

CITY OF PHOENIX
AVIATION DEPARTMENT
FACILITY LEASE AGREEMENT

NO. _____

Between

CITY OF PHOENIX,
an Arizona municipal corporation,

Landlord,

and

[Tenant's full name],

[type of business entity],

Tenant,

at Phoenix Sky Harbor International Airport

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- Exhibit A Aerial Map of the Parcel
- Exhibit B Aerial Map of the Premises
- Exhibit C Drop-off/Pick-up Area
- Exhibit D Irrevocable Letter of Credit Form
- Exhibit E Cash Deposit for Performance Guarantee
- Exhibit F Insurance Requirements
- Exhibit G Supplemental Terms and Conditions to All Airport Agreements (Revised 2/2/19)
- Exhibit H Compliance Requirements American Rescue Plan Act State and Local Fiscal Recovery Funds (ARPA/SLFRF)
- Exhibit I Aviation Security Procedures for Contractor and Subcontractor Worker Background Screening
- Exhibit J Tenant Design Criteria

**CITY OF PHOENIX AVIATION DEPARTMENT
FACILITY LEASE AGREEMENT NO. _____**

This Facility Lease Agreement (Lease or Childcare 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 or Operator). 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 or PHX) which is critical to the transportation infrastructure of the United States and the economic health of the state and local economy. The Airport’s operations have been negatively impacted by the unprecedented workforce shortages caused by the recent pandemic. Additionally, the area surrounding the Airport is considered to be a “childcare desert” with little to no childcare options to meet the needs of the local workforce.

B. Landlord owns and operates the Phoenix Sky Train® (Sky Train) which provides service throughout the Airport campus, and includes facilities located at 200 S 44th Street (44th Street Sky Train Station), which is identified as Maricopa County Assessor Parcel Number (APN) 124-06-153. An **Aerial Map of the Parcel** is attached and marked **Exhibit A**.

C. Landlord has solicited procurement responses from childcare providers to build-out, operate and manage a quality affordable childcare development facility (Childcare Facility) on a portion of the existing 44th Street Sky Train Station (Premises). An **Aerial Map of the Premises** is attached and marked **Exhibit B**. The Childcare Facility will serve the children of eligible employees and workers of the City of Phoenix and its tenant concessionaires and contractors (collectively “Airport Workers”), and to the general public on an availability basis. Additionally, the City will benefit from the build-out of the 44th Street Sky Train Station.

D. Tenant is the Successful Respondent of the Childcare Services Revenue Contract Solicitation (RCS), AVN RCS 24-001, and Landlord desires to grant Tenant the non-exclusive rights specified in this Lease to establish the terms and conditions for the operation of Tenant’s Childcare Facility at the Airport.

E. To assist in mitigating the lack of childcare options in the vicinity of the Airport, Landlord has allocated portions of federal funding (City Funding) received from the American Rescue Plan Act (ARPA) toward assisting Tenant’s construction costs of the Childcare Facility (Site Work Costs). Tenant’s request for reimbursement of Site Work Costs will require prior Landlord approval and must comply with state and federal laws as specifically provided in Article 4 of this Lease.

F. At any time during the term of this lease, Landlord reserves the right to add or change provisions of this Childcare Services Lease at the Airport.

G. Tenant is responsible for all contractual obligations involving the Childcare Facility, including any services provided by its Airport Concessions Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), small business, and joint ventures partners (collectively referred to as "Partners").

H. On [month, day, year], the Phoenix City Council passed Ordinance S-[number], which authorized the City Manager to enter into this Lease with Tenant.

AGREEMENT

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 *Airport* means Phoenix Sky Harbor International Airport and all land, buildings, and facilities comprising the Airport, including terminals, Sky Train, parking lots, 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.

2.2 *Airport Workers* means eligible Airport employees and workers confirmed through the City's Aviation Department badging verification process.

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 *Day or Days*, irrespective of capitalization, means a calendar day unless otherwise specified.

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 *Tenant 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://www.skyharbor.com/media/clpbz0rr/tenant-improvement-handbook-rev-05112023.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

3.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord approximately 13,462 square feet (sq. ft.) for Childcare Facility at the 44th Street Sky Train Station at the Airport (Premises). The Premises includes only the shell of the Improvement on the Effective Date of this Lease. The actual square footage may change upon completion of final survey.

3.2 Tenant leases the Premises after a full and complete examination of the Premises and the title and has full knowledge of the present uses and non-uses. Lessee accepts the foregoing in the "as is" condition without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord as to the title, nature, condition or usability or use to which the Premises may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises other than those expressly provided in this Lease. Tenant assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Premises.

ARTICLE 4 - USE OF THE PREMISES

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

A. Landlord hereby grants to Tenant a nonexclusive right to engage in business at the Premises as a Childcare Services Operator, a commercial activity defined and regulated by this Lease and the Phoenix City Code, to operate the Childcare Facility as identified in Article 5 (Duties of Operator).

B. The Tenant is responsible for providing Childcare Services, including the planning, developing, managing and operating the Childcare Facility. The proposed Childcare Facility will have an indoor area comprised of 8,546 square feet and an outdoor area comprised of 4,916 square feet for a total area of approximately 13,462 square feet as depicted in an **Aerial Map of the Premises** which is attached and marked **Exhibit B**.

C. Subject to the reimbursement provision in paragraph D, the Landlord will provide non-Airport general funds from City's allocated American Rescue Plan Act State and Local Fiscal Recovery Funds (ARPA/SLFRF) in an amount up to \$3,000,000.00 (City Funding) to the Tenant to be used solely toward the Childcare Facility build-out, which will benefit the Airport in the future.

D. Any Site Work Costs for which Tenant will seek City Funding reimbursement requires Landlord's prior approval and must comply with the applicable advertisement, notification, competitive bidding, and bonding provisions of Arizona Revised Statutes (A.R.S.) Section § 34-101, et seq. (collectively, "Title 34"). In accepting such City Funding, the Tenant acknowledges and agrees to comply with **Exhibit H**, which sets forth the Compliance Requirements for American Rescue Plan Act State and Local Fiscal Recovery Funds (ARPA/SLFRF).

