

SCOTTSDALE AIRPORT ADVISORY COMMISSION
****AMENDED** MEETING NOTICE AND**
AGENDA



Wednesday, September 20, 2023
5:00 p.m.
Scottsdale Airport Aviation Business Center
Stearman/Thunderbird Meeting Room
15000 N. Airport Drive, Second floor
Scottsdale, AZ



****AGENDA ITEM 5 HAS BEEN REMOVED****

AIRPORT ADVISORY COMMISSION

Charles McDermott, Chair
Peter Mier, Vice-Chair
Larry Bernosky
Ken Casey

Michael Goode
David Reid
John Spalj

Call to Order

Roll Call

Pledge of Allegiance

Aviation Director's Report

The public body may not propose, discuss, deliberate, or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

Approval of Minutes

Regular Meeting: June 21, 2023

Public Comment

Citizens may complete one Request to Speak "Public Comment" card per night and submit it to Aviation Staff. Public Comment time is reserved for citizen comment regarding non-agendized items. No official action can be taken on these items. Public Comment is limited to a total of 15 minutes at the beginning and 15 minutes at the end of the meeting. **Speakers are limited to three minutes to address the Commission during "Public Comment."**

Persons with a disability may request a reasonable accommodation by contacting Airport Administration (480-312-2321). Requests should be made 24 hours in advance or as early as possible to allow time to arrange accommodation. For TTY Users, the Arizona Relay Service (1-800-367-8939) may contact the Aviation Department (480-312-2321).

REGULAR AGENDA

ITEMS 1-16

How the Regular Agenda Works: The Commission takes a separate action on each item on the Regular Agenda. If you wish to address the Commission regarding any or all of the items on the Regular Agenda, please complete a Comment Card for each topic you wish to address and submit it to Aviation Staff. Speakers will be given three minutes to speak per item. Additional time may be granted to speakers representing two or more persons. Cards for designated speakers and the persons they represent must be submitted together. **Comment cards must be submitted before public testimony has begun on any Regular Agenda or Public Hearing item.**

1. Discussion and Possible Action Regarding Application for Airport Aeronautical Business Permit for Out West Aviation, LLC to conduct Hangar/Shade Leasing Services at Scottsdale Airport. Staff contact: Kelli Kuester, Aviation Planning & Outreach Coordinator, 480-312-8482, kkuester@scottsdaleaz.gov
2. Discussion and Possible Action Regarding Application for Airport Aeronautical Business Permit for WC Aviation Inc. to conduct Aircraft Maintenance and Repair Services at Scottsdale Airport. Staff contact: Kelli Kuester, Aviation Planning & Outreach Coordinator, 480-312-8482, kkuester@scottsdaleaz.gov
3. Adopt Resolution No. 12923 Authorizing a Second Amended and Restated Lease Agreement No. 2018-193-COS-A2 with Jet Aviation Scottsdale, LLC. Staff contact: Gary P. Mascaro, Aviation Director, 480-312-7735, gmascaro@scottsdaleaz.gov
4. Discussion and Possible Action for a Recommendation to the Planning Commission and City Council regarding case 15-ZN-2022, a request by owner for a zoning district map amendment, amending the stipulations and development plan of case 14-ZN-1991, increasing the allowed building height from 36 feet to 42 feet 4 inches and the allowed floor area ratio from 0.25 to 0.79 to allow for redevelopment of the site into a new 3-story residential health care facility including up to 143 residential healthcare units having up to 164 beds (both minimal and specialized care) on a +/- 5.78-acre site with Central Business Planned Community District (C-2 PCD) zoning. Staff Contact: Bryan Cluff, Planning & Develop Area Manager, 480-312-2258, bcluff@scottsdaleaz.gov
- **AGENDA ITEM 5 REMOVED****
5. Discussion and Possible Action for a Recommendation to the Planning Commission and City Council regarding case 13-ZN-2020#2, a request by owner for a zoning district map amendment from Planned Community District, Industrial Park (P-C I-1) zoning to Planned Community District with P-C comparable Planned Airpark Core, Airpark Mixed-Use - Residential (P-C PCP AMU-R) zoning to accommodate an amendment to the original development plan (13-ZN-2020) to allow for 2,552 multi-family residential units, a hotel, and retail in six five-story buildings, up to 67 feet in height, and an increase in allowed floor area ratio (FAR) from 0.8 to 1.1, on a +/- 41-acre portion of a +/- 68-acre site, located at 8300 E Axon way. Staff Contact: Greg Bloemberg, Planner Principal, 480-312-4306, gblo@scottsdaleaz.gov
6. Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12920 authorizing Contract No. 2023-134-COS with Mead & Hunt, Inc. to provide Engineering

Services at Scottsdale Airport. Staff contact: Chris Read, Assistant Aviation Director-Operations, 480-312-2674, cread@scottsdaleaz.gov

7. Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12921 authorizing Contract No. IFB-052023-091 with J. Banicki Construction, Inc. in the amount of \$501,745.50 to construct Taxiway A4 improvements at Scottsdale Airport. Staff contact: Chris Read, Assistant Aviation Director-Operations, 480-312-2674, cread@scottsdaleaz.gov
8. Discussion and Possible Action to modify the Airport Rules and Regulations
Staff contact: Chris Read, Assistant Aviation Director-Operations, 480-312-2674, cread@scottsdaleaz.gov
9. Discussion and input regarding Monthly Operations Report for July and August
Staff contact: Chris Read, Assistant Aviation Director-Operations, 480-312-2674, cread@scottsdaleaz.gov
10. Discussion and input regarding Monthly Construction Report
Staff contact: Chris Read, Assistant Aviation Director-Operations, 480-312-2674, cread@scottsdaleaz.gov
11. Discussion and input regarding Airport and Airpark Aeronautical Business Permit Additions, Revocations and Cancellations. Staff contact: Kelli Kuester, Aviation Planning & Outreach Coordinator, 480-312-8482, kkuester@scottsdaleaz.gov
12. Discussion and input regarding Monthly Financial Report for May, June, and July 2023
Staff contact: Kelli Kuester, Aviation Planning & Outreach Coordinator, 480-312-7735, gmascaro@scottsdaleaz.gov
13. Discussion and input regarding Public Outreach Programs and Planning Projects
Staff contact: Sarah Ferrara, Aviation Planning & Outreach Coordinator, 480-312-8482, sferrara@scottsdaleaz.gov
14. Discussion and input regarding Quarterly Noise Complaint Report
Staff contact: Sarah Ferrara, Aviation Planning & Outreach Coordinator, 480-312-8482, sferrara@scottsdaleaz.gov
15. Administrative report from the Aviation Director, or designee, regarding the status of pending aviation-related items. Staff contact: Gary P. Mascaro, Aviation Director, 480-312-7735, gmascaro@scottsdaleaz.gov
16. Discussion and possible action to modify the Airport Advisory Commission Meeting Schedule and Commission Item Calendar. Staff contact: Gary P. Mascaro, Aviation Director, 480-312-7735, gmascaro@scottsdaleaz.gov

Public Comment

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minutes at the beginning and 15 minutes at the end of the meeting. **Speakers are limited to three minutes to address the Commission during "Public Comment."**

Future Agenda Items

Discussion and possible action to add Commissioner requested item on a future agenda.

Adjournment



COMMISSION INFORMATION REPORT
APPROVAL OF MINUTES

Meeting Date: 09/20/23

Contact: Gary P. Mascaro,
Aviation Director

Phone: (480) 312-7735

ACTION

Approval of Minutes – Regular Meeting
June 21, 2023

Attachment(s): 1. Draft of minutes of the June 21, 2023, Regular Meeting

Action taken:



**SCOTTSDALE AIRPORT ADVISORY COMMISSION
PUBLIC MEETING
Scottsdale Airport Aviation Business Center
Stearman/Thunderbird Meeting Room
15000 N. Airport Drive
Scottsdale, Arizona
Wednesday, June 21, 2023**

DRAFT MINUTES

PRESENT: Charles McDermott, Chair (telephonic)
Peter Mier, Vice Chair
Larry Bernosky
Michael Goode (telephonic)
David Reid (telephonic)

ABSENT: Ken Casey
John Spalj

STAFF: Gary Mascaro, Aviation Director
Carmen Williams, Aviation Finance & Administration Manager
Sarah Ferrara, Aviation Planning & Outreach Coordinator
Chris Read, Assistant Aviation Director-Operations

GUESTS: Stephanie Pressler, Experience Scottsdale
John Berry
Scott Casey, PrismJet
Darren Blackett, CB Aviation
George Kurtz

CALL TO ORDER

The meeting was called to order at 5:00 p.m.

ROLL CALL

A formal roll call confirmed the presence of Commissioners as noted above.

AVIATION DIRECTOR'S REPORT

Gary Mascaro, Aviation Director, congratulated Carmen Williams on her last Airport Advisory Commission meeting and her seven years of service at Scottsdale Airport.

1. Regular Meeting: May 17, 2023

One correction was made, with Chair McDermott's name being removed from the adjournment vote.

COMMISSIONER BERNOSKY MADE A MOTION TO APPROVE THE REGULAR MEETING MINUTES OF MAY 17, 2023 AS AMENDED. COMMISSIONER BERNOSKY SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

PUBLIC COMMENT

There were no public comments.

REGULAR AGENDA ITEMS 1-14

1. Discussion and possible action regarding application for Airport Aeronautical Business Permit for PrismJet, LLC, to conduct aircraft management and brokerage services at Scottsdale Airport

Carmen Williams, Aviation Finance & Administration Manager, stated that PrismJet will start its charter services this month and offer aircraft management services beginning in July. The company has acquired office space at Signature private hangars and have met all the requirements of the aeronautical business permit. Company Vice President, Scott Casey, was present to answer questions. In response to a question from Chair McDermott, Mr. Casey stated he is no longer associated with Pinnacle as of August, 2022.

COMMISSIONER REID MADE A MOTION TO APPROVE THE APPLICATION FOR AN AIRPORT AERONAUTICAL BUSINESS PERMIT FOR PRISMJET AIR, LLC TO CONDUCT AIRCRAFT MANAGEMENT SERVICES AT SCOTTSDALE AIRPORT. COMMISSIONER GOODE SECONDED THE MOTION, WHICH CARRIED WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

2. Discussion and possible action regarding application for Airport Aeronautical Business Permit for CB Aviation, LLC, to conduct aircraft charter/management services at Scottsdale Airport

Ms. Williams stated that the company is based in Utah and has acquired office space at Jet Aviation's FBO facility. They have met all the requirements of the aeronautical business permit. Darren Blackett, Vice President of Sales, was present to answer questions. In response to a question from Vice Chair Mier, Mr. Blackett stated that the company has 20 aircraft. They began in 2009 as a brokerage. In 2012, they expanded to purchase of an FBO and began charter services approximately five years ago.

COMMISSIONER BERNOSKY MADE A MOTION TO APPROVE THE APPLICATION FOR AN AIRPORT AERONAUTICAL BUSINESS PERMIT FOR CB AVIATION, LLC, TO CONDUCT AIRCRAFT CHARTER/MANAGEMENT SERVICES AT SCOTTSDALE AIRPORT. COMMISSIONER GOODE SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

3. Annual update from Experience Scottsdale

Stephanie Pressler, Director of Community and Government Affairs, Experience Scottsdale, provided the presentation. Experience Scottsdale is a nonprofit private company, known as a Destination Marketing Organization (DMO) and has been the sole organization responsible for establishing Scottsdale as a year-round luxury travel destination for 36 years. This is accomplished via promotion of Scottsdale to national and international audiences, including leisure visitors, travel advisors, tour operators, meeting and incentive planners and the media. In 2021, 9.7 million visitors traveled to Scottsdale. In order to stand out from other destinations, a strong brand is needed. Time, research, testing and development go into creating an effective and appealing destination brand.

A review of marketing strategies and projects was provided. Year-to-date, the PR team has generated 1,300 positive media hits about Scottsdale. This includes pitching Scottsdale stories, meeting with editors on the road and hosting press trips for journalists. Meetings and conference typically account for nearly half of all occupancy and revenue at resorts and hotels. Fiscal year-to-date, over 400 bookings for Scottsdale area resorts and venues have been secured. During the past year, over 1,500 travel professionals were trained to sell Scottsdale vacations during product trainings, which always include information on Scottsdale Airport. Information on the Airport's amenities and FBOs is shared with luxury travel advisors. Experience Scottsdale partners with the Airport for the National Business Aviation Association conference in Orlando, Florida. A brief overview of the Tourism and Events Strategic Plan was provided.

In response to a question from Vice Chair Mier, Ms. Pressler stated that summer is the slow season, with a drop-off in travel. Experience Scottsdale runs a summer campaign to target warm weather as well as humid markets.

4. Discussion and possible action for a recommendation to the Plaintiff's Counsel and City Council regarding Case 13-ZN-2022, a request by owner for a zoning district map amendment from General Commercial (C-4) to Planned Airpark Core Development - Airpark Mixed Use Residential, Planned Shared Development (PCP-AMU-R-PSD), including a development plan with bonus development standards for building height up to 119 feet and floor area ratio up to 1.73, to allow a mixed-use development with approximately 1,236 dwelling units, 223 hotel keys and 253,000 square feet of commercial floor area on a +/- 32.29 gross acre site located at 16011 N. Scottsdale Road.

Bryan Cluff, Planning Manager, identified the site location, which is located in the Airpark Mixed Use Residential land use designation and within the AC-1 Airport Influence Area. It is located outside the of the 55 DNL contour. The current owner is looking to rezone the site from General Commercial to Planned Airpark Core within the Airpark mixed use subcategory and a Planned Shared Development District overlay. This will redevelop the site to a mixed use development, which will include multiple buildings with approximately 1,236 residential units and 253,000 square feet of commercial floor area. Site cross-sections and land uses were reviewed, with building heights ranging from 30 feet to 119 feet. The Part 150 Noise Compatibility Study Land Use Measure allows for residential uses, subject to conditions. Development will be subject to a height analysis and approval, avigation easement and fair disclosures.

Applicant representative, John Berry, introduced project owner, George Kurtz, who gave a slide presentation on FalconEye Ventures' investments and development properties in the Airpark and Airport vicinities. Mr. Berry noted that the Greater Airpark Character Area Plan is designated as a location for residential development. In addition, the site along Scottsdale Road is designated as a regional core appropriate for the greatest intensity. This includes the site plan's five-star hotel and hotel branded condominiums, which will be serviced by the hotel. Across the street from Scottsdale is an old area of the City of Phoenix. The City of Phoenix City Council approved a 165-foot tall building on that corner, which is taller and more dense than what is being proposed on the Scottsdale side. A comparison of the proposed development site to Scottsdale Quarter and Scottsdale Civic Center Plaza was provided, particularly in terms of the two-acre open space incorporated into the proposed development.

Mr. Berry discussed the proximity of the project site to the Airport, which is located in AC-1, outside of the 55 DNL and three-quarters of a mile from the runway. All of the uses are permitted under the Part 150 Land Use Matrix. Additional requirements include disclosure and an avigation easement. The developer proposed to do noise mitigation commensurate with construction on the property on a voluntary basis. Only one building will reach 119 feet, including all mechanical components. The minimum clearance in the parcel is 156 feet and zoning allows for a request of 234 feet. The next highest building is 109 feet. Others are 90 feet down to 30 feet. As a result, there will be no requirement of blinking red lights. In terms of vehicular traffic, the property has existing zoning with the right to build without approval from the Planning Commission or City Council. The proposed development will reduce traffic volumes by 54 percent. The development will generate \$83 million in construction sales tax. Upon completion, the City will receive over \$94 million in direct annual benefits. The development volunteers to do the noise attenuation, normally only required when a property is within the 55 DNL and with AC-2.

In response to a question from Vice Chair Mier, Mr. Berry stated that in terms of a timetable, they anticipate commencement in two years.

Chair McDermott noted that project is different than the last project reviewed by the Commission, as it is located in the horizontal surface and not the conical surface. This does not necessarily pose a concern in terms of penetration. The horizontal surface is 150 feet above the established Airport elevation, which is 1,510.3 feet, making the horizontal surface 1,660.3 feet. He asked whether the applicant has filed an 7460-1 Airspace review with the FAA. Mr. Berry thanked Chair McDermott for the clarification and confirmed that they have filed the 7460-1 Airspace review. The determination is pending. Chair stated that he supports the development.

In response to a question from Chair McDermott, Mr. Berry stated that they are looking at ways to add sustainable elements to the project, which may include solar panels or recreational elements, such as pickleball courts on top of the garage. In response to a request for clarification, Mr. Cluff stated that solar panels are not a typical requirement in the planning process.

In response to a question from Commissioner Bernosky, Mr. Berry stated that other sustainability options for consideration include reuse and reduction of water consumption and indoor sustainability measures. This includes consideration of materials used in construction, installation of electric charging stations and bicycle stations.

Commissioner Bernosky asked about planned amenities. Mr. Berry stated that this is still in the planning stage, however, there is consideration for farmers markets, public park and open spaces. Dwelling will be a mix of rented and owned units. Vice Chair Mier commented that the proposed development is a good fit for the area.

In response to a question from Commissioner Bernosky, Mr. Berry stated that the site is over 32 acres with 30 percent open space.

CHAIR MCDERMOTT MADE A MOTION TO RECOMMEND TO THE PLANNING COMMISSION AND THE CITY COUNCIL REGARDING CASE 13-ZN-2022 A REQUEST BY OWNER FOR A ZONING DISTRICT MAP AMENDMENT WITH STIPULATIONS: 1) THE APPLICANT SHALL RECEIVE FROM THE FEDERAL AVIATION ADMINISTRATION (FAA) A "DETERMINATION OF NO HAZARD TO AIR AVIGATION," WITHOUT THE USE OF (RED) OBSTRUCTION LIGHTING RESULTING FROM THE SUBMISSION OF A NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION-OFF AIRPORT (FORM 7460-1). 2) THE MAXIMUM HEIGHT OF ANY PORTION OF THE PROPOSED PROJECT SHALL REMAIN BELOW THE ESTABLISHED HORIZONTAL SURFACE ELEVATION OF 1,660.3 FEET FOR SCOTTSDALE AIRPORT AS DEFINED BY 14 CFR PART 77. 3) IF PROPOSED DEVELOPMENT PLANS TO INSTALL SOLAR PANELS, A GLARE ANALYSIS IS REQUIRED TO BE PROVIDED TO THE CITY.

Discussion:

Vice Chair expressed support regarding inclusion of the comments regarding red lights, which may impede Council's hands. Chair clarified that the motion indicated, "without use of red obstruction lighting..." Discussion ensued, with Mr. Mascaro stated that there will likely be a determination notice by the FAA before the project goes before City Council. The motion states that if there is a determination notice from the FAA requiring installation of red lights, the motion then advises against approval of the project. The approval process begins with the Airport Advisory Commission. The recommendation is brought next to the Planning Commission with City Council making the final determination. The Planning Commission does not overrule the Airport Commission's recommendation. The City Council receives separate recommendations from both the Airport Advisory Commission and the Planning Commission. He read back the motion for review.

COMMISSIONER BERNOSKY SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

5. Adopt Resolution No. 12859 authorizing Lease Agreement No. 2023-087-COS with Aerobat Ventures, LLC for the lease of General Aviation box hangar space at Scottsdale Airport.

Ms. Williams stated that in March, there was termination with the lease agreement in the tenant at Box Hangar 105. The Airport's real estate consultant recommended Aerobat Ventures, LLC to occupy the hangar starting in mid-April. In order to allow the tenant to occupy the hangar on April 14th, a short-term license agreement was executed, with a full-term lease agreement to commence with a 60-month term. The lease requires City Council approval at its July 10th meeting.

COMMISSIONER BERNOSKY MADE A MOTION TO AUTHORIZE LEASE AGREEMENT NO. 2023-087-COS WITH AEROBAT VENTURES, LLC FOR THE LEASE OF GENERAL AVIATION BOX HANGAR SPACE AT SCOTTSDALE AIRPORT. CHAIR MCDERMOTT SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

6. Discussion and possible action to recommend to City Council adoption of Resolution No. 12858 authorizing the award of the base bid and add alternatives No. 1 and No. 2 for Contract No. IFB-032023-071 with J. Banicki Construction, Inc., in the amount of \$1,212,134.50 to construct perimeter road improvements at Scottsdale Airport and authorize a FY 2023-24 appropriation contingency transfer up to \$650,000 from the Airport Future Grants Contingency (ZB53) to the Airport Perimeter Road Construction Capital Project (AI03) to be funded by the Operating Aviation Fund undesignated, unreserved ending fund balance.

Chris Read, Assistant Aviation Director-Operations, identified this as the Airport Perimeter Road Project. The site location was identified. It is used by emergency vehicles, service vehicles and City vehicles to get around the Airport without having to cross the runway. The road was originally constructed in 2003 and is now beyond its usable life. ADOT provide a grant for reconstruction. However, increased costs have necessitated a request for contingency of \$650,000. The project duration is estimated to be 27 days. No runway closures will be associated with the project.

COMMISSIONER BERNOSKY MADE A MOTION TO RECOMMEND TO CITY COUNCIL ADOPTION OF RESOLUTION NO. 12858 AUTHORIZING THE AWARD OF THE BASE BID AND ADD ALTERNATIVES NO. 1 AND NO. 2 FOR CONTRACT NO. IFB-032023-071. CHAIR MCDERMOTT SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

7. Discussion and possible action to recommend to City Council adoption of Resolution No. 12876 authorizing the award of Contract No. IFB-032023-074 with J. Banicki Construction, Inc., in the amount of \$901,015.55 to construct Airport Drive improvements at Scottsdale Airport and authorize a FY 2023/24 appropriation contingency transfer up to \$125,000 from the Airport Match Contingency (ZB52) to the Rehabilitate Airport Drive Capital Project (AJ02) to be funded by the Operating Aviation Fund undesignated, unreserved ending fund balance.

Mr. Read identified the project area. A contingency is requested in order to cover increased costs. The project is funded 90 percent via a grant from ADOT Aeronautics. A budget adjustment is being made to account for design and construction administration. The project duration is approximately nine working days.

COMMISSIONER BERNOSKY MADE A MOTION TO RECOMMEND TO CITY COUNCIL ADOPTION OF RESOLUTION NO. 12876 AUTHORIZING THE AWARD OF CONTRACT NO. IFB-032023-074 WITH J. BANICKI CONSTRUCTION, INC. CHAIR MCDERMOTT SECONDED THE MOTION, WHICH CARRIED 5/0 WITH CHAIR MCDERMOTT, VICE CHAIR MIER AND COMMISSIONERS BERNOSKY, GOODE, AND REID VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

8. Discussion and input regarding Monthly Operations Report

Mr. Read stated that total operations are down 4.4 percent over last year and IFRs are down 12.7 percent. There was one alert 2. Enforcement actions consisted primarily of parking violations and after hours flight stop and goes and touch and goes. U.S. Customs revenue for May totaled \$104,125 with total uses of 174 and 10 U.S. visits. Revenues are up slightly compared to last fiscal year. Total uses fiscal year to date are 1,803 compared to 1,846 last year. PPRs total 70 this calendar year.

Commissioner Bernosky asked about the relationship between the number of operations and fuel flowage. Mr. Read stated that there is not a comparison, as many of the operations are local, including touch and goes, which account for two operations in each instance.

9. Discussion and input regarding Monthly Construction Report

Mr. Read stated that the report is essentially the same as last month. The Perimeter Road and Airport Drive projects were moved from the bidding phase to the award phase.

10. Discussion and input regarding Airport and Airpark Aeronautical Business Permit additions, revocations and cancellations

Ms. Williams stated that the report includes two aeronautical business permits from tonight's agenda. There was a cancellation of the Scott Air, LLC dba Island Air Express permit.

- 11.

Discussion and input regarding Monthly Financial Report for April 2023

Ms. Williams stated that the approved budget for revenues was \$6.8 million, with actuals at \$8 million. The expense budget was \$2.47 million with actuals coming in at \$98,000 above budget. Compared to last year, revenues are \$46,000 lower. Expenses were higher by \$87,000. The aviation cash balance was \$10.8 million as of April 30th. FBOs accounted for 78.6 percent of all fuel sold. AVGAS was 2.5 percent and Airpark operators were at 18.9 percent. Total gallons pumped was 1.67 million, down 10.6 percent from last year. Fiscal year to date totals are 1.5 percent greater than last year with a difference of 206,000 gallons.

12. Discussion and input regarding Public Outreach Programs and Planning Projects

Sarah Ferrara, Aviation Planning & Outreach Coordinator, stated that the FAA Performance Based Navigation team held initial procedure design meetings, with the City of Scottsdale and their consultant attending. A pilot briefing was held on May 30th with approximately 50 participants. The FAA held its annual Runway Safety Action Team meeting on June 13. For May, there were five projects in planning and zoning. Listserv notices continue to be sent out as needed. The most recent edition included the Airport's induction into the Chamber's History Hall of Fame. Another listserv was issued on the Airport's Sustainability Report. Airport staff presented at the annual Scottsdale Chamber's Economic Development and Advisory Council.

13. Administrative report from the Aviation Director, or designee, regarding the status of pending aviation-related items

Mr. Mascaro stated that the Parque was just discussed and will be updated at the next meeting. The Key Hangar was approved by the Design Review Board. The Key Essential Hangar use permit was approved on June 13th by City Council.

14. Discussion and possible action to modify the Airport Advisory Commission meeting schedule and Commission item calendar

The next meeting is scheduled for September 20th.

PUBLIC COMMENT

There were no public comments.

FUTURE AGENDA ITEMS

There were no items added.

ADJOURNMENT

With no further business to discuss, being duly moved by Commissioner Bernosky and seconded by Commissioner Goode, the meeting adjourned at 6:24 p.m.

AYES: Chair McDermott, Vice Chair Mier, Commissioners Bernosky, Goode and Reid

NAYS: None

SUBMITTED BY:

eScribers, LLC



COMMISSION ACTION REPORT

Discussion and Possible Action regarding application for Airport Aeronautical Business Permit for Out West Aviation LLC to conduct Hangar/Shade Leasing Services

Agenda Item No.: 1

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach
Coordinator

Phone: (480) 312-8482

ACTION

Ratification of Airport Aeronautical Business Permit for Out West Aviation LLC to conduct hangar/shade leasing services in the Scottsdale Airport.

PURPOSE

Pursuant to Scottsdale Revised Code, Chapter 5, Article 3, commercial aeronautical activity conducted in the Airport requires a valid Aeronautical Business Permit. In addition, the Airport Minimum Operating Standards outlines the process for obtaining such a permit. Out West Aviation LLC has requested an Airport Aeronautical Business Permit to conduct hangar/shade leasing services in the Scottsdale Airport.

APPLICANT(S)

Out West Aviation LLC
Shannon Day, Manager
4340 E. Indian School Road, Suite 21-471
Phoenix, AZ 85018

KEY CONSIDERATIONS

Out West Aviation LLC has provided the appropriate documentation as required in the Airport Minimum Operating Standards.

Attachment(s): 1. Completed Airport Aeronautical Business Permit
 2. Location Map

Action taken:



SCOTTSDALE AIRPORT AERONAUTICAL BUSINESS PERMIT



(Required to conduct commercial aeronautical activity on the airport)
Fields in RED are required fields.

Business or activity to be conducted (check all that apply):

- Aircraft Charter Services
- Aircraft Leasing or Rental Services
- Aircraft Maintenance and Repair Services
- Aircraft Management
- Aircraft Washing Services
- Aircraft Sales Services
- Aircraft Mobile Maintenance and Repair Services
- Specialized Aircraft Repair Services (list service):
- Specialized Commercial Flying Service (list service):
- Hangar/Shade Leasing Services
- Flight Training Services
- Fixed Base Operator
- On-Airport Rental Car Concession
- Other (list service):

These activities are limited to the airport by ordinance. Please refer to the Airport Minimum Operating Standards for further information on each type of business.

Applicant
(Business Name):

Out West Aviation LLC

Authorized
Representative, title:

Shannon Day - Manager

Email Address:

shannon@outwest

Work Phone:

Cell Phone:

602.698.8448

Fax:

Mailing Address:

4340 E Indian School Rd, Suite 21-471

City:

Phoenix

State: AZ

Zip Code:

85018

Billing Address:

4340 E Indian School Rd, Suite 21-471

City:

Phoenix

State: AZ

Zip Code:

85018

Billing Phone:

602.698.8448

Billing Email:

shannon@outwestaviation.com

The Applicant hereby requests the above action(s), and in consideration of this request being granted, agrees to the following:

1. FEE PAYMENT: The Applicant agrees to pay all applicable fees on time, and all required fees including late fees, interest and penalties without deduction of any kind.
2. PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to the approved business activity listed above
3. INFORMATION CHANGES: The Applicant shall notify Airport Administration, in writing within fifteen (15) days , of any change to the information provided.
4. RELEASE OF LIABILITY: The City assumes no liability for damage or loss to personal property while operating at Scottsdale Airport.
5. INDEMNIFICATION: The Applicant and invitees shall indemnify the City pursuant to Chapter 5 of the Scottsdale Revised Code. As required by the Airport Minimum Operating Standards, permit holder shall endorse all liability insurance policies to include the City of Scottsdale as an additional insured. Applicant further agrees to waive their insurers' subrogation rights against the City of Scottsdale, and its Officers, Directors, Commissioners, and Employees.
6. COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations. To view regulations, go to <http://www.scottsdaleaz.gov/airport/regulatorydocs>

Please check the box for each item attached and submitted with the application:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Lease/License Agreement | <input checked="" type="checkbox"/> Certificates of Insurance | <input type="checkbox"/> FAA Certificates |
| <input type="checkbox"/> Sublease Agreement | <input checked="" type="checkbox"/> Business/ Privilege Tax License | For Flight Training Schools: |
| | | <input type="checkbox"/> Noise Abatement Pilot Briefing |

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of a copy of this permit.

Applicant Signature: Shannon Day Digitally signed by Shannon Day
Date: 2023.06.09 15:56:12 -07'00' Date: 6/9/2023

By checking this box, I affirm that the information entered above is accurate and that the name typed above represents my official signature.

*Please save the form to your documents, submit the form with an electronic signature to cawilliams@scottsdaleaz.gov
OR print, sign and return to: 15000 N. Airport Drive, Suite 100, Scottsdale, AZ 85260.*

Staff Use Only

Application, permits and insurance reviewed by: *C. Williams*

Account 2023-09

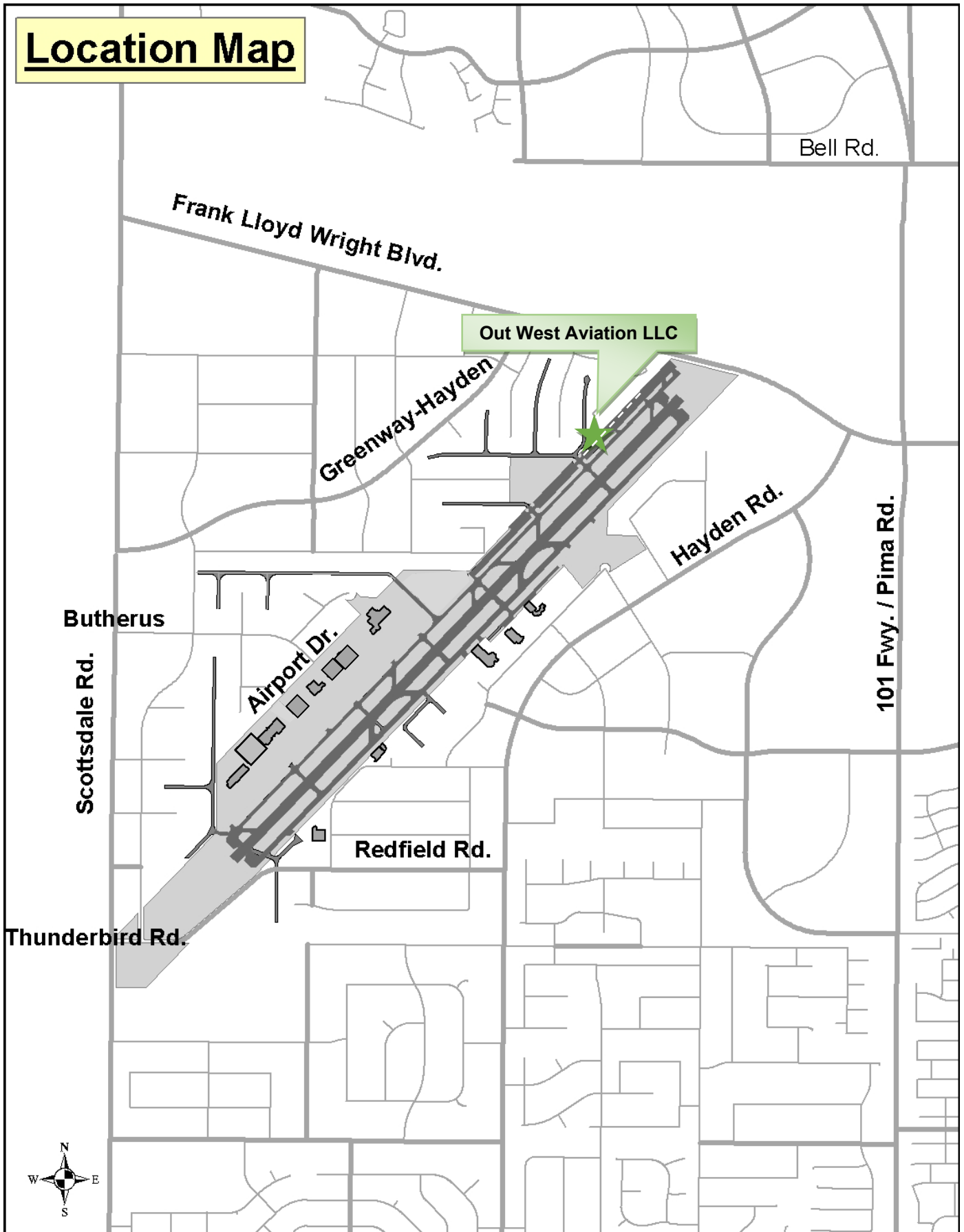
Aviation
Director's
Comments/
Stipulations:

Approved by Aviation
Director or designee:

Cameron Williams 6-15-2023

Date Ratified by the Airport Advisory Commission:

Location Map





COMMISSION ACTION REPORT

Discussion and Possible Action regarding application for Airport Aeronautical Business Permit for WC Aviation Inc. to conduct Aircraft Maintenance and Repair Services

Agenda Item No.: 2

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach
Coordinator

Phone: (480) 312-8482

ACTION

Ratification of Airport Aeronautical Business Permit for WC Aviation Inc. to conduct aircraft maintenance and repair services in the Scottsdale Airport.

PURPOSE

Pursuant to Scottsdale Revised Code, Chapter 5, Article 3, commercial aeronautical activity conducted in the Airport requires a valid Aeronautical Business Permit. In addition, the Airport Minimum Operating Standards outlines the process for obtaining such a permit. WC Aviation Inc. has requested an Airport Aeronautical Business Permit to conduct aircraft maintenance and repair services in the Scottsdale Airport.

APPLICANT(S)

WC Aviation Inc.
Jorge Duarte, Owner
14600 N. Airport Drive, Suite 224
Scottsdale, AZ 85260

KEY CONSIDERATIONS

WC Aviation Inc. has provided the appropriate documentation as required in the Airport Minimum Operating Standards.

Attachment(s): 1. Completed Airport Aeronautical Business Permit
 2. Location Map

Action taken:



SCOTTSDALE AIRPORT AERONAUTICAL BUSINESS PERMIT



(Required to conduct commercial aeronautical activity on the airport)
Fields in RED are required fields.

Business or activity to be conducted (check all that apply):

- Aircraft Charter Services
- Aircraft Leasing or Rental Services
- Aircraft Maintenance and Repair Services
- Aircraft Management
- Aircraft Washing Services
- Aircraft Sales Services
- Aircraft Mobile Maintenance and Repair Services
- Specialized Aircraft Repair Services (list service): _____
- Specialized Commercial Flying Service (list service): _____
- Hangar/Shade Leasing Services
- Flight Training Services
- Fixed Base Operator
- On-Airport Rental Car Concession
- Other (list service): _____

These activities are limited to the airport by ordinance. Please refer to the Airport Minimum Operating Standards for further information on each type of business.

Applicant (Business Name): **WC Aviation Inc.**

Authorized Representative, title: **Jorge Duarte** Email Address: **jorge@wcaviation.net**

Work Phone: _____ Cell Phone: **3237079567** Fax: _____

Mailing Address: **14600 N. Airport Drive**

City: **Scottsdale** State: **AZ** Zip Code: **85260**

Billing Address: **14700 N. Airport Dr.**

City: **Scottsdale** State: **AZ** Zip Code: **85260**

Billing Phone: **3237079567** Billing Email: **invoices@wcaviation.net**

The Applicant hereby requests the above action(s), and in consideration of this request being granted, agrees to the following:


1. FEE PAYMENT: The Applicant agrees to pay all applicable fees on time, and all required fees including late fees, interest and penalties without deduction of any kind.
2. PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to the approved business activity listed above
3. INFORMATION CHANGES: The Applicant shall notify Airport Administration, in writing within fifteen (15) days , of any change to the information provided.
4. RELEASE OF LIABILITY: The City assumes no liability for damage or loss to personal property while operating at Scottsdale Airport.
5. INDEMNIFICATION: The Applicant and invitees shall indemnify the City pursuant to Chapter 5 of the Scottsdale Revised Code. As required by the Airport Minimum Operating Standards, permit holder shall endorse all liability insurance policies to include the City of Scottsdale as an additional insured. Applicant further agrees to waive their insurers' subrogation rights against the City of Scottsdale, and its Officers, Directors, Commissioners, and Employees.
6. COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations. To view regulations, go to <http://www.scottsdaleaz.gov/airport/regulatorydocs>

Please check the box for each item attached and submitted with the application:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Lease/License Agreement | <input checked="" type="checkbox"/> Certificates of Insurance | <input type="checkbox"/> FAA Certificates |
| <input type="checkbox"/> Sublease Agreement | <input checked="" type="checkbox"/> Business/ Privilege Tax License | For Flight Training Schools:
<input type="checkbox"/> Noise Abatement Pilot Briefing |

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of a copy of this permit.

Applicant Signature:



Date: 6/8/23

By checking this box, I affirm that the information entered above is accurate and that the name typed above represents my official signature.

Please save the form to your documents, submit the form with an electronic signature to cawilliams@scottsdaleaz.gov
OR print, sign and return to: 15000 N. Airport Drive, Suite 100, Scottsdale, AZ 85260.

Staff Use Only

Application, permits and insurance reviewed by: C. Williams

Aviation
Director's
Comments/
Stipulations:

Account 2023-08

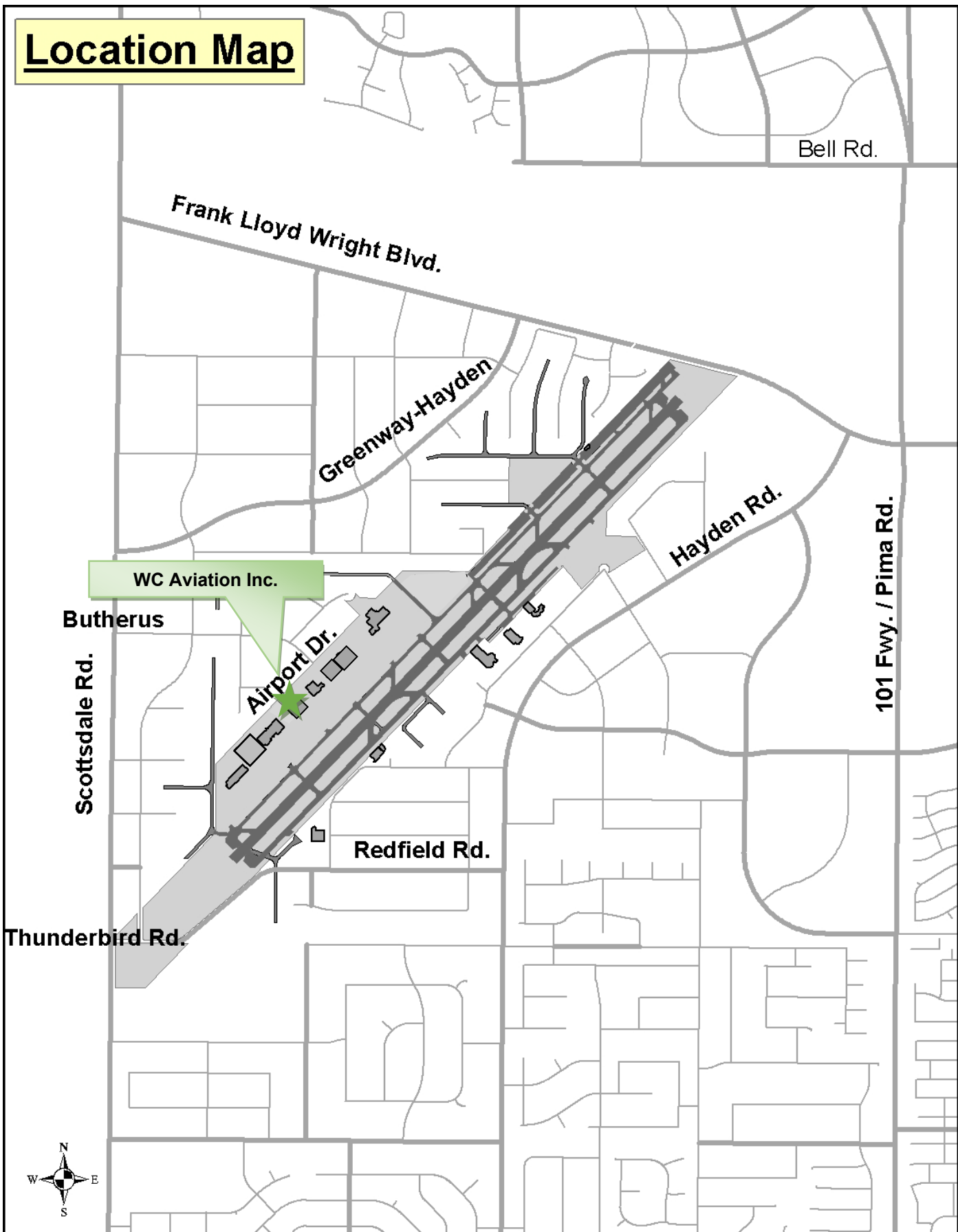
Approved by Aviation
Director or designee:



Date Ratified by the Airport Advisory Commission:

August 2014

Location Map





COMMISSION ACTION REPORT

Discussion and Possible Action to Recommend Adoption of Resolution No. 12923 authorizing a Second Amended and Restated Lease Agreement No. 2018-193-COS-A2 with Jet Aviation Scottsdale, LLC

Agenda Item No.: 3

Meeting Date: 09/20/23

Staff Contact: Gary P. Mascaro,
C.M., C.A.E., Aviation Director

Phone: (480) 312-7735

ACTION

Discussion and possible action to recommend adoption of Resolution No. 12923 authorizing a second amended and restated lease agreement No. 2018-193-COS-A2 with Jet Aviation Scottsdale, LLC to provide clarity of terms, modify the lease premises square footage and exhibits, extend the term of the lease, and modify the time periods for completion of certain improvements.

PURPOSE

This action item shall modify the leased area square footage and monthly base rent, modify the lease term, update time periods for completion of certain improvements and update indemnity and insurance language.

KEY CONSIDERATIONS

- Lease agreement 2018-193-COS was executed between the City of Scottsdale and Scottsdale Jet Center Real Estate, LLC on December 11, 2018, for the lease and redevelopment of two airport parcels for a future fixed-base operation (FBO). The original lease term expiration is January 31, 2059.
- The first amendment approved in February 2020 reflected an increase to the monthly base rental rate and leased apron square footage due to future development plans by the Lessee, including construction milestones for improving existing facilities and new construction as required for the operation of the new FBO.
- This second amended and restated lease reflects a decrease of 5,170.28 square feet of leased apron area with a revised base rent of \$20,531.56 commencing on the effective date of the second amendment.
- If the Lessee demonstrates an expenditure of \$29 million dollars in improvements to the satisfaction of the Aviation Director, Lessee shall be vested with an option to extend this lease for an additional fifteen-year period beyond the original term and automatic extension set forth.
- If the Lessee completes all of the Phase IIB improvements no later than May 22, 2026, the term shall be automatically extended an additional five years to January 31, 2064.
- If the Lessee has executed the fifteen-year extension option prior to the completion of Phase IIB work, the Phase IIB completion would extend the lease until January 31, 2079.
- Administrative changes were made to the Indemnity and Insurance, Section XII as agreed upon between City Risk Management and Lessee.
- Updates were made to some of the Exhibits.

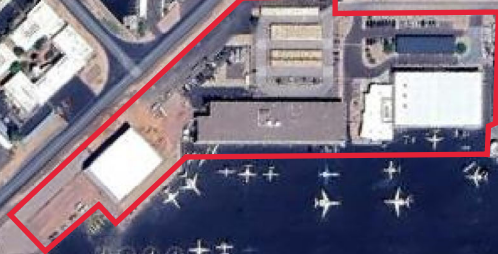
Attachments:

1. Vicinity Map
2. Resolution No. 12923
3. Second Amended and Restated Lease Agreement 2018-193-COS-A2
4. Second Amended and Restated Lease Agreement 2018-193-COS-A2 Redline Version

Action taken:

4/2023

Jet Aviation
Leasehold



Scottsdale Airport

Image © 2023 Airbus

Imagery Date: 4/22/2023 33°37'14.81" N 111°54'58.46" W elev 0



RESOLUTION NO. 12923

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING SECOND AMENDED AND RESTATED LEASE AGREEMENT NO. 2018-193-COS-A2 WITH JET AVIATION SCOTTSDALE, LLC FOR THE LEASE OF SPACE FOR FIXED BASE OPERATIONS AND OTHER PURPOSES AT THE SCOTTSDALE AIRPORT.

WHEREAS, the City is the owner of certain real property known as the Scottsdale Airport which was originally leased ("the Lease") to Scottsdale Jet Center Real Estate, LLC ("Lessee") through Contract No. 2018-193-COS; and

WHEREAS, the Lease was amended through Contract 2018-193-COS-A1 to permit expansion of the leased area and adjust the base rent; and

WHEREAS, Lessee has formally changed its name and is now known as Jet Aviation Scottsdale, LLC; and

WHEREAS, the City desires to amend and restate the Lease to provide clarity of terms, extend the term of the lease, and modify the time periods for completion of certain improvements;

NOW, THEREFORE, be it resolved by the Council of the City of Scottsdale as follows:

Section 1: The Mayor is authorized and directed to execute on behalf of the City of Scottsdale, the Second Amended and Restated Lease Agreement No. 2018-193-COS-A2 with Jet Aviation Scottsdale, LLC for fixed base and other operations at the Scottsdale Airport.

PASSED AND ADOPTED by the Council of the City of Scottsdale this _____ day of _____, 2023.

CITY OF SCOTTSDALE, an Arizona
municipal Corporation

David D. Ortega, Mayor

ATTEST:

By: _____
Ben Lane, City Clerk

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney

WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Aviation Director)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. 2018-193-COS-A2
(Resolution No. 12923)
(Jet Aviation aka Scottsdale Jet Center)

SECOND AMENDED AND RESTATED LEASE AGREEMENT

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, by and between the City of Scottsdale, an Arizona municipal corporation ("Lessor"), and Jet Aviation Scottsdale, LLC (formerly known as Scottsdale Jet Center Real Estate, LLC), an Arizona limited liability company ("Lessee").

RECITALS

A. Lessor is the owner of the Scottsdale Airport (the "Airport") located northeast of the intersection of Scottsdale Road and Thunderbird Road in Maricopa County, Arizona.

B. The Airport includes certain real property (the "Premises") comprising two parcels in the City of Scottsdale, Arizona, consisting of the Air Commerce Center Parcel of approximately 7.88 total acres (343,153 square feet) as described in Exhibit "A.1" attached hereto, and the Greenway Hangars and Shades Parcel of approximately 7.01 total acres (305,209 square feet) as described in Exhibit "B.1" attached hereto.

C. Lessor holds fee title and various other interests in the Premises subject to various documents recorded in the office of the Maricopa County Recorder as of the date of this Agreement (collectively, the "Site Documents").

D. The original Premises includes certain office and hangar facilities as well as T-Shades and Hangars and an underground fuel farm made available for lease hereunder. As a part of this Agreement, Lessee will be granted the non-exclusive use of the aircraft parking apron located directly in front of the leased Premises.

E. Lessee has begun construction and desires to continue to construct and operate all improvements necessary for convenient use of the Premises as a full service fixed base operator (collectively the "Project") upon the Premises as depicted on the drawings (collectively, the "Site Plan") attached hereto as Exhibit "C.1" (relating to the Air Commerce Center Parcel)

and Exhibit "D.1" (relating to the Greenway Hangars and Shades Parcel), subject to the requirements of this Agreement.

F. Lessor and Lessee entered an initial lease on or about December 11, 2018, City of Scottsdale Contract No. 2018-193-COS.

G. Lessor and Lessee entered an amendment to the initial lease on February 18, 2020, City of Scottsdale Contract No. 2018-193-COS-A1.

H. Lessor and Lessee now wish to amend and restate the Lease agreement between themselves thereby superseding the original Lease and the First Amendment through this Second Amended and Restated Lease Agreement.

I. On or about February 26, 2021, Lessee filed forms with the Arizona Corporation Commission legally changing its name from Scottsdale Jet Center Real Estate, LLC to its current name of Jet Aviation Scottsdale, LLC.

J. Subject to the terms and conditions herein, Lessor shall lease the premises to Lessee and Lessee shall complete construction of the various improvements in three phases comprising the Project upon and adjacent to the Premises as depicted on the Site Plan under the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Lessee, and the covenants and agreements contained herein to be kept and performed by Lessee, and other good and valuable consideration, Lessor and Lessee agree as follows:

I. RECITALS

1.0 Recitals. The foregoing recitals are incorporated into this Agreement.

II. PREMISES

2.0 Premises. Lessee's rights to use the Premises are limited as follows:

2.1 Reservation. Lessor specifically reserves to itself and excludes from this Agreement a non-exclusive easement (the "Reserved Easement") over the entire Premises for the exercise of all of Lessor's rights under this Agreement and for any and all purposes that do not materially interfere with Lessee's lawful conduct of the Permitted Uses under this Agreement. The Reserved Easement does not give the general public or any other Airport tenant (or the employees, vendors, or contractors of any other Airport tenant) a right to enter upon the Premises. Without limitation, the Reserved Easement also includes:

2.1.1 An underground utility easement.

2.1.2 A non-exclusive easement for pedestrian and vehicular access upon all vehicular, aircraft and pedestrian driveways, plazas, sidewalks, and maneuvering areas existing from time to time.

2.1.3 The right to install antennas utilized for airport operations upon the roofs of the buildings. Lessor shall not install, operate or allow use of equipment, methodology or technology for its antennas at the Premises that may or would interfere with the optimum

effective use or operation of Lessee's antennas now or hereafter at the Premises. Lessee shall have the right to reject antennas which are visible from the parking spaces within the Premises or which interfere with other permitted uses of the roofs by Lessee and cannot be reasonably accommodated by such uses.

2.2 Public Agency Access. Lessor reserves the right for other public agencies and Lessor to enter the Premises or any part thereof at all reasonable times, for the purposes of reconstruction, maintenance, repair or service of any public improvements or public facilities located within or without the Premises. Any such entry shall be made only after reasonable notice to Lessee, and after Lessor or the other public agency has agreed to be responsible for any claims or liabilities pertaining to any entry. Any damage or injury to the Premises or to the part thereof resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. Such reserved rights do not include the interior space of any buildings that Lessee may construct upon the Premises. Lessor or the other public agency shall take commercially reasonable steps to minimize any disruption of the conduct of business on the Premises caused by the construction, reconstruction, repair, operation, maintenance and replacement of such improvements and facilities.

2.3 Rights in Adjacent Premises. Lessee's rights are expressly limited to the real property defined as the "Premises" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property adjacent to the Premises is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Lessor, such property shall not accrue to this Agreement but shall be Lessor's only. In addition, and severable from the preceding sentence, upon any such event, Lessee shall execute and deliver to Lessor without compensation a quit-claim deed of such right-of-way or other property.

2.4 Variation in Area. In the event the Premises consist of more or less than any stated acreage, this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

2.5 Condition of Title. Lessee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the Premises. Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own or Lessee's title to the Premises. Lessee's rights hereunder are further subject to all present and future building restrictions, regulations, rules, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises or Lessee's use thereof.

2.6 Site Documents. Lessee shall do nothing at the Premises that the Site Documents would not allow Lessor to do. Lessee shall timely, fully and faithfully perform all obligations of Lessor and Lessee under the Site Documents with respect to the Premises. Lessee shall not have power to amend, modify, terminate or otherwise change the Site Documents, without Lessor's express written consent. Lessee shall pay, indemnify, defend and hold harmless the Lessor and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs, which arise from or relate to violations of the Site Documents by Lessee or those claiming through Lessee. In the event the Site Documents impose affirmative duties to be performed on land outside the Premises, Lessee is not obligated to perform such duties unless the Site Documents specifically impose such duties upon the land included within the Premises.

2.7 Condition of Premises. Lessee has examined, studied and inspected the Premises, the Airport, and all other property associated with this Agreement and its environs. All of such property is being made available in an “as is” condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Lessee has obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement or this transaction.

2.8 Lessor’s Fixtures and Personalty. No fixtures or personal property owned by Lessor upon or within the Premises are included in this Agreement. Any and all of Lessor’s property as may come into the possession of Lessee or be used by Lessee, shall be returned to Lessor by Lessee at termination of this Agreement and shall be maintained in good working condition by Lessee from time to time at Lessee’s expense and replaced by Lessee at Lessee’s expense when worn out and shall be owned at all times by Lessor with Lessee being solely responsible for the condition thereof. All such personal property shall be provided “as is” and Lessee shall accept all responsibility for its condition and shall thoroughly inspect the same before use.

III. TERM OF AGREEMENT

3.0 Term of Agreement. Lessor hereby leases the Premises to Lessee subject to and conditioned upon Lessee’s full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Lessee, and Lessee hereby accepts the Premises and this Agreement.

3.1 Term. The term of the Lease of the Premises commenced, and the original Lease became effective on or about December 11, 2018, and the initial term of the Lease of the Premises shall expire on January 31, 2059. Provided, however, if Lessee demonstrates expenditure of \$29 million dollars in improvements to the satisfaction of the Aviation Director, Lessee shall be vested with an option to extend this Lease for an additional fifteen year period beyond the conclusion of the initial term and any automatic extension as set forth below (“the fifteen year extension”). If verified and desired, Lessee shall exercise this option by providing written notice to Lessor no later than 180 days prior to expiration of the initial term (as extended) of the Lease. Further, if Lessee completes all of the improvements for Phase IIB as contemplated in this Agreement no later than May 22, 2026, the term of this Lease shall be automatically extended an additional five years to January 31, 2064. For the avoidance of doubt, if the Lessee has executed the fifteen year extension option prior to the completion of the Phase IIB work, the Phase IIB completion would extend the lease until January 31, 2079. Upon confirmation of the vesting of either the automatic extension or the Lessee option, Lessee and Lessor’s Aviation Director shall execute a memorandum confirming the same and Lessor’s Aviation Director shall cause a copy of the memorandum to be attached to this Lease Agreement and filed with the City Clerk.

3.2 Holding Over. In any circumstance whereby Lessee should remain in possession of the Premises after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month which may be terminated at any time by Lessor upon thirty (30) days notice to Lessee, or by Lessee upon sixty (60) days notice to Lessor.

3.3 Airport Closure. Lessor does not warrant that the Airport will remain open during the entire term of this Agreement, but Lessor does not presently have intentions to close the Airport. If the Airport is scheduled to be closed for more than a twelve (12) month period,

Lessee shall have a six (6) month period (the "Decision Period") to give Lessor notice that Lessee elects to terminate this Agreement without penalty. The Decision Period shall commence on the date (the "Determination Date") which is the end of the said first six (6) month period of Airport closure. If Lessee does not so elect to terminate this Agreement by giving such notice, then the following shall apply

3.3.1 The Permitted Uses shall be expanded to include all uses then allowed under applicable zoning and other laws.

IV. LEASE PAYMENTS

4.0 Lease Payments. Lessee shall pay to Lessor all of the following payments together with all other payments required by this Agreement (all payments by Lessee to Lessor required by this Agreement for any reason are collectively the "Rent"):

4.1 Rent Payment Date. All Rent shall be payable one month in advance on the twenty-fifth day of the preceding month. In the event an amount is not known in advance, Lessor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. For example, the Rent for September shall be payable on or before August 25. Rent is deemed paid only when good payment is actually received by Lessor.

4.2 Base Rent. The rental amount ("the Base Rent") Lessee shall pay to Lessor at the twenty-fifth day of the preceding month of this Agreement shall be Thirteen Thousand One Hundred Sixteen and 51/100 Dollars (\$13,116.51). On May 22, 2022, the rental amount (the "New Base Rent") Lessee shall pay to the Lessor at the twenty-fifth day of the preceding month of this Agreement shall be Nineteen Thousand Seven Hundred Twenty-Four and 44/100 Dollars (\$19,724.44). Commencing on the Effective Date of this Second Amendment, the monthly rental amount (the "Revised Base Rent") Lessee shall pay to the Lessor at the twenty-fifth day of the preceding month shall be Twenty Thousand Five Hundred Thirty-One and 56/100 Dollars (\$20,531.56)

4.3 Base Rent Adjustment. The Base Rent shall be automatically adjusted upward on each anniversary of this Amendment occurring in an odd numbered year, beginning with 2021. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each new adjusted monthly installment of Base Rent (represented by the letter "R" in the formula set forth below) shall be equal to the new Cost of Living Index number (represented by the letter "C" in the formula set forth below) divided by the original Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the original monthly Base Rent amount (represented by the letter "B" in the formula set forth below) This computation is expressed by the following formula:

$$R = C/M \times B$$

provided, that in no event shall any Rent be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, Lessor shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate. Any correction due to an error in Lessor's estimate shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice by either party to the other

that the Cost of Living Index has been published. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by Lessor in Lessor's reasonable discretion. Any delayed adjustment shall be effective retroactively. In the event of a holdover, all Rent and every element thereof shall be increased by an additional fifty percent (50%) over the amount of Rent that would otherwise be payable under this Agreement.

4.4 Aeronautical Business Permit. To the extent required by law, all persons occupying or operating at the Premises shall obtain an Aeronautical Business Permit. This paragraph applies to any type of permit or other rule or requirement that may supplement or replace the Aeronautical Business Permit. In addition to all other Rent payment hereunder, if Lessee does not from time to time hold an Aeronautical Business Permit covering all activities relating to its own operations, activity and business at the Premises and pay all fees related thereto, Rent shall include an additional amount equal to the amount that would be payable pursuant to such an Aeronautical Business Permit regardless of whether an Aeronautical Business Permit is required by law. Notwithstanding the foregoing or Paragraph 5.1, Lessee may sublease office space (but only office space) to persons or entities who are not engaged in an aviation related business and/or who are not required to hold an Aeronautical Business Permit; provided, however, that because the Permitted Uses are otherwise limited to certain aviation related uses and Lessor desires to ensure an appropriate overall mix of aviation and non-aviation related office space on the Premises, any and all such non-aviation related office subleases are subject to Lessor's prior written consent (which consent Lessor shall not unreasonably withhold or delay).

4.5 Security Deposit. Lessee shall continue maintain with Lessor at all times during the term of this Agreement, a cash security deposit in the amount equal to Fifteen Thousand Dollars (\$15,000) guaranteeing the faithful performance of this Agreement. Any funds or property of Lessee held by or available to Lessor or any issuer of a letter of credit receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Lessee's faithful performance of this Agreement. Any portion of any security deposit to which Lessee may then be entitled, net of any setoff or other obligation of Lessee, shall be paid to Lessee by the then owner of the fee title to the Premises within sixty (60) days after the later of termination of this Agreement or complete satisfaction of all of Lessee's obligations.

4.6 Late Fees. Should any Rent not be paid on or before the due date, a late fee shall be added to the amount due in the amount of ten percent (10%) of the amount due. Furthermore, any Rent that is not timely paid shall accrue interest at the rate of .25 percent (.0025) per month, every month thereafter until paid. Lessee expressly agrees that the forgoing represent fair and reasonable estimates by Lessor and Lessee of Lessor's costs (such as accounting and processing costs, administrative costs, etc.) in the event of a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

4.7 Rent Amounts Cumulative. All amounts payable by Lessee under any provision of this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

4.8 No Setoffs. Lessee shall pay all Rent directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

V. USE RESTRICTIONS

5.0 Use Restrictions. Lessee's use and occupation of the Premises shall in all respects conform to all and each of the following cumulative provisions:

5.1 Permitted Uses. Lessee and those claiming through Lessee shall use the Premises solely for a full service fixed base operator (the "Permitted Uses") in accordance with the Airport Minimum Operating Standards and receiving an approved Aeronautical Business Permit for such activity. Lessee shall conduct no other activity at or from the Premises. The Permitted Uses are limited to the following as set forth in Sections 5.1 through 5.1.11:

5.1.1 Commercial offices as reasonably required for conduct of the Permitted Uses.

5.1.2 Flight instruction.

5.1.3 Aircraft charter service.

5.1.4 Aircraft sales and leasing.

5.1.5 Major aircraft maintenance and repair.

5.1.6 Aircraft storage, parking and tiedown.

5.1.7 Aircraft related warehousing.

5.1.8 Aircraft lubrication.

5.1.9 Aircraft management services.

5.1.10 Aircraft parts, avionics and equipment sales.

5.1.11 Aircraft fueling subject to the limits of this Agreement and the Airport Rules and Regulations.

5.2 Additional Restrictions. Through the term of this Lease the Permitted Uses are further restricted as follows:

5.2.1 Except for vending machines, no food shall be sold at the Premises. The preceding sentence does not preclude sales of in-flight meals prepared outside the Premises.

5.2.2 No gambling activities of any sort whatsoever are permitted at the Premises.

5.2.3 Sales, sale signs, and merchandise storage and display are confined to the interior of the Premises within the building.

5.2.4 No alcohol is permitted at the Premises. The preceding sentence does not apply to de minimus quantities of alcohol provided by building occupants for their own use (and guests) or to infrequent social parties conducted by Premises occupants for their staff or customers.

5.3 Restriction on Lessee's Other Business. During the entire term of this Agreement, Lessee shall not participate directly or indirectly in the ownership, management, or operation of any other business or other operation that includes transient fueling at the Airport.

5.4 Height Limitation. Lessee shall not direct, permit, or maintain upon the Premises any structure, tree, or other stationary or attached object (except an aircraft) that penetrates the Federal Aviation Regulation Part 77 surface without consent of the Federal Aviation Administration.

5.5 Signs. Lessee shall install all signs and markings required for safe use of the Premises. Lessee shall have the right to install and maintain not more than five (5) appropriate exterior signs per building to identify Lessee's operations at the Premises provided that all of the following conditions are met:

5.5.1 Each sign shall be made of metal and match the color, materials, content, construction, lettering, style, appearance and function of other signs installed by Lessor in the operation areas of the Airport, all as reasonably determined by Lessor.

5.5.2 Lessee shall design, make, install and maintain all signage in a first class professional manner.

5.5.3 Lessee shall not erect, install, apply for a permit for, or display any sign until Lessee has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Lessor, and has received notice of Lessor's approval. Proposed Lessee signs shall also be subject to the same plans review and other requirements that apply to other construction work by Lessee under this Agreement.

5.5.4 Lessee shall bear all costs pertaining to the erection, installation, operation, maintenance and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits.

5.5.5 The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, banners and other manner of signage.

5.5.6 Lessee shall provide signage and other markings on the Premises as directed by Lessor from time to time to cause parking, deliveries and other vehicle and other uses to comply with this Agreement.

5.6 Publicity. Upon special or standing requests made by Lessor from time to time and not in the absence of such requests, Lessee shall include in its promotional materials and other information distributed, sent, or made available to the public or others a notation that all or any part of Lessee's activities at the Premises are accomplished "with the assistance of the City of Scottsdale" or other words of support as Lessor may reasonably select from time to time.

5.7 Prohibited Names. Lessee shall not allow use in connection with any operations at the Premises any name that directly or indirectly refers to or contains any part of Lessor's

name or the Airport's name or otherwise suggests a connection between Lessor and Lessee or Lessee's activities. Lessee shall also not use in connection with its operations at the Premises any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

5.8 Name of Business. Lessee shall operate the Permitted Uses at the Premises under Lessee's name, Jet Aviation Scottsdale, or if such name is not available or if Lessor and Lessee desire otherwise, such other aviation related name as Lessor may approve in Lessor's reasonable discretion.

5.9 Nonexclusive Uses. Lessee understands and agrees that Lessor, Lessor's other tenants, and other persons within and without the Airport and the surrounding vicinity will conduct from time to time business activities in direct competition with Lessee. Lessee has no exclusive rights to conduct any activity anywhere at the Airport. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. § 1349).

5.10 Communications Operations Restriction. Lessee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Lessor's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Lessee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Lessee takes corrective measures. Any such corrective measures shall be made at no cost to Lessor.

5.11 Outdoor Uses. Except to the extent, if any, approved by Lessor (Aviation Director) in writing in advance from time to time, all uses other than automobile and aircraft parking, aircraft fueling, pedestrian, aircraft and vehicular access, and similar incidental uses are confined to the interior of buildings at the Premises. The preceding sentence does not prohibit minor aircraft servicing outside the Premises on other portions of the Airport as may be allowed from time to time.

5.12 Coordination Meetings. Lessee shall meet with Lessor and other Airport users from time to time as requested by Lessor to coordinate and plan construction and operation of the Premises and all matters affected by this Agreement.

5.13 Governmental Relations. Lessee shall conduct its activities in coordination with Lessor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Premises. The preceding sentence does not prohibit Lessee from asserting its legal rights against such entities. Lessee shall immediately give to Lessor notice of any actual or threatened dispute, violation or other disagreement relating to the Premises. Lessee is not an agent for Lessor. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Premises):

5.13.1 State of Arizona

5.13.2 Maricopa County

5.13.3 Arizona Department of Environmental Quality

5.13.4 Arizona Department of Transportation

5.13.5 Federal Aviation Administration

5.14 Conduct at Premises. In entering into this Agreement, Lessor and Lessee have foremost in mind providing the public with a professional atmosphere devoid of unruly, inebriated, disorderly, or sexually oriented behavior. Lessee shall cause persons exhibiting such behavior to leave the Premises.

5.15 Quality Service. Lessee shall operate the Premises in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Premises attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to Lessor's reasonable satisfaction.

5.16 Lessee's Agent. Lessee shall at all times when the Premises are occupied retain on call available to Lessor upon the Premises an active, qualified, competent and experienced manager to supervise all activities upon and operation of the Premises and who shall be authorized to represent and act for Lessee in matters pertaining to all emergencies and the day-to-day operation of the Premises and other matters affecting this Agreement. Lessee shall also provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone numbers of a person to handle Lessee's affairs and emergencies at the Premises.

5.17 Operations and Staff Qualifications and Requirements. Lessee shall provide to the Premises adequate qualified personnel to conveniently conduct all operations at the Premises.

5.18 Hazardous Materials. Lessee's use upon or about the Premises shall be subject to the following provisions regarding any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, or the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

5.18.1 Lessee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Premises. The prohibitions of the preceding sentence only shall not apply to:

5.18.1.1 Aircraft fuel lawfully contained in proper tanks and dispensing equipment and offered for sale as permitted by this Agreement.

5.18.1.2 Materials necessary for aircraft servicing and restoration, provided such materials are present only in the minimum quantities reasonably necessary for such uses.

5.18.1.3 Janitorial supplies and similar materials in the minimum quantities necessary for first class modern fixed base operator uses permitted by this Agreement.

5.18.1.4 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in aircraft, motor vehicles and ordinary construction or landscaping machinery serving the Premises when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles installed in such vehicles and machinery.

5.18.2 Lessee shall dispose of any Toxic Substances away from the Premises as required by law.

5.18.3 Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Health Services.

5.18.4 In addition to any other indemnities or obligations, Lessee shall pay, indemnify, defend and hold Lessor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Premises attributable to or caused by Lessee or anyone using the Premises or acting or claiming under Lessee or this Agreement or otherwise relating to this Agreement. Lessee shall immediately notify Lessor of any prohibited Toxic Substance at any time discovered or existing upon the Premises.

5.18.5 Lessee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Lessee acknowledges the possibility that the Premises may contain actual or presumed asbestos containing materials.

5.19 Chemical Containers. Lessee shall capture, control and dispose of waste oil and other waste materials from equipment and other activities at the Premises. Lessee's disposal of such items shall be according to law and away from the Premises and other property of Lessor.

5.20 Fixtures and Personalty. Lessee shall provide to and maintain at the Premises all equipment and other items necessary for the Premises to be conveniently used for the Permitted Uses.

5.21 Required Operation. During the entire term of this Agreement and any renewals or extensions, Lessee shall keep the Premises open to the public with service adequate to meet public demand. If Lessor determines in Lessor's reasonable discretion that public demand requires additional operating hours, Lessor shall have the right to require additional hours of operation. The operating requirements of this paragraph shall be suspended during the allowed period of repair work to the Premises under this Agreement when and to the extent operation is prevented by damage to the Premises. Lessee shall provide all of the following services:

5.21.1 Aircraft fueling and lubricants.

5.21.2 Aircraft line services.

5.21.3 Major aircraft maintenance and repair services.

5.21.4 All service required to meet the minimum standards for a fixed base operator as set forth in the Scottsdale Airport Minimum Operating Standards, as amended from time to time.

5.22 Parking off the Premises. Lessor is not required to provide any parking. Parking is allowed only in marked parking stalls on the Premises. Vehicle loading, unloading, parking and standing is not allowed on any other area of the Airport or upon adjacent streets or lands.

The preceding sentence does not prohibit use of motor vehicles upon the Airport ramp or other areas as may be permitted from time to time. Lessee shall take such measures as Lessor may reasonably request (including but not limited to installing, maintaining and operating card-controlled access gates) to control non-aircraft access to areas accessible to aircraft.

5.23 Parking on the Premises. To reduce effects on surrounding parking, and to encourage full use of parking at the Premises by persons visiting the Premises, Lessee shall make no charge except for valet service, if any, for parking at the Premises. For purposes of the preceding sentence, parking charges do not include charges for automobile storage while a person is using an aircraft based at the Premises. Except as Lessor may consent from time to time, Lessee shall provide all parking on site in compliance with current and future laws and regulations.

5.24 Airport Operations. Lessee acknowledges that Lessee's use of the Premises shall be subject and subordinate to Lessor's operation of the Airport, which will necessarily directly and indirectly affect Lessee and the Premises. Lessee shall not use the Premises in a way that in Lessor's reasonable discretion adversely affects Lessor's use or operation of the Airport. Cumulatively and without limitation:

5.24.1 This Agreement does not give Lessee any rights to park aircraft at any location at the Airport other than the Premises or to use any other portion of the Airport. Any use of any portion of the Airport other than the Premises by Lessee shall be only as a member of the public and subject to all rules and regulations affecting the Airport from time to time.

5.24.2 Lessor reserves the right to further develop, diminish, close, remove or otherwise change the landing area and other areas of the Airport. Lessor reserves the right, but shall not be obligated to Lessee to maintain, operate or repair the landing or other areas of the Airport and all publicly owned facilities of the Airport.

5.24.3 There is hereby reserved to Lessor, its successors and assigns, and for the use and benefit of Lessor and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This right of flight shall include the right to cause within or without said airspace any noise, vibrations or other effects relating to the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating at, the Airport.

5.24.4 Lessee shall not interfere with or endanger or obstruct the flight, taxiing, landing and taking off of aircraft, the loading or unloading of passengers or cargo, or other Airport operations.

5.25 Actions by Others. Lessee shall be responsible to ensure compliance with this Agreement by all persons using the Premises or claiming through or under Lessee or this Agreement. Lessee shall prevent all such persons from doing anything that this Agreement prohibits Lessee from doing.

VI. IMPROVEMENTS BY LESSOR

6.0 Improvements by Lessor. Except as expressly provided in this Agreement, Lessor has not promised to and is not obligated in any manner to make any improvements to the Premises or the Airport.

VII. LESSEE'S IMPROVEMENTS GENERALLY

7.0 Lessee's Improvements Generally. Lessee shall not perform any improvements, repairs, installation, construction, grading, structural alterations, utility alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon or related to the Premises (collectively "Lessee's Improvements") except in compliance with the following:

7.1 Cost of Lessee Improvements. Should Lessee wish to further improve the Premises, all Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, indemnify, defend and hold harmless Lessor and Lessor's employees, officer's, contractors and agents against all claims related thereto. Lessee shall bear the cost of all work required from time to time to cause the Premises to comply with local zoning rules, environmental approvals, the Americans with Disabilities Act, building codes and similar rules. Lessee shall also bear the cost of all work required from time to time to cause any other property owned by Lessor to comply with all such rules implicated by work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

7.2 Design and Construction Professionals. All construction and plans preparation for all Lessee's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Lessee's Improvements.

7.3 Improvement Quality. Any and all work performed on the Premises by Lessee shall be performed in a workman-like manner as reasonably determined by Lessor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

7.4 Ownership of Lessee's Improvements. All Lessee's Improvements (including the existing Air Commerce Center improvements) shall be considered owned by Lessee throughout the term of this Agreement; provided that (a) upon the expiration or earlier termination of this Lease, title to all such improvements shall be deemed automatically transferred to Lessor, without need for action by any party, (b) the foregoing shall not excuse Lessee from any of its obligations under the this Agreement concerning such improvement, and (c) Lessee shall not have any right to remove any such Improvements upon any termination of this Lease or upon the expiration of the term of this Agreement, except as may be expressly permitted pursuant to this Agreement.

7.5 Time for Completion. Lessee shall diligently and expeditiously pursue to completion the construction of all approved Lessee's Improvements and shall complete construction of all of Lessee's Improvements, if any, no later than the earlier of i) eighteen (18) months after commencement of such construction, or ii) any earlier date required by this

Agreement or by Lessor's approval of the plans. Notwithstanding anything in this paragraph to the contrary, the time period for completing restoration work in the event of damage to the premises is twenty-four (24) months after the damage.

7.6 Construction Coordination. Lessee shall conduct all of its construction activities at and about the Premises so as not to materially interfere with activities, operation, and other construction upon the Airport or surrounding properties.

7.7 Approval Required. Lessee shall not perform any construction work requiring a building permit without having first received the written consent of Lessor.

7.8 Effect of Approval. Lessor's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Lessor shall not reject subsequent plans to the extent the matter to which Lessor objects was clearly included in plans previously approved by Lessor and plainly shown on plans previously approved by Lessor. However, Lessor is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

7.9 Utility Modifications. Any changes to utility facilities shall be strictly limited to the Premises and shall be undertaken by Lessee at its sole cost and expense.

7.10 Design Requirements. All Lessee's Improvements shall comply with the following design requirements:

7.10.1 All Lessee's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property, except that Lessee's Improvements shall include construction of related curbs, gutters, pavement, landscaping, and other street improvements Lessor determines to be appropriate.

7.10.2 All Lessee Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Airport.

7.10.3 All Lessee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents and this Agreement.

7.10.4 Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises.

7.10.5 To the extent requested by Lessor, Lessee's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Premises and protect other facilities at the Airport and surrounding properties.

7.11 Disturbance of Toxic Substances. Prior to undertaking any construction or maintenance work, Lessee shall cause the Premises to be inspected to ensure that no potential asbestos or other Toxic Substances are disturbed, except in accordance with all applicable laws and regulations. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Agreement to the

effect that the person will inspect for such materials, will not disturb such materials except in accordance with all applicable laws and regulations, and will indemnify, defend and hold Lessor harmless against any disturbance of such materials in the course of the contractor's or other person's work. Lessee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

7.12 Plans Required. Lessee's design of all Lessee's Improvements shall occur in three stages culminating in final working construction documents for the Lessee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

7.12.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and operation of each element of Lessee's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other area that all significant uses and facilities will respectively occupy.

7.12.2 Preliminary plans showing all building finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

7.12.3 Final Plans.

7.13 Approval Process. The following procedure shall govern Lessee's submission to Lessor of all plans for Lessee's Improvements, including any proposed changes by Lessee to previously approved plans:

7.13.1 Upon execution of this Agreement, Lessor and Lessee shall each designate a construction manager (or confirm a previously designated construction manager) to coordinate the respective party's participation in designing and constructing the Lessee's Improvements. Each construction manager shall devote such time and effort to the Lessee's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Lessee's Improvements and compliance with this Agreement. Lessor's construction manager will not be exclusively assigned to this Agreement or the Lessee's Improvements.

7.13.2 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by Lessor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Lessor for the level of plans required by this Agreement.

7.13.3 All submissions by Lessee under this Agreement shall be delivered directly to Lessor's construction manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Lessee for Lessor's review shall include two (2) complete sets of the plans on paper together with one (1) electronic copy of the plans in PDF.

7.13.4 Lessee shall coordinate with Lessor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

7.13.5 In addition to other submissions required under this Agreement, Lessee shall simultaneously deliver to Lessor's construction manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for the Lessee's Improvements (excluding building permits).

7.13.6 No plans shall be deemed approved by Lessor until stamped "APPROVED PER ARTICLE 7 OF LEASE AGREEMENT" (or other words clearly evidencing Lessor's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by Lessor's construction manager (collectively "Stamped").

7.13.7 Construction shall not commence until Lessee delivers to Lessor a formal certification in favor of Lessor by a qualified registered engineer acceptable to Lessor to the effect that the Lessee's Improvements are properly designed to be safe and functional and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as Lessor may require. Such certification shall be on the face of the plans themselves.

7.13.8 Lessee acknowledges that Lessor's construction manager's authority with respect to the Premises is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by Lessor's construction manager or other persons affiliated with Lessor inconsistent with this Agreement shall be binding upon Lessor. Lessee shall be responsible for securing all environmental and zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Lessee's Improvements and shall not rely on Lessor or Lessor's construction manager for any of the same.

7.13.9 Lessor's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans for purposes of this Agreement. Lessee's submission of plans under this Agreement, Lessor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

7.13.10 Lessor has the right to require Lessee to obtain approval for any Lessee Improvements from the City of Scottsdale Development Review Board and any similar body.

7.13.11 Lessee shall hand deliver all plans to Lessor no later than each submission date. Submission dates shall be such dates as are necessary for Lessee to timely obtain the approvals required by this Agreement. Lessee is responsible to allow adequate time

for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

7.13.12 Within thirty (30) days after Lessor's receipt of plans from Lessee, Lessor shall make available to Lessee one (1) copy of the plans Lessee submitted either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.13 If changes are required, Lessee shall revise the plans incorporating the changes requested by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty (20) days after Lessor's receipt of the revised plans, Lessor shall make available to Lessee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.14 Lessee shall provide to Lessor copies of any and all designs or plans for improvements upon the Premises for Lessor's unrestricted use at the Premises or elsewhere.

7.14 Minor Changes. Lessor's consent shall not be required for minor changes discovered by Lessee during the course of construction to be necessary to complete construction as contemplated by the latest plans approved by Lessor. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any room, area, feature, structure, or other aspects of any improvements. Lessee shall give to Lessor as much advance notice of any minor changes as is reasonably possible. In the event advance notice to Lessor is not possible, Lessee shall as soon as possible, and in no event later than three (3) days after the change, give Lessor notice of any such minor change. Such notice shall refer specifically to this paragraph.

7.15 Funding Assurances. In addition to the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor the following assurances that Lessee will timely pay for the work to be completed (the "Funding Assurances") as follows:

7.15.1 Funding Assurances Amount. The Funding Assurance shall be in an amount (the "Funding Assurances Amount") equal to eighty percent (80%) of the full contract amounts payable directly or indirectly to all persons for the construction work. In the event the contract amounts increase, the Funding Assurances Amount shall increase by the same proportion.

7.15.2 Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following:

7.15.2.1 A fully executed construction loan commitment or agreement legally obligating a reputable federally insured financial institution to fund construction.

7.15.2.2 A letter of credit meeting the requirements listed on Exhibit "E.1" attached hereto. The following provisions apply to any and all letters of credit provided by Lessee under this Agreement:

7.15.2.2.1 Lessee shall cause the original letter of credit to be delivered to Lessor's financial services general manager.

7.15.2.2.2 Lessee shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.

7.15.2.2.3 Within fourteen (14) days after Lessor gives Lessee notice that Lessor has drawn on the letter of credit, Lessee shall cause the letter of credit to be replenished to its prior amount.

7.15.2.2.4 Lessor may draw on the letter of credit upon any Event of Default related to the construction and completion of any improvement reinitiating the Funding Assurance, and in the following circumstances whether or not they are an Event of Default:

7.15.2.2.4.1 Lessee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this Agreement.

7.15.2.2.4.2 Lessee fails to make monetary payments related to the construction of improvements required under this Agreement.

7.15.2.2.4.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

7.15.2.2.5 Lessor shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

7.15.2.3 Written confirmation from a federally insured financial institution reasonably approved by Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest bearing account in Lessor's name only. All interest shall remain in the Construction Account. Funds shall be disbursed to anyone other than Lessor only upon Lessor's notice to the institution that Lessor has received unrelated third party invoices for actual hard costs of construction labor or materials together with notice from Lessee that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as Lessor may reasonably deem necessary to determine compliance with this Agreement. All distributions from the Construction Account shall be by check payable to Lessor or jointly payable to Lessee and the third party, provided that, if Lessee provides receipts to Lessor showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee. Lessee shall provide to Lessor no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding month. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not previously deposited by Lessee.

7.15.2.4 A construction escrow agreement on terms mutually acceptable to Lessee and the Aviation Director.

7.16 Contractor Assurances. In addition to the Funding Assurances, the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor evidence of the following assurances in favor of Lessee that Lessee's general contractor will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

7.16.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

7.16.2 Contractor Assurances Required. Lessee's obligation to cause its general contractor to provide Contractor Assurances includes both of the following:

7.16.2.1 A payment bond in favor of Lessee covering all of the contracted work.

7.16.2.2 A performance bond in favor of Lessee covering all of the contracted work.

7.16.3 Contractor Assurance Qualifications. The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to Lessor and shall also at a minimum meet the requirements of A.R.S. §§ 34-222 to 34-223, and other applicable laws.

7.17 Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

7.17.1 Amount Adjustment. In the event the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the prior amount, Lessee shall, on or before the date of the increase, deliver to Lessor an additional Improvement Assurance in the amount of such increase, or cause the existing Improvement Assurance held by Lessor to be amended to increase its amount.

7.17.2 Improvement Assurance Form. Each Improvement Assurance must be in form and substance reasonably acceptable to Lessor. The scope of Lessor's approval is to assure that the Improvement Assurance complies with this Agreement. Lessee shall deliver directly to Lessor's legal department (together with a copy to Lessor as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least twenty (20) days prior to the date the actual Improvement Assurance is required. Lessor shall give its comments concerning the draft form no later than ten (10) business days after receiving the draft form.

7.17.3 Improvement Assurance Claims. Lessor shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement; but in the event of a dispute over Lessor's obtaining and using the benefits of an Improvement Assurance due to a default by Lessee, neither Lessee, the Improvement Assurance issuer, nor any third party shall

be entitled to interfere in any way (including without limitation, restraining order, injunctions or other judicial remedies, all of which are hereby unconditionally and irrevocably waived) with Lessor's obtaining or using the funds or other benefits of the Improvement Assurance. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.17.4 Lessor's Improvement Assurance Claim. In the event Lessee is in default or the construction is not completed or timely progressing for any reason, Lessor shall have the right to set-off, deduct and withhold an amount or otherwise make claim upon any Improvement Assurance sufficient to complete the construction and to pay all other costs and expenses related to such construction. Additionally, in such event, Lessor shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys' fees and costs required by a judgment or decision relating to any contingent liability that, in the opinion of Lessor, may be outstanding at the time of termination. Further, Lessor may draw on any Improvement Assurance at any time whatsoever to satisfy any of Lessee's obligations under this Agreement. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.17.5 Improvement Assurance Term. Lessee shall give Lessor not less than thirty (30) days nor more than sixty (60) days advance notice of expiration or other termination of an Improvement Assurance. Any replacement Improvement Assurance must be delivered to Lessor at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without Lessor's consent.

7.18 Release of Improvement Assurance. Within thirty (30) days after the last to occur of the following, Lessor shall deliver to Lessee notice that the Improvement Assurance is released: i) Lessee's completion of the Lessee Improvements, ii) Lessee's payment of all design, construction, and all other amounts to be paid in connection with construction of the Lessee Improvements, iii) Lessee's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations thereto, and iv) Lessee's giving to Lessor notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as Lessor may reasonably require. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.19 Applicability of Existing Funding Assurances. Any funding or other assurances provided by Lessee pursuant to the Original Lease or prior amendments shall be deemed to automatically carry over and remain subject to the terms and conditions of this Restated Amendment.

VIII. LESSEE'S INITIAL PROJECT CONSTRUCTION

8.0 Lessee's Initial Project Construction. No later than the Completion Deadlines set forth herein, Lessee shall complete construction of each Phase of the Project in accordance with all requirements of this Agreement, including without limitation those relating to Lessee's Improvements, and the following time frame and conditions:

8.1 Lessee completed construction of Phase I in substantial conformance with the Site Plan as contained in Exhibit "C.1".

8.2 Phase II Lessee shall complete construction of Phase II in substantial conformance with the Site Plan as contained in Exhibit "C.1." Phase II shall be divided into two stages, Phase IIA and Phase IIB.

8.2.1 Lessee has already commenced construction on Phase IIA, a conventional hangar, and shall complete construction no later than June 30, 2023. Failure to complete Phase IIA by June 30, 2023 shall result in the immediate termination of Lessee's leasehold interest in that portion of the Air Commerce Parcel designated in Exhibit "C.1" as the property onto which Phase IIA and Phase IIB are to be completed. Phase IIB shall be completed no later than May 22, 2026. Failure to complete Phase IIB by May 22, 2026 shall result in the immediate termination of Lessee's leasehold interest in that portion of the Air Commerce Parcel designated in Exhibit "C.1" as the property onto which Phase IIB is to be completed.

8.3 Lessee has already commenced construction of Phase III. In conjunction therewith, the Parties recognize that Lessee has provided Lessor with a Public Motorized Access Easement to the Greenway Hangars and Shades Parcel as set forth in the document recorded at Docket No. 2022-0520698 of the Maricopa County Recorder. Lessee shall complete construction of Phase III in substantial conformance with the Site Plan as contained in Exhibit "D.1" no later than May 22, 2025.

8.3.1 Failure to complete Phase III by May 22, 2025 shall result in the immediate termination of Lessee's leasehold interest in the Greenway Hangars and Shades Parcel as set forth in Exhibit "B.1".

8.4 Intentionally omitted.

8.5 In the event of a significant economic downturn or other delays not caused by Lessee, Lessee may request that the Aviation Director extend by written notice each of the time limits set forth in Section 8.0 for a period not to exceed one year, and the Aviation Director shall not unreasonably withhold approval of such request. In the event of an extension of the time limits set forth herein, the Lease term on the Greenway Hangars and Shades Parcel shall be extended by an amount equal to the extension of the deadline of the Phase III completion.

8.6 Initial Plans Approved. By entering into this Agreement, Lessor approves for purposes of this Agreement only, the design of the Lessee's Improvements comprising the Project to the extent their design is set forth in the Site Plan and other exhibits to this Agreement. For purposes of Lessee's initial Project construction, said approval satisfies the requirement under this Agreement that Lessee obtain Lessor's approval of plans to the extent of matters shown in the Site Plan and other exhibits. However, Lessee must still submit to Lessor and obtain Lessor's approval of matters not shown on the Site Plan and other exhibits, and changes, modifications, refinements and particular implementations of matters that are shown on the Site Plan and other exhibits. Provided, however, nothing in this Restated Amendment is intended to affect, alter, or otherwise change any approvals already issued by Lessor in accordance with the Original Lease or prior amendments and the same are confirmed herein.

8.7 Project Definition. Unless otherwise agreed by the parties, the Project shall confirm to the Site Plan (which listing of requirements is not intended to be exhaustive of the improvements required to construct first class public fixed base operator facility and other improvements this Agreement requires Lessee to construct):

8.7.1 Main FBO Components. Lessee's Improvements include all improvements shown on the Site Plan or required by applicable law.

8.7.2 Infrastructure. Lessee's Improvements include all related work upon streets, sidewalks, drainage and other facilities upon the Premises and upon other real property near the Premises.

8.7.3 Other Design Requirements. The Project shall include all such other improvements and other facilities as may be necessary to operate the Premises in the manner contemplated by this Agreement.

8.8 Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

8.9 Project Design and Construction Schedule. Lessee shall design and construct each Phase of the Project according to the following schedule:

8.9.1 Lessee shall obtain Lessor's approval of conceptual plans for each Phase of the Project no later than eighteen (18) months prior to the Completion Deadline for that specific Phase.

8.9.2 Lessee shall obtain Lessor's approval of preliminary plans for all components of each Phase the Project no later than fifteen (15) months prior to the Completion Deadline for that specific Phase.

8.9.3 Lessee shall obtain Lessor's approval of Final Plans for each Phase of the Project no later than twelve (12) months prior to the Completion Deadline for that specific Phase.

8.9.4 Lessee shall commence constructing for each Phase of the Project no later than eight (8) months prior to the Completion Deadline for that specific Phase.

8.9.5 Lessee shall complete construction of each Phase of the Project, obtain certificates of occupancy for each Phase of the Project, and commence operating that Phase of the Project in the manner contemplated by this Agreement, no later than the Completion Deadline for that specific Phase.

IX. MAINTENANCE AND UTILITIES

9.0 Maintenance and Utilities. Except as expressly provided below, Lessee shall be solely responsible for all maintenance, repair and utilities for the Premises during the term of this Agreement.

9.1 Maintenance by Lessor. Lessor has no maintenance or repair obligations for the Premises except that Lessor is responsible to maintain and repair any other utilities Lessor may install upon the Premises.

9.2 Utility Interruptions. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation:

9.2.1 Lessor is not responsible for utility interruptions caused outside the Premises.

9.2.2 Lessor is not responsible for utility interruptions not caused directly by Lessor's negligence.

9.2.3 Lessor is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

9.3 Utility Costs. Lessee shall pay all charges, fees, deposits and other amounts for all natural gas air conditioning heating electricity and other utilities used at the Premises during the term of this Agreement.

9.4 Maintenance by Lessee. Lessee shall at all times repair and maintain and replace the Premises and all of Lessee's facilities thereat at Lessee's sole expense in a first-class, sound, clean and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the western United States as determined in Lessor's reasonable discretion. Such Lessee obligations extend to any improvements Lessee may construct on public lands outside the Premises unless Lessor expressly gives Lessee written notice otherwise. By way of example and not limitation, Lessee shall be responsible for the following minimum requirements:

9.4.1 General. Lessee shall perform all irrigation, landscape, building and other maintenance required to operate the Premises in a first-class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation.

9.4.2 Trash. Adequate and sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse related to Lessee's use of the Premises. Without limitation, Lessee shall provide and use suitable covered receptacles for all trash and other refuse related to Lessee's use of the Premises. Piling of boxes, cartons, barrels, debris or other items outside the Premises or in a manner visible from outside the Premises or in a manner visible to areas open to the public is prohibited. Lessee shall contract for a large metal roll-off dumpster service at the Premises. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.

9.4.3 Recycling. Lessee shall comply with such paper, plastic or other recycling or conservation programs Lessor may establish for the Airport from time to time.

X. BREACH BY LESSEE

10.0 Breach by Lessee. Lessee shall comply with, perform and do each performance and thing required of Lessee herein shall cause all persons using the Premises or claiming through or under Lessee or this Agreement to do the same. Lessee's failure to do so shall be a breach by Lessee of this Agreement.

10.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Lessee of Lessee's material obligations under this Agreement:

10.1.1 If Lessee shall be in arrears in the payment of Rent and shall not cure such arrearage within ten (10) days after Lessor has notified Lessee in writing of such arrearage.

10.1.2 The occurrence of any default or other failure by Lessee to perform all obligations under any of the Site Documents if Lessee shall not have cured such failure within thirty (30) days after Lessor has notified Lessee in writing of such default or other failure.

10.1.3 If Lessee shall fail to operate the facilities as herein required for a period of three (3) consecutive days or a total of five (5) days within any calendar year.

10.1.4 If Lessee shall abandon the Premises or this Agreement.

10.1.5 If Lessee shall be the subject of a voluntary or involuntary bankruptcy, insolvency or similar Proceeding or if any general assignment of any of Lessee's property shall be made for the benefit of creditors (collectively a "Lessee Insolvency") unless such Proceeding has been dismissed within ninety (90) days after it is filed.

10.1.6 If any representation or warranty made by Lessee in connection with this Agreement shall prove to have been false in any material respect when made, if Lessee shall not have taken such action as required to cause the representation or warranty to be true within ten (10) days after Lessor has notified Lessee in writing of such falsity.

10.1.7 If Lessee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days.

10.1.8 If Lessee shall fail or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Lessor has notified Lessee in writing of Lessee's default hereunder. In the event of a cure which cannot be completed within thirty (30) days, Lessee shall have an extended cure period as follows:

10.1.8.1 Lessee shall complete the cure within the shortest period that may be possible, but in no event later than ninety (90) days after Lessor's initial notice.

10.1.8.2 As soon as reasonably possible, but in no event later than the end of the initial thirty (30) day period, Lessee shall give to Lessor notice describing the nonperformance, Lessee's proposed cure, the time required for the proposed cure and the reason the cure cannot be effected within the initial thirty (30) day period. Lessee shall thereafter give to Lessor such notices as are necessary to keep Lessor thoroughly apprised of the status of the cure.

10.1.9 If Lessee shall repeatedly fail to perform any requirement of this Agreement.

10.2 Lessor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at Lessor's option:

10.2.1 Lessor's right to terminate this Agreement for nonpayment of Rent or for any other Event of Default is hereby specifically provided for and agreed to.

10.2.2 Without demand or notice, enter into and upon the Premises or any part thereof, and repossess the same of its former estate, and expel Lessee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

10.2.3 Claim and enforce a lien upon Lessee's property at the Premises securing all of Lessee's obligations hereunder.

10.2.4 Cause a receiver to be appointed for the Premises and for the continuing operation of Lessee's business thereon.

10.2.5 Pay or perform, for Lessee's account and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee.

10.2.6 Abate at Lessee's expense any violation of this Agreement.

10.2.7 Pursue at Lessee's expense any and all other remedies, legal or equitable, to which Lessor may be entitled.

10.2.8 Refuse without any liability to Lessee therefore to perform any obligation imposed on Lessor by this Agreement unless and until Lessee's default is cured.

10.2.9 Terminate this Agreement and thereafter be excused from further performance under this Agreement.

10.2.10 Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all Rent during the entire remaining term of this Agreement.

10.2.11 Assert or exercise any other right or remedy permitted by law.

10.3 Non-waiver.

10.3.1 Lessee acknowledges Lessee's unconditional obligation to comply with this Agreement. No failure by Lessor to demand any performance required of Lessee under this Agreement, and no acceptance by Lessor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Lessor of Rent or other performances hereunder shall be deemed a compromise or settlement of any claim Lessor may have for additional or further payments or performances. Any waiver by Lessor of any breach of condition or covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessor from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Lessor concerning payments or other performances due hereunder shall excuse Lessee from compliance with this Agreement nor estop Lessor (or otherwise impair Lessor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective

against Lessor unless made in writing by a duly authorized representative of Lessor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

10.3.2 No failure by Lessee to demand any performance required of Lessor under this Agreement, and no acceptance by Lessee of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessee's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. Any waiver by Lessee of any breach of condition or covenant herein contained to be kept and performed by Lessor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessee from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No notice by Lessee concerning performance due hereunder shall excuse Lessor from compliance with this Agreement nor estop Lessee (or otherwise impair Lessee's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Lessee unless made in writing by a duly authorized representative of Lessee specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSOR EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

10.4 Reimbursement of Remedies Lessor's Expenses. Lessee shall pay to Lessor upon demand any and all amounts expended or incurred by Lessor in performing Lessee's obligations.

10.5 Inspection. Lessor shall have access to the Premises at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Premises or exercising Lessor's other rights hereunder. Lessee shall promptly undertake appropriate action to rectify any deficiency (identified by Lessor during such inspections or otherwise) in Lessee's compliance with this Agreement.

XI. TERMINATION

11.0 Rights at Termination. Termination of this Agreement due to Lessee's breach or for any other reason does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to its breach of this Agreement.

11.1 Delivery of Possession. At the expiration of the term hereof or upon any sooner termination thereof, Lessee shall without demand, peaceably and quietly quit and deliver up the Premises to Lessor thoroughly cleaned, in good repair, and with all utilities operating, with the Premises maintained and repaired and in as good order and condition, reasonable use and wear excepted, with the Premises as the same now are or in such better condition as the Premises may hereafter be placed. Upon termination, Lessee shall deliver to Lessor any subtenant security deposits, prepaid rents, or other amounts for which Lessor deems a claim may be made respecting the Premises.

11.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Lessee shall provide to Lessor upon demand quit claim deeds covering the Premises executed by Lessee and by all persons claiming through this Agreement or Lessee any interest in or right to use the Premises.

11.3 Disposition of Lessee's Equipment. All personal property owned or used by Lessee (excluding money and business records) at the Premises under this Agreement shall be divided into two categories ("Attached Items" and "Unattached Items").

11.3.1 Attached Items are any and all fixtures and structural or permanent improvements placed upon the Premises together with all pipes, fences, conduits, traffic bumpers, pumps, valves, sprinklers, meters, controls, air conditioners, heaters, water heaters and all other mechanical systems and their components, monitors, timers, utility lines and all other equipment and personal property of every description attached in any way to the Premises or installed at a fixed location upon the Premises together with every part of the utility systems serving the Premises, whether or not located upon the Premises. The Attached items include all fuel tanks, pumps, hoses, nozzles, and related items except fuel trucks. The Attached Items exclude air compressors, even if they are installed at a fixed location at the Premises.

11.3.2 Unattached Items are all fixtures, furniture, furnishings, equipment and other personal property located at the Premises excluding Attached Items.

11.4 Fixtures and Improvements. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to any and all Attached Items shall automatically vest in Lessor without any payment by Lessor or any compensation to Lessee and without requirement of any deed, conveyance, or bill of sale. However, if Lessor shall request any documents in confirmation thereof, Lessee shall promptly execute, acknowledge and deliver the same. Unattached Items owned by Lessee shall continue to be owned by Lessee.

XII. INDEMNITY AND INSURANCE

12.0 Indemnity and Insurance. Lessee shall insure the Premises and its property and activities at and about the Premises and shall provide insurance and indemnification as follows:

12.1 Insurance Required. Prior to entering, occupying or using the Premises in any way all times thereafter, and in any event not later than the date thirty (30) days after the date of this Agreement, and at all times thereafter Lessee shall obtain and cause to be in force and effect the following insurance:

12.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000) for each occurrence and a Five Million Dollar (\$5,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, any medical professionals based on the Premises, and liability assumed under an "insured contract" including this Agreement. The policy will cover Lessee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

12.1.2 Automobile Liability. Commercial business automobile liability insurance with limit of Five Million Dollars (\$5,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Lessee's use of the Premises. Without limitation, all of such insurance shall cover hazards of motor vehicle use for loading and off loading. If applicable, an MCS 90 endorsement covering Toxic Substances is required providing Five Million Dollars (\$5,000,000) per occurrence limits of liability for bodily injury and property damage.

12.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) disease for each employee, One Million Dollars (\$1,000,000) policy limit for disease.

12.1.4 Special Risk Property. Lessee shall maintain Special Risk Causes of Loss Property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of the Premises and all personal property used in connection with the Premises. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of \$50,000.

12.1.5 Environmental Impairment Liability. Lessee shall maintain Environmental Impairment Liability coverage for any fuel storage facility, tank, underground or aboveground piping, ancillary equipment, containment system or structure used, controlled, constructed or maintained by Lessee in the amount of \$1,000,000 Each Incident, \$2,000,000 Aggregate. The policy shall cover on-site and off-site third party bodily injury and property damage including expenses for defense, corrective action for storage tank releases and clean-up for storage tank releases.

12.1.6 Owners and Contractor's Protective. With respect to any construction involving the Premises, Lessor's and contractor's protective insurance covering the interests of contractors, Lessor and Lessee, with a minimum limit of One Million Dollars (\$1,000,000) for each occurrence and a Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This coverage may be included with the commercial general liability coverage.

12.1.7 Builders' Risk Property Insurance. If applicable, Builders' risk insurance in the amount of the entire cost of the Project or other construction work at or related to the Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for the construction work and materials has been made and until no person or entity other than Lessee and Lessor has an insurable interest in the Premises, whichever is later. This insurance shall include interests of Lessor, Lessee and all subcontractors and sub-subcontractors involved in any Lessee's Improvements or other construction work at or related to the Premises during the course of any construction, and shall continue until all work is completed and accepted by Lessee and Lessor. Lessee bears full responsibility for loss or damage to all work being performed and to works under construction. Builders' risk insurance shall be on special form (all-risk) policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Lessee's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the

construction installation site, and while on the construction or installation site awaiting installation. The policy will continue to provide coverage when the covered Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

12.1.8 Hangarkeeper's Liability. If applicable, Lessee shall carry Hangarkeeper's Liability coverage covering the portions of the Premises used for aircraft storage in an amount equal to the full replacement cost of aircraft subject to loss or damage while in the care, custody or control of Lessee for safekeeping, storage, service or repair.

12.1.9 Other Insurance. Any other insurance Lessor may reasonably require for the protection of Lessor and Lessor's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds"), the Premises, surrounding property, Lessee, or the activities carried on or about the Premises. Likewise, Lessor may elect by notice to Lessee to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that Lessor reasonably determines to affect the prudent amount of insurance to be provided.

12.2 Form of Insurance. All insurance policies shall meet the following requirements.

12.2.1 All policies except workers' compensation must name Lessor and the other Additional Insureds as additional insureds. Lessee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. Lessor may give Lessee notice of Lessor's election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

12.2.2 All property policies must name Lessor as a loss payee as their interest may appear.

12.2.3 Lessee must provide Lessor with at least thirty (30) days prior notice of any cancellation, reduction or other material change in coverage.

12.2.4 All policies shall require that notices be given to Lessor in the manner specified for notices to Lessor under this Agreement.

12.2.5 "Occurrence" coverage is required. "Claims made" insurance is not permitted except for Environmental Impairment Liability and employment liability insurance.

12.2.6 Policies must also cover and insure Lessee's activities relating to the business operations and activities conducted from the Premises.

12.2.7 Lessee must clearly show by providing copies of certificates, formal endorsements or other documentation acceptable to Lessor that all insurance coverage required by this Agreement is provided.

12.2.8 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Lessor and all other Additional Insureds.

12.3 Insurance Certificates. Lessee shall evidence all insurance by furnishing to Lessor certificates of insurance annually and with each change in insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect. Certificates must

indicate that Lessor and the other Additional Insureds are included as additional insureds. Lessee shall provide updated certificates at Lessor's request. Notwithstanding the above, Lessee may only be required to submit copies of the actual policy coverage in the event that the City indicates that an event has incurred and its intention to seek coverage under the actual policy. Upon such request by City, Lessee may submit the applicable policy confidentially to the City to be reviewed only by the City's Airport Aviation Director, Risk Director, members of the City Attorney's Office, or any other City employee immediately necessary to review in relation to coverage. Upon the complete resolution of any dispute or adjustment of a loss covered under the policy, Lessee may request the return of any copies of the applicable policy provided to the City.

12.4 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Lessor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

12.5 Primary Insurance. Lessee's insurance shall be primary insurance. Any insurance or self insurance maintained by Lessor shall not contribute to Lessee's insurance.

12.6 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Lessee shall pay, indemnify, defend and hold harmless Lessor and all other Additional Insureds for, from and against any and all claims or harm related to the Premises and/or Lessee's performance of or failure to perform its obligations under this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of the Premises or Lessor's property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement. It is the specific intention of the parties that the Lessor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Lessor, be indemnified by Lessee from and against any and all claims. The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to Lessor's or Lessee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Lessor or Lessee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

12.6.1 Claims arising only from the sole negligence of Lessor.

12.6.2 Claims that the law prohibits from being imposed upon Lessee.

12.6.3 These provisions requiring indemnity shall not be construed in any way to limit the insurance requirements set forth above or any applicable coverage thereunder.

12.7 Risk of Loss. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessee assumes the risk of any and all loss, damage or claims to the Premises or related to Lessee's use of the Premises or other property of Lessor, Lessee or third parties throughout the term hereof. Lessor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Premises or any activities, uses or improvements related to the Premises. Lessee's obligations to indemnify do not diminish in any way Lessee's obligations to insure; and Lessee's obligations to insure do not diminish in any way Lessee's obligations to indemnify. Lessee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Lessee under or connected with this Agreement. Lessee shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify regardless of the cause of such damages. In the event Lessee secures other insurance related to the Premises or any improvements, property or uses related thereto, Lessee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Lessor and the other Additional Insureds.

12.8 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Lessee must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Agreement protecting City of Scottsdale and Lessee. Lessee shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements are met. Lessee shall be responsible for determining minimum limits of insurance for their Subcontractors. This provision does not apply to vendors, customers and guest of the lessee.

12.9 Fuel and Other Hazardous Material Delivery. Any vendor or sub-contractor bringing fuel or hazardous material on site must provide the commercial vehicle insurance as listed in 12.1.2. This shall include the MCS 90 endorsement and listing of the lessee and Lessor as additional insured.

XIII. CONDEMNATION

13.0 Condemnation. The following shall govern any condemnation of any part of or interest in the Premises (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation (but shall not apply to any condemnation by Lessor):

13.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date"), which is the earlier of the date title to the Part Taken vests in the condemnor, or the date upon which the condemnor is let into possession of the Part Taken. Lessee shall execute and deliver to Lessor deeds or other instruments reasonably requested by Lessor conveying and assigning to Lessor Lessee's entire interest in the Part Taken. In the event of a partial taking, this Agreement shall continue in full force and effect as to the part of the Premises not taken. In the case of an Interfering Condemnation (as defined below) applicable to the Greenway Hangar and Shades Parcel or as to the Air Commerce Parcel, Lessee may terminate this Agreement insofar as it applies to the applicable Parcel, subject to Lessee's rights to compensation under this Section 13.

13.2 Determining Partial or Total Condemnation. A condemnation of the Premises which renders the Premises unsuitable for the Permitted Uses (an "Interfering Condemnation"), or which takes the entire Premises, shall be deemed to be a total condemnation. Any other

condemnation shall be a partial condemnation. Within fifteen (15) days after the commencement of any condemnation, Lessee and Lessor shall each give to the other a notice stating its respective opinion as to whether the condemnation is total or partial and the reasons for the opinion. Within fifteen (15) days thereafter, Lessor shall determine in Lessor's reasonable discretion whether the condemnation is total or partial.

13.3 Rent Adjustment. In the event of a partial condemnation, Base Rent shall be reduced by a percentage equal to the percentage of the Premises land area taken. The effective date of the Base Rent adjustment shall be the Condemnation Date.

13.4 Condemnation Proceeds. Lessee hereby assigns and transfers to Lessor Lessee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Lessee shall execute and deliver to Lessor assignments or other instruments reasonably requested by Lessor confirming such assignment and transfer. Lessee shall immediately pay to Lessor any Condemnation Proceeds Lessee may receive. The Condemnation Proceeds shall not include relocation benefits awarded specifically to Lessee to cover expenses of relocating Lessee's business located at the Premises at the time of the condemnation. Such relocation benefits shall be owned by and paid directly to Lessee only.

13.5 Proceeds Account Deposit. Separate and apart from any condemnation action, Lessor shall deposit into the Proceeds Account (the "Condemnation Deposit") a portion of the Condemnation Proceeds (the "Condemnation Deposit Amount") as follows:

13.5.1 The Condemnation Deposit Amount shall be calculated as follows:

13.5.1.1 First, begin with the actual fair market value of the Lessee's Improvements condemned (as if they were owned by Lessee in fee, excluding any land value, without regard to the term of this Agreement).

13.5.1.2 Second, reduce said fair market value three and 33/100 percent (3.33%) for each year or portion of a year having passed from the time of construction.

13.5.1.4 Fourth, subtract any amount necessary to insure that the Condemnation Deposit Amount does not exceed the net amount actually received by Lessor with respect to such Lessee's Improvements.

13.5.2 Lessor shall make the Condemnation Deposit within ten (10) days after Lessor receives the condemnation proceeds.

13.6 Lessee's Condemnation Work. In the event of a partial condemnation, Lessee shall restore the remainder of the Premises to its condition at the time of such condemnation less the portion lost in the taking. In the event of an Interfering Condemnation, Lessee shall perform such demolition or restorative work upon the remaining Premises as Lessor may direct, except that the cost of such work shall not exceed the cost of demolishing the improvements then existing upon the remaining Premises. Disbursements from the Proceeds Account shall be subject to the rules applicable to the Proceeds Account. Notwithstanding the preceding sentence, any portion of the Condemnation Deposit remaining in the Proceeds Account after the work is completely paid for and any claims by Lessor against Lessee are satisfied shall be disbursed to Lessee.

13.7 Power to Condemn. Lessee acknowledges that Lessor and others from time to time may use the power to condemn the Premises or any interest therein or rights thereto. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. Lessor does not warrant that Lessor will not condemn the Premises during the term of this Agreement, but Lessor does not presently have intentions to condemn the Premises. Notwithstanding anything to the contrary in this Lease Agreement, in the event of any condemnation of all or any portion of the Premises by Lessor, Lessee shall have all rights and remedies available at law and in equity.

XIV. DAMAGE TO OR DESTRUCTION OF PREMISES

14.0 Damage to or Destruction of Premises. The following provisions shall govern damage to the Premises:

14.1 Damage to Entire Premises. If the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the damage would exceed fifty percent (50%) of the then estimated cost of constructing all improvements upon the Premises, Lessee shall have a ninety (90) day period following such damage to notify Lessor that Lessee elects to terminate this Agreement. Such notice shall not be effective unless it is also signed by Primary Lienholder, if any. Lessee's failure to give such notice shall constitute Lessee's election not to terminate this Agreement. In the event of damage to the Premises to a lesser degree or extent this Agreement shall not terminate.

14.2 Restoration Work. Whether or not this Agreement is terminated, Lessee shall perform certain construction work at Lessee's expense ("the Restoration Work"). If this Agreement is terminated, the Restoration Work shall be all engineering, design and construction work necessary to demolish, clear and clean the Premises to the extent and as directed by Lessor. If this Agreement is not terminated, then the Restoration Work shall be all engineering, design and construction work necessary to restore the Premises to the condition existing prior to the damage.

14.3 Restoration Process. Lessee's performance of the Restoration Work shall be subject to the approval process and other requirements for Lessee's Improvements. Lessee shall perform the Restoration Work with due diligence and at Lessee's sole cost and expense.

14.4 Insurance Proceeds. All property insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid directly to Lessor and owned by Lessor. Lessor shall deposit said proceeds in an account (the "Proceeds Account") with a federally insured financial institution having offices in Maricopa County, Arizona. The preceding sentence does not apply to insurance proceeds of aircraft, vehicles or other personalty not attached to the Premises. The Proceeds Account shall be an interest bearing account in Lessor's name only. All interest shall remain in the Proceeds Account. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not in the Proceeds Account.

14.5 Proceeds Account Use Priorities. The Proceeds Account funds shall be used for the following purposes:

14.5.1 Funds in the Proceeds Account shall be used only for paying for the Restoration Work until the cost of the Restoration Work has been disbursed by Lessor to Lessee

or to third parties in connection with the Restoration Work. Inadequacy of funds in the Proceeds Account does not excuse Lessee from Lessee's obligation to perform the Restoration Work.

14.5.2 A certain payment (the "Regulatory Payment") to Lessee, if required by this Agreement.

14.5.3 Funds in the Proceeds Account shall next be used for compensating Lessor for the loss of revenues that would have been realized from the operation of the relevant Lessee Improvements during the period of the Restoration Work, and for any damage to or loss of any other property of Lessor due to the damage.

14.5.4 Any remaining funds in the Proceeds Account shall be distributed as follows:

14.5.4.1 If this Agreement is not terminated, then any remaining funds in the Proceeds Account (the "Type 2 Funds") shall be distributed to Lessee and any other interested parties as their interests may appear.

14.5.4.2 If this Agreement is terminated, then any remaining funds in the Proceeds Account shall be distributed to Lessor.

14.6 Regulatory Payment. Lessee shall receive a Regulatory Payment if and only if certain regulatory changes ("Major Regulatory Changes") occur. Whether Lessee receives the Regulatory Payment, and the amount of the Regulatory Payment, shall be determined as follows:

14.6.1 Major Regulatory Changes are one or more additional future regulatory burdens (such as future increased burdens under the Americans with Disabilities Act or a future outright prohibition on reconstructing the damaged improvement) that, after the date the damaged improvement was constructed (or construction was stopped because of the damage), are imposed upon the Restoration Work that would be necessary to restore the damaged improvement and which in the aggregate either:

14.6.1.1 Prohibit the Restoration Work that would be required to restore the damaged improvement; or

14.6.1.2 Increase the cost of such work such that the uninsured portion of the cost of such Restoration Work exceeds more than the greater of i) Five Hundred Thousand Dollars (\$500,000) or ii) twenty percent (20%) of the total amount that such work would have cost in the absence of the Major Regulatory Changes. Lessor in Lessor's sole and absolute discretion may elect to contribute to the cost of such work in order to reduce the uninsured portion of the cost of the work to twenty percent (20%) or to Five Hundred Thousand Dollars (\$500,000), as the case may be.

14.6.2 In the event Lessee receives a Regulatory Payment due to a Major Regulatory Change, the amount of the Regulatory Payment shall be calculated as follows:

14.6.2.1 Begin with the lesser of the actual original cost to construct the damaged improvement which is not rebuilt because of the Major Regulatory Change, or the amount of insurance proceeds deposited into the Proceeds Account with respect to such improvements.

14.6.2.2 Calculate an amortization figure by dividing said original cost or amount deposited by the number of whole years (not calendar years) that were remaining in the term of this Agreement (including both extensions) at the time the improvements were completed (or construction was stopped because of the damage).

14.6.2.3 Calculate the amount of the Regulatory Payment by subtracting from said original cost or amount of insurance proceeds deposited a number that is derived by multiplying the amortization figure by the number of whole years that passed from the date of completion to the date of destruction.

14.6.3 The portion of the Regulatory Payment attributable to each building or other improvement shall be calculated separately.

14.6.4 The Regulatory Payment shall not be Type 2 Funds.

14.7 Use of Proceeds Account for Restoration Work. The following shall govern disbursement of funds from the Proceeds Account for the Restoration Work:

14.7.1 All distributions from the Proceeds Account shall be by check payable to Lessor or jointly payable to Lessee and the third party. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

14.7.2 Lessee's applications for payment shall be prepared according to a schedule of values for the work prepared by Lessee's architect, subject to Lessor's reasonable approval.

14.7.3 Funds shall be disbursed within fourteen (14) days after Lessor has received notice from Lessee requesting that such funds be disbursed. Such notice shall be accompanied by the following:

14.7.3.1 A description of the work completed.

14.7.3.2 Unrelated third party invoices for design, engineering or related professional services rendered or actual hard costs of demolition or construction labor or materials.

14.7.3.3 Certificates from the third party payee that the third party has actually supplied the labor or materials to the Premises.

14.7.3.4 Appropriate mechanics and materialmen's lien waivers.

14.7.3.5 Such additional documentation and confirmations as Lessor may reasonably deem necessary to confirm compliance with this Agreement.

14.7.4 The Proceeds Account shall qualify as a satisfactory Funding Assurance.

14.8 Accelerated Funding. In order to avoid delay in completing the Restoration Work due to time constraints of the Proceeds Account, Lessee may do either or both of the following:

14.8.1 Advance its own funds (the "Reimbursable Funds") for the Restoration Work from time to time and subsequently obtain reimbursement from the Proceeds Account

subject to compliance with the requirements for disbursements from the Proceeds Account. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

14.8.2 Unilaterally request that Lessor make a one-time single disbursement to Lessee (the "Working Funds"). Lessee shall hold the Working Funds in a separate bank account and shall use the Working Funds only during the course of the Restoration Work to make progress payments to third parties for the Restoration Work. The amount of the Working Funds shall not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000) (which amount shall be adjusted from time to time according to the Cost of Living Index in the same manner provided for adjustment of Base Rent) or ten percent (10%) of the estimated cost of the Restoration Work. Upon completion of the Restoration Work, Lessee shall return any excess Working Funds to the Proceeds Account.

14.9 Monthly Restoration Work Report. Lessee shall provide to Lessor no later than the tenth day of each month a written report of the progress of the Restoration Work along with detailed statement of Proceeds Account, Reimbursable Funds and Working Funds activity during the preceding month.

14.10 Proceeds Account Variations. Lessee's city manager or designee shall have the authority to cooperate with Lessee's lienholder to implement variations to the requirements and administration of the Proceeds Account. Any such variations must provide to Lessor the substantive protections of the Proceeds Account afforded by this Agreement in said city manager or designee's sole and absolute discretion, must not allow insurance proceeds (except any Type 2 Funds that may be disbursed to Lessee) to be used to pay the debt, must be approved in writing in advance by said city manager or designee and by Lessor's city attorney in their sole and absolute discretion, and must otherwise be acceptable to Lessor's city manager or designee and Lessor's city attorney in their sole and absolute discretion.

XV. LESSEE'S RECORDS

15.0 Lessee's Records. Lessee will maintain in a secure place at Lessee's corporate headquarters within the continental United States or at a secure location within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating in any manner to this Agreement and to all of Lessee's obligations hereunder.

15.1 Standards for Records. Lessee shall keep and maintain all books and records relating to the Premises in accordance with generally accepted accounting principles applied on a consistent basis. Lessee shall retain all records related to this Agreement or Lessee's performances hereunder for a period of seven (7) years after the period reported in the record.

15.2 Reporting. Lessee will furnish or cause to be furnished to Lessor, as soon as the same are available, and in any event within one hundred twenty (120) days after the end of each calendar year a certificate signed by the chief financial officer or managing general partner, as the case may be, of Lessee stating that the rental revenues and related information provided during the preceding year is correct and there exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Lessee proposes to take with respect thereto. Lessee shall furnish, from time to time, such financial and other information as Lessor may reasonably

request pertaining to Lessee's and Lessor's respective rights and obligations with respect to this Agreement as reasonably determined by Lessor.

15.3 Right of Inspection. Until the date three (3) years after termination of this Agreement, Lessee will (i) permit and assist Lessor and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Lessee's facilities, activities and records, (ii) cause its employees, agents and, if reasonably necessary, accountants to give their full cooperation and assistance in connection with any such visits or inspections, (iii) make available such further information concerning Lessee's business and affairs relating to the Premises as Lessor may from time to time reasonably request, and (iv) make available to Lessor at the Premises (or at the offices of Lessor within the corporate limits of the City of Scottsdale) any and all records and reasonable accommodations for Lessor's audit and inspection. The preceding sentence does not require Lessee to pay for copies Lessor requests or Lessor's employees' or other agents' time or travel expenses. Such inspection shall be limited to matters relevant to Lessor's and Lessee's rights and obligations under this Agreement and activities related to the Premises as reasonably determined by Lessor.

15.4 Records Included. Lessee's records subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information and matters that may in Lessor's reasonable judgment bear on any matters, rights, duties or obligations under or covered by this Agreement or any performance hereunder. Lessee need not disclose information that does not concern the Premises or Lessor's or Lessee's rights and obligations related to the Premises in Lessor's reasonable judgment.

15.5 Costs of Audit. If an audit, inspection or examination of Lessee's performance discloses underpayments (or other adjustments in favor of Lessor) of any nature in excess of three percent (3%) of any payments or single payment, Lessee shall pay to Lessor Lessor's actual cost (based on the amount paid by Lessor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the audit is performed by Lessor's employees) of the audit, inspection or examination, together with late fees, interest, and other amount payable in connection with such adjustments or payments. Any adjustments and/or payments which must be made as a result of any such audit, inspection or examination (whether or not performed in-house by Lessor), shall be made within a reasonable amount of time (not to exceed 30 days) after Lessor gives to Lessee notice of Lessor's findings.

15.6 Monthly Reports. No later than the due date for each Rent Payment for each month, but in no event later than the end of each month, Lessee shall deliver to Lessor a report containing the information described on Exhibit "F.1" attached hereto. Except for fuel flowage information, each such report shall indicate by highlighting or similar marking any changes from the preceding month's report.

15.7 Applicable to Sublessees. By claiming under this Agreement, sublessees and others conducting a business based at the Premises shall also be deemed to have agreed to provide to Lessor upon request information relevant to compliance with this Agreement by Lessee or others.

XVI. COMPLIANCE WITH LAW

16.0 Compliance with Law. Lessee shall conduct only lawful operations and activities at the Premises and at the Airport in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended and shall use and occupy the Premises in conformance with all of the same. The provisions of this Agreement obligating Lessee to comply with applicable law do not deny Lessee such right, if any, as Lessee may have under applicable law to continue a use which was lawful (and permitted by this Agreement) when commenced. Lessee acknowledges that this Agreement does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Lessee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Lessee, the Premises, the Airport or Lessee's use of the Premises or Airport. Lessee acknowledges that all of Lessee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to Lessee. Lessee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. This Agreement does not impair the City of Scottsdale power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Lessee or the Premises. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

16.1 Government Property Lease Excise Tax. Lessee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that are lawfully assessed against the Premises or against Lessor or Lessee with respect to the Premises. Pursuant to A.R.S. § 42-6206, failure by Lessee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises.

16.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Lessee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be lawfully levied upon or assessed against Lessee, the Premises, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Premises and improvements and other property thereon, whether belonging to Lessor or Lessee. The preceding sentence does not apply to obligations of Lessee not related to the Premises. Lessee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Lessee shall pay all sales, transaction privilege, and similar taxes which it is legally obligated to pay.

16.3 Special Supplemental Indemnity. Without limitation, the indemnities of this Agreement require Lessee to pay, indemnify, defend and hold Lessor harmless against fines or penalties for any breach of security arising from the unauthorized entry of any persons from the Premises (or their vehicles or aircraft) onto the passenger loading areas, taxiways, runways, aircraft movement areas and any other restricted portion of the Airport. The preceding sentence does not apply to persons not conducting business at the Premises or who enter the Premises using a password or gate entry card issued by Lessor.

16.4 Federal Agreements. This Agreement shall be subordinate to the provisions and requirements of any existing or future grant assurances and other agreements between the Lessor and the United States, relative to the development, operation or maintenance of the Airport.

16.5 Based Aircraft. Lessee shall not allow to be based at the Premises any aircraft that has not been registered with the Airport to the extent required by applicable laws and regulations.

XVII. ASSIGNABILITY

17.0 Assignability. This Agreement is not assignable by Lessee and any assignment shall be void and create in the assignee no rights except in strict compliance with the following as determined and approved by the Aviation Director:

17.1 Assignments Prohibited. Every assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited unless Lessor's consent to the assignment is contained in this Agreement or Lessee first receives from Lessor a separate notice of Lessor's consent to the assignment. References in this Agreement to assignments by Lessee shall be deemed also to apply to all of the following transactions, circumstances and conditions:

17.1.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Premises or any interest therein or any rights under this Agreement.

17.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise (collectively "Liens").

17.1.3 The use, occupation, management, control or operation of the Premises or any part thereof by others.

17.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Lessee except (a) transfers between two or more members, (b) a transfer from a member to a trust or legal entity that is 100% controlled by the transferring member, or (c) transfers caused by the death of a shareholder or other owner.

17.1.5 Any assignment by Lessee for the benefit of creditors, voluntary or involuntary.

17.1.6 Any bankruptcy or reorganization of Lessee not completely resolved in Lessee's favor within one hundred twenty (120) days after it is initiated.

17.1.7 The occurrence of any of the foregoing by operation of law or otherwise.

17.1.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Lessee except for sublessees.

17.2 Effect of Assignment. No action or inaction by Lessor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of the provisions of this Agreement. The consent by Lessor to an assignment shall not relieve Lessee from obtaining Lessor's consent to any further assignment. No assignment shall release Lessee from any liability hereunder except that Lessee shall be released from future obligations under this Agreement in the event of a complete assignment of Lessee's entire interest made with Lessor's consent. This Agreement shall also run with the land and continue to be a burden upon the Premises and every interest therein in favor of Lessor.

17.3 Enforceability after Assignment. This Agreement shall control any conflict between this Agreement and the terms of any assignment. Upon execution of this Agreement, and upon each subsequent assignment, Lessee shall provide a complete copy of this Agreement and any amendments to each sublessee or other assignee.

17.4 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for except for those to which Lessor has given consent in this Agreement. Lessor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment, except as expressly provided in this Agreement.

17.5 Form of Assignment. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Lessor. Assignees other than sublessees shall assume this Agreement. In the event Lessor terminates this Agreement due to a default by Lessee, Lessor at Lessor's sole option may succeed to the position of Lessee as to any sublessee or assignee of Lessee without liability for any prior breaches or performances.

17.6 Employees. Lessee's hiring and discharging of employees shall not constitute a change of management amounting to an assignment of this Agreement by Lessee.

17.7 Liens Prohibited. Notwithstanding the prohibition on Liens, Lessee is permitted with Lessor's consent (not to be unreasonably withheld) to impose a single mortgage or deed of trust (the "Primary Lien") upon Lessee's leasehold interest in the Premises under this Agreement to secure a loan obtained by Lessee to obtain funds for Lessee to use to construct new Lessee's Improvements.

17.8 Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any action is brought to enforce the Lien. Lessee agrees to pay, indemnify, defend and hold Lessor and the Premises free and harmless from all liability and against any and all Liens, together with all costs and expenses in connection therewith, including attorney's fees. Lessor shall have the right at any time to post and maintain on the Premises such notices, pay such amounts, file or record such notices, or take such other actions as Lessor may deem necessary to protect Lessor and its property interests against all Liens. Every Lien shall cover Lessee's entire leasehold interest in this Agreement and the Premises.

17.9 Lien Priorities. In no event shall any Lien (whether arising before, concurrent with, or after the date of this Agreement) cover, affect or have any priority higher than or equal to any of Lessor's rights in the Premises or under this Agreement at any time.

17.10 Lessor's Rights to Pay Lienholder. Prior to foreclosure, deed in lieu, or the conclusion of other enforcement of a Lien, Lessor shall have the right at any time to purchase any Lien, by payment to the holder of the Lien the amount of the unpaid debt, plus any accrued and unpaid interest.

17.11 Primary Permitted Lien. The Primary Lien is subject to the following provisions:

17.11.1 Until Lessee's Improvements are completed, the Primary Lien shall not be cross collateralized or cross defaulted with any debt or lien related to property other than the Premises. Until Lessee's Improvements are completed, the Primary Lien shall cover no interests in any real property other than Lessee's interests in the Premises and the rents and profits under any permitted subleases.

17.11.2 The holder of the Primary Lien (the "Primary Lienholder") shall promptly give notice to Lessor of the creation of the Primary Lien and any modification, renewal, termination, default or enforcement of the Primary Lien, and any notices to Lessee related thereto. Such notices shall be accompanied by true copies of the Primary Lien or other correspondence or instruments pertaining to the notice. Primary Lienholder shall notify Lessor of the address to which notices to Primary Lienholder shall be sent.

17.11.3 The Primary Lien shall contain no provisions inconsistent with or purporting to alter in any way the provisions of this Agreement. This Agreement shall control any inconsistent terms or provisions in the Primary Lien or in any document of any description related to the Primary Lien.

17.11.4 Primary Lienholder shall have a limited right to cure deficiencies in Lessee's performance under this Agreement (the "Cure Right") as follows:

17.11.4.1 The Cure Right is that, in the event of an Event of Default:

17.11.4.1.1 Lessor shall not terminate this Agreement without first giving Primary Lienholder notice of the Event of Default; and

17.11.4.1.2 Upon Lessor's giving such notice, Primary Lienholder shall have an opportunity to cure the Event of Default as specifically described herein.

17.11.4.2 The Cure Right only applies to Events of Default that are capable of cure by Primary Lienholder within one hundred eighty (180) days after Lessor's notice to Primary Lienholder. In the event of an Event of Default that cannot be cured within that time period, Primary Lienholder and/or Lessee shall have the right to call for a meeting to consult with Lessor's city manager and/or aviation director to develop a plan for curing the Event of Default. Lessor's city manager and aviation director shall each have authority to consider such a plan and give notice on behalf of Lessor extending the time period for curing the particular Event of Default in accordance with the plan.

17.11.4.3 If an event or circumstance occurs which will become an Event of Default with the passage of time or giving of notice or both, Lessor may elect to provide Primary Lienholder's notice of the Event of Default prior to, after, or

simultaneously with any notice Lessor may give to Lessee, and prior to, after, or simultaneously with the expiration of any applicable cure or grace period.

17.11.4.4 Primary Lienholder may elect to exercise the Cure Right by giving Lessor notice (a "Cure Notice") of such election not later than forty-five (45) days after Lessor's notice to Primary Lienholder. Primary Lienholder's failure to timely give a Cure Notice shall be Primary Lienholder's rejection and waiver of the Cure Right. Primary Lienholder's giving of a Cure Notice shall constitute Primary Lienholder's promise to Lessor that Primary Lienholder shall immediately undertake and diligently pursue to completion on Lessee's behalf all payments and performances necessary to cure an Event of Default and otherwise cause Lessee's performance to comply in all respects with the requirements of this Agreement. Each Cure Notice shall include payment of any and all amounts then payable to Lessor under this Agreement.

17.11.4.5 In the event Primary Lienholder exercises the Cure Right, Primary Lienholder shall immediately commence and thereafter diligently prosecute the cure to completion no later than thirty (30) days after Primary Lienholder's Cure Notice to Lessor. In the event of a cure that cannot be completed within thirty (30) days, Primary Lienholder shall complete the cure within the shortest period that may be possible, but in no event later than one hundred eighty (180) days after Primary Lienholder's Cure Notice exercising the Cure Right (or such longer period as Lessor's city manager or aviation director may allow). In the case of a Lessee Insolvency, if the Premises are operating as required by this Agreement and all payments by Lessee are current and all other defaults are cured, then the one hundred eighty (180) day period specified in the preceding sentence shall be extended to eighteen (18) months to cure the Lessee Insolvency. Such extension applies only to the Lessee Insolvency.

17.11.5 If this Agreement is terminated due to rejection by a bankruptcy trustee for Lessee, then Primary Lienholder shall have a thirty (30) day period after such rejection to give notice to Lessor that Lessee elects to obtain from Lessor a new replacement lease. Primary Lienholder's rights and obligations under the replacement lease shall be the same as those applicable to Lessee at the time of the rejection. A default by Lessee under the Primary Lien shall not amount to a default by Lessee under this Agreement.

17.11.6 Until completion of Lessee's Improvements, the Primary Lien must be held by an FDIC insured financial institution having offices in Maricopa County, Arizona, a pension fund or insurance company authorized to do business in Arizona, or sophisticated investors qualified under federal securities law to purchase unregistered securities in private placements.

17.11.7 This Agreement's provisions relating to the Primary Lien are for the sole benefit of Lessor and Primary Lienholder, and are not for the benefit of Lessee, other than Section 17.7 which is for the benefit of Lessee as well as the Primary Lienholder.

17.11.8 Lessee shall immediately give notice to Lessor and Primary Lienholder of any notice Lessee may receive relating to this Agreement or to the Primary Lien.

17.11.9 Primary Lienholder shall immediately give notice to Lessor and Lessee of any notice Primary Lienholder may receive relating to this Agreement or to the Primary Lien.

17.11.10 The provisions of this Agreement permitting the Primary Lien shall apply to any subsequent refinancing of the Primary Lien so long as the following requirements are satisfied:

17.11.10.1 Any replacement Primary Lien must satisfy all requirements of this Agreement.

17.11.10.2 No new Primary Lien may be created while a Primary Lien exists or is of record.

17.11.10.3 Only one Primary Lien may exist or be of record at a time.

17.11.11 Primary Lienholder shall become personally liable to perform Lessee's obligations hereunder only if and when Primary Lienholder gives a Cure Notice (and in such case only to the extent of the cure set forth in the Cure Notice), becomes the owner of all or part of the leasehold estate pursuant to judicial or non-judicial foreclosure, assignment or transfer in lieu of foreclosure or otherwise, or takes possession of all or part of the Premises. The occurrence or existence of any of the foregoing shall constitute an assumption by Primary Lienholder of Lessee's obligations under this Agreement.

17.12 Confirmation of Status. By notice to the other (a "Confirmation Request Notice"), either Lessor or Lessee (the "Requesting Party") may request that the other provide to the Requesting Party written confirmation of certain matters (an "Estoppel Certificate") as follows:

17.12.1 Lessee may give a Confirmation Request Notice only when a Primary Lien is being created or assigned, when Lessee's entire interest in the Premises is being assigned, or as otherwise reasonably necessary for Lessee's business purposes. Any Confirmation Notice by Lessee must meet the following additional requirements:

17.12.1.1 The Confirmation Request Notice shall be executed and joined in by the prospective Primary Lienholder, assignee of a Primary Lien, or assignee of Lessee's entire interest in the Premises (the "Confirmation Assignee").

17.12.1.2 The Confirmation Request Notice shall describe the proposed transaction between Lessee and the Confirmation Assignee.

17.12.1.3 The Confirmation Request Notice must include warranties and representations by the Confirmation Assignee that the matters to be confirmed are true to the best of its knowledge.

17.12.1.4 The Confirmation Request Notice must include warranties and representations by Lessee that the matters to be confirmed are true and that the information contained in the Confirmation Request Notice is complete and true.

17.12.1.5 If a Primary Lien is being created or assigned, the Confirmation Request Notice must warrant and represent that the proposed Primary Lienholder and its Lien qualify in every way for Primary Lien status under this Agreement.

17.12.2 The Confirmation Request Notice must specify the matters the other party is requested to confirm. The Confirmation Request Notice shall request only that the

other party confirm whether or not one or more of the following matters are true, to the best of such other party's knowledge:

17.12.2.1 That this Agreement is in effect and has not been amended except as stated in the Confirmation Request Notice.

17.12.2.2 If Lessee is the Requesting Party, that an Event of Default by Lessee does not exist (except that Estoppel Certificates by Lessor shall exclude matters of zoning or other regulatory compliance other than, to the actual knowledge of the Aviation Director, compliance with Airport standards and regulations). If Lessor is the Requesting Party, that Lessor has performed its obligations and is in compliance with this Agreement.

17.12.2.3 If a Primary Lien is being created, that upon Primary Lienholder's providing to Lessor copies of the recorded instrument creating Primary Lienholder's Primary Lien and a recorded instrument releasing any prior Primary Lien, Lessor will acknowledge Primary Lienholder as the Primary Lienholder under this Agreement.

17.12.2.4 If Lessee is the Requesting Party, that Lessor consents to the proposed transaction between Lessee and the Confirmation Assignee.

17.12.2.5 That Rent has been paid through the date set forth in the Confirmation Request Notice.

17.12.3 The other party shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after a proper Confirmation Request Notice.

17.13 Assignment Payment. In addition to all other Rent payable hereunder, in the event of any assignment (including without limitation a Lien enforcement) which transfers possession of more than 30% of the interior building space of the Premises or has a duration of five (5) or more years, Lessee shall pay to Lessor the amount of Twenty Thousand Dollars (\$20,000). Lessor's contract administrator shall have authority to waive or reduce such payment in the event of an assignment to an affiliate of Lessee. Lessee shall pay to Lessor the sum of Two Thousand Five Hundred Dollars (\$2,500) as a fee for legal and administrative expenses related to creation of a Primary Lien or any assignment or request for consent to an assignment. Lessee shall pay to Lessor the sum of One Thousand Dollars (\$1,000) as a fee for legal and administrative expenses related to any request for an Estoppel Certificate.

17.14 Aircraft Storage Agreement. If an aircraft is to be stored or based at the Premises or the Airport more than fourteen (14) days, then Lessor's consent to an assignment is not effective until an Aircraft Storage Agreement is in effect between the City of Scottsdale and the aircraft owner.

17.15 Approved Assignments. Lessee shall attach to each assignment not described in this paragraph, a copy of Lessor's notice to Lessee of Lessor's consent to the assignment. No consent by Lessor to an assignment shall be effective unless and until Lessee receives notice of Lessor's consent pursuant to this Agreement. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an Assignment. Lessor hereby consents to the following assignments:

17.15.1 The creation of a Primary Lien that meets all of the requirements of this Agreement.

17.15.2 Lessee's granting to its customers in the ordinary course of its business rights of incidental use of small lockers at the Premises for temporary storage of miscellaneous personalty provided such rights are terminable by Lessee upon not more than thirty (30) days notice.

17.15.3 Lessee's complete assignment of all of Lessee's rights and interests in the Premises and this Agreement to a single assignee that meets the following requirements, as determined by Lessor in Lessor's reasonable discretion (a "Qualified FBO"):

17.15.3.1 The assignee must have a net worth in excess of One Million Dollars (\$1,000,000) adjusted upward from the date of this Agreement based on changes in the Cost of Living Index in the same manner as Base Rent is adjusted.

17.15.3.2 The assignee must provide to Lessor a written assumption of Lessee's obligations under this Agreement.

17.15.3.3 The assignee must have the management and financial capacity and other resources necessary to successfully perform under this Agreement.

17.15.3.4 The assignee or its core management team must have substantial recent experience in successfully operating a first-class, fixed-base operator operation comparable to the Premises.

17.15.3.5 The assignee must have active, involved executive, managerial and production level leadership staff with substantial recent experience in successfully operating a first-class, fixed-base operator operation comparable to the Premises.

17.15.3.6 The assignee shall provide to Lessor such information and materials (including presentations) as Lessor may reasonably request to confirm the assignee's qualifications and to assist Lessor to make such determination. Without limitation, Lessor may require the assignee to provide an information package containing all of the information required of Lessee in connection with the original granting of this Agreement. Lessor may take into account any such information and factors in determining the assignee's qualifications.

17.15.4 Retail subleases by Lessee in the ordinary course of business to occupants of hangar space for individual aircraft so long as no rent (excluding amounts Lessee uses for tenant improvements) shall be prepaid more than twelve (12) months.

17.15.5 Office subleases by Lessee in the ordinary course of business to occupants of commercial office space so long as no rent (excluding amounts Lessee uses for tenant improvements) is prepaid more than twelve (12) months.

17.16 Assignment by Lessor. Lessor's interests in this Agreement shall be automatically deemed to be assigned to and assumed by any person who acquires fee title to the Premises. Upon any such assignment, Lessor's liability with regard to this Agreement shall terminate.

XVIII. MISCELLANEOUS

18.0 Miscellaneous.

18.1 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity or any other provision of this Agreement.

18.2 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties. Amendments shall require Primary Lienholder consent to the amendment which consent shall not be unreasonably withheld or delayed.

18.3 Conflicts of Interest. No member, official or employee of Lessor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

18.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

18.5 Nonliability of Lessor Officials and Employees. No member, official, representative or employee of Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Lessor or for any amount which may become due to any party or successor, or with respect to any obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement.

18.6 Notices. Except as otherwise indicated, all notices, waivers, demands, requests and other communications required or permitted by this Agreement (collectively, "Notices") shall be in writing and shall be effective only if sent by one or more of the following methods: (a) personal delivery; (b) generally-recognized overnight commercial courier regularly providing proof of delivery, with delivery charges prepaid or duly charged; or (c) United States registered or certified mail, return-receipt requested, postage prepaid, addressed to the parties at the respective addresses set forth opposite their names below, or to any other address or addresses as any party shall designate from time to time by notice given to the other in the manner provided in this paragraph:

If to Lessor: Scottsdale Aviation Director
15000 N. Airport Dr., Suite 100
Scottsdale, AZ 85260

City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
Attn: City Attorney

If to Lessee: Jet Aviation
112 Charles Lindbergh Drive
Teterboro, NJ 07608
Attention: VP of FBO Operations

Notices to Lessee may also be hand-delivered to Lessee's management office at the Premises. Notices given or served by personal delivery shall be deemed to have been received upon tender

to the respective party. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be.

18.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

18.8 Integration. This Agreement constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises, as, and to the extent, set forth in that certain Lease Replacement Agreement between the parties of even date herewith.

18.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Lessee.

18.10 Lessee Payments Cumulative. All amounts payable by Lessee to Lessor hereunder or under any tax, assessment or other existing or future ordinance or other law of City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other by Lessee in any manner.

18.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

18.12 No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a Primary Lienholder, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Lessor shall have no liability to third parties for any approval of plans, Lessee's construction of improvements, Lessee's negligence, Lessee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Lessee), or otherwise as a result of the existence of this Agreement.

18.13 Exhibits. All attached exhibits, which are specifically referenced in this Agreement, are hereby incorporated into and made an integral part of this Agreement for all purposes.

18.14 Attorneys' Fees.

18.14.1 In the event any action or suit or proceeding is brought by Lessor to collect the Rent due or to become due hereunder or any portion hereof or to take possession of the Premises or to enforce compliance with this Agreement or for Lessee's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessor's rights or remedies hereunder, and if Lessor is the prevailing party, Lessee agrees to pay all costs of such

action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

18.14.2 In the event any action or suit or proceeding is brought by Lessee to enforce compliance with this Agreement or for Lessor's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessee's rights or remedies hereunder, and if Lessee is the prevailing party, Lessor agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

18.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

18.16 Approvals and Inspections. All approvals, reviews and inspections by Lessor under this Agreement or otherwise are for Lessor's sole benefit and not for the benefit of Lessee, its contractors, engineers or other consultants or agents, or any other person.

18.17 Recording. Within ten (10) days after the effective date of this Agreement, Lessee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

18.18 Statutory Cancellation Right. In addition to its other rights hereunder, Lessor shall have the rights specified in A.R.S. § 38-511.

[SIGNATURE PAGES FOLLOW]

EXECUTED as of the date first given above.

LESSEE: **JET AVIATION SCOTTSDALE LLC**, an
Arizona limited liability company

By: _____
David H. Best
Its: Vice President and GM

LESSOR: **CITY OF SCOTTSDALE**,
an Arizona municipal corporation

By: _____
David D. Ortega, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson, Assistant City Attorney

Gary P. Mascaro, Aviation Director

George Woods, Jr., Risk Management Director

STATE OF NEW JERSEY)
) ss.
County of Bergen)

The foregoing instrument was acknowledged before me this ____ day of _____ 2023, by David Best, Vice President and GM of Jet Aviation Scottsdale LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____ 2023, by David D. Ortega, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

LEGAL DESCRIPTION

**SCOTTSDALE AIRPORT
JET CENTER PHASE 2 LEASE**

THAT PORTION OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY MOST CORNER OF LOT 42, THUNDERBIRD INDUSTRIAL AIRPARK NO. 3, ACCORDING TO THE PLAT RECORDED IN BOOK 145 OF MAPS, PAGE 28, RECORDS OF MARICOPA COUNTY, ARIZONA (M.C.R.);

THENCE NORTH 43°55'06" EAST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT 42, A DISTANCE OF 274.09 FEET;

THENCE DEPARTING PERPENDICULAR TO SAID SOUTHEASTERLY LINE, SOUTH 46°04'54" EAST, A DISTANCE OF 37.80 FEET;

THENCE NORTH 43°55'06" EAST, PARRALEL WITH AND 37.80 FEET SOUTHEASTERLY OF SAID SOUTHEASTERLY LINE, A DISTANCE OF 346.44 FEET TO THE SOUTHWEST CORNER OF LANDMARK LEASEHOLD, SOUTH PARCEL AS DESCRIBED IN DOCUMENT NO. 2010-958702, M.C.R.;

THENCE DEPARTING SAID PARALLEL LINE, SOUTH 46°05'00" EAST, ALONG THE SOUTHERLY LINE OF SAID SOUTH PARCEL, A DISTANCE OF 332.37 FEET;

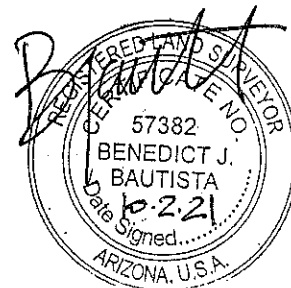
THENCE DEPARTING SAID SOUTHERLY LINE, SOUTH 43°55'06" WEST, A DISTANCE OF 774.79 FEET;

THENCE SOUTH 00°39'54" WEST, A DISTANCE OF 431.17 FEET;

THENCE NORTH 89°20'06" WEST, A DISTANCE OF 157.21 FEET TO A POINT ON THE EAST LINE OF TRACT B, THUNDERBIRD INDUSTRIAL AIRPARK, ACCORDING TO THE PLAT RECORDED IN BOOK 118 OF MAPS, PAGE 9, M.C.R.;

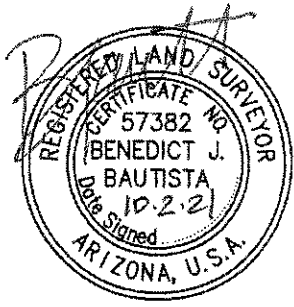
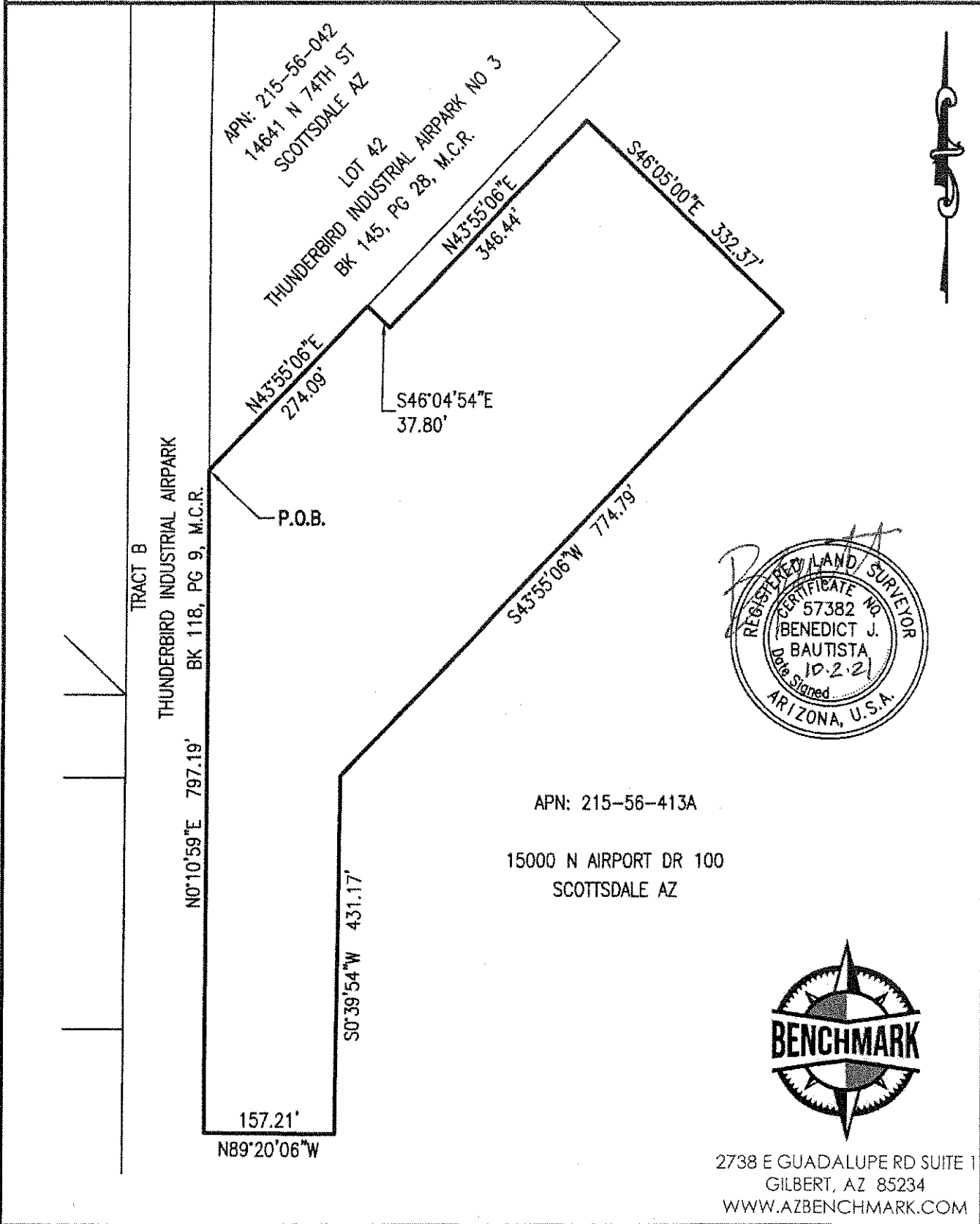
THENCE NORTH 00°11'00" EAST, ALONG SAID EAST LINE, A DISTANCE OF 797.19 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 343,153 SQUARE FEET OR 7.88 ACRES, MORE OR LESS.



**EXHIBIT
SCOTTSDALE AIRPORT JET CENTER**

Job No:
2021-29



APN: 215-56-413A

15000 N AIRPORT DR 100
SCOTTSDALE AZ



2738 E GUADALUPE RD SUITE 1
GILBERT, AZ 85234
WWW.AZBENCHMARK.COM

Prepared By: BJB **Date:** 10-02-21 **Checked By:** BRJ **Sheet No:** 1 Of 1



**Legal Description
SCOTTSDALE AIRPORT
PROPOSED GREENWAY HANGARS AND SHADES**

THAT PORTION OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 93, THUNDERBIRD INDUSTRIAL AIRPARK NO. 3A, ACCORDING TO THE PLAT RECORDED IN BOOK 160 OF MAPS, PAGE 8, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 46°04'54" EAST, A DISTANCE OF 75.20 FEET;

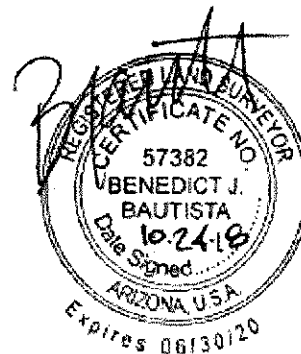
THENCE SOUTH 43°55'06" WEST, A DISTANCE OF 725.58 FEET;

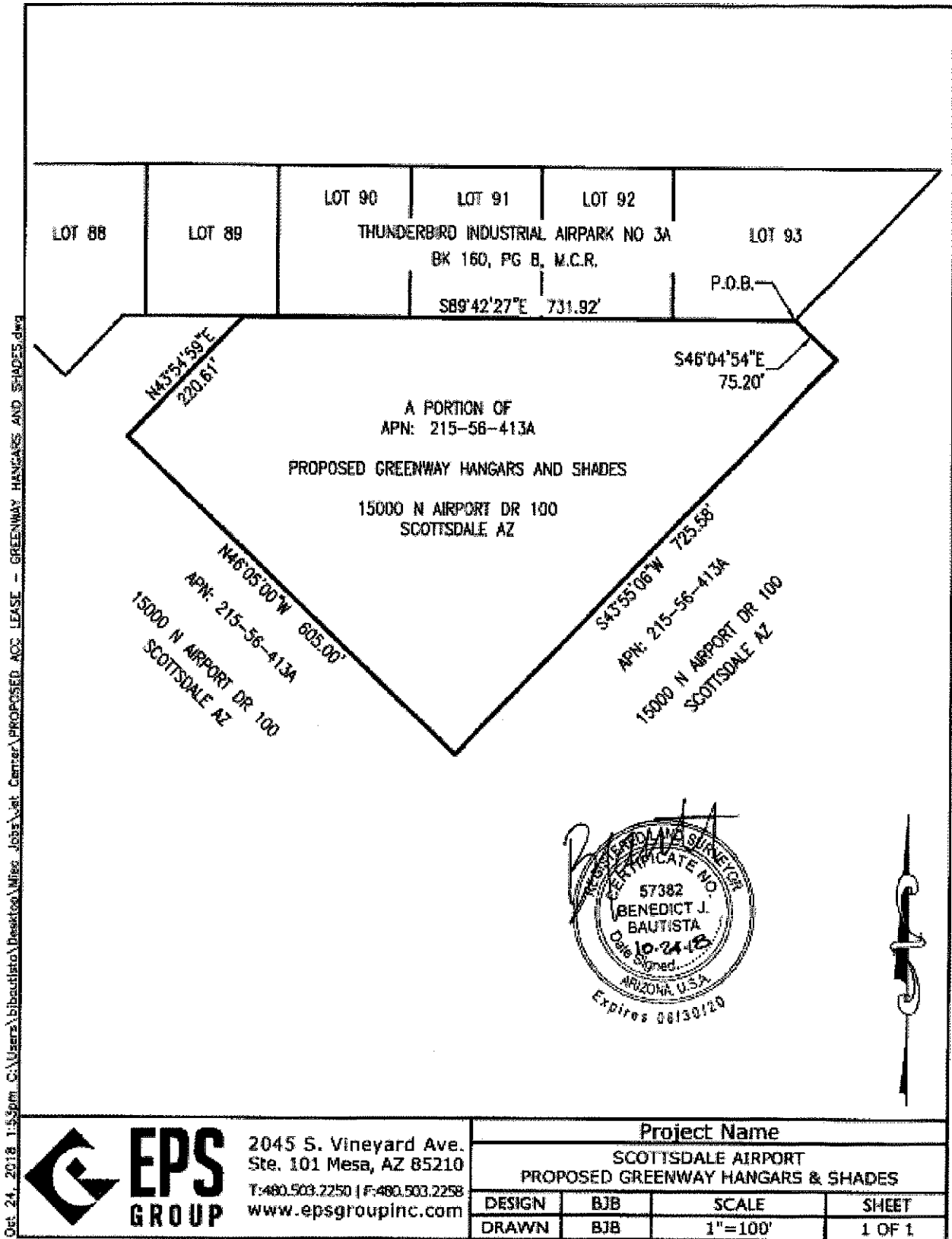
THENCE NORTH 46°05'00" WEST, A DISTANCE OF 605.00 FEET;

THENCE NORTH 43°54'59" EAST, A DISTANCE OF 220.61 FEET TO A POINT ON THE SOUTH LINE OF LOT 89 OF SAID PLAT;

THENCE SOUTH 89°42'27" EAST, ALONG THE SOUTH LINE OF LOT 89 - 93 OF SAID PLAT, A DISTANCE OF 731.92 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED BOUNDARY CONTAINS AN AREA OF 305,209 SQUARE FEET OF 7.01 ACRES MORE OR LESS.



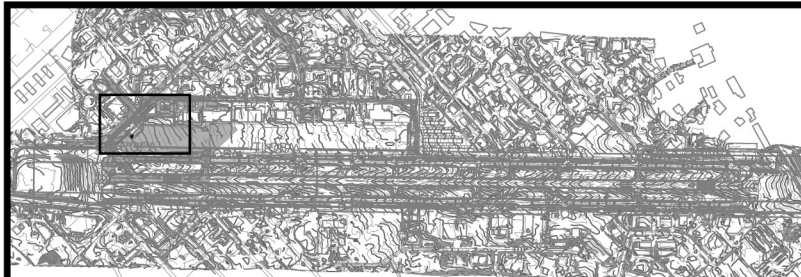


Oct. 24, 2018 1:53pm C:\Users\bjbautista\Desktop\Mapas\Jobs\set Camer\PROPOSED ACC. LEASE - GREENWAY HANGARS AND SHADES.dwg

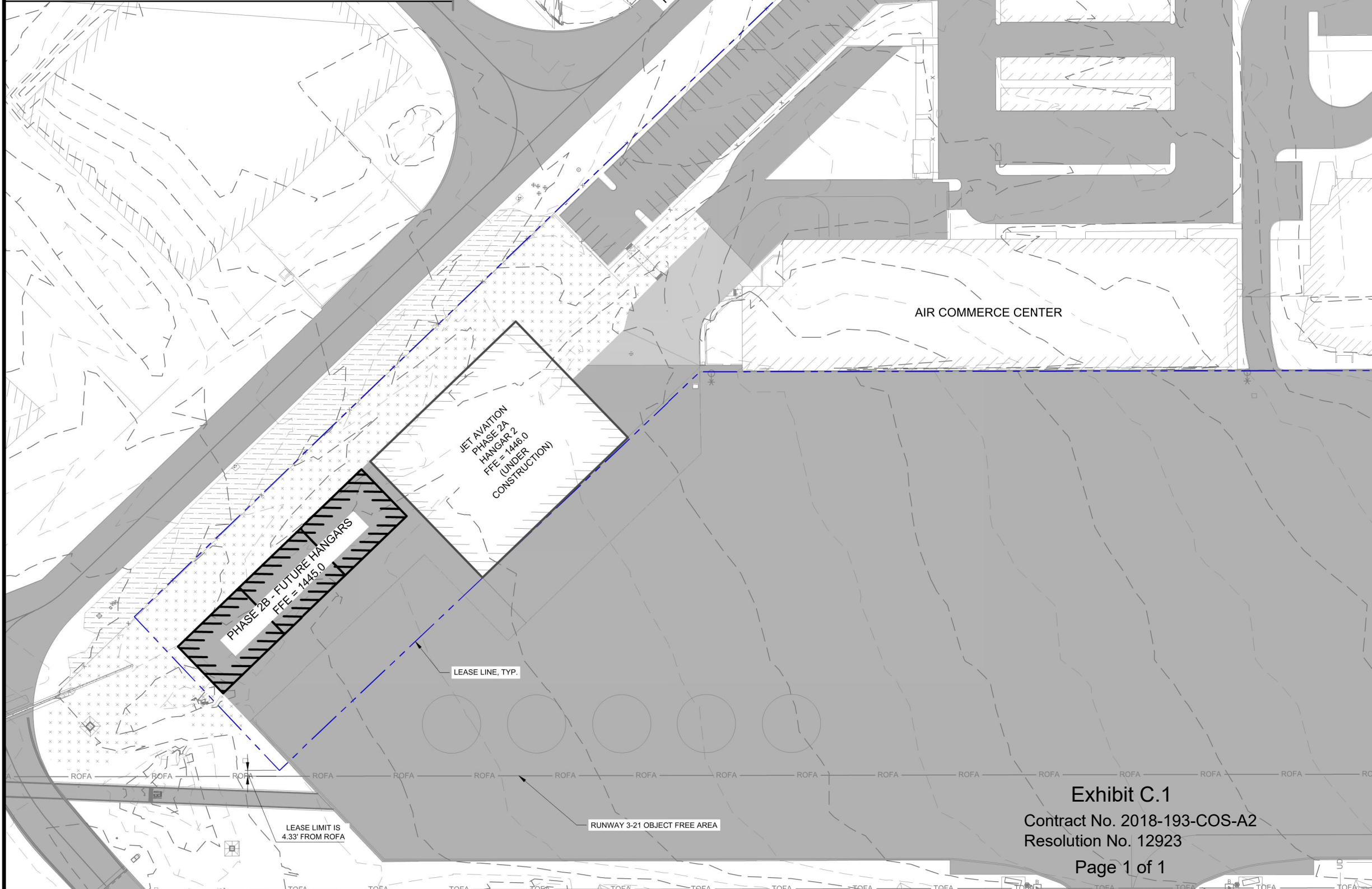


2045 S. Vineyard Ave.
Ste. 101 Mesa, AZ 85210
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Project Name			
SCOTTSDALE AIRPORT PROPOSED GREENWAY HANGARS & SHADES			
DESIGN	BJB	SCALE	SHEET
DRAWN	BJB	1"=100'	1 OF 1



KEYMAP
NOT TO SCALE



AIRPORT DRIVE

TAXILANE

JET AVIATION FBO

AIR COMMERCE CENTER

JET AVIATION
PHASE 2A
HANGAR 2
FFE = 1446.0
(UNDER
CONSTRUCTION)


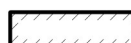

PHASE 2B - FUTURE HANGARS
FFE = 1445.0

LEASE LINE, TYP.

LEASE LIMIT IS
4.33' FROM ROFA

RUNWAY 3-21 OBJECT FREE AREA

LEGEND:

-  EXITING BUILDING / HANGAR
-  FUTURE BUILDING / HANGAR
-  LEASE LINE

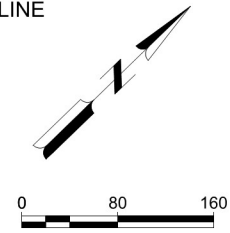


Exhibit C.1
Contract No. 2018-193-COS-A2
Resolution No. 12923
Page 1 of 1

X:\4600300\202277\01\TECH\DRAWINGS\EXHIBITS\SET\JET CENTER HANGAR PHASE 2B - PART 77 ANALYSIS.DWG

X:\2886300\10801.01\TECH\CAD\C-012 PROPOSED SITE PLAN.DWG
1/31/2023 8:31:28 AM

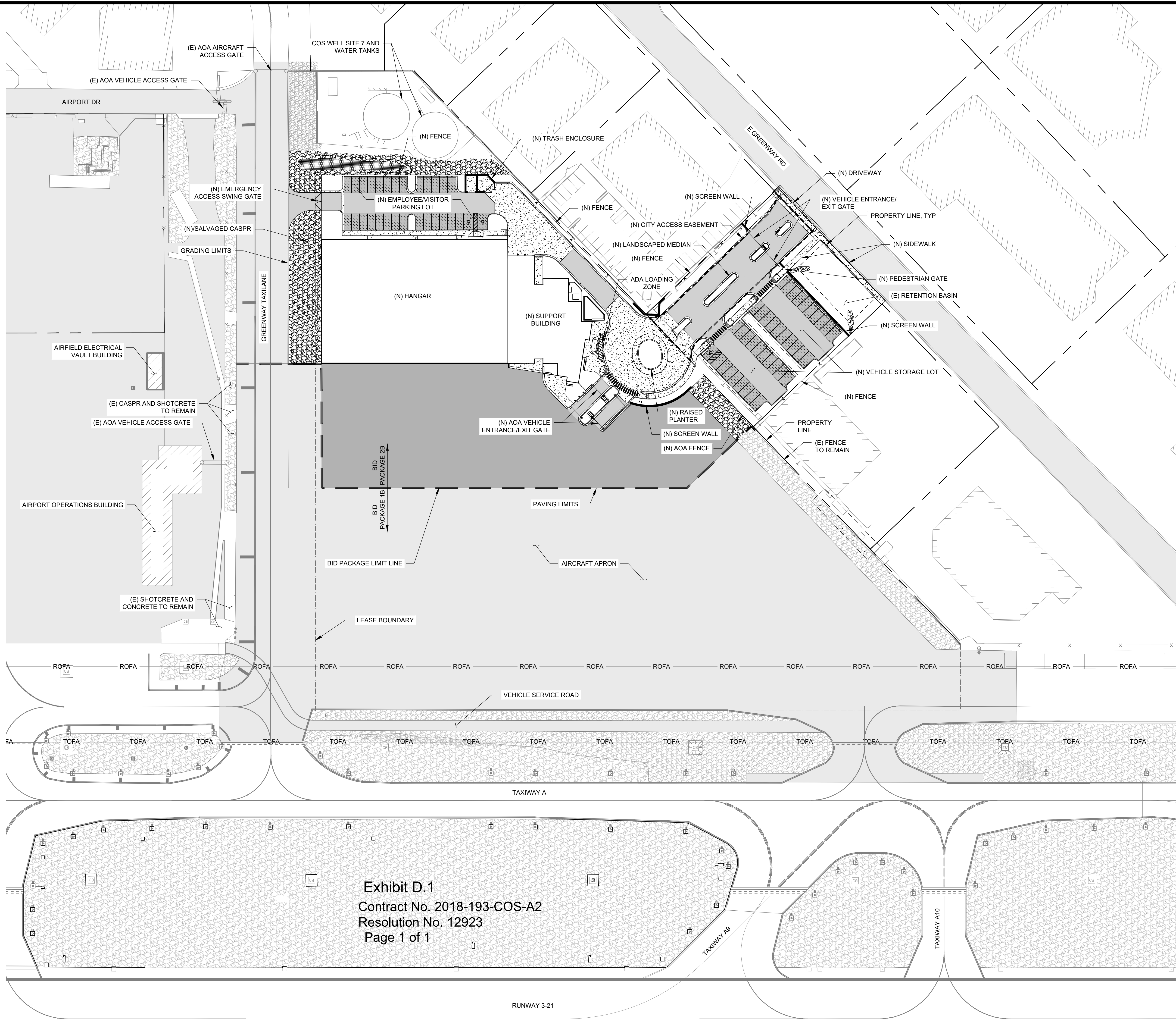
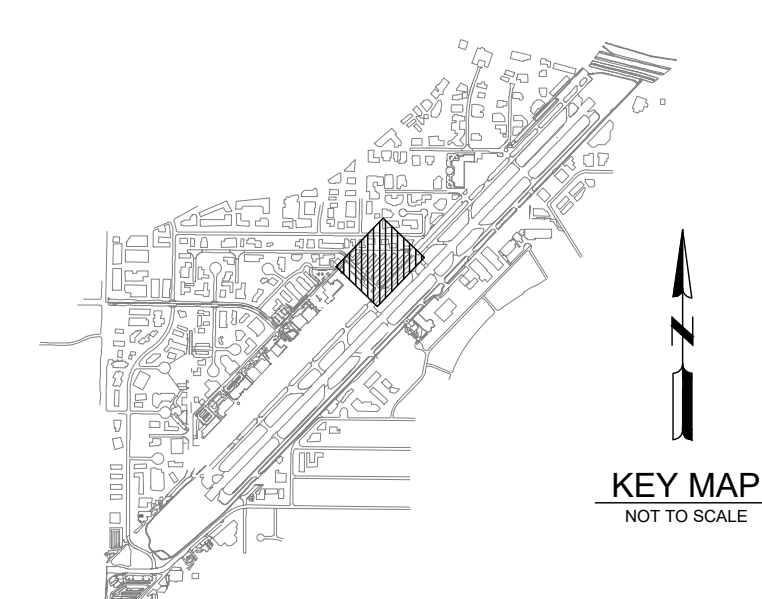
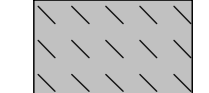
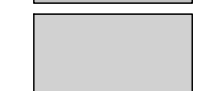




Exhibit D.1
Contract No. 2018-193-COS-A2
Resolution No. 12923
Page 1 of 1



LEGEND

-  VEHICLE PARKING STALL PAVEMENT SECTION (SEE 1/C-301)
-  VEHICLE DRIVE AISLE PAVEMENT SECTION (SEE 2/C-301)
-  AIRCRAFT APRON PAVEMENT SECTION (SEE 3/C-301)
-  (E) ASPHALT CONCRETE

PROJECT DATA

PARCEL NUMBERS
215-56-091A JET AVIATION SCOTTSDALE LLC OWNED PARCEL
215-56-413A CITY OWNED PARCEL, AIRPORT PROPERTY
ZONING
I-1 INDUSTRIAL PARK

Mead & Hunt
Mead and Hunt, Inc.
2440 Deming Way
Middleton, WI 53562
phone: 608-273-6380
meadhunt.com



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**JET AVIATION
PROJECT CACTUS**
7811 E GREENWAY ROAD
SCOTTSDALE, AZ 85260

ISSUED
01/31/23 ISSUED FOR CONSTRUCTION

MSH NO: 2886300-210801.01
DATE: JANUARY 31, 2023
DESIGNED BY: RJK
DRAWN BY: RJK
CHECKED BY: DPS
DO NOT SCALE DRAWINGS

SHEET CONTENTS
PROPOSED SITE PLAN

SHEET NO: 5 OF 50

C-012

DRB CASE NO.: 82-DR-2021

Exhibit E.1

Standards for Letters of Credit

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. Letter of Credit Requirements. The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:

1.1. The Letter of Credit is clean, unconditional, and irrevocable.

1.2. The Letter of Credit is payable to City upon presentation of the City's draft.

1.3. City may make partial draws upon the Letter of Credit.

1.4. The Letter of Credit is conditioned for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.

1.5. Within ten (10) days after City's draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer in Maricopa County, Arizona upon which the issuer may endorse its payments.

1.6. The issuer specifies a telefax number, email address and street address at which City may present drafts on the Letter of Credit at a specified.

1.7. The Letter of Credit is valid until a specified date.

1.8. The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.

1.9. The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce.

1.10. The Letter of Credit need not be transferable.

2. Approved Forms. The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

2.1. Except as approved in writing by City's Chief Financial Officer or designee, the form of the Letter of Credit shall be in the form set out below.

2.2. Except as approved in writing by City's Chief Financial Officer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

3. Issuer Requirements. The issuer of the Letter of Credit shall meet all of the following requirements:

3.1. The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented.

3.2. The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to City.

3.3. The issuer shall have a net worth of not less than \$1 billion.

FORM OF LETTER OF CREDIT

Date _____, 20__

Letter of Credit No.: _____

City Treasurer
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, AZ 85253

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in your favor at the request and for the account of _____ in the aggregate amount of _____ (\$_____), available upon presentation of your draft in the form attached hereto as **Schedule "1"**.

We will honor each draft presented to us at our above office in compliance with the terms of this Letter of Credit. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. Drafts may be presented by any of the following means:

1. By telefax to (_____) _____.
2. By _____ email _____ to _____.
3. By hand or overnight courier service delivery to:

This Letter of Credit is valid until _____, 20__ and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce. This Letter of Credit is not assignable.

_____ [bank name] _____, a _____
By _____ [bank officer's signature] _____
_____ [bank officer's name printed] _____
Its _____ [bank officer's title] _____
Phone _____ bank officer's phone number] _____

FORM OF DRAFT ON LETTER OF CREDIT

To: _____

From: City Treasurer
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, Arizona 85253

Date: _____, 20_____

Ladies and Gentlemen:

Pursuant to your Credit No. _____, the City of Scottsdale hereby demands cash payment in the amount of _____ (\$_____).

Please make your payment to the City of Scottsdale in the form of a wire deposit to:

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the City Treasurer of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at 480-312-2427 so that I can correct it. Also, please immediately notify the City Attorney at 480-312-2405.

Thank you.

City of Scottsdale, City Treasurer

Exhibit F.1

MONTHLY REPORT ITEMS

1. For each portion of the Premises:
 - 1.1 The name of the user or occupant.
 - 1.2 The name and date of the agreement permitting such use or occupancy.
 - 1.3 The names of the parties to such agreement.
 - 1.4 The suite number, location and square footage of the space used or occupied.
 - 1.5 The name and business phone number of the user or occupant and the name and after hours phone number of a responsible representative for such user or occupant.
 - 1.6 The business name and type of business activity being conducted.
2. For any new use or occupancy commenced, a complete copy of the executed agreement permitting such use or occupancy, together with copies of all permits, licenses or similar permissions, registrations or agreements related to such use or occupancy will be provided, upon request to the Lessor.
3. For each portion of the Premises capable of aircraft storage:
 - 3.1 The number of aircraft based at such portion of the Premises.
 - 3.2 For each aircraft based at such portion of the Premises:
 - 3.2.1 Make, model, year and registration number.
 - 3.2.2 Owner's name, address and telephone number.

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
~~(Gary Mascaro)~~
(Aviation Director)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. 201____-____-8-193-COS-A2
(Resolution No. _____12923)
(Jet Aviation aka Scottsdale Jet Center)

SECOND AMENDED AND RESTATED LEASE AGREEMENT

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, by and between the City of Scottsdale, an Arizona municipal corporation ("Lessor"), and Jet Aviation Scottsdale, LLC (formerly known as Scottsdale Jet Center Real Estate, LLC), an Arizona limited liability company ("Lessee").

RECITALS

A. Lessor is the owner of the Scottsdale Airport (the "Airport") located northeast of the intersection of Scottsdale Road and Thunderbird Road in Maricopa County, Arizona.

B. The Airport includes certain real property (the "Premises") comprising two parcels in the City of Scottsdale, Arizona, consisting of the Air Commerce Center Parcel of approximately 7.297.88 total acres (317,620,343,153 square feet) as described in Exhibit "A.1" attached hereto, and the Greenway Hangars and Shades Parcel of approximately 7.01 total acres (305,209 square feet) as described in Exhibit "B.1" attached hereto.

C. Lessor holds fee title and various other interests in the Premises subject to various documents recorded in the office of the Maricopa County Recorder as of the date of this Agreement (collectively, the "Site Documents").

D. The original Premises includes certain office and hangar facilities as well as T-Shades and Hangars and an underground fuel farm made available for lease hereunder. As a part of this Agreement, Lessee will be granted the non-exclusive use of the aircraft parking apron located directly in front of the leased Premises.

E. Lessee has begun construction and desires to continue to construct and operate all improvements necessary for convenient use of the Premises as a full service fixed base operator (collectively the "Project") upon the Premises as depicted on the drawings (collectively, the "Site Plan") attached hereto as Exhibit "C.1" (relating to the Air Commerce Center Parcel) and

Exhibit "D.1" (relating to the Greenway Hangars and Shades Parcel), subject to the requirements of this Agreement.

F.

F. Lessor and Lessee entered an initial lease on or about December 11, 2018, City of Scottsdale Contract No. 2018-193-COS.

G. Lessor and Lessee entered an amendment to the initial lease on February 18, 2020, City of Scottsdale Contract No. 2018-193-COS-A1.

H. Lessor and Lessee now wish to amend and restate the Lease agreement between themselves thereby superseding the original Lease and the First Amendment through this Second Amended and Restated Lease Agreement.

I. On or about February 26, 2021, Lessee filed forms with the Arizona Corporation Commission legally changing its name from Scottsdale Jet Center Real Estate, LLC to its current name of Jet Aviation Scottsdale, LLC.

J. Subject to the terms and conditions of this Agreement, Lessee shall construct herein, Lessor shall lease the premises to Lessee and Lessee shall complete construction of the various improvements in three phases comprising the Project upon and adjacent to the Premises as depicted on the Site Plan under the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Lessee, and the covenants and agreements contained herein to be kept and performed by Lessee, and other good and valuable consideration, Lessor and Lessee agree as follows:

I. RECITALS

1.0 Recitals. The foregoing recitals are incorporated into this Agreement.

II. PREMISES

2.0 Premises. Lessee's rights to use the Premises are limited as follows:

2.1 Reservation. Lessor specifically reserves to itself and excludes from this Agreement a non-exclusive easement (the "Reserved Easement") over the entire Premises for the exercise of all of Lessor's rights under this Agreement and for any and all purposes that do not materially interfere with Lessee's lawful conduct of the Permitted Uses under this Agreement. The Reserved Easement does not give the general public or any other Airport tenant (or the employees, vendors, or contractors of any other Airport tenant) a right to enter upon the Premises. Without limitation, the Reserved Easement also includes:

2.1.1 An underground utility easement.

2.1.2 A non-exclusive easement for pedestrian and vehicular access upon all vehicular, aircraft and pedestrian driveways, plazas, sidewalks, and maneuvering areas existing from time to time.

2.1.3 The right to install antennas utilized for airport operations upon the roofs of the buildings. Lessor shall not install, operate or allow use of equipment, methodology or technology for its antennas at the Premises that may or would interfere with the optimum effective use or operation of Lessee's antennas now or hereafter at the Premises. Lessee shall have the right to reject antennas which are visible from the parking spaces within the Premises or which interfere with other permitted uses of the roofs by Lessee and cannot be reasonably accommodated by such uses.

2.2 Public Agency Access. Lessor reserves the right for other public agencies and Lessor to enter the Premises or any part thereof at all reasonable times, for the purposes of reconstruction, maintenance, repair or service of any public improvements or public facilities located within or without the Premises. Any such entry shall be made only after reasonable notice to Lessee, and after Lessor or the other public agency has agreed to be responsible for any claims or liabilities pertaining to any entry. Any damage or injury to the Premises or to the part thereof resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. Such reserved rights do not include the interior space of any buildings that Lessee may construct upon the Premises. Lessor or the other public agency shall take commercially reasonable steps to minimize any disruption of the conduct of business on the Premises caused by the construction, reconstruction, repair, operation, maintenance and replacement of such improvements and facilities.

2.3 Rights in Adjacent Premises. Lessee's rights are expressly limited to the real property defined as the "Premises" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property adjacent to the Premises is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Lessor, such property shall not accrue to this Agreement but shall be Lessor's only. In addition, and severable from the preceding sentence, upon any such event, Lessee shall execute and deliver to Lessor without compensation a quit-claim deed of such right-of-way or other property.

2.4 Variation in Area. In the event the Premises consist of more or less than any stated acreage, this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

2.5 Condition of Title. Lessee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the Premises. Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own or Lessee's title to the Premises. Lessee's rights hereunder are further subject to all present and future building restrictions, regulations, rules, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises or Lessee's use thereof.

2.6 Site Documents. Lessee shall do nothing at the Premises that the Site Documents would not allow Lessor to do. Lessee shall timely, fully and faithfully perform all obligations of Lessor and Lessee under the Site Documents with respect to the Premises. Lessee shall not have power to amend, modify, terminate or otherwise change the Site Documents, without Lessor's express written consent. Lessee shall pay, indemnify, defend and hold harmless the Lessor and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs, which arise from or relate to violations of the Site

Documents by Lessee or those claiming through Lessee. In the event the Site Documents impose affirmative duties to be performed on land outside the Premises, Lessee is not obligated to perform such duties unless the Site Documents specifically impose such duties upon the land included within the Premises.

2.7 Condition of Premises. Lessee has examined, studied and inspected the Premises, the Airport, and all other property associated with this Agreement and its environs. All of such property is being made available in an “as is” condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Lessee has obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement or this transaction.

2.8 Lessor’s Fixtures and Personalty. No fixtures or personal property owned by Lessor upon or within the Premises are included in this Agreement. Any and all of Lessor’s property as may come into the possession of Lessee or be used by Lessee, shall be returned to Lessor by Lessee at termination of this Agreement and shall be maintained in good working condition by Lessee from time to time at Lessee’s expense and replaced by Lessee at Lessee’s expense when worn out and shall be owned at all times by Lessor with Lessee being solely responsible for the condition thereof. All such personal property shall be provided “as is” and Lessee shall accept all responsibility for its condition and shall thoroughly inspect the same before use.

III. TERM OF AGREEMENT

3.0 Term of Agreement. Lessor hereby leases the Premises to Lessee subject to and conditioned upon Lessee’s full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Lessee, and Lessee hereby accepts the Premises and this Agreement.

3.1 Term. ~~The term of the Lease of the Premises shall commence, and this Lease shall become effective, on the Effective Date of the Lease Assignment, Assumption, Consent and Estoppel made among Lessor, Lessee, Air Commerce Center L.L.C., Airport Properties, L.L.P., and Airport Holdings, Inc., concurrently herewith, and the term of the Lease of the Premises shall expire on January 31, 2059-commenced, and the original Lease became effective on or about December 11, 2018, and the initial term of the Lease of the Premises shall expire on January 31, 2059. Provided, however, if Lessee demonstrates expenditure of \$29 million dollars in improvements to the satisfaction of the Aviation Director, Lessee shall be vested with an option to extend this Lease for an additional fifteen year period beyond the conclusion of the initial term and any automatic extension as set forth below (“the fifteen year extension”). If verified and desired, Lessee shall exercise this option by providing written notice to Lessor no later than 180 days prior to expiration of the initial term (as extended) of the Lease. Further, if Lessee completes all of the improvements for Phase IIB as contemplated in this Agreement no later than May 22, 2026, the term of this Lease shall be automatically extended an additional five years to January 31, 2064. For the avoidance of doubt, if the Lessee has executed the fifteen year extension option prior to the completion of the Phase IIB work, the Phase IIB completion would extend the lease until January 31, 2079. Upon confirmation of the vesting of either the automatic extension or the Lessee option, Lessee and Lessor’s Aviation Director shall execute a memorandum confirming the same and Lessor’s Aviation Director shall cause a copy of the memorandum to be attached to this Lease Agreement and filed with the City Clerk.~~

3.2 Holding Over. In any circumstance whereby Lessee ~~would~~should remain in possession of the Premises after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month which may be terminated at any time by Lessor upon thirty (30) days notice to Lessee, or by Lessee upon sixty (60) days notice to Lessor.

3.3 Airport Closure. Lessor does not warrant that the Airport will remain open during the entire term of this Agreement, but Lessor does not presently have intentions to close the Airport. If the Airport is scheduled to be closed for more than a twelve (12) month period, Lessee shall have a six (6) month period (the "Decision Period") to give Lessor notice that Lessee elects to terminate this Agreement without penalty. The Decision Period shall commence on the date (the "Determination Date") which is the end of the said first six (6) month period of Airport closure. If Lessee does not so elect to terminate this Agreement by giving such notice, then the following shall apply

3.3.1 The Permitted Uses shall be expanded to include all uses then allowed under applicable zoning and other laws.

IV. LEASE PAYMENTS

4.0 Lease Payments. Lessee shall pay to Lessor all of the following payments together with all other payments required by this Agreement (all payments by Lessee to Lessor required by this Agreement for any reason are collectively the "Rent"):

4.1 Rent Payment Date. All Rent shall be payable one month in advance on the twenty-fifth day of the preceding month. In the event an amount is not known in advance, Lessor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. For example, the Rent for September shall be payable on or before August 25. Rent is deemed paid only when good payment is actually received by Lessor.

4.2 Base Rent. The rental amount ("the Base Rent") Lessee shall pay to Lessor at the twenty-fifth day of the preceding month of this Agreement shall be Thirteen Thousand One Hundred Sixteen and 51/100 Dollars (\$13,116.51). On May 22, 2022, the rental amount (the "New Base Rent") Lessee shall pay to the Lessor at the twenty-fifth day of the preceding month of this Agreement shall be Nineteen Thousand Seven Hundred Twenty ~~Four~~ and 44/100 Dollars (\$19,724.44). Commencing on the Effective Date of this Second Amendment, the monthly rental amount (the "Revised Base Rent") Lessee shall pay to the Lessor at the twenty-fifth day of the preceding month shall be Twenty Thousand Five Hundred Thirty-One and 56/100 Dollars (\$20,531.56)

4.3 Base Rent Adjustment. The Base Rent shall be automatically adjusted upward on each anniversary of this ~~Agreement~~Amendment occurring in an odd numbered year, beginning with 2021. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each new adjusted monthly installment of Base Rent (represented by the letter "R" in the formula set forth below) shall be equal to the new Cost of Living Index number (represented by the letter "C" in the formula set forth below) divided by the original Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and

multiplied by the original monthly Base Rent amount (represented by the letter "B" in the formula set forth below) This computation is expressed by the following formula:

$$R = C/M \times B$$

provided, that in no event shall any Rent be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, Lessor shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate. Any correction due to an error in Lessor's estimate shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice by either party to the other that the Cost of Living Index has been published. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by Lessor in Lessor's reasonable discretion. Any delayed adjustment shall be effective retroactively. In the event of a holdover, all Rent and every element thereof shall be increased by an additional fifty percent (50%) over the amount of Rent that would otherwise be payable under this Agreement.

~~4.3.1 If Lessee fails to complete, as evidenced by the issuance of a Certificate of Occupancy, the construction for Phase II by the date set forth in Section 8.2.1 below, Lessee's base rent shall be \$11,861.13.~~

~~4.3.2 If Lessee fails to complete, as evidenced by the issuance of a Certificate of Occupancy, the construction of Phase III by the date set forth in Section 8.3.1 below, Lessee's base rent shall be \$10,064.39.~~

4.4 Aeronautical Business Permit. To the extent required by law, all persons occupying or operating at the Premises shall obtain an Aeronautical Business Permit. This paragraph applies to any type of permit or other rule or requirement that may supplement or replace the Aeronautical Business Permit. In addition to all other Rent payment hereunder, if Lessee does not from time to time hold an Aeronautical Business Permit covering all activities relating to its own operations, activity and business at the Premises and pay all fees related thereto, Rent shall include an additional amount equal to the amount that would be payable pursuant to such an Aeronautical Business Permit regardless of whether an Aeronautical Business Permit is required by law. Notwithstanding the foregoing or Paragraph 5.1, Lessee may sublease office space (but only office space) to persons or entities who are not engaged in an aviation related business and/or who are not required to hold an Aeronautical Business Permit; provided, however, that because the Permitted Uses are otherwise limited to certain aviation related uses and Lessor desires to ensure an appropriate overall mix of aviation and non-aviation related office space on the Premises, any and all such non-aviation related office subleases are subject to Lessor's prior written consent (which consent Lessor shall not unreasonably withhold or delay).

4.5 Security Deposit. ~~Upon execution of this Agreement,~~ Lessee shall ~~provide to Lessor, and continue~~ maintain with Lessor at all times during the term of this Agreement, a cash security deposit in the amount equal to Fifteen Thousand Dollars (\$15,000) guaranteeing the faithful performance of this Agreement. Any funds or property of Lessee held by or available to Lessor or any issuer of a letter of credit receiver, escrow agent or other third party under or related

to this Agreement shall also stand as a security deposit guaranteeing Lessee's faithful performance of this Agreement. Any portion of any security deposit to which Lessee may then be entitled, net of any setoff or other obligation of Lessee, shall be paid to Lessee by the then owner of the fee title to the Premises within sixty (60) days after the later of termination of this Agreement or complete satisfaction of all of Lessee's obligations.

4.6 Late Fees. Should any Rent not be paid on or before the due date, a late fee shall be added to the amount due in the amount of ten percent (10%) of the amount due. Furthermore, any Rent that is not timely paid shall accrue interest at the rate of .25 percent (.0025%) per month, every month thereafter until paid. Lessee expressly agrees that the forgoing represent fair and reasonable estimates by Lessor and Lessee of Lessor's costs (such as accounting and processing costs, administrative costs, etc.) in the event of a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

4.7 Rent Amounts Cumulative. All amounts payable by Lessee under any provision of this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

4.8 No Setoffs. Lessee shall pay all Rent directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

V. USE RESTRICTIONS

5.0 Use Restrictions. Lessee's use and occupation of the Premises shall in all respects conform to all and each of the following cumulative provisions:

5.1 Permitted Uses. ~~Upon completion of Phase I as set forth in Section 8.1~~ Lessee and those claiming through Lessee shall use the Premises solely for a full service fixed base operator (the "Permitted Uses") in accordance with the Airport Minimum Operating Standards and receiving an approved Aeronautical Business Permit for such activity. Lessee shall conduct no other activity at or from the Premises. ~~Upon completion of Phase I, the~~The Permitted Uses are limited to the following as set forth in Sections 5.1 through 5.1.11:

5.1.1 Commercial offices as reasonably required for conduct of the Permitted Uses.

5.1.2 Flight instruction.

5.1.3 Aircraft charter service.

5.1.4 Aircraft sales and leasing.

5.1.5 Major aircraft maintenance and repair.

5.1.6 Aircraft storage, parking and tiedown.

5.1.7 Aircraft related warehousing.

5.1.8 Aircraft lubrication.

5.1.9 Aircraft management services.

5.1.10 Aircraft parts, avionics and equipment sales.

5.1.11 Aircraft fueling subject to the limits of this Agreement and the Airport Rules and Regulations.

~~5.1.12 Prior to the completion of Phase I as set forth in Section 8.1 and Lessee's receipt of any aeronautical business permit for a full service fixed based operator, Lessee will be limited to the aeronautical activities listed from Sections 5.1.1 through 5.1.15.2.5.~~

~~5.1.13 Prior to receiving an approved Aeronautical Business Permit for a full service fixed base operator, the Premises shall be operated subject to the limits of this section regarding based aircraft.~~

~~5.1.13.1 Intentionally Omitted~~

~~5.1.13.2 Based Aircraft:~~

~~As used herein, "Based Location" means an aircraft which the owner physically locates on the Premises at the Airport with the intent and purpose to remain for an undetermined period; and whose presence at the Premises is not transitory in nature. "Based" includes an aircraft that is located at the Airport for a limited or seasonal duration.~~

~~5.1.13.3 Visiting aircraft.~~

~~Non-based aircraft (i.e. transient or visiting aircraft based in another location) may only access the Premises upon the Aviation Director's prior written approval of a request from: (i) the Lessee or (ii) aircraft owner/operator based at the premises, in accordance with the following:~~

~~5.1.13.3.1 Visiting aircraft may not receive fuel from the Premises, receive maintenance, unless by an approved Aeronautical Business Permittee that is allowed to conduct maintenance, or remain overnight more than ten (10) consecutive calendar days;~~

~~5.1.13.3.2 The Aviation Director will not accept any application to base a visiting aircraft permanently at the Premises while the aircraft is parked under Aircraft Visiting Notice.~~

~~5.1.13.3.3 The Lessee receiving the visitor must notify Airport Operations in writing via the Aircraft Visiting Notice or email in advance of the visiting aircraft's arrival at the Airport.~~

~~5.1.14 Prerequisites to registration and licensing of aircraft at the Premises. Prior to the completion of Phase I as set forth in Section 8.1 and Lessee's receipt of any aeronautical business permit for a full service fixed based operator, the following requirements shall apply:~~

~~Each person owning, operating, or otherwise controlling aircraft based at the Premises shall:~~

~~5.1.14.1 — Prior to basing the aircraft, obtain an Aircraft Storage Agreement approved by the Aviation Director for each aircraft and submit evidence satisfactory to the City of registration and/or aircraft leasehold interest.~~

~~5.1.14.2 — Convey in writing any changes to information contained within the Aircraft Storage Agreement to the Aviation Director within fifteen (15) calendar days of the change.~~

~~5.1.14.3 — If conducting storage of aircraft primarily used in conjunction with the commercial aeronautical uses at the Premises, provide evidence reasonably satisfactory to the City that:~~

~~5.1.14.3.1 — The operator has been granted an approved Aeronautical Business Permit to conduct such activity at the Premises; and~~

~~5.1.14.3.2 — The permitted aeronautical business occupies the amount of enclosed non-hangar gross floor area at the Premises required by the Airport Minimum Operating Standards.~~

~~5.1.15 Based aircraft storage requirements. Prior to the completion of Phase I as set forth in Section 8.1 and Lessee's receipt of any aeronautical business permit for a full service fixed based operator, the following requirements shall apply:~~

~~5.1.15.1 — A based aircraft shall only park at the Premises in its "slot".~~

~~5.1.15.2 — The maximum number of aircraft that may be lawfully based at Premises is calculated by the number of aircraft that can physically and operationally fit at the Premises at any time if all based aircraft were present. The Lessee shall:~~

~~5.1.15.2.1 — Submit a dimensional plan view drawing of the Premises and associated aircraft for approval or denial by Aviation Director.~~

~~5.1.15.2.2 — If, in the determination of the Aviation Director, the dimensional plan view drawing is insufficient to demonstrate the ability to base all aircraft in the hangar location, at the Aviation Director's discretion, all or some of the based and proposed based aircraft will be required to be simultaneously placed at the Premises location for review by the Aviation Director.~~

~~5.1.15.2.3 — A slot is considered occupied by a based aircraft for a minimum of six (6) months or, if in excess of six (6) months, as long as the aircraft is based at the Premises.~~

~~5.1.15.2.4 — Replacement aircraft may be substituted for a slot aircraft only if the Aviation Director approves a replacement aircraft:~~

~~(a) — For an aircraft sold by the owner, and the replacement aircraft based in the same slot at the Premises. The replacement aircraft begins a new six (6) month period for the slot.~~

~~(b) — For a specified period of time, to replace the slot aircraft while it is undergoing maintenance, repair or specialized aircraft repair services as they are described in the Airport Minimum Operating Standards. The replacement aircraft does not begin a new six (6) month period for the slot.~~

~~5.1.15.2.5 — Except as provided in subsection 5.1.15.1.2.4, replacement aircraft shall not be substituted for aircraft no longer based by Lessee or sublessee at the Premises.~~

5.2 Additional Restrictions. Through the term of this Lease the Permitted Uses are further restricted as follows:

5.2.1 Except ~~from~~for vending machines, no food shall be sold at the Premises. The preceding sentence does not preclude sales of in-flight meals prepared outside the Premises.

5.2.2 No gambling activities of any sort whatsoever are permitted at the Premises.

5.2.3 Sales, sale signs, and merchandise storage and display are confined to the interior of the Premises within the building.

5.2.4 No alcohol is permitted at the Premises. The preceding sentence does not apply to de minimus quantities of alcohol provided by building occupants for their own use (and guests) or to infrequent social parties conducted by Premises occupants for their staff or customers.

5.3 Restriction on Lessee's Other Business. During the entire term of this Agreement, Lessee shall not participate directly or indirectly in the ownership, management, or operation of any other business or other operation that includes transient fueling at the Airport.

5.4 Height Limitation. Lessee shall not direct, permit, or maintain upon the Premises any structure, tree, or other stationary or attached object (except an aircraft) that penetrates the Federal Aviation Regulation Part 77 surface without consent of the Federal Aviation Administration.

5.5 Signs. Lessee shall install all signs and markings required for safe use of the Premises. Lessee shall have the right to install and maintain not more than five (5) appropriate exterior signs per building to identify Lessee's operations at the Premises provided that all of the following conditions are met:

5.5.1 Each sign shall be made of metal and match the color, materials, content, construction, lettering, style, appearance and function of other signs installed by Lessor in the operation areas of the Airport, all as reasonably determined by Lessor.

5.5.2 Lessee shall design, make, install and maintain all signage in a first class professional manner.

5.5.3 Lessee shall not erect, install, apply for a permit for, or display any sign until Lessee has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Lessor, and has received notice of Lessor's approval. Proposed Lessee signs shall also be subject to the same plans review and other requirements that apply to other construction work by Lessee under this Agreement.

5.5.4 Lessee shall bear all costs pertaining to the erection, installation, operation, maintenance and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits.

5.5.5 The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, banners and other manner of signage.

5.5.6 Lessee shall provide signage and other markings on the Premises as directed by Lessor from time to time to cause parking, deliveries and other vehicle and other uses to comply with this Agreement.

5.6 Publicity. Upon special or standing requests made by Lessor from time to time and not in the absence of such requests, Lessee shall include in its promotional materials and other information distributed, sent, or made available to the public or others a notation that all or any part of Lessee's activities at the Premises are accomplished "with the assistance of the City of Scottsdale" or other words of support as Lessor may reasonably select from time to time.

5.7 Prohibited Names. Lessee shall not allow use in connection with any operations at the Premises any name that directly or indirectly refers to or contains any part of Lessor's name or the Airport's name or otherwise suggests a connection between Lessor and Lessee or Lessee's activities. Lessee shall also not use in connection with its operations at the Premises any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

5.8 Name of Business. Lessee shall operate the Permitted Uses at the Premises under Lessee's name, Jet Aviation Scottsdale ~~Jet Center~~, or if such name is not available or if Lessor and Lessee desire otherwise, such other aviation related name as Lessor may approve in Lessor's reasonable discretion.

5.9 Nonexclusive Uses. Lessee understands and agrees that Lessor, Lessor's other tenants, and other persons within and without the Airport and the surrounding vicinity will conduct from time to time business activities in direct competition with Lessee. Lessee has no exclusive rights to conduct any activity anywhere at the Airport. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. § 1349).

5.10 Communications Operations Restriction. Lessee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Lessor's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Lessee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Lessee takes corrective measures. Any such corrective measures shall be made at no cost to Lessor.

5.11 Outdoor Uses. Except to the extent, if any, approved by Lessor (Aviation Director) in writing in advance from time to time, all uses other than automobile and aircraft parking, aircraft fueling, pedestrian, aircraft and vehicular access, and similar incidental uses are confined to the interior of buildings at the Premises. The preceding sentence does not prohibit minor aircraft servicing outside the Premises on other portions of the Airport as may be allowed from time to time.

5.12 Coordination Meetings. Lessee shall meet with Lessor and other Airport users from time to time as requested by Lessor to coordinate and plan construction and operation of the Premises and all matters affected by this Agreement.

5.13 Governmental Relations. Lessee shall conduct its activities in coordination with Lessor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Premises. The preceding sentence does not prohibit Lessee from asserting its legal rights against such entities. Lessee shall immediately give to Lessor notice of any actual or threatened dispute, violation or other disagreement relating to the Premises. Lessee is not an agent for Lessor. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Premises):

5.13.1 State of Arizona

5.13.2 Maricopa County

5.13.3 Arizona Department of Environmental Quality

5.13.4 Arizona Department of Transportation

5.13.5 Federal Aviation Administration

5.14 Conduct at Premises. In entering into this Agreement, Lessor and Lessee have foremost in mind providing the public with a professional atmosphere devoid of unruly, inebriated, disorderly, or sexually oriented behavior. Lessee shall cause persons exhibiting such behavior to leave the Premises.

5.15 Quality Service. Lessee shall operate the Premises in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Premises attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to Lessor's reasonable satisfaction.

5.16 Lessee's Agent. Lessee shall at all times when the Premises are occupied retain on call available to Lessor upon the Premises an active, qualified, competent and experienced manager to supervise all activities upon and operation of the Premises and who shall be authorized to represent and act for Lessee in matters pertaining to all emergencies and the day-to-day operation of the Premises and other matters affecting this Agreement. Lessee shall also provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone numbers of a person to handle Lessee's affairs and emergencies at the Premises.

5.17 Operations and Staff Qualifications and Requirements. Lessee shall provide to the Premises adequate qualified personnel to conveniently conduct all operations at the Premises.

5.18 Hazardous Materials. Lessee's use upon or about the Premises shall be subject to the following provisions regarding any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, or the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

5.18.1 Lessee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Premises. The prohibitions of the preceding sentence only shall not apply to:

5.18.1.1 Aircraft fuel lawfully contained in proper tanks and dispensing equipment and offered for sale as permitted by this Agreement.

5.18.1.2 Materials necessary for aircraft servicing and restoration, provided such materials are present only in the minimum quantities reasonably necessary for such uses.

5.18.1.3 Janitorial supplies and similar materials in the minimum quantities necessary for first class modern fixed base operator uses permitted by this Agreement.

5.18.1.4 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in aircraft, motor vehicles and ordinary construction or landscaping machinery serving the Premises when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles installed in such vehicles and machinery.

5.18.2 Lessee shall dispose of any Toxic Substances away from the Premises as required by law.

5.18.3 Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Health Services.

5.18.4 In addition to any other indemnities or obligations, Lessee shall pay, indemnify, defend and hold Lessor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Premises attributable to or caused by Lessee or anyone using the Premises or acting or claiming under Lessee or this Agreement or otherwise relating to this Agreement. Lessee shall immediately notify Lessor of any prohibited Toxic Substance at any time discovered or existing upon the Premises.

5.18.5 Lessee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Lessee acknowledges the possibility that the Premises may contain actual or presumed asbestos containing materials.

5.19 Chemical Containers. Lessee shall capture, control and dispose of waste oil and other waste materials from equipment and other activities at the Premises. Lessee's disposal of such items shall be according to law and away from the Premises and other property of Lessor.

5.20 Fixtures and Personality. Lessee shall provide to and maintain at the Premises all equipment and other items necessary for the Premises to be conveniently used for the Permitted Uses.

5.21 Required Operation. During the entire term of this Agreement and any renewals or extensions, Lessee shall keep the Premises open to the public with service adequate to meet public demand. If Lessor determines in Lessor's reasonable discretion that public demand requires additional operating hours, Lessor shall have the right to require additional hours of operation. The operating requirements of this paragraph shall be suspended during the allowed period of repair work to the Premises under this Agreement when and to the extent operation is prevented by damage to the Premises. ~~Prior to completion of Phase I of the project during the required hours of operations. Lessee shall provide, hangar and shade storage and office space services. After completion of Phase I of the Project, during the required hours of operations,~~ Lessee shall provide all of the following services:

5.21.1 Aircraft fueling and lubricants.

5.21.2 Aircraft line services.

5.21.3 Major aircraft maintenance and repair services.

5.21.4 All service required to meet the minimum standards for a fixed base operator as set forth in the Scottsdale Airport Minimum Operating Standards, as amended from time to time.

5.22 Parking off the Premises. Lessor is not required to provide any parking. Parking is allowed only in marked parking stalls on the Premises. Vehicle loading, unloading, parking and standing is not allowed on any other area of the Airport or upon adjacent streets or lands. The preceding sentence does not prohibit use of motor vehicles upon the Airport ramp or other areas as may be permitted from time to time. Lessee shall take such measures as Lessor may reasonably request (including but not limited to installing, maintaining and operating card - controlled access gates) to control non-aircraft access to areas accessible to aircraft.

5.23 Parking on the Premises. To reduce effects on surrounding parking, and to encourage full use of parking at the Premises by persons visiting the Premises, Lessee shall make no charge except for valet service, if any, for parking at the Premises. For purposes of the preceding sentence, parking charges do not include charges for automobile storage while a person is using an aircraft based at the Premises. Except as Lessor may consent from time to time, Lessee shall provide all parking on site in compliance with current and future laws and regulations.

5.24 Airport Operations. Lessee acknowledges that Lessee's use of the Premises shall be subject and subordinate to Lessor's operation of the Airport, which will necessarily directly and indirectly affect Lessee and the Premises. Lessee shall not use the Premises in a way that in Lessor's reasonable discretion adversely affects Lessor's use or operation of the Airport. Cumulatively and without limitation:

5.24.1 This Agreement does not give Lessee any rights to park aircraft at any location at the Airport other than the Premises or to use any other portion of the Airport. Any use

of any portion of the Airport other than the Premises by Lessee shall be only as a member of the public and subject to all rules and regulations affecting the Airport from time to time.

5.24.2 Lessor reserves the right to further develop, diminish, close, remove or otherwise change the landing area and other areas of the Airport. Lessor reserves the right, but shall not be obligated to Lessee to maintain, operate or repair the landing or other areas of the Airport and all publicly-owned facilities of the Airport.

5.24.3 There is hereby reserved to Lessor, its successors and assigns, and for the use and benefit of Lessor and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This right of flight shall include the right to cause within or without said airspace any noise, vibrations or other effects relating to the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating at, the Airport.

5.24.4 Lessee shall not interfere with or endanger or obstruct the flight, taxiing, landing and taking off of aircraft, the loading or unloading of passengers or cargo, or other Airport operations.

5.25 Actions by Others. Lessee shall be responsible to ensure compliance with this Agreement by all persons using the Premises or claiming through or under Lessee or this Agreement. Lessee shall prevent all such persons from doing anything that this Agreement prohibits Lessee from doing.

VI. IMPROVEMENTS BY LESSOR

6.0 Improvements by Lessor. Except as expressly provided in this Agreement, Lessor has not promised to and is not obligated in any manner to make any improvements to the Premises or the Airport.

VII. LESSEE'S IMPROVEMENTS GENERALLY

7.0 Lessee's Improvements Generally. Lessee shall not perform any improvements, repairs, installation, construction, grading, structural alterations, utility alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon or related to the Premises (collectively "Lessee's Improvements") except in compliance with the following:

7.1 Cost of Lessee Improvements. Should Lessee wish to further improve the Premises, all Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, indemnify, defend and hold harmless Lessor and Lessor's employees, officer's, contractors and agents against all claims related thereto. Lessee shall bear the cost of all work required from time to time to cause the Premises to comply with local zoning rules, environmental approvals, the Americans with Disabilities Act, building codes and similar rules. Lessee shall also bear the cost of all work required from time to time to cause any other property owned by Lessor

to comply with all such rules implicated by work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

7.2 Design and Construction Professionals. All construction and plans preparation for all Lessee's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Lessee's Improvements.

7.3 Improvement Quality. Any and all work performed on the Premises by Lessee shall be performed in a workman-like manner as reasonably determined by Lessor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

7.4 Ownership of Lessee's Improvements. All Lessee's Improvements (including the existing Air Commerce Center improvements) shall be considered owned by Lessee throughout the term of this Agreement; provided that (a) upon the expiration or earlier termination of this Lease, title to all such improvements shall be deemed automatically transferred to Lessor, without need for action by any party, (b) the foregoing shall not excuse Lessee from any of its obligations under the this Agreement concerning such improvement, and (c) Lessee shall not have any right to remove any such Improvements upon any termination of this Lease or upon the expiration of the term of this Agreement, except as may be expressly permitted pursuant to this Agreement.

7.5 Time for Completion. Lessee shall diligently and expeditiously pursue to completion the construction of all approved Lessee's Improvements and shall complete construction of all of Lessee's Improvements, if any, no later than the earlier of i) eighteen (18) months after commencement of such construction, or ii) any earlier date required by this Agreement or by Lessor's approval of the plans. Notwithstanding anything in this paragraph to the contrary, the time period for completing restoration work in the event of damage to the premises is twenty-four (24) months after the damage.

7.6 Construction Coordination. Lessee shall conduct all of its construction activities at and about the Premises so as not to materially interfere with activities, operation, and other construction upon the Airport or surrounding properties.

7.7 Approval Required. Lessee shall not perform any construction work requiring a building permit without having first received the written consent of Lessor.

7.8 Effect of Approval. Lessor's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Lessor shall not reject subsequent plans to the extent the matter to which Lessor objects was clearly included in plans previously approved by Lessor and plainly shown on plans previously approved by Lessor. However, Lessor is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

7.9 Utility Modifications. Any changes to utility facilities shall be strictly limited to the Premises and shall be undertaken by Lessee at its sole cost and expense.

7.10 Design Requirements. All Lessee's Improvements shall comply with the following design requirements:

7.10.1 All Lessee's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property, except that Lessee's Improvements shall include construction of related curbs, gutters, pavement, landscaping, and other street improvements Lessor determines to be appropriate.

7.10.2 All Lessee Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Airport.

7.10.3 All Lessee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents and this Agreement.

7.10.4 Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises.

7.10.5 To the extent requested by Lessor, Lessee's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Premises and protect other facilities at the Airport and surrounding properties.

7.11 Disturbance of Toxic Substances. Prior to undertaking any construction or maintenance work, Lessee shall cause the Premises to be inspected to ensure that no potential asbestos or other Toxic Substances are disturbed, except in accordance with all applicable laws and regulations. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials except in accordance with all applicable laws and regulations, and will indemnify, defend and hold Lessor harmless against any disturbance of such materials in the course of the contractor's or other person's work. Lessee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

7.12 Plans Required. Lessee's design of all Lessee's Improvements shall occur in three stages culminating in final working construction documents for the Lessee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

7.12.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and operation of each element of Lessee's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other area that all significant uses and facilities will respectively occupy.

7.12.2 Preliminary plans showing all building finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

7.12.3 Final Plans.

7.13 Approval Process. The following procedure shall govern Lessee's submission to Lessor of all plans for Lessee's Improvements, including any proposed changes by Lessee to previously approved plans:

7.13.1 Upon execution of this Agreement, Lessor and Lessee shall each designate a construction manager (or confirm a previously designated construction manager) to coordinate the respective party's participation in designing and constructing the Lessee's Improvements. Each construction manager shall devote such time and effort to the Lessee's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Lessee's Improvements and compliance with this Agreement. Lessor's construction manager will not be exclusively assigned to this Agreement or the Lessee's Improvements.

7.13.2 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by Lessor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Lessor for the level of plans required by this Agreement.

7.13.3 All submissions by Lessee under this Agreement shall be delivered directly to Lessor's construction manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Lessee for Lessor's review shall include two (2) complete sets of the plans on paper together with one (1) electronic copy of the plans in PDF.

7.13.4 Lessee shall coordinate with Lessor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

7.13.5 In addition to other submissions required under this Agreement, Lessee shall simultaneously deliver to Lessor's construction manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for the Lessee's Improvements (excluding building permits).

7.13.6 No plans shall be deemed approved by Lessor until stamped "APPROVED PER ARTICLE 7 OF LEASE AGREEMENT" (or other words clearly evidencing Lessor's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by Lessor's construction manager (collectively "Stamped").

7.13.7 Construction shall not commence until Lessee delivers to Lessor a formal certification in favor of Lessor by a qualified registered engineer acceptable to Lessor to the effect that the Lessee's Improvements are properly designed to be safe and functional and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as Lessor may require. Such certification shall be on the face of the plans themselves.

7.13.8 Lessee acknowledges that Lessor's construction manager's authority with respect to the Premises is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by Lessor's construction manager or other persons affiliated with Lessor inconsistent with this Agreement shall be binding upon Lessor. Lessee shall be responsible for securing all environmental and zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Lessee's Improvements and shall not rely on Lessor or Lessor's construction manager for any of the same.

7.13.9 Lessor's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans for purposes of this Agreement. Lessee's submission of plans under this Agreement, Lessor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

7.13.10 Lessor has the right to require Lessee to obtain approval for any Lessee Improvements from the City of Scottsdale Development Review Board and any similar body.

7.13.11 Lessee shall hand deliver all plans to Lessor no later than each submission date. Submission dates shall be such dates as are necessary for Lessee to timely obtain the approvals required by this Agreement. Lessee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

7.13.12 Within thirty (30) days after Lessor's receipt of plans from Lessee, Lessor shall make available to Lessee one (1) copy of the plans Lessee submitted either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.13 If changes are required, Lessee shall revise the plans incorporating the changes requested by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty (20) days after Lessor's receipt of the revised plans, Lessor shall make available to Lessee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.13.14 Lessee shall provide to Lessor copies of any and all designs or plans for improvements upon the Premises for Lessor's unrestricted use at the Premises or elsewhere.

7.14 Minor Changes. Lessor's consent shall not be required for minor changes discovered by Lessee during the course of construction to be necessary to complete construction

as contemplated by the latest plans approved by Lessor. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any room, area, feature, structure, or other aspects of any improvements. Lessee shall give to Lessor as much advance notice of any minor changes as is reasonably possible. In the event advance notice to Lessor is not possible, Lessee shall as soon as possible, and in no event later than three (3) days after the change, give Lessor notice of any such minor change. Such notice shall refer specifically to this paragraph.

7.15 Funding Assurances. In addition to the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor the following assurances that Lessee will timely pay for the work to be completed (the "Funding Assurances") as follows:

7.15.1 Funding Assurances Amount. The Funding Assurance shall be in an amount (the "Funding Assurances Amount") equal to eighty percent (80%) of the full contract amounts payable directly or indirectly to all persons for the construction work. In the event the contract amounts increase, the Funding Assurances Amount shall increase by the same proportion.

7.15.2 Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following:

7.15.2.1 A fully executed construction loan commitment or agreement legally obligating a reputable federally insured financial institution to fund construction.

7.15.2.2 A letter of credit meeting the requirements listed on Exhibit "E.1" attached hereto. The following provisions apply to any and all letters of credit provided by Lessee under this Agreement:

7.15.2.2.1 Lessee shall cause the original letter of credit to be delivered to Lessor's financial services general manager.

7.15.2.2.2 Lessee shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.

7.15.2.2.3 Within fourteen (14) days after Lessor gives Lessee notice that Lessor has drawn on the letter of credit, Lessee shall cause the letter of credit to be replenished to its prior amount.

7.15.2.2.4 Lessor may draw on the letter of credit upon any Event of Default related to the construction and completion of any improvement reinitiating the Funding Assurance, and in the following circumstances whether or not they are an Event of Default:

7.15.2.2.4.1 Lessee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this Agreement.

7.15.2.2.4.2 Lessee fails to make monetary payments related to the construction of improvements required under this Agreement.

7.15.2.2.4.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

7.15.2.2.5 Lessor shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

7.15.2.3 Written confirmation from a federally insured financial institution reasonably approved by Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest bearing account in Lessor's name only. All interest shall remain in the Construction Account. Funds shall be disbursed to anyone other than Lessor only upon Lessor's notice to the institution that Lessor has received unrelated third party invoices for actual hard costs of construction labor or materials together with notice from Lessee that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as Lessor may reasonably deem necessary to determine compliance with this Agreement. All distributions from the Construction Account shall be by check payable to Lessor or jointly payable to Lessee and the third party, provided that, if Lessee provides receipts to Lessor showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee. Lessee shall provide to Lessor no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding month. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not previously deposited by Lessee.

7.15.2.4 A construction escrow agreement on terms mutually acceptable to Lessee and the Aviation Director.

7.16 Contractor Assurances. In addition to the Funding Assurances, the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor evidence of the following assurances in favor of Lessee that Lessee's general contractor will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

7.16.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

7.16.2 Contractor Assurances Required. Lessee's obligation to cause its general contractor to provide Contractor Assurances includes both of the following:

7.16.2.1 A payment bond in favor of Lessee covering all of the contracted work.

7.16.2.2 A performance bond in favor of Lessee covering all of the contracted work.

7.16.3 Contractor Assurance Qualifications. The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to Lessor and shall also at a minimum meet the requirements of A.R.S. §§ 34-222 to 34-223, and other applicable laws.

7.17 Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

7.17.1 Amount Adjustment. In the event the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the prior amount, Lessee shall, on or before the date of the increase, deliver to Lessor an additional Improvement Assurance in the amount of such increase, or cause the existing Improvement Assurance held by Lessor to be amended to increase its amount.

7.17.2 Improvement Assurance Form. Each Improvement Assurance must be in form and substance reasonably acceptable to Lessor. The scope of Lessor's approval is to assure that the Improvement Assurance complies with this Agreement. Lessee shall deliver directly to Lessor's legal department (together with a copy to Lessor as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least twenty (20) days prior to the date the actual Improvement Assurance is required. Lessor shall give its comments concerning the draft form no later than ten (10) business days after receiving the draft form.

7.17.3 Improvement Assurance Claims. Lessor shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement; but in the event of a dispute over Lessor's obtaining and using the benefits of an Improvement Assurance due to a default by Lessee, neither Lessee, the Improvement Assurance issuer, nor any third party shall be entitled to interfere in any way (including without limitation, restraining order, injunctions or other judicial remedies, all of which are hereby unconditionally and irrevocably waived) with Lessor's obtaining or using the funds or other benefits of the Improvement Assurance. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.17.4 Lessor's Improvement Assurance Claim. In the event Lessee is in default or the construction is not completed or timely progressing for any reason, Lessor shall have the right to set-off, deduct and withhold an amount or otherwise make claim upon any Improvement Assurance sufficient to complete the construction and to pay all other costs and expenses related to such construction. Additionally, in such event, Lessor shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys' fees and costs required by a judgment or decision relating to any contingent liability that, in the opinion of Lessor, may be outstanding at the time of termination. Further, Lessor may draw on any Improvement Assurance at any time whatsoever to satisfy any of Lessee's obligations under this Agreement. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.17.5 Improvement Assurance Term. Lessee shall give Lessor not less than thirty (30) days nor more than sixty (60) days advance notice of expiration or other termination of

an Improvement Assurance. Any replacement Improvement Assurance must be delivered to Lessor at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without Lessor's consent.

7.18 Release of Improvement Assurance. Within thirty (30) days after the last to occur of the following, Lessor shall deliver to Lessee notice that the Improvement Assurance is released: i) Lessee's completion of the Lessee Improvements, ii) Lessee's payment of all design, construction, and all other amounts to be paid in connection with construction of the Lessee Improvements, iii) Lessee's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations thereto, and iv) Lessee's giving to Lessor notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as Lessor may reasonably require. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.19 Applicability of Existing Funding Assurances. Any funding or other assurances provided by Lessee pursuant to the Original Lease or prior amendments shall be deemed to automatically carry over and remain subject to the terms and conditions of this Restated Amendment.

VIII. LESSEE'S INITIAL PROJECT CONSTRUCTION

8.0 Lessee's Initial Project Construction. No later than the Completion Deadlines set forth herein, Lessee shall complete construction of each Phase of the Project in accordance with all requirements of this Agreement, including without limitation those relating to Lessee's Improvements, and the following time frame and conditions:

8.1 Lessee ~~shall complete~~completed construction of Phase I in substantial conformance with the Site Plan as contained in Exhibit "C.1" ~~no later than July 31, 2021.~~

~~8.1.1 Failure to complete Phase I by July 31, 2021 shall result in the termination of Lessee's leasehold interest in the Air Commerce Parcel as depicted on Exhibit "A" on July 23, 2027.~~

~~8.1.2 Any sub-tenants of hangar/shade space in the Air Commerce Parcel displaced by the construction of the Phase I Lessee Improvements shall be offered similar space in the Greenway Hangars and Shades Parcel at the same rate for a period not less than twelve (12) months.~~

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8.2 Phase II Lessee shall complete construction of Phase II in substantial conformance with the Site Plan as contained in Exhibit "C.1." ~~no later July 31, 2022~~Phase II shall be divided into two stages, Phase IIA and Phase IIB.

8.2.1 Lessee has already commenced construction on Phase IIA, a conventional hangar, and shall complete construction no later than June 30, 2023. Failure to complete Phase ~~IIIA~~ IIIA by ~~July 31~~June 30, 20222023 shall result in the immediate termination of Lessee's leasehold interest in that portion of the Air Commerce Parcel designated in Exhibit "C.1" as the property onto which Phase ~~IIIA and Phase IIB are to be completed.~~ Phase IIB shall be completed no later than

May 22, 2026. Failure to complete Phase IIB by May 22, 2026 shall result in the immediate termination of Lessee's leasehold interest in that portion of the Air Commerce Parcel designated in Exhibit "C.1" as the property onto which Phase IIB is to be completed.

8.3 Lessee has already commenced construction of Phase III. In conjunction therewith, the Parties recognize that Lessee has provided Lessor with a Public Motorized Access Easement to the Greenway Hangars and Shades Parcel as set forth in the document recorded at Docket No. 2022-0520698 of the Maricopa County Recorder. Lessee shall complete construction of Phase III in substantial conformance with the Site Plan as contained in Exhibit "D.1" no later than May 22, 2025.

8.3.1 Failure to complete Phase III by May 22, 2025 shall result in the immediate termination of Lessee's leasehold interest in the Greenway Hangars and Shades Parcel as set forth in Exhibit "B.1".

~~8.4 If Lessee determines that it would be advantageous to accelerate the construction of Phase II, then upon notice to Lessor, Lessee may commence construction of Phase II before Phase I, in which case the provisions of Section 8.1 and 8.1.1 above shall apply to Phase II and the provisions of Section 8.2 and 8.1.2 above shall apply to Phase I. Intentionally omitted.~~

8.5 In the event of a significant economic downturn or other delays not caused by Lessee, Lessee may request that the Aviation Director extend by written notice each of the time limits set forth in Section 8.0 for a period not to exceed one year, and the Aviation Director shall not unreasonably withhold approval of such request. In the event of an extension of the time limits set forth herein, the Lease term on the Greenway Hangars and Shades Parcel shall be extended by an amount equal to the extension of the deadline of the Phase III completion.

8.6 Initial Plans Approved. By entering into this Agreement, Lessor approves for purposes of this Agreement only, the design of the Lessee's Improvements comprising the Project to the extent their design is set forth in the Site Plan and other exhibits to this Agreement. For purposes of Lessee's initial Project construction, said approval satisfies the requirement under this Agreement that Lessee obtain Lessor's approval of plans to the extent of matters shown in the Site Plan and other exhibits. However, Lessee must still submit to Lessor and obtain Lessor's approval of matters not shown on the Site Plan and other exhibits, and changes, modifications, refinements and particular implementations of matters that are shown on the Site Plan and other exhibits. Provided, however, nothing in this Restated Amendment is intended to affect, alter, or otherwise change any approvals already issued by Lessor in accordance with the Original Lease or prior amendments and the same are confirmed herein.

~~8.6.7 Project Definition. As of the date of this Agreement, the Project is only in the preliminary design stages.~~ Unless otherwise agreed by the parties, the Project shall conform to the Site Plan (which listing of requirements is not intended to be exhaustive of the improvements required to construct first class public fixed base operator facility and other improvements this Agreement requires Lessee to construct):

~~8.6.18.7.1~~ Main FBO Components. Lessee's Improvements include all improvements shown on the Site Plan or required by applicable law.

~~8.6.28.7.2~~ Infrastructure. Lessee's Improvements include all related work upon streets, sidewalks, drainage and other facilities upon the Premises and upon other real property near the Premises.

~~8.6.38.7.3~~ Other Design Requirements. The Project shall include all such other improvements and other facilities as may be necessary to operate the Premises in the manner contemplated by this Agreement.

~~8.78.8~~ Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

~~8.88.9~~ Project Design and Construction Schedule. Lessee shall design and construct each Phase of the Project according to the following schedule:

~~8.8.1~~ 8.9.1 Lessee shall obtain Lessor's approval of conceptual plans for each Phase of the Project no later than eighteen (18) months prior to the Completion Deadline for that specific Phase.

~~8.8.2~~ 8.9.2 Lessee shall obtain Lessor's approval of preliminary plans for all components of each Phase the Project no later than fifteen (15) months prior to the Completion Deadline for that specific Phase.

~~8.8.3~~ 8.9.3 Lessee shall obtain Lessor's approval of Final Plans for each Phase of the Project no later than twelve (12) months prior to the Completion Deadline for that specific Phase.

~~8.8.4~~ 8.9.4 Lessee shall commence constructing for each Phase of the Project no later than eight (8) months prior to the Completion Deadline for that specific Phase.

~~8.8.5~~ 8.9.5 Lessee shall complete construction of each Phase of the Project, obtain certificates of occupancy for each Phase of the Project, and commence operating that Phase of the Project in the manner contemplated by this Agreement, no later than the Completion Deadline for that specific Phase.

IX. MAINTENANCE AND UTILITIES

9.0 Maintenance and Utilities. Except as expressly provided below, Lessee shall be solely responsible for all maintenance, repair and utilities for the Premises during the term of this Agreement.

9.1 Maintenance by Lessor. Lessor has no maintenance or repair obligations for the Premises except that Lessor is responsible to maintain and repair any other utilities Lessor may install upon the Premises.

9.2 Utility Interruptions. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation:

9.2.1 Lessor is not responsible for utility interruptions caused outside the Premises.

9.2.2 Lessor is not responsible for utility interruptions not caused directly by Lessor's negligence.

9.2.3 Lessor is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

9.3 Utility Costs. Lessee shall pay all charges, fees, deposits and other amounts for all natural gas air conditioning heating electricity and other utilities used at the Premises during the term of this Agreement.

9.4 Maintenance by Lessee. Lessee shall at all times repair and maintain and replace the Premises and all of Lessee's facilities thereat at Lessee's sole expense in a first-class, sound, clean and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the western United States as determined in Lessor's reasonable discretion. Such Lessee obligations extend to any improvements Lessee may construct on public lands outside the Premises unless Lessor expressly gives Lessee written notice otherwise. By way of example and not limitation, Lessee shall be responsible for the following minimum requirements:

9.4.1 General. Lessee shall perform all irrigation, landscape, building and other maintenance required to operate the Premises in a first-class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation.

9.4.2 Trash. Adequate and sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse related to Lessee's use of the Premises. Without limitation, Lessee shall provide and use suitable covered receptacles for all trash and other refuse related to Lessee's use of the Premises. Piling of boxes, cartons, barrels, debris or other items outside the Premises or in a manner visible from outside the Premises or in a manner visible to areas open to the public is prohibited. Lessee shall contract for a large metal roll-off dumpster service at the Premises. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.

9.4.3 Recycling. Lessee shall comply with such paper, plastic or other recycling or conservation programs Lessor may establish for the Airport from time to time.

X. BREACH BY LESSEE

10.0 Breach by Lessee. Lessee shall comply with, perform and do each performance and thing required of Lessee herein shall cause all persons using the Premises or claiming through or under Lessee or this Agreement to do the same. Lessee's failure to do so shall be a breach by Lessee of this Agreement.

10.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Lessee of Lessee's material obligations under this Agreement:

10.1.1 If Lessee shall be in arrears in the payment of Rent and shall not cure such arrearage within ten (10) days after Lessor has notified Lessee in writing of such arrearage.

10.1.2 The occurrence of any default or other failure by Lessee to perform all obligations under any of the Site Documents if Lessee shall not have cured such failure within thirty (30) days after Lessor has notified Lessee in writing of such default or other failure.

10.1.3 If Lessee shall fail to operate the facilities as herein required for a period of three (3) consecutive days or a total of five (5) days within any calendar year.

10.1.4 If Lessee shall abandon the Premises or this Agreement.

10.1.5 If Lessee shall be the subject of a voluntary or involuntary bankruptcy, insolvency or similar Proceeding or if any general assignment of any of Lessee's property shall be made for the benefit of creditors (collectively a "Lessee Insolvency") unless such Proceeding has been dismissed within ninety (90) days after it is filed.

10.1.6 If any representation or warranty made by Lessee in connection with this Agreement shall prove to have been false in any material respect when made, if Lessee shall not have taken such action as required to cause the representation or warranty to be true within ten (10) days after Lessor has notified Lessee in writing of such falsity.

10.1.7 If Lessee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days.

10.1.8 If Lessee shall fail or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Lessor has notified Lessee in writing of Lessee's default hereunder. In the event of a cure which cannot be completed within thirty (30) days, Lessee shall have an extended cure period as follows:

10.1.8.1 Lessee shall complete the cure within the shortest period that may be possible, but in no event later than ninety (90) days after Lessor's initial notice.

10.1.8.2 As soon as reasonably possible, but in no event later than the end of the initial thirty (30) day period, Lessee shall give to Lessor notice describing the nonperformance, Lessee's proposed cure, the time required for the proposed cure and the reason the cure cannot be effected within the initial thirty (30) day period. Lessee shall thereafter give to Lessor such notices as are necessary to keep Lessor thoroughly apprised of the status of the cure.

10.1.9 If Lessee shall repeatedly fail to perform any requirement of this Agreement.

10.2 Lessor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at Lessor's option:

10.2.1 Lessor's right to terminate this Agreement for nonpayment of Rent or for any other Event of Default is hereby specifically provided for and agreed to.

10.2.2 Without demand or notice, enter into and upon the Premises or any part thereof, and repossess the same of its former estate, and expel Lessee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

10.2.3 Claim and enforce a lien upon Lessee's property at the Premises securing all of Lessee's obligations hereunder.

10.2.4 Cause a receiver to be appointed for the Premises and for the continuing operation of Lessee's business thereon.

10.2.5 Pay or perform, for Lessee's account and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee.

10.2.6 Abate at Lessee's expense any violation of this Agreement.

10.2.7 Pursue at Lessee's expense any and all other remedies, legal or equitable, to which Lessor may be entitled.

10.2.8 Refuse without any liability to Lessee therefore to perform any obligation imposed on Lessor by this Agreement unless and until Lessee's default is cured.

10.2.9 Terminate this Agreement and thereafter be excused from further performance under this Agreement.

10.2.10 Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all Rent during the entire remaining term of this Agreement.

10.2.11 Assert or exercise any other right or remedy permitted by law.

10.3 Non-waiver.

10.3.1 Lessee acknowledges Lessee's unconditional obligation to comply with this Agreement. No failure by Lessor to demand any performance required of Lessee under this Agreement, and no acceptance by Lessor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Lessor of Rent or other performances hereunder shall be deemed a compromise or settlement of any claim Lessor may have for additional or further payments or performances. Any waiver by Lessor of any breach of condition or covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessor from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Lessor concerning payments or other performances due hereunder shall excuse Lessee from compliance with this Agreement nor estop Lessor (or otherwise impair Lessor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No

waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Lessor unless made in writing by a duly authorized representative of Lessor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

10.3.2 No failure by Lessee to demand any performance required of Lessor under this Agreement, and no acceptance by Lessee of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessee's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. Any waiver by Lessee of any breach of condition or covenant herein contained to be kept and performed by Lessor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessee from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No notice by Lessee concerning performance due hereunder shall excuse Lessor from compliance with this Agreement nor estop Lessee (or otherwise impair Lessee's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Lessee unless made in writing by a duly authorized representative of Lessee specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSOR EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

10.4 Reimbursement of Remedies Lessor's Expenses. Lessee shall pay to Lessor upon demand any and all amounts expended or incurred by Lessor in performing Lessee's obligations.

10.5 Inspection. Lessor shall have access to the Premises at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Premises or exercising Lessor's other rights hereunder. Lessee shall promptly undertake appropriate action to rectify any deficiency (identified by Lessor during such inspections or otherwise) in Lessee's compliance with this Agreement.

XI. TERMINATION

11.0 Rights at Termination. Termination of this Agreement due to Lessee's breach or for any other reason does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to its breach of this Agreement.

11.1 Delivery of Possession. At the expiration of the term hereof or upon any sooner termination thereof, Lessee shall without demand, peaceably and quietly quit and deliver up the Premises to Lessor thoroughly cleaned, in good repair, and with all utilities operating, with the Premises maintained and repaired and in as good order and condition, reasonable use and wear excepted, with the Premises as the same now are or in such better condition as the Premises may hereafter be placed. Upon termination, Lessee shall deliver to Lessor any subtenant security deposits, prepaid rents, or other amounts for which Lessor deems a claim may be made respecting the Premises.

11.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Lessee shall provide to Lessor upon demand quit claim deeds covering the Premises executed by Lessee and by all persons claiming through this Agreement or Lessee any interest in or right to use the Premises.

11.3 Disposition of Lessee's Equipment. All personal property owned or used by Lessee (excluding money and business records) at the Premises under this Agreement shall be divided into two categories ("Attached Items" and "Unattached Items").

11.3.1 Attached Items are any and all fixtures and structural or permanent improvements placed upon the Premises together with all pipes, fences, conduits, traffic bumpers, pumps, valves, sprinklers, meters, controls, air conditioners, heaters, water heaters and all other mechanical systems and their components, monitors, timers, utility lines and all other equipment and personal property of every description attached in any way to the Premises or installed at a fixed location upon the Premises together with every part of the utility systems serving the Premises, whether or not located upon the Premises. The Attached items include all fuel tanks, pumps, hoses, nozzles, and related items except fuel trucks. The Attached Items exclude air compressors, even if they are installed at a fixed location at the Premises.

11.3.2 Unattached Items are all fixtures, furniture, furnishings, equipment and other personal property located at the Premises excluding Attached Items.

11.4 Fixtures and Improvements. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to any and all Attached Items shall automatically vest in Lessor without any payment by Lessor or any compensation to Lessee and without requirement of any deed, conveyance, or bill of sale. However, if Lessor shall request any documents in confirmation thereof, Lessee shall promptly execute, acknowledge and deliver the same. Unattached Items owned by Lessee shall continue to be owned by Lessee.

XII. INDEMNITY AND INSURANCE

12.0 Indemnity and Insurance. Lessee shall insure the Premises and its property and activities at and about the Premises and shall provide insurance and indemnification as follows:

12.1 Insurance Required. Prior to entering, occupying or using the Premises in any way all times thereafter, and in any event not later than the date thirty (30) days after the date of this Agreement, and at all times thereafter Lessee shall obtain and cause to be in force and effect the following insurance:

12.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000) for each occurrence and a Five Million Dollar (\$5,000,000) general aggregate limit per policy year. ~~If a loss is reported to or becomes known by Lessee that has an impact on the annual aggregate, Lessee shall cause the annual aggregate limit to be reinstated for the remainder of the policy term affected by the impairment.~~ The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, any medical professionals based on the Premises, and liability assumed under an "insured contract" including this Agreement. The policy will cover Lessee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

12.1.2 Automobile Liability. Commercial business automobile liability insurance with limit of Five Million Dollars (\$5,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Lessee's use of the Premises. Without limitation, all of such insurance shall cover hazards of motor vehicle use for loading and off loading. If applicable, an MCS 90 endorsement covering Toxic Substances is required providing Five Million Dollars (\$5,000,000) per occurrence limits of liability for bodily injury and property damage.

12.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) disease for each employee, One Million Dollars (\$1,000,000) policy limit for disease.

12.1.4 Special Risk Property. Lessee shall maintain Special Risk Causes of Loss Property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of the Premises and all personal property used in connection with the Premises. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of \$50,000.

12.1.5 Environmental Impairment Liability. Lessee shall maintain Environmental Impairment Liability coverage for any fuel storage facility, tank, underground or aboveground piping, ancillary equipment, containment system or structure used, controlled, constructed or maintained by Lessee in the amount of \$1,000,000 Each Incident, \$2,000,000 Aggregate. The policy shall cover on-site and off-site third party bodily injury and property damage including expenses for defense, corrective action for storage tank releases and clean-up for storage tank releases.

12.1.6 Owners and Contractor's Protective. With respect to any construction involving the Premises, Lessor's and contractor's protective insurance covering the interests of contractors, Lessor and Lessee, with a minimum limit of One Million Dollars (\$1,000,000) for each occurrence and a Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This coverage may be included with the commercial general liability coverage.

12.1.7 Builders' Risk Property Insurance. If applicable, Builders' risk insurance in the amount of the entire cost of the Project or other construction work at or related to the Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for the construction work and materials has been made and until no person or entity other than Lessee and Lessor has an insurable interest in the Premises, whichever is later. This insurance shall include interests of Lessor, Lessee and all subcontractors and sub-subcontractors involved in any Lessee's Improvements or other construction work at or related to the Premises during the course of any construction, and shall continue until all work is completed and accepted by Lessee and Lessor. Lessee bears full responsibility for loss or damage to all work being performed and to works under construction. Builders' risk insurance shall be on special form (all-risk) policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Lessee's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during

which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will continue to provide coverage when the covered Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

12.1.8 Hangarkeeper's Liability. If applicable, Lessee shall carry Hangarkeeper's Liability coverage covering the portions of the Premises used for aircraft storage in an amount equal to the full replacement cost of aircraft subject to loss or damage while in the care, custody or control of Lessee for safekeeping, storage, service or repair.

12.1.9 Other Insurance. Any other insurance Lessor may reasonably require for the protection of Lessor and Lessor's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds"), the Premises, surrounding property, Lessee, or the activities carried on or about the Premises. Likewise, Lessor may elect by notice to Lessee to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that Lessor reasonably determines to affect the prudent amount of insurance to be provided.

12.2 Form of Insurance. All insurance policies shall meet the following requirements:

12.2.1 All policies except workers' compensation must name Lessor and the other Additional Insureds as additional insureds. Lessee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. Lessor may give Lessee notice of Lessor's election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

12.2.2 All property policies must name Lessor as a loss payee as their interest may appear.

12.2.3 Lessee must provide Lessor with at least thirty (30) days prior notice of any cancellation, reduction or other material change in coverage.

12.2.4 All policies shall require that notices be given to Lessor in the manner specified for notices to Lessor under this Agreement.

12.2.5 "Occurrence" coverage is required. "Claims made" insurance is not permitted except for Environmental Impairment Liability and employment liability insurance.

12.2.6 Policies must also cover and insure Lessee's activities relating to the business operations and activities conducted from the Premises.

12.2.7 Lessee must clearly show by providing copies of ~~insurance policies,~~ certificates, formal endorsements or other documentation acceptable to Lessor that all insurance coverage required by this Agreement is provided.

12.2.8 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Lessor and all other Additional Insureds.

~~12.2.9 No deductibles, retentions, or "self insured" amounts shall exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate per year, per policy. If Lessee~~

~~desires higher deductibles, retentions, or “self insured” amounts, Lessee shall notify Lessor in writing not more often than once per year requesting a change in the amount. Lessor shall have the right to accept, modify, limit or reject Lessee’s request. Lessee shall be solely responsible for any self insurance amount or deductible. Lessor may require Lessee from time to time to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional letter of credit.~~

12.3 Insurance Certificates. Lessee shall evidence all insurance by furnishing to Lessor certificates of insurance annually and with each change in insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect ~~and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates~~Certificates must indicate that Lessor and the other Additional Insureds are included as additional insureds ~~and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to Lessor. All certificates are in addition to the actual policies and endorsements required.~~ Lessee shall provide updated certificates at Lessor’s request. Notwithstanding the above, Lessee may only be required to submit copies of the actual policy coverage in the event that the City indicates that an event has incurred and its intention to seek coverage under the actual policy. Upon such request by City, Lessee may submit the applicable policy confidentially to the City to be reviewed only by the City’s Airport Aviation Director, Risk Director, members of the City Attorney’s Office, or any other City employee immediately necessary to review in relation to coverage. Upon the complete resolution of any dispute or adjustment of a loss covered under the policy, Lessee may request the return of any copies of the applicable policy provided to the City.

12.4 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Lessor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

12.5 Primary Insurance. Lessee’s insurance shall be primary insurance. Any insurance or self insurance maintained by Lessor shall not contribute to Lessee’s insurance.

12.6 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Lessee shall pay, indemnify, defend and hold harmless Lessor and all other Additional Insureds for, from and against any and all claims or harm related to the Premises and/or Lessee’s performance of or failure to perform its obligations under this Agreement (the “Indemnity”). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of the Premises or Lessor’s property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement, ~~including without limitation, claims, liability, harm or damages caused in part by Lessor or any other Additional Insured or anyone for~~

~~whose mistakes, errors, omissions or negligence Lessee or Lessor may be liable. It is the specific intention of the parties that the Lessor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Lessor, be indemnified by Lessee from and against any and all claims.~~ The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to Lessor's or Lessee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Lessor or Lessee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

12.6.1 Claims arising only from the sole negligence of Lessor.

12.6.2 Claims that the law prohibits from being imposed upon Lessee.

12.6.3 These provisions requiring indemnity shall not be construed in any way to limit the insurance requirements set forth above or any applicable coverage thereunder.

12.7 Risk of Loss. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessee assumes the risk of any and all loss, damage or claims to the Premises or related to Lessee's use of the Premises or other property of Lessor, Lessee or third parties throughout the term hereof. Lessor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Premises or any activities, uses or improvements related to the Premises. Lessee's obligations to indemnify do not diminish in any way Lessee's obligations to insure; and Lessee's obligations to insure do not diminish in any way Lessee's obligations to indemnify. Lessee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Lessee under or connected with this Agreement. Lessee shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify regardless of the cause of such damages. In the event Lessee secures other insurance related to the Premises or any improvements, property or uses related thereto, Lessee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Lessor and the other Additional Insureds.

~~12.8 — Insurance to be Provided by Lessees, Sublessees and Others. Any sublessees, contractors or other persons occupying, working on or about, or using the Premises pursuant to this Agreement must also provide for the protection of Lessor and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Lessee provides. Lessee shall cause any persons basing aircraft at the Premises to name Lessee and the Additional Insureds as additional insureds under their aircraft liability policies. Such policies shall contain waivers of subrogation as to Lessee and Lessor and the other Additional Insureds.~~

12.8 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Lessee must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Agreement protecting City of Scottsdale and Lessee. Lessee shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements are met. Lessee shall be responsible for determining minimum limits of insurance for their Subcontractors. This provision does not apply to vendors, customers and guest of the lessee.

12.9 Fuel and Other Hazardous Material Delivery. Any vendor or sub-contractor bringing fuel or hazardous material on site must provide the commercial vehicle insurance as listed in 12.1.2. This shall include the MCS 90 endorsement and listing of the lessee and Lessor as additional insured.

XIII. CONDEMNATION

13.0 Condemnation. The following shall govern any condemnation of any part of or interest in the Premises (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation (but shall not apply to any condemnation by Lessor):

13.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date"), which is the earlier of the date title to the Part Taken vests in the condemnor, or the date upon which the condemnor is let into possession of the Part Taken. Lessee shall execute and deliver to Lessor deeds or other instruments reasonably requested by Lessor conveying and assigning to Lessor Lessee's entire interest in the Part Taken. In the event of a partial taking, this Agreement shall continue in full force and effect as to the part of the Premises not taken. In the case of an Interfering Condemnation (as defined below) applicable to the Greenway Hangar and Shades Parcel or as to the Air Commerce Parcel, Lessee may terminate this Agreement insofar as it applies to the applicable Parcel, subject to Lessee's rights to compensation under this Section 13.

13.2 Determining Partial or Total Condemnation. A condemnation of the Premises which renders the Premises unsuitable for the Permitted Uses (an "Interfering Condemnation"), or which takes the entire Premises, shall be deemed to be a total condemnation. Any other condemnation shall be a partial condemnation. Within fifteen (15) days after the commencement of any condemnation, Lessee and Lessor shall each give to the other a notice stating its respective opinion as to whether the condemnation is total or partial and the reasons for the opinion. Within fifteen (15) days thereafter, Lessor shall determine in Lessor's reasonable discretion whether the condemnation is total or partial.

13.3 Rent Adjustment. In the event of a partial condemnation, Base Rent shall be reduced by a percentage equal to the percentage of the Premises land area taken. The effective date of the Base Rent adjustment shall be the Condemnation Date.

13.4 Condemnation Proceeds. Lessee hereby assigns and transfers to Lessor Lessee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Lessee shall execute and deliver to Lessor assignments or other instruments reasonably requested by Lessor confirming such assignment and transfer. Lessee shall immediately pay to Lessor any Condemnation Proceeds Lessee may receive. The Condemnation Proceeds shall not include relocation benefits awarded specifically to Lessee to cover expenses of relocating Lessee's business located at the Premises at the time of the condemnation. Such relocation benefits shall be owned by and paid directly to Lessee only.

13.5 Proceeds Account Deposit. Separate and apart from any condemnation action, Lessor shall deposit into the Proceeds Account (the "Condemnation Deposit") a portion of the Condemnation Proceeds (the "Condemnation Deposit Amount") as follows:

13.5.1 The Condemnation Deposit Amount shall be calculated as follows:

13.5.1.1 First, begin with the actual fair market value of the Lessee's Improvements condemned (as if they were owned by Lessee in fee, excluding any land value, without regard to the term of this Agreement).

13.5.1.2 Second, reduce said fair market value three and 33/100 percent (3.33%) for each year or portion of a year having passed from the time of construction.

13.5.1.4 Fourth, subtract any amount necessary to insure that the Condemnation Deposit Amount does not exceed the net amount actually received by Lessor with respect to such Lessee's Improvements.

13.5.2 Lessor shall make the Condemnation Deposit within ten (10) days after Lessor receives the condemnation proceeds.

13.6 Lessee's Condemnation Work. In the event of a partial condemnation, Lessee shall restore the remainder of the Premises to its condition at the time of such condemnation less the portion lost in the taking. In the event of an Interfering Condemnation, Lessee shall perform such demolition or restorative work upon the remaining Premises as Lessor may direct, except that the cost of such work shall not exceed the cost of demolishing the improvements then existing upon the remaining Premises. Disbursements from the Proceeds Account shall be subject to the rules applicable to the Proceeds Account. Notwithstanding the preceding sentence, any portion of the Condemnation Deposit remaining in the Proceeds Account after the work is completely paid for and any claims by Lessor against Lessee are satisfied shall be disbursed to Lessee.

13.7 Power to Condemn. Lessee acknowledges that Lessor and others from time to time may use the power to condemn the Premises or any interest therein or rights thereto. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. Lessor does not warrant that Lessor will not condemn the Premises during the term of this Agreement, but Lessor does not presently have intentions to condemn the Premises. Notwithstanding anything to the contrary in this Lease Agreement, in the event of any condemnation of all or any portion of the Premises by Lessor, Lessee shall have all rights and remedies available at law and in equity.

XIV. DAMAGE TO OR DESTRUCTION OF PREMISES

14.0 Damage to or Destruction of Premises. The following provisions shall govern damage to the Premises:

14.1 Damage to Entire Premises. If the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the damage would exceed fifty percent (50%) of the then estimated cost of constructing all improvements upon the Premises, Lessee shall have a ninety (90) day period following such damage to notify Lessor that Lessee elects to terminate this Agreement. Such notice shall not be effective unless it is also signed by Primary Lienholder, if any. Lessee's failure to give such notice shall constitute Lessee's election not to terminate this Agreement. In the event of damage to the Premises to a lesser degree or extent this Agreement shall not terminate.

14.2 Restoration Work. Whether or not this Agreement is terminated, Lessee shall perform certain construction work at Lessee's expense ("the Restoration Work"). If this Agreement is terminated, the Restoration Work shall be all engineering, design and construction work

necessary to demolish, clear and clean the Premises to the extent and as directed by Lessor. If this Agreement is not terminated, then the Restoration Work shall be all engineering, design and construction work necessary to restore the Premises to the condition existing prior to the damage.

14.3 Restoration Process. Lessee's performance of the Restoration Work shall be subject to the approval process and other requirements for Lessee's Improvements. Lessee shall perform the Restoration Work with due diligence and at Lessee's sole cost and expense.

14.4 Insurance Proceeds. All property insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid directly to Lessor and owned by Lessor. Lessor shall deposit said proceeds in an account (the "Proceeds Account") with a federally insured financial institution having offices in Maricopa County, Arizona. The preceding sentence does not apply to insurance proceeds of aircraft, vehicles or other personalty not attached to the Premises. The Proceeds Account shall be an interest bearing account in Lessor's name only. All interest shall remain in the Proceeds Account. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not in the Proceeds Account.

14.5 Proceeds Account Use Priorities. The Proceeds Account funds shall be used for the following purposes:

14.5.1 Funds in the Proceeds Account shall be used only for paying for the Restoration Work until the cost of the Restoration Work has been disbursed by Lessor to Lessee or to third parties in connection with the Restoration Work. Inadequacy of funds in the Proceeds Account does not excuse Lessee from Lessee's obligation to perform the Restoration Work.

14.5.2 A certain payment (the "Regulatory Payment") to Lessee, if required by this Agreement.

14.5.3 Funds in the Proceeds Account shall next be used for compensating Lessor for the loss of revenues that would have been realized from the operation of the relevant Lessee Improvements during the period of the Restoration Work, and for any damage to or loss of any other property of Lessor due to the damage.

14.5.4 Any remaining funds in the Proceeds Account shall be distributed as follows:

14.5.4.1 If this Agreement is not terminated, then any remaining funds in the Proceeds Account (the "Type 2 Funds") shall be distributed to Lessee and any other interested parties as their interests may appear.

14.5.4.2 If this Agreement is terminated, then any remaining funds in the Proceeds Account shall be distributed to Lessor.

14.6 Regulatory Payment. Lessee shall receive a Regulatory Payment if and only if certain regulatory changes ("Major Regulatory Changes") occur. Whether Lessee receives the Regulatory Payment, and the amount of the Regulatory Payment, shall be determined as follows:

14.6.1 Major Regulatory Changes are one or more additional future regulatory burdens (such as future increased burdens under the Americans with Disabilities Act or a future outright prohibition on reconstructing the damaged improvement) that, after the date the damaged

improvement was constructed (or construction was stopped because of the damage), are imposed upon the Restoration Work that would be necessary to restore the damaged improvement and which in the aggregate either:

14.6.1.1 Prohibit the Restoration Work that would be required to restore the damaged improvement; or

14.6.1.2 Increase the cost of such work such that the uninsured portion of the cost of such Restoration Work exceeds more than the greater of i) Five Hundred Thousand Dollars (\$500,000) or ii) twenty percent (20%) of the total amount that such work would have cost in the absence of the Major Regulatory Changes. Lessor in Lessor's sole and absolute discretion may elect to contribute to the cost of such work in order to reduce the uninsured portion of the cost of the work to twenty percent (20%) or to Five Hundred Thousand Dollars (\$500,000), as the case may be.

14.6.2 In the event Lessee receives a Regulatory Payment due to a Major Regulatory Change, the amount of the Regulatory Payment shall be calculated as follows:

14.6.2.1 Begin with the lesser of the actual original cost to construct the damaged improvement which is not rebuilt because of the Major Regulatory Change, or the amount of insurance proceeds deposited into the Proceeds Account with respect to such improvements.

14.6.2.2 Calculate an amortization figure by dividing said original cost or amount deposited by the number of whole years (not calendar years) that were remaining in the term of this Agreement (including both extensions) at the time the improvements were completed (or construction was stopped because of the damage).

14.6.2.3 Calculate the amount of the Regulatory Payment by subtracting from said original cost or amount of insurance proceeds deposited a number that is derived by multiplying the amortization figure by the number of whole years that passed from the date of completion to the date of destruction.

14.6.3 The portion of the Regulatory Payment attributable to each building or other improvement shall be calculated separately.

14.6.4 The Regulatory Payment shall not be Type 2 Funds.

14.7 Use of Proceeds Account for Restoration Work. The following shall govern disbursement of funds from the Proceeds Account for the Restoration Work:

14.7.1 All distributions from the Proceeds Account shall be by check payable to Lessor or jointly payable to Lessee and the third party. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

14.7.2 Lessee's applications for payment shall be prepared according to a schedule of values for the work prepared by Lessee's architect, subject to Lessor's reasonable approval.

14.7.3 Funds shall be disbursed within fourteen (14) days after Lessor has received notice from Lessee requesting that such funds be disbursed. Such notice shall be accompanied by the following:

14.7.3.1 A description of the work completed.

14.7.3.2 Unrelated third party invoices for design, engineering or related professional services rendered or actual hard costs of demolition or construction labor or materials.

14.7.3.3 Certificates from the third party payee that the third party has actually supplied the labor or materials to the Premises.

14.7.3.4 Appropriate mechanics and materialmen's lien waivers.

14.7.3.5 Such additional documentation and confirmations as Lessor may reasonably deem necessary to confirm compliance with this Agreement.

14.7.4 The Proceeds Account shall qualify as a satisfactory Funding Assurance.

14.8 Accelerated Funding. In order to avoid delay in completing the Restoration Work due to time constraints of the Proceeds Account, Lessee may do either or both of the following:

14.8.1 Advance its own funds (the "Reimbursable Funds") for the Restoration Work from time to time and subsequently obtain reimbursement from the Proceeds Account subject to compliance with the requirements for disbursements from the Proceeds Account. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

14.8.2 Unilaterally request that Lessor make a one-time single disbursement to Lessee (the "Working Funds"). Lessee shall hold the Working Funds in a separate bank account and shall use the Working Funds only during the course of the Restoration Work to make progress payments to third parties for the Restoration Work. The amount of the Working Funds shall not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000) (which amount shall be adjusted from time to time according to the Cost of Living Index in the same manner provided for adjustment of Base Rent) or ten percent (10%) of the estimated cost of the Restoration Work. Upon completion of the Restoration Work, Lessee shall return any excess Working Funds to the Proceeds Account.

14.9 Monthly Restoration Work Report. Lessee shall provide to Lessor no later than the tenth day of each month a written report of the progress of the Restoration Work along with detailed statement of Proceeds Account, Reimbursable Funds and Working Funds activity during the preceding month.

14.10 Proceeds Account Variations. Lessee's city manager or designee shall have the authority to cooperate with Lessee's lienholder to implement variations to the requirements and administration of the Proceeds Account. Any such variations must provide to Lessor the substantive protections of the Proceeds Account afforded by this Agreement in said city manager or designee's sole and absolute discretion, must not allow insurance proceeds (except any Type 2 Funds that may be disbursed to Lessee) to be used to pay the debt, must be approved in writing

in advance by said city manager or designee and by Lessor's city attorney in their sole and absolute discretion, and must otherwise be acceptable to Lessor's city manager or designee and Lessor's city attorney in their sole and absolute discretion.

XV. LESSEE'S RECORDS

15.0 Lessee's Records. Lessee will maintain in a secure place at Lessee's corporate headquarters within the continental United States or at a secure location within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating in any manner to this Agreement and to all of Lessee's obligations hereunder.

15.1 Standards for Records. Lessee shall keep and maintain all books and records relating to the Premises in accordance with generally accepted accounting principles applied on a consistent basis. Lessee shall retain all records related to this Agreement or Lessee's performances hereunder for a period of seven (7) years after the period reported in the record.

15.2 Reporting. Lessee will furnish or cause to be furnished to Lessor, as soon as the same are available, and in any event within one hundred twenty (120) days after the end of each calendar year a certificate signed by the chief financial officer or managing general partner, as the case may be, of Lessee stating that the rental revenues and related information provided during the preceding year is correct and there exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Lessee proposes to take with respect thereto. Lessee shall furnish, from time to time, such financial and other information as Lessor may reasonably request pertaining to Lessee's and Lessor's respective rights and obligations with respect to this Agreement as reasonably determined by Lessor.

15.3 Right of Inspection. Until the date three (3) years after termination of this Agreement, Lessee will (i) permit and assist Lessor and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Lessee's facilities, activities and records, (ii) cause its employees, agents and, if reasonably necessary, accountants to give their full cooperation and assistance in connection with any such visits or inspections, (iii) make available such further information concerning Lessee's business and affairs relating to the Premises as Lessor may from time to time reasonably request, and (iv) make available to Lessor at the Premises (or at the offices of Lessor within the corporate limits of the City of Scottsdale) any and all records and reasonable accommodations for Lessor's audit and inspection. The preceding sentence does not require Lessee to pay for copies Lessor requests or Lessor's employees' or other agents' time or travel expenses. Such inspection shall be limited to matters relevant to Lessor's and Lessee's rights and obligations under this Agreement and activities related to the Premises as reasonably determined by Lessor.

15.4 Records Included. Lessee's records subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information and matters that may in Lessor's reasonable judgment bear on any

matters, rights, duties or obligations under or covered by this Agreement or any performance hereunder. Lessee need not disclose information that does not concern the Premises or Lessor's or Lessee's rights and obligations related to the Premises in Lessor's reasonable judgment.

15.5 Costs of Audit. If an audit, inspection or examination of Lessee's performance discloses underpayments (or other adjustments in favor of Lessor) of any nature in excess of three percent (3%) of any payments or single payment, Lessee shall pay to Lessor Lessor's actual cost (based on the amount paid by Lessor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the audit is performed by Lessor's employees) of the audit, inspection or examination, together with late fees, interest, and other amount payable in connection with such adjustments or payments. Any adjustments and/or payments which must be made as a result of any such audit, inspection or examination (whether or not performed in-house by Lessor), shall be made within a reasonable amount of time (not to exceed 30 days) after Lessor gives to Lessee notice of Lessor's findings.

15.6 Monthly Reports. No later than the due date for each Rent Payment for each month, but in no event later than the end of each month, Lessee shall deliver to Lessor a report containing the information described on Exhibit "F.1" attached hereto. Except for fuel flowage information, each such report shall indicate by highlighting or similar marking any changes from the preceding month's report.

15.7 Applicable to Sublessees. By claiming under this Agreement, sublessees and others conducting a business based at the Premises shall also be deemed to have agreed to provide to Lessor upon request information relevant to compliance with this Agreement by Lessee or others.

XVI. COMPLIANCE WITH LAW

16.0 Compliance with Law. Lessee shall conduct only lawful operations and activities at the Premises and at the Airport in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended and shall use and occupy the Premises in conformance with all of the same. The provisions of this Agreement obligating Lessee to comply with applicable law do not deny Lessee such right, if any, as Lessee may have under applicable law to continue a use which was lawful (and permitted by this Agreement) when commenced. Lessee acknowledges that this Agreement does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Lessee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Lessee, the Premises, the Airport or Lessee's use of the Premises or Airport. Lessee acknowledges that all of Lessee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to Lessee. Lessee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. This Agreement does not impair the City of Scottsdale power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Lessee or the Premises. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

16.1 Government Property Lease Excise Tax. Lessee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that are lawfully assessed against the Premises or against Lessor or Lessee with respect to the Premises. Pursuant to A.R.S. § 42-6206, failure by Lessee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises.

16.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Lessee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be lawfully levied upon or assessed against Lessee, the Premises, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Premises and improvements and other property thereon, whether belonging to Lessor or Lessee. The preceding sentence does not apply to obligations of Lessee not related to the Premises. Lessee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Lessee shall pay all sales, transaction privilege, and similar taxes which it is legally obligated to pay.

16.3 Special Supplemental Indemnity. Without limitation, the indemnities of this Agreement require Lessee to pay, indemnify, defend and hold Lessor harmless against fines or penalties for any breach of security arising from the unauthorized entry of any persons from the Premises (or their vehicles or aircraft) onto the passenger loading areas, taxiways, runways, aircraft movement areas and any other restricted portion of the Airport. The preceding sentence does not apply to persons not conducting business at the Premises or who enter the Premises using a password or gate entry card issued by Lessor.

16.4 Federal Agreements. This Agreement shall be subordinate to the provisions and requirements of any existing or future grant assurances and other agreements between the Lessor and the United States, relative to the development, operation or maintenance of the Airport.

16.5 Based Aircraft. Lessee shall not allow to be based at the Premises any aircraft that has not been registered with the Airport to the extent required by applicable laws and regulations.

XVII. ASSIGNABILITY

17.0 Assignability. This Agreement is not assignable by Lessee and any assignment shall be void and create in the assignee no rights except in strict compliance with the following as determined and approved by the Aviation Director:

17.1 Assignments Prohibited. Every assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited unless Lessor's consent to the assignment is contained in this Agreement or Lessee first receives from Lessor a separate notice of Lessor's consent to the assignment. References in this Agreement to assignments by Lessee shall be deemed also to apply to all of the following transactions, circumstances and conditions:

17.1.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Premises or any interest therein or any rights under this Agreement.

17.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise (collectively "Liens").

17.1.3 The use, occupation, management, control or operation of the Premises or any part thereof by others.

17.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Lessee except (a) transfers between two or more members, (b) a transfer from a member to a trust or legal entity that is 100% controlled by the transferring member, or (c) transfers caused by the death of a shareholder or other owner.

17.1.5 Any assignment by Lessee for the benefit of creditors, voluntary or involuntary.

17.1.6 Any bankruptcy or reorganization of Lessee not completely resolved in Lessee's favor within one hundred twenty (120) days after it is initiated.

17.1.7 The occurrence of any of the foregoing by operation of law or otherwise.

17.1.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Lessee except for sublessees.

17.2 Effect of Assignment. No action or inaction by Lessor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of the provisions of this Agreement. The consent by Lessor to an assignment shall not relieve Lessee from obtaining Lessor's consent to any further assignment. No assignment shall release Lessee from any liability hereunder except that Lessee shall be released from future obligations under this Agreement in the event of a complete assignment of Lessee's entire interest made with Lessor's consent. This Agreement shall also run with the land and continue to be a burden upon the Premises and every interest therein in favor of Lessor.

17.3 Enforceability after Assignment. This Agreement shall control any conflict between this Agreement and the terms of any assignment. Upon execution of this Agreement, and upon each subsequent assignment, Lessee shall provide a complete copy of this Agreement and any amendments to each sublessee or other assignee.

17.4 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for except for those to which Lessor has given consent in this Agreement. Lessor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment, except as expressly provided in this Agreement.

17.5 Form of Assignment. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Lessor. Assignees other than sublessees shall assume this Agreement. In the event Lessor terminates this Agreement due to a default by

Lessee, Lessor at Lessor's sole option may succeed to the position of Lessee as to any sublessee or assignee of Lessee without liability for any prior breaches or performances.

17.6 Employees. Lessee's hiring and discharging of employees shall not constitute a change of management amounting to an assignment of this Agreement by Lessee.

17.7 Liens Prohibited. Notwithstanding the prohibition on Liens, Lessee is permitted with Lessor's consent (not to be unreasonably withheld) to impose a single mortgage or deed of trust (the "Primary Lien") upon Lessee's leasehold interest in the Premises under this Agreement to secure a loan obtained by Lessee to obtain funds for Lessee to use to construct new Lessee's Improvements.

17.8 Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any action is brought to enforce the Lien. Lessee agrees to pay, indemnify, defend and hold Lessor and the Premises free and harmless from all liability and against any and all Liens, together with all costs and expenses in connection therewith, including attorney's fees. Lessor shall have the right at any time to post and maintain on the Premises such notices, pay such amounts, file or record such notices, or take such other actions as Lessor may deem necessary to protect Lessor and its property interests against all Liens. Every Lien shall cover Lessee's entire leasehold interest in this Agreement and the Premises.

17.9 Lien Priorities. In no event shall any Lien (whether arising before, concurrent with, or after the date of this Agreement) cover, affect or have any priority higher than or equal to any of Lessor's rights in the Premises or under this Agreement at any time.

17.10 Lessor's Rights to Pay Lienholder. Prior to foreclosure, deed in lieu, or the conclusion of other enforcement of a Lien, Lessor shall have the right at any time to purchase any Lien, by payment to the holder of the Lien the amount of the unpaid debt, plus any accrued and unpaid interest.

17.11 Primary Permitted Lien. The Primary Lien is subject to the following provisions:

17.11.1 Until Lessee's Improvements are completed, the Primary Lien shall not be cross collateralized or cross defaulted with any debt or lien related to property other than the Premises. Until Lessee's Improvements are completed, the Primary Lien shall cover no interests in any real property other than Lessee's interests in the Premises and the rents and profits under any permitted subleases.

17.11.2 The holder of the Primary Lien (the "Primary Lienholder") shall promptly give notice to Lessor of the creation of the Primary Lien and any modification, renewal, termination, default or enforcement of the Primary Lien, and any notices to Lessee related thereto. Such notices shall be accompanied by true copies of the Primary Lien or other correspondence or instruments pertaining to the notice. Primary Lienholder shall notify Lessor of the address to which notices to Primary Lienholder shall be sent.

17.11.3 The Primary Lien shall contain no provisions inconsistent with or purporting to alter in any way the provisions of this Agreement. This Agreement shall control any inconsistent terms or provisions in the Primary Lien or in any document of any description related to the Primary Lien.

17.11.4 Primary Lienholder shall have a limited right to cure deficiencies in Lessee's performance under this Agreement (the "Cure Right") as follows:

17.11.4.1 The Cure Right is that, in the event of an Event of Default:

17.11.4.1.1 Lessor shall not terminate this Agreement without first giving Primary Lienholder notice of the Event of Default; and

17.11.4.1.2 Upon Lessor's giving such notice, Primary Lienholder shall have an opportunity to cure the Event of Default as specifically described herein.

17.11.4.2 The Cure Right only applies to Events of Default that are capable of cure by Primary Lienholder within one hundred eighty (180) days after Lessor's notice to Primary Lienholder. In the event of an Event of Default that cannot be cured within that time period, Primary Lienholder and/or Lessee shall have the right to call for a meeting to consult with Lessor's city manager and/or aviation director to develop a plan for curing the Event of Default. Lessor's city manager and aviation director shall each have authority to consider such a plan and give notice on behalf of Lessor extending the time period for curing the particular Event of Default in accordance with the plan.

17.11.4.3 If an event or circumstance occurs which will become an Event of Default with the passage of time or giving of notice or both, Lessor may elect to provide Primary Lienholder's notice of the Event of Default prior to, after, or simultaneously with any notice Lessor may give to Lessee, and prior to, after, or simultaneously with the expiration of any applicable cure or grace period.

17.11.4.4 Primary Lienholder may elect to exercise the Cure Right by giving Lessor notice (a "Cure Notice") of such election not later than forty-five (45) days after Lessor's notice to Primary Lienholder. Primary Lienholder's failure to timely give a Cure Notice shall be Primary Lienholder's rejection and waiver of the Cure Right. Primary Lienholder's giving of a Cure Notice shall constitute Primary Lienholder's promise to Lessor that Primary Lienholder shall immediately undertake and diligently pursue to completion on Lessee's behalf all payments and performances necessary to cure an Event of Default and otherwise cause Lessee's performance to comply in all respects with the requirements of this Agreement. Each Cure Notice shall include payment of any and all amounts then payable to Lessor under this Agreement.

17.11.4.5 In the event Primary Lienholder exercises the Cure Right, Primary Lienholder shall immediately commence and thereafter diligently prosecute the cure to completion no later than thirty (30) days after Primary Lienholder's Cure Notice to Lessor. In the event of a cure that cannot be completed within thirty (30) days, Primary Lienholder shall complete the cure within the shortest period that may be possible, but in no event later than one hundred eighty (180) days after Primary Lienholder's Cure Notice exercising the Cure Right (or such longer period as Lessor's city manager or aviation director may allow). In the case of a Lessee Insolvency, if the Premises are operating as required by this Agreement and all payments by Lessee are current and all other defaults are cured, then the one hundred eighty (180) day period specified in the preceding sentence shall be extended to eighteen (18) months to cure the Lessee Insolvency. Such extension applies only to the Lessee Insolvency.

17.11.5 If this Agreement is terminated due to rejection by a bankruptcy trustee for Lessee, then Primary Lienholder shall have a thirty (30) day period after such rejection to give notice to Lessor that Lessee elects to obtain from Lessor a new replacement lease. Primary Lienholder's rights and obligations under the replacement lease shall be the same as those applicable to Lessee at the time of the rejection. A default by Lessee under the Primary Lien shall not amount to a default by Lessee under this Agreement.

17.11.6 Until completion of Lessee's Improvements, the Primary Lien must be held by an FDIC insured financial institution having offices in Maricopa County, Arizona, a pension fund or insurance company authorized to do business in Arizona, or sophisticated investors qualified under federal securities law to purchase unregistered securities in private placements.

17.11.7 This Agreement's provisions relating to the Primary Lien are for the sole benefit of Lessor and Primary Lienholder, and are not for the benefit of Lessee, other than Section 17.7 which is for the benefit of Lessee as well as the Primary Lienholder.

17.11.8 Lessee shall immediately give notice to Lessor and Primary Lienholder of any notice Lessee may receive relating to this Agreement or to the Primary Lien.

17.11.9 Primary Lienholder shall immediately give notice to Lessor and Lessee of any notice Primary Lienholder may receive relating to this Agreement or to the Primary Lien.

17.11.10 The provisions of this Agreement permitting the Primary Lien shall apply to any subsequent refinancing of the Primary Lien so long as the following requirements are satisfied:

17.11.10.1 Any replacement Primary Lien must satisfy all requirements of this Agreement.

17.11.10.2 No new Primary Lien may be created while a Primary Lien exists or is of record.

17.11.10.3 Only one Primary Lien may exist or be of record at a time.

17.11.11 Primary Lienholder shall become personally liable to perform Lessee's obligations hereunder only if and when Primary Lienholder gives a Cure Notice (and in such case only to the extent of the cure set forth in the Cure Notice), becomes the owner of all or part of the leasehold estate pursuant to judicial or non-judicial foreclosure, assignment or transfer in lieu of foreclosure or otherwise, or takes possession of all or part of the Premises. The occurrence or existence of any of the foregoing shall constitute an assumption by Primary Lienholder of Lessee's obligations under this Agreement.

17.12 Confirmation of Status. By notice to the other (a "Confirmation Request Notice"), either Lessor or Lessee (the "Requesting Party") may request that the other provide to the Requesting Party written confirmation of certain matters (an "Estoppel Certificate") as follows:

17.12.1 Lessee may give a Confirmation Request Notice only when a Primary Lien is being created or assigned, when Lessee's entire interest in the Premises is being assigned, or as otherwise reasonably necessary for Lessee's business purposes. Any Confirmation Notice by Lessee must meet the following additional requirements:

17.12.1.1 The Confirmation Request Notice shall be executed and joined in by the prospective Primary Lienholder, assignee of a Primary Lien, or assignee of Lessee's entire interest in the Premises (the "Confirmation Assignee").

17.12.1.2 The Confirmation Request Notice shall describe the proposed transaction between Lessee and the Confirmation Assignee.

17.12.1.3 The Confirmation Request Notice must include warranties and representations by the Confirmation Assignee that the matters to be confirmed are true to the best of its knowledge.

17.12.1.4 The Confirmation Request Notice must include warranties and representations by Lessee that the matters to be confirmed are true and that the information contained in the Confirmation Request Notice is complete and true.

17.12.1.5 If a Primary Lien is being created or assigned, the Confirmation Request Notice must warrant and represent that the proposed Primary Lienholder and its Lien qualify in every way for Primary Lien status under this Agreement.

17.12.2 The Confirmation Request Notice must specify the matters the other party is requested to confirm. The Confirmation Request Notice shall request only that the other party confirm whether or not one or more of the following matters are true, to the best of such other party's knowledge:

17.12.2.1 That this Agreement is in effect and has not been amended except as stated in the Confirmation Request Notice.

17.12.2.2 If Lessee is the Requesting Party, that an Event of Default by Lessee does not exist (except that Estoppel Certificates by Lessor shall exclude matters of zoning or other regulatory compliance other than, to the actual knowledge of the Aviation Director, compliance with Airport standards and regulations). If Lessor is the Requesting Party, that Lessor has performed its obligations and is in compliance with this Agreement.

17.12.2.3 If a Primary Lien is being created, that upon Primary Lienholder's providing to Lessor copies of the recorded instrument creating Primary Lienholder's Primary Lien and a recorded instrument releasing any prior Primary Lien, Lessor will acknowledge Primary Lienholder as the Primary Lienholder under this Agreement.

17.12.2.4 If Lessee is the Requesting Party, that Lessor consents to the proposed transaction between Lessee and the Confirmation Assignee.

17.12.2.5 That Rent has been paid through the date set forth in the Confirmation Request Notice.

17.12.3 The other party shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after a proper Confirmation Request Notice.

17.13 Assignment Payment. In addition to all other Rent payable hereunder, in the event of any assignment (including without limitation a Lien enforcement) which transfers possession of more than 30% of the interior building space of the Premises or has a duration of five (5) or more years, Lessee shall pay to Lessor the amount of Twenty Thousand Dollars (\$20,000). Lessor's contract administrator shall have authority to waive or reduce such payment in the event of an assignment to an affiliate of Lessee. Lessee shall pay to Lessor the sum of Two Thousand Five Hundred Dollars (\$2,500) as a fee for legal and administrative expenses related to creation of a Primary Lien or any assignment or request for consent to an assignment. Lessee shall pay to Lessor the sum of One Thousand Dollars (\$1,000) as a fee for legal and administrative expenses related to any request for an Estoppel Certificate.

17.14 Aircraft Storage Agreement. If an aircraft is to be stored or based at the Premises or the Airport more than fourteen (14) days, then Lessor's consent to an assignment is not effective until an Aircraft Storage Agreement is in effect between the City of Scottsdale and the aircraft owner.

17.15 Approved Assignments. Lessee shall attach to each assignment not described in this paragraph, a copy of Lessor's notice to Lessee of Lessor's consent to the assignment. No consent by Lessor to an assignment shall be effective unless and until Lessee receives notice of Lessor's consent pursuant to this Agreement. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an Assignment. Lessor hereby consents to the following assignments:

17.15.1 The creation of a Primary Lien that meets all of the requirements of this Agreement.

17.15.2 Lessee's granting to its customers in the ordinary course of its business rights of incidental use of small lockers at the Premises for temporary storage of miscellaneous personalty provided such rights are terminable by Lessee upon not more than thirty (30) days notice.

17.15.3 Lessee's complete assignment of all of Lessee's rights and interests in the Premises and this Agreement to a single assignee that meets the following requirements, as determined by Lessor in Lessor's reasonable discretion (a "Qualified FBO"):

17.15.3.1 The assignee must have a net worth in excess of One Million Dollars (\$1,000,000) adjusted upward from the date of this Agreement based on changes in the Cost of Living Index in the same manner as Base Rent is adjusted.

17.15.3.2 The assignee must provide to Lessor a written assumption of Lessee's obligations under this Agreement.

17.15.3.3 The assignee must have the management and financial capacity and other resources necessary to successfully perform under this Agreement.

17.15.3.4 The assignee or its core management team must have substantial recent experience in successfully operating a first-class, fixed-base operator operation comparable to the Premises.

17.15.3.5 The assignee must have active, involved executive, managerial and production level leadership staff with substantial recent experience in successfully operating a first-class, fixed-base operator operation comparable to the Premises.

17.15.3.6 The assignee shall provide to Lessor such information and materials (including presentations) as Lessor may reasonably request to confirm the assignee's qualifications and to assist Lessor to make such determination. Without limitation, Lessor may require the assignee to provide an information package containing all of the information required of Lessee in connection with the original granting of this Agreement. Lessor may take into account any such information and factors in determining the assignee's qualifications.

17.15.4 Retail subleases by Lessee in the ordinary course of business to occupants of hangar space for individual aircraft so long as no rent (excluding amounts Lessee uses for tenant improvements) shall be prepaid more than twelve (12) months.

17.15.5 Office subleases by Lessee in the ordinary course of business to occupants of commercial office space so long as no rent (excluding amounts Lessee uses for tenant improvements) is prepaid more than twelve (12) months.

17.16 Assignment by Lessor. Lessor's interests in this Agreement shall be automatically deemed to be assigned to and assumed by any person who acquires fee title to the Premises. Upon any such assignment, Lessor's liability with regard to this Agreement shall terminate.

XVIII. MISCELLANEOUS

18.0 Miscellaneous.

18.1 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity of any other provision of this Agreement.

18.2 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties. Amendments shall require Primary Lienholder consent to the amendment which consent shall not be unreasonably withheld or delayed.

18.3 Conflicts of Interest. No member, official or employee of Lessor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

18.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

18.5 Nonliability of Lessor Officials and Employees. No member, official, representative or employee of Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Lessor or for any amount which may become

due to any party or successor, or with respect to any obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement.

18.6 Notices. Except as otherwise indicated, all notices, waivers, demands, requests and other communications required or permitted by this Agreement (collectively, "Notices") shall be in writing and shall be effective only if sent by one or more of the following methods: (a) personal delivery; (b) generally-recognized overnight commercial courier regularly providing proof of delivery, with delivery charges prepaid or duly charged; or (c) United States registered or certified mail, return-receipt requested, postage prepaid, addressed to the parties at the respective addresses set forth opposite their names below, or to any other address or addresses as any party shall designate from time to time by notice given to the other in the manner provided in this paragraph:

If to Lessor: Scottsdale Aviation Director
15000 N. Airport Dr., Suite 100
Scottsdale, AZ 85260

City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
Attn: City Attorney

If to Lessee: ~~Scottsdale Jet Center Aviation~~
~~421 E. Hickory, Suite 105~~
~~Denton, TX 76210~~
~~112 Charles Lindbergh Drive~~
~~Teterboro, NJ 07608~~
Attention: ~~John Marchman~~ VP of FBO Operations

Notices to Lessee may also be hand-delivered to Lessee's management office at the Premises. Notices given or served by personal delivery shall be deemed to have been received upon tender to the respective party. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be.

18.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

18.8 Integration. This Agreement constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises, as, and to the extent, set forth in that certain Lease Replacement Agreement between the parties of even date herewith.

18.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement

shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Lessee.

18.10 Lessee Payments Cumulative. All amounts payable by Lessee to Lessor hereunder or under any tax, assessment or other existing or future ordinance or other law of City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other by Lessee in any manner.

18.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

18.12 No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a Primary Lienholder, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Lessor shall have no liability to third parties for any approval of plans, Lessee's construction of improvements, Lessee's negligence, Lessee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Lessee), or otherwise as a result of the existence of this Agreement.

18.13 Exhibits. All attached exhibits, which are specifically referenced in this Agreement, are hereby incorporated into and made an integral part of this Agreement for all purposes.

18.14 Attorneys' Fees.

18.14.1 In the event any action or suit or proceeding is brought by Lessor to collect the Rent due or to become due hereunder or any portion hereof or to take possession of the Premises or to enforce compliance with this Agreement or for Lessee's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessor's rights or remedies hereunder, and if Lessor is the prevailing party, Lessee agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

18.14.2 In the event any action or suit or proceeding is brought by Lessee to enforce compliance with this Agreement or for Lessor's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessee's rights or remedies hereunder, and if Lessee is the prevailing party, Lