of Years in Business:	Range of Annual Gross Receipts:														
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts:	<input type="checkbox"/> ACDBE/DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	List Scope(s) of Work	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____ _____	Date Firm was Notified: _____ Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:															
Address:															
City, State, Zip:	Number of Employees:														
Phone Number:	Email or Fax:														
Number of Years in Business:	Range of Annual Gross Receipts:														

*Firms must be notified of final selection outcome prior to submittal of this form