E. Tenant's requirements for Site Work Costs reimbursement: The amount subject to reimbursement shall be derived from an invoice and supporting documentation (Reimbursement Documentation) detailing the actual Site Work Costs incurred by Tenant, which have been previously approved by the Landlord prior to construction. Reimbursement Documentation that includes unapproved Tenant Improvement costs will be rejected.

F. Reimbursement Documentation shall be submitted to:

City of Phoenix Aviation Department
Business & Properties Division
c/o Real Estate Department
2485 East Buckeye Road
Phoenix, Arizona 85034
Email: aviation.business@phoenix.gov

with a copy provided to:

City of Phoenix Aviation Department
Aviation Director's Office
c/o Matthew Heil, Deputy Director
Strategy, Policy & Administration
2485 East Buckeye Road
Phoenix, Arizona 85034
Email: matthew.heil@phoenix.gov

G. The Tenant shall, in the design and construction of the improvements to the space, comply with all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et al., the ADA Accessibility Guidelines (ADAAG), and implementing regulations as imposed upon the owner and operator of public facilities.

H. Tenant must comply with the Tenant Design Criteria, depicted and marked as Exhibit J.

I. Tenant shall not use or occupy the Premises for any other use or purpose whatsoever without Landlord's prior written approval.

J. Tenant shall comply with all Applicable Laws that relate to the Premises and the Airport.

K. Tenant shall not install or connect any utility to the Premises without Landlord's prior written approval. If Landlord grants such approval.

L. 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.

M. 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.

N. Tenant shall secure the Premises only with locks provided by Landlord.

O. Tenant shall not install any public address or paging system on the Premises.

P. Tenant shall have the right and obligation to construct Leasehold improvements to the Premises in accordance with Article 21.

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. Landlord made no representation or warranty that the Premises are fit or suitable for any particular use or purpose, except as expressly provided 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. The 44th Street Sky Train Station includes all automobile parking areas, sidewalks, roadways and lighting facilities, and other public facilities. Tenant may enter, exit, and use the Airport to the same extent as the general public.

A. Tenant will have access to the Childcare Facility 24-hours, seven days a week, 365 days a year. The Landlord will monitor the building 24 hours, seven days a week, however, the Tenant will be responsible for setting the alarm to the Childcare Facility. If Tenant triggers any false alarms, Tenant will be responsible for applicable false alarm fees.

B. Tenant will be responsible for obtaining new employee badges to access the Premises and Tenant shall comply with all the applicable requirements set forth in the **Aviation Security Procedures for Contractor and Subcontractor Worker**

Background Screening attached and marked **Exhibit I**. Tenant shall also notify Landlord upon termination of employee(s) and return all badges. Tenant will be charged the current rate for each replacement badge requested.

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

4.5 Vehicle Parking. Tenant and its Agents shall park all vehicles related to the Premises only in parking areas designated by Landlord. Tenant has no right to reserved parking at the Airport.

A. The entrance to the Childcare Facility will be located south of the Premises and will have a designated and posted parking area for child drop-off/pickups only. Tenant shall work with City's Aviation Department to facilitate enforcement of any illegally parked cars in the drop-off/pick-up area. The **Drop-off/Pick-up Area** is attached and marked as **Exhibit C**.

B. Tenant may participate in the Airport's Employee Parking Program, in accordance with all rules and regulations promulgated by the Aviation Department, and Phoenix City Code. Tenant shall be responsible for any parking fees for anyone enrolled under Tenant's account.

4.6 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.

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

4.8 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 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.

4.9 Right to Enforce Avigation Easement. Tenant's use of the Premises shall not interfere with the avigation easement rights granted to Landlord under this Article. If Tenant and its Agents interfere with or violate Landlord's avigation easement rights, then Landlord may enter and occupy the Premises for as long as necessary to do the following:

A. After giving Tenant at least five (5) days' Notice, enter the Premises to install, maintain, and repair one or more permanent markers, beacons, or lights related to Aircraft Operations at the Airport.

B. Enter the Premises without prior Notice to eliminate or abate any source of any interference with radio communications between the Airport and any aircraft or with radar operations at the Airport or by any aircraft.

C. Enter the Premises without prior Notice to eliminate or abate any condition or remove any object that interferes or may interfere with Airport Operations or that may constitute a hazard to any aircraft or the Airport.

4.10 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.

4.11 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 5 - DUTIES OF OPERATOR

5.1 Operate and manage the Facility by providing Childcare Services for the maximum capacity of the Childcare Facility, based on state requirements, including care for children between the ages of six (6) weeks to six (6) years of age.

5.2 Priority enrollment given to badged Airport Workers and space shall be offered upon availability to the general public only when no children of Airport Workers remain on the enrollment wait list.

5.3 Child age groups and teacher/student ratios shall be in compliance with City, State and Federal laws and regulations.

5.4 Establish policies and procedures for Childcare Facility operations; maintain a current Program Policies and Procedures Manual and ensure its implementation; and train staff on program curriculum and Childcare Facility policies and procedures.

5.5 Establish staff qualification and recruitment guidelines; recruit a qualified administrator to operate and manage the Childcare Facility; City representatives reserve the right to meet all Director candidates placed on a short list and approve final selection before proposed administrator is hired.

5.6 Obtain and maintain licensing, accreditation, and permits for the Childcare Facility in accordance with the Arizona Department of Health Services (ADHS) licensing requirements, ADHS - Child Care Facilities Licensing - Home (azdhs.gov) as well as in compliance with all City, State and Federal requirements during the lease term, as well as maintain the required insurance levels.

5.7 Provide periodic reports to city staff as requested or needed.

5.8 Provide nutritious meals and snacks including, but not limited to breakfast, morning snack, hot lunch and afternoon snack.

5.9 Develop and implement a childcare educational curriculum, and program focused on promoting optimal physical, social, emotional, and intellectual development of each enrolled child.

5.10 Operate the Childcare Facility through revenue generation and collection of tuition, and fully accept any and all risk of any operating losses associated with the Childcare Facility's operation.

5.11 Develop, implement, and maintain a strategy to prevent and reduce contraction or spread transmittable diseases among children and staff in accordance with applicable City, State and Federal requirements.

5.12 Tenant should consider the security of customer data, including banking, credit card and payment information, phone numbers, employment information, and any other identifying information, and have methods in place to ensure that customer data is adequately protected. The Tenant should submit proof of Payment Card Industry Data Security Standard (PCI DSS) Certification with the response. The PCI DSS Certification will ensure that the Tenant has all required measures in place to secure customer credit card payments.

5.13 Reporting Requirements. During the Primary Term, the Tenant will submit the reports listed below to the Landlord. Such reporting is subject to change based on the needs of the Landlord.

1. Accident and Safety Reports – Due within 24 hours of the occurrence
Accidents and Injury reports where external intervention or medical attention was required.
2. Income and Expense Report and Enrollment/Staffing Ratios – Due within twenty (20) days after the close of each month.
 - a. A detailed report of the actual income and expenses for the previous month.
 - b. Monthly status report that describes key issues, including but not limited to the following:
 - i. Enrollment list.
 - ii. Enrollment Status Change Report providing reason for changes.
 - iii. Wait list including dates children added and/or removed from list.
 - iv. Center activities and special events for the upcoming month.
 - v. Facility maintenance, including requests made, date of original requests, progress reports, and completion reports.
 - vi. Licensing and regulatory activity, including notification of site visits and other events.
3. Annual Report – Due by March 31st of each Year.
 - i. Complete inventory of both City of Phoenix equipment.
 - ii. Proposed operating budget for the upcoming year.
 - iii. Proposed tuition for the upcoming year.
 - iv. Marketing Plan for Childcare Facility services.

ARTICLE 6 - OPERATIONS OF FACILITY

6.1 The Childcare Facility will be required to maintain hours of operations from 6:00 am to 6:00 pm with the exception of unforeseen emergency situations approved by the Aviation Director. Examples of unforeseen emergency situations may be due to weather or natural disaster and will be determined by the Aviation Director. Hours of operation may be changed as deemed necessary by the Aviation Director, upon consultation with the Tenant. The Tenant must have a willingness to expand to non-traditional care hours as some of the Airport Workers are required to be available 24/7/365.

ARTICLE 7 - RIGHT OF ENTRY RESERVED

7.1 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; and show the Premises to a prospective tenant.

7.2 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.

7.3 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.

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

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

ARTICLE 8 - TERM

8.1 Initial Term. The Initial Term of the Lease will begin on the Effective Date of the Lease and lasts for twelve (12) to eighteen (18) consecutive months or until the Tenant begins all Childcare Facility Operations under this Lease, whichever comes first. [NUMBER OF MONTHS WILL BE MODIFIED TO CONFORM TO SUCCESSFUL RESPONDENT'S PROPOSAL]

8.2 Primary Term. The Primary Term of this Lease shall commence twelve (12) to eighteen (18) months from the Effective Date or the on date the Tenant begins all

childcare operations specified under this Lease. The Primary Term will be ten (10) years. If Tenant begins all operations on a day other than the first day of the month, all monetary obligations under this Lease will be prorated for the remainder of the month. [NUMBER OF MONTHS WILL BE MODIFIED TO CONFORM TO SUCCESSFUL RESPONDENT'S PROPOSAL]

8.3 Options to Extend Term. There are two (2) five-year options to extend the Term that may be exercised at the Aviation Director's sole discretion.

8.4 Termination by Landlord. Landlord may terminate this Lease at any time and for any reason or no reason by giving the other Party at least six months (180 days) prior Notice stating the date this Lease will terminate. Tenant shall vacate and surrender possession of the Premises to Landlord no later than the termination date stated in the Notice.

8.5 Termination by Tenant. Tenant may terminate this Lease in five (5) years for any reason or no reason by giving Landlord at least six months (180 days) prior Notice stating the date this Lease will terminate. Tenant shall vacate and surrender possession of the Premises to Landlord no later than the termination date stated in the Notice.

8.6 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.

8.7 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.

8.8 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.

8.9 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 ten (10) 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.

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

ARTICLE 9 - LANDLORD RIGHT TO RECLAIM

9.1 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.

9.2 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.

ARTICLE 10 - NET RENT

10.1 Net Rent. Beginning on Lease Year 6 of the Primary Term and continuing thereafter each Lease Year of the Primary Term and the Option Term, if any, Tenant shall pay to Landlord net annual rent in advance in the amount of \$134,620.00 per Year, plus applicable tax, which may be adjusted from time to time (Net Rent).

Description	Square Foot	Rent Rate	Annual Amount	Monthly Amount
Premises	13,462	\$10.00	\$134,620	\$11,218.33

10.2 Monthly Installments. Tenant shall pay Net Rent to Landlord in twelve (12) equal monthly installments in the amount of \$11,218.33 without notice, demand, deduction, or setoff in advance on the first Day of each month during the Primary Term

of this Lease. If the Primary 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.

10.3 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.

10.4 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.

10.5 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 Primary 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.

10.6 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.

10.7 CPI Adjustments. At the beginning of the seventh (7) Lease Year of the Primary Term and every Year thereafter, Landlord may adjust Net Rent upward according by two percent (2%).

A. Tenant acknowledges that adjustments made to Net Rent will be effective and payable as of the Adjustment Date, even though the new rate may not be able to be calculated until sometime after the Adjustment Date. Tenant agrees to: (a) pay the new rate upon receipt of Landlord's invoice containing the new rate; and (b) pay any difference between Net Rent actually paid to Landlord after the Adjustment Date and the amount due for such period within thirty (30) calendar days after Landlord's invoice therefore.

10.8 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.

10.9 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.

10.10 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.

10.11 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.

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

ARTICLE 11 - TAXES

11.1 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.

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

ARTICLE 12 - UTILITIES

12.1 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 install, relocate, modify, and improve the utilities that exist in, on, under, and over the Premises on the Effective Date of this Lease.

12.2 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.

12.3 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.

12.4 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 13 - PERFORMANCE GUARANTEE

13.1 Performance Guarantee. On or before the Effective 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 \$33,655.00. The Performance Guarantee may be an **Irrevocable Letter of Credit (LOC)** in the form attached and marked **Exhibit D**, a **Cash Deposit** in the form attached and marked **Exhibit E**, 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.

13.2 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.

13.3 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.

13.4 Duty to Restore. The Performance Guarantee ensures the full and timely performance by the Tenant of all its obligations under the Lease and is security payment by the Tenant of all claims by City. City may draw on or make a claim against the Performance Guarantee if Tenant breaches or fails to perform under the Lease. If City draws on or makes a claim against the Performance Guarantee, then Tenant, upon demand from City, shall replenish the Performance Guarantee to its previous amount within thirty (30) days of City's draw or claim.

13.5 Return of Performance Guarantee. After the expiration or earlier termination of the Lease, and when Landlord determines Net Rent, Additional Payments, and all other amounts that accrued and became due during the Term of this Lease have been fully satisfied, City will return the Performance Guarantee to the Tenant.

ARTICLE 14 - INDEMNIFICATION

Tenant (Indemnitor) must indemnify, defend, and hold harmless the City and its officers, officials (elected and 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 Indemnitor occupancy and use of the Premises. This defense and indemnity obligation includes 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. The obligations of Indemnitor under this provision shall survive the termination or expiration of this License.

ARTICLE 15 - INSURANCE

15.1 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 F**.

15.2 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.

15.3 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 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 - NO ASSIGNMENTS, SUBLEASES, OR MORTGAGES

17.1 No Assignments. 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 No Subleases. 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 subtenant, has possession of the Premises. Tenant agrees that Landlord and an approved 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.

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. 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. 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 No Tenant Improvements. Tenant may not construct or install any Tenant Improvement on the Premises without Landlord's prior written approval. Landlord's approval may be subject to any terms and conditions that Landlord deems appropriate, including compliance with Applicable Law, Landlord's Tenant Improvement Process, and the Aviation Department's Tenant Improvement Handbook.

21.2 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.

21.3 Title to Tenant Improvements. Title to all Tenant Improvements shall remain in Tenant until this Lease expires or is terminated, 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 refuse 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.

21.4 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.

21.5 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.

21.6 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 relocate 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 reimburse 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 Maintaining the day-to-day cleanliness of the Childcare Facility to meet or exceed Maricopa County Public Health Standards, Arizona Department of Health Services Licensing requirement and National Health and Safety Performance Standards.

25.2 Maintenance. Tenant shall keep the Premises, Tenant Improvements, equipment, interior plumbing, furniture 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 reimburse Landlord for all costs incurred upon demand.

25.3 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.

25.4 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.

25.5 Janitorial Services. Tenant shall provide custodial, janitorial, trash, and cleaning services (Janitorial Services) to the Premises. Whether Tenant elects to furnish the Janitorial Services itself or use a janitorial 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
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 Laws 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 G**.

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 G**.

28.4 Airport Security Program. Individuals assigned to work at PHX must pass a fingerprint-based Criminal History Records Check, pass a Federally mandated Security Threat Assessment, and obtain an Aviation-issued security credential or badge.

A. Tenant, its contract employees and volunteers who are required or allowed as a condition of employment to provide services directly to children or vulnerable adults shall submit a full set of fingerprints to the City to conduct a criminal background check for the purpose of determining whether the person has been convicted of a crime that bears upon the person's fitness to have responsibility for the safety and well-being of children and vulnerable adults.

B. Prior to accessing the Premises, Tenant must comply with all airport security requirements, including required badging, set for in the **Aviation Security Procedures for Contractor and Subcontractor Worker Background Screening** attached and marked **Exhibit I**.

For more information, visit:

<https://www.skyharbor.com/airport-business/security-badging/badging-information>

<https://www.fpc.gov/resources/glossary/>

<https://www.skyharbor.com/airport-business/phx-information/rules-regulations/>

for current Airport Rules and Regulations.

C. Landlord may implement an Airport Security Program in a form acceptable to the FAA that limits access of persons, vehicles, and aircraft in and around the general aviation area and terminals at the Airport. Landlord may modify the Program

at any time it deems necessary or appropriate. Tenant shall comply with the Program and shall indemnify, defend, and hold harmless Landlord from any violation of the Program committed by Tenant and its Agents.

28.5 Environmental and Energy Conservation. The Airport is committed to incorporating sustainable principles and practices into its operation, management and administrative processes and strengthening sustainability throughout the Airport. In keeping with this commitment, the Airport values the vision, commitment and sustainability practices demonstrated by its Airport Tenants. Information on the Airport's sustainability vision, commitment and practices can be found at <https://www.skyharbor.com/about/Sustainability>

A. Tenant must avoid the use of polystyrene foam (also branded as Styrofoam) cups and containers for eat in or take-out food and beverage service. The use of bio-based products (cardboard, etc.) or reusable dishes and utensils are suggested alternatives.

B. The Airport has energy and water conservation requirements for lease spaces, outlined in its Tenant Improvement Handbook and Design Manual. Those include the use of EnergyStar and WaterSense appliances (with certain efficiency ratings) and LED lighting. During the Tenant Improvement process, submittal of energy needs and illumination calculations for the leased space will be submitted for Aviation approval.

C. The Airport is developing a voluntary Green Tenant Program to incentivize conservation actions that can be taken by the tenants. These initiatives can control costs by reducing waste disposal and energy and water consumption. PHX encourages the Tenant to participate in the program.

D. Tenant may set up an area for the sorting and accumulation of materials to be recycled, with instructive signage. Tenant may appoint a staff person to serve as the environmental liaison and point of contact with the Airport Recycling Coordinator or designee. This person would oversee training of new staff on recycling procedures and check recycling efforts in the lease space.

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 Laws 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 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.

29.2 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.

29.3 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.

29.4 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.

29.5 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).

29.6 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.

29.7 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.

29.8 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.

29.9 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.

29.10 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.

29.11 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.

29.12 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.

29.13 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.

29.14 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.

29.15 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.

29.16 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.

29.17 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.

29.18 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.

29.19 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.

29.20 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.

29.21 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.

29.22 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.

29.23 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.

29.24 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.

29.25 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.

29.26 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.

29.27 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.

29.28 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.

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

29.30 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.

29.31 Entire Lease. It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire Lease between Tenant and Landlord as to this Lease. Tenant's response to the Childcare Services Revenue Contract Solicitation (RCS), AVN RCS 24-001 is incorporated by reference as fully set forth herein. It is further understood and agreed by Tenant that Landlord and Landlord's agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Tenant against Landlord for, and Landlord shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or parole agreement with Landlord is expressly waived by Tenant.

(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, A.A.E
Aviation Director

Date: _____

ATTEST:

City Clerk

Date: _____

APPROVED AS TO FORM,
JULIE M. KRIEGH, City Attorney

By: _____
Carolina Potts
Assistant Chief Counsel

TENANT
[name],
[type of entity]

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

Date: _____

**EXHIBIT A
AERIAL MAP OF THE PARCEL
APN 124-06-153
200 S 44TH STREET**



**EXHIBIT B
AERIAL MAP OF THE PREMISES (CONCEPTUAL DESIGN)
PORTION OF APN 124-06-153
APPROXIMATELY 13,462 SQUARE FEET**

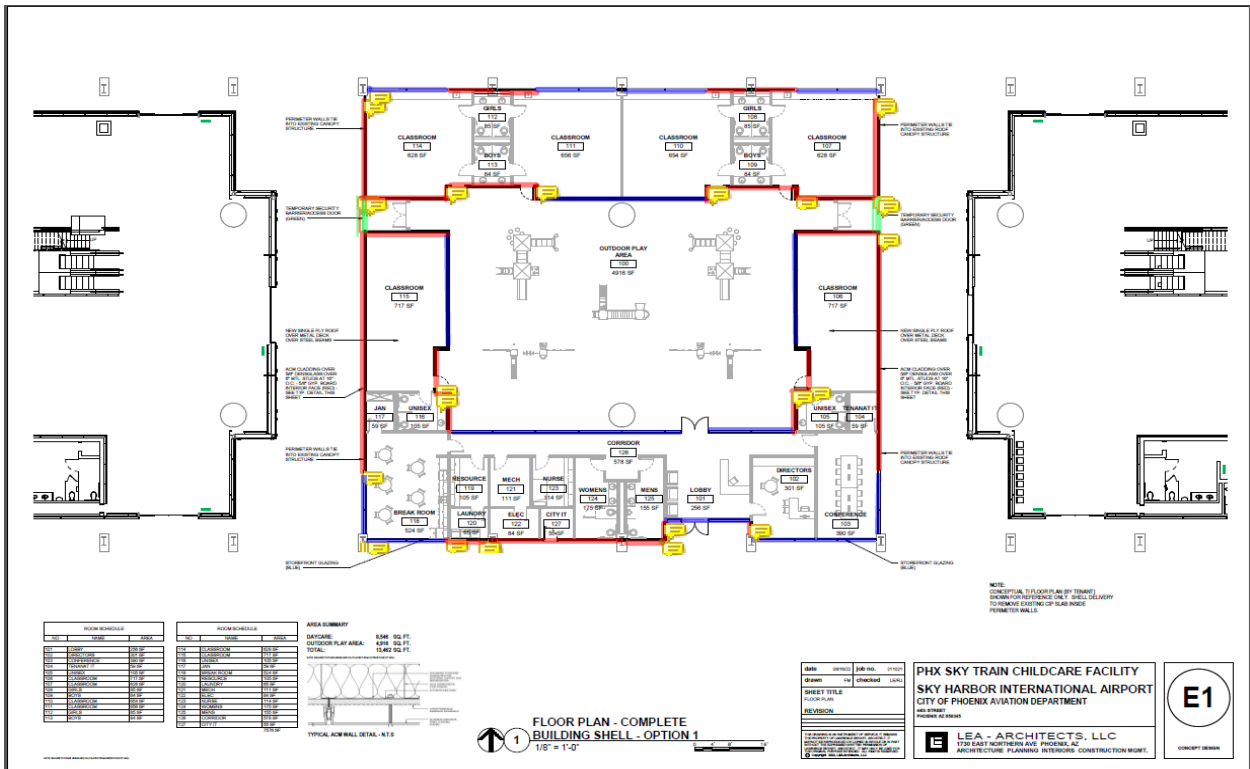
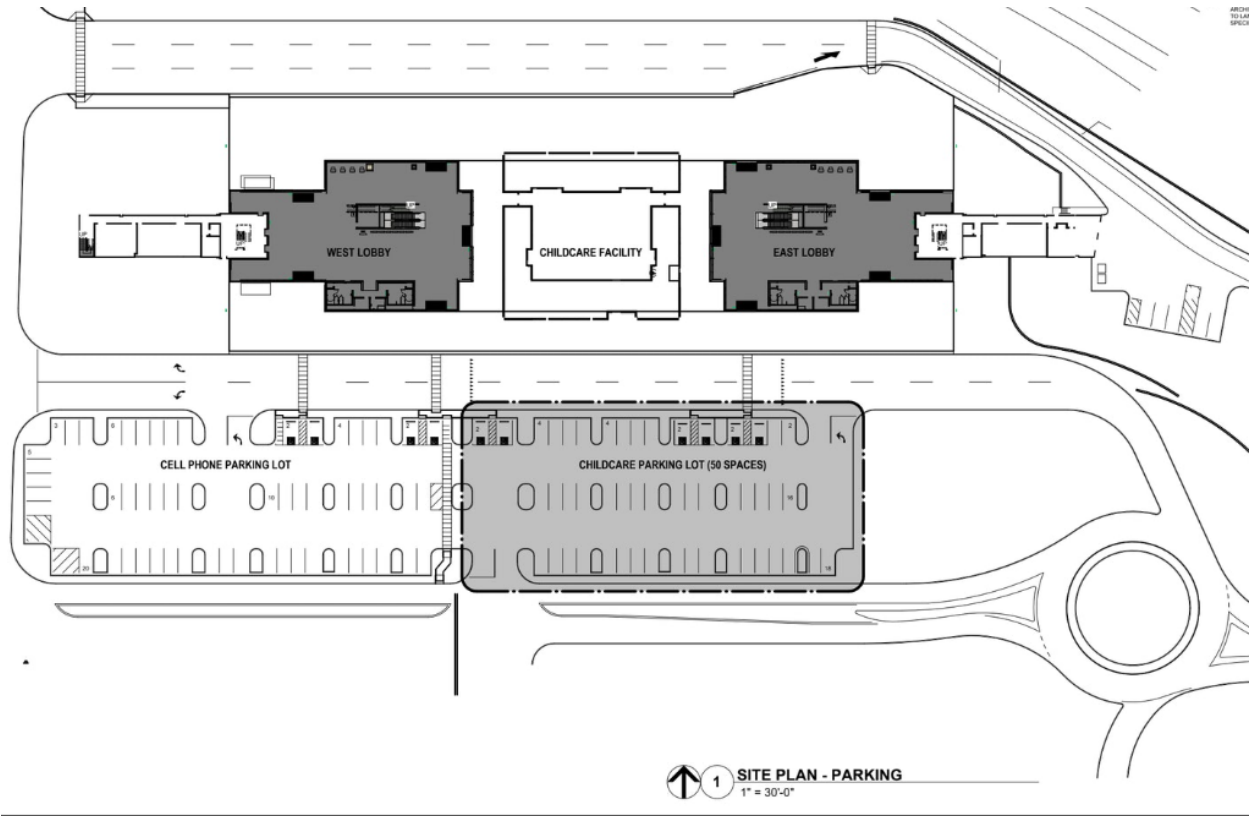


EXHIBIT C
DROP-OFF/PICK-UP AREA
(Draft Exhibit – label drop-off/pick-up area)



**EXHIBIT D
IRREVOCABLE 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

2021044
Revised 2/2018

EXHIBIT E
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 F
INSURANCE REQUIREMENTS**

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

- Policy must not contain any exclusions for operations on or near airport premises.
- The policy must cover liability arising out of the work product defined in the scope of services in this Contract.
- 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 activities performed by, or on behalf of the Tenant related to this Contract.
- 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.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Tenant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

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) \$1,000,000

- Policy must not contain any exclusions of coverage for operations on airport premises.
- 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.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Tenant.
- The Tenant's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

3. **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

- Policy must contain a waiver of subrogation against the City of Phoenix.
- 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.

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

- Policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this contract.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- Policy must not contain any exclusions for operations on or near airport premises

4. Sexual/Physical Abuse & Molestation

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

- a. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct.

Property Insurance

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 cost value, including coverage for flood and earth movement.
- b. The City of Phoenix shall be named as a loss payee if Tenant is a sole occupant and/or if Tenant is making tenant improvements.
- c. Tenant improvements must be insured. Coverage must be written on a Special Causes of Loss property insurance form with replacement cost value.
- 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: inbox@cop.complianz.com

- E. **SUBLESSEES:** If Tenant is approved by Landlord to sublease any part of the Leased Premises, subTenant 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 Phenix 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 coverage and conditions in this Lease must be documented by an executed contract amendment.

EXHIBIT G
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 sub-tier 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.

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Revised 2/1/19

EXHIBIT H

COMPLIANCE REQUIREMENTS - AMERICAN RESCUE PLAN ACT STATE AND LOCAL FISCAL RECOVERY FUNDS (ARPA/SLFRF)

Uniform Guidance

ARPA/SLFRF awards are subject to requirements set forth in the Uniform Guidance, 2 CFR Part 200, available at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

Debarment and Suspension

Contractor agrees to abide by Executive Orders 12549 and 12689, Debarment and Suspension, and implementing regulations found at 2 CFR Part 180 and 31 CFR Part 19. The City may by giving written notice to Contractor, immediately terminate this Agreement if the City determines that Contractor has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Contractor will include a term or condition in all related contracts and subcontracts described in 2 CFR Part 180, Subpart B that the award is subject to 2 CFR Part 180 and 31 CFR Part 19.

Award Terms and Conditions

The Award Terms and Conditions of the ARPA/SLFRF financial assistance agreement (<https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-Local-governments.pdf>) sets forth the compliance obligations for Contractor pursuant to the ARPA/SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Contractor should ensure it remains in compliance with all Award Terms and Conditions. These obligations include the following items in addition to others:

- **Conflicts of Interest.** The Contractor must disclose in writing to the City of Phoenix any potential conflict of interest affecting this agreement in accordance with 2 C.F.R. § 200.112. The City of Phoenix will disclose such conflict to Treasury.
- **Compliance with Applicable Law and Regulations.** Contractor agrees to comply with the requirements of section 603 of the American Rescue Plan Act, and regulations adopted by the Treasury pursuant to section 603(f) of the Act, and guidance issued by the Treasury. Contractor also agrees to comply with all other applicable federal statutes, regulations, and executive orders. Contractor shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award which may include, but not limited to the following:
 - Uniform Administrative Regulations, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. Part 200;

- OMB Guidelines to Agencies on Government wide Debarment and Suspension, 2 C.F.R. part 180;
 - Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20;
 - New Restrictions on Lobbying, 31 C.F.R. Part 21;
 - Generally applicable federal environmental laws and regulations.
- **Clean Air Act and Federal Water Pollution Control Act.** Contractor will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
 - **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, for all contracts that qualify as “federally assisted construction contracts” as defined in 41 CFR Part 60–1.3, Contractor agrees to comply with the equal opportunity clause under 41 CFR 60-1.4(b), incorporated herein by reference, and E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
 - **Copeland “Anti-Kickback” Act.** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - **Contract Works Hours and Safety Standards Act.** If the contract exceeds \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or

transmission of intelligence.

- **Byrd Anti-Lobbying Certification (31 U.S.C. 1352; 31 CFR Part 21).** Contractor hereby certifies, to the best of its knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
 - b. Each contractor tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization or influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C, 1352.
 - c. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- **Protection for Whistleblowers.** In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;

- iv. A Treasury employee responsible for Agreement or grant oversight or management;
 - v. An authorized official of the Department of Justice or oversight or management;
 - vii. A court or grand jury; or
 - viii. A management official or other employee of the City, Contractor or a subcontractor who has the responsibility to investigate, discover, or address misconduct.
- **Drug-Free Workplace Act of 1988:** Contractor must comply with drug-free workplace requirements in 31 CFR Part 20, which implements the Drug-Free Workplace Act of 1988.
 - **Victims of Human Trafficking.** Contractor agrees to follow the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104) and ensure that it and none of its employees engage in server forms of trafficking in persons, procure commercial sex acts during the subaward term, used forced labor in the performance of obligations under this Agreement. Contractor agrees to notify the City immediately once it has information from any source alleging a violation of this Section.
 - **Preference for Domestic Procurement.** Pursuant to 2 C.F.R. 200.322, to the greatest extent practicable, Contractor will purchase, acquire, or use goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
 - **Prohibition on Certain Telecommunications Equipment.** Contractor is prohibited from obligating or expending funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) enter into a contract to procure or obtain equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and such other entities described in 2 C.F.R. 200.216.
 - **Additional Federal Requirements.** Contractor will comply with any additional terms and conditions imposed by 2 CFR Part 200, as applicable, and any guidance issued by the U.S. Department of Treasury regarding this agreement.

EXHIBIT I

AVIATION SECURITY PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

1. **CONTRACT WORKER BACKGROUND SCREENING:** Contractor agrees that all Contract Workers that Contractor allows to perform work under this Contract shall be subject to background and security checks and screening (Background Screening). Contractor must pay for the cost of all Background Screenings, unless otherwise provided in the Scope of Work. Contractor agrees that Background Screenings required by this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City does not warrant or represent that the minimum requirements are sufficient to protect Contractor from any liability that may arise out of Contractor's work under this Contract or Contractor's failure to comply with this Section. Therefore, in addition to the Background Screening measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing work under this Contract.

As used in this Section, "Contract Worker" means a person performing work for the City, including (1) a person or entity that has a contract with the City, (2) a worker of a person or entity that has a contract with the City, (3) a worker of a subcontractor of a person or entity that has a contract with the City, and (4) a worker of a tenant of the City. (City of Phoenix A.R. 4.45)

- 1.1. **City Rights Regarding Security Inquiries:** The City reserves the right to require Contractor to:
 - 1.1.1. Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
 - 1.1.2. Act on newly acquired information, whether or not the information should have been previously discovered;
 - 1.1.3. Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and
 - 1.1.4. Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

- 1.2. Contractor Certification:** By entering into this Contract, Contractor certifies that Contractor has read the Background Screening requirements and criteria in this Section, understands them, and that all Background Screening information furnished to the City is accurate, complete, and current. A Contract Worker that is rejected for work under this Contract shall not perform any work under any other contract or engagement Contractor has with the City without the City's prior written approval.
 - 1.3. Contractor's Contracts and Subcontracts:** Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight services.
 - 1.4. Materiality of Background Screening Requirements and Indemnity:** The Background Screening requirements of this Section are material to the City's decision to enter into this Contract. Any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to any other indemnification provision in this Contract, Contractor shall defend, indemnify, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses (Claims) arising out of this Background Screening Section, including the Contractor's disqualification of any Contract Worker or the City's failure to enforce this Section.
 - 1.5. Continuing Duty and Audit:** Contractor's obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Contractor shall immediately notify the City of any change to a Contract Worker's Background Screening. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.
- 2. CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS:** Contractor shall not allow a Contract Worker to begin work under this Contract until Contractor has completed the Background Screening required by the City and the City has issued the appropriate airport security badge to the Contract Worker. The airport security badge will grant the Contract Worker unescorted access authority only to the area or areas of the Airport that the Contract Worker must enter in order to perform work under this Contract. When a Contract Worker's work in any area ends, the Contract Worker's access authority to that area ends. Any Contract Worker that attempts to enter a restricted area or sterile area, as those terms are defined below, of the Airport without proper authority is an immediate breach of this Contract.

3. **SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS:** Each Contract Worker that needs unescorted access authority to a restricted or sterile area of the Airport in order to perform work under this Contract must receive a security identification display area (SIDA) badge from the Aviation Department's Public Safety and Security Division's Badging Office. Contractor must make arrangements with the City to have each Contract Worker proceed to the Badging Office for processing. The Badging Office will not issue a SIDA badge until the Contract Worker passes a fingerprint-based criminal history background check (CHRC) required by federal law (49 C.F.R. § 1542.209) and § 4-22(C) of the Phoenix City Code and passes a security threat assessment as mandated by the TSA through a security directive (49 C.F.R. § 1542.303). The Contract Worker shall comply with all requirements of and furnish all information requested by the Badging Office. Contractor shall pay for all fees associated with SIDA badging process, unless otherwise provided in the Scope of Work. Fees will be assessed according to § 4-22(D) of the Phoenix City Code. Current badging procedures and fees are available for review at <https://www.skyharbor.com/airport-business/security-badging/badging-information>.

As used in this Section, "restricted area" means the secured area and SIDA area of the Airport. "Secured area" means the part of the Airport in which certain federal security measures are implemented and where airlines enplane and deplane passengers and load baggage. "SIDA area" means the secured area and other areas designated by the Aviation Department, which include air operation areas, ground transportation areas, and the Rental Car Center security doors. "Sterile area" means the part of the Airport that provides passengers access to board aircraft and is controlled by the TSA or the airline by screening of persons and property. See § 4-22 of the Phoenix City Code and Rules 05-01 and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms.

4. **RISK-BASED BACKGROUND CHECK PROCESS:** The City has established two levels of risk for Contract Worker background checks: standard risk and maximum risk. If the Scope of Work changes, the City may change the level of risk, which may require Contractor conduct additional investigations and incur additional costs in order to process a background check and obtain the required airport security badge. Contract Workers who receive a SIDA badge are exempt from a standard and maximum risk background check and will be required to pass Criminal History Records Checks (CHRC) and Security Threat Assessments (STA).

A MAXIMUM RISK BACKGROUND CHECK is required for all non-exempt Contract Workers performing work under this Contract.

As used in this Section, "background check" means the fact-gathering process described in City of Phoenix A.R. 4.45 that is conducted to obtain information regarding a Contract Worker's criminal history, driving history, certifications, and

other matters that may affect the Contract Worker's ability or fitness to perform work under this Contract.

4.1 Before any work is performed under this Contract, Contractor shall provide the City with a list of its Contract Workers.

4.2 If any dispute arises related to a background check process or criminal history check information, then Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.

4.3 In making the determination whether information in a background check renders the Contract Worker disqualified, Contractor should be guided by the following principles and guidelines:

4.3.1 Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.

4.3.2 Arrests that did not result in a conviction being entered or charges being filed may not be considered.

4.3.3 Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.

4.3.4 Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.

4.3.5 Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:

- Duties of the position
- Time, nature, and number of negative events and convictions
- Attempts and extent of rehabilitation efforts
- The relation between the duties of the position and the nature of the crime committed

4.4 The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Contractor should review the background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract's requirements.

4.4.1 For a Contract Worker requiring a standard risk background check, potentially disqualifying convictions include a record of theft, identity theft,

computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.

4.4.2 For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.

4.5 If a background check shows that the disposition of an arrest is unknown, then Contractor must determine the disposition of the arrest.

4.6 Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)

4.7 In a standard risk background check, Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.

4.8 In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.

4.8.1 If the City approves a Contract Worker, then the City will notify Contractor of that fact and the Aviation Department will issue the appropriate airport security badge to the Contract Worker.

4.8.2 If the City denies a Contract Worker, then the City will notify Contractor of that fact and Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Contractor will discuss those

circumstances with the City. The City will review the matter and its decision on disqualification is final.

4.8.3 The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.

4.9 If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

4.10 Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

5. **STANDARD RISK BACKGROUND CHECK:** A standard risk background check must be conducted for the term of this Contract or five (5) years, whichever is shorter. Contractor shall conduct a standard risk background check on all Contract Workers whose work under this Contract requires:

- An airport security badge or key for access to City facilities,
- Access to sensitive information, confidential records, personal identifying information, or restricted City information, or
- Unescorted access to City facilities during normal and non-business hours.

“Personal identifying information” is defined by City of Phoenix A.R. 4.45.

5.1 Scope of the Standard Risk Background Check: The standard risk background check conducted by Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from any county in the United States, the state of Arizona, and any other jurisdiction where the Contractor Worker has lived at any time in the last seven (7) years.

6. **MAXIMUM RISK BACKGROUND CHECK:** A maximum risk background check must be conducted for the term of this Contract or five (5) years, whichever is shorter. Contractor shall conduct a maximum risk background check on all Contract Workers whose work under this Contract requires:

- Working directly with a vulnerable adult or child under age 18,
- Any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation,
- Unescorted access to City data centers, money rooms, high-value equipment rooms,

- Access to a private residence,
- Access to Homeland Defense Bureau-identified critical infrastructure sites or facilities, or
- Responsibility or access to City-identified critical infrastructure sites, City networks or data, cyber/IT/network assets, digital or cyber assets, workstations, or servers, by either remote or direct access.

6.1 Scope of the Maximum Risk Background Check: The maximum risk background check conducted by Contractor must include the search criteria conducted under a standard risk background check in addition to a search for all felony and misdemeanor convictions (not including traffic or parking violations), a sex offender check, and a search for all outstanding warrants. Based on the Scope of Work, Contractor shall also conduct a credit check (for cash handling, accounting, and compliance positions only), driving records check (for driving positions only), and fingerprint verification when the Contract Worker is working directly with a child under age 18 or a vulnerable adult or the work under the Contract will take the Contract Worker to a criminal justice information system (CJIS) location.

Maximum risk background checks are valid for the term of this Contract or three (3) years, whichever is shorter.

6.2 Maximum Risk Background Check for Child Care Staff Members: If the Scope of Work of this Contract involves work as a child care staff member, then Contractor will conduct a maximum risk background check.

6.3 Criminal Justice Information System (CJIS) Maximum Risk Background Check: If the Scope of Work of this Contract requires unescorted access to a CJIS location or if Contractor will have access to a CJIS infrastructure or information, then a CJIS maximum risk background check will be conducted, reviewed, and approved by the Phoenix Police Department or the Arizona Department of Public Safety.

6.4 Maximum Risk Background Check for Children or Vulnerable Adults: If the Scope of Work of this Contract involves work with a child under age 18 or a vulnerable adult, then Contractor will conduct a maximum risk background check.

As used in this Section, “vulnerable adult” means an individual who is 18 years of age or older who is unable to protect himself or herself from abuse, neglect, or exploitation by others because of a mental or physical impairment. (A.R.S. § 13-3623(F)(6) and City of Phoenix A.R. 4.45)

7. AIRPORT SECURITY BADGE HANDLING PROCEDURES: Contractor will comply with the following airport security badge handling procedures:

7.1 Key Access Procedures: If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued and Contractor must complete a return form and submit it to the City for each key issued.

7.2 Stolen or Lost Badges or Keys: Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key

7.3 Return of Badges or Keys: All airport security badges and keys are the property of the City and must be returned to the Badging Office within one (1) business day after the Contract Worker's access to a City facility is no longer required under this Contract. Contractor shall collect a Contract Worker's airport security badge and all keys (1) when the Contract Worker's employment is terminated, (2) when the Contract Worker's services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.

7.4 Employee Identification and Access: Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office.

The Aviation Department will determine who will have access to the Airport. Contract Workers access authority is only valid during their scheduled hours. Contractor shall provide the City with updates and changes in personnel as they occur.

7.5 Badge Fees: Contractor shall pay the airport security badge fees set forth in § 4-11(D) of the Phoenix City Code.

8. CONTRACTOR'S BREACH: Contractor agrees that the access control, airport security badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Therefore, Contractor shall be deemed in immediate breach of this Section upon the occurrence of any of the following:

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person's airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport

- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key
- A Contract Worker or Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assignment to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.

9. **CONTRACTOR CERTIFICATION:** Contractor certifies to the City that Contractor has read the foregoing Background Screening requirements and that all Background Screening information Contractor furnished to the City is accurate, complete, and current. Contractor further certifies to the City that Contractor has satisfied all Background Screening requirements and verified the legal worker status of each Contract Worker as required under this Section.

10. **CONFIDENTIALITY:** "Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or

used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

11. **DATA PROTECTION:** The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: <https://www.fpc.gov/resources/glossary/>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

- 11.1. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
- 11.1.1 process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;
 - 11.1.2 implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
 - 11.1.3 not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
 - 11.1.4 as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;

- 11.1.5 take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access.
- 11.1.6 maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
- 11.1.7 allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;
- 11.1.8 If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
- 11.1.9 provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
- 11.1.10. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;
- 11.1.11. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and
- 11.1.12. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).
- 11.1.13. In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the

City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Data Protection).

11.1.14 Contractor's obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

12. SECURITY INQUIRIES: Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

EXHIBIT J

Tenant Design Criteria

[TO BE INSERTED PRIOR TO EXECUTION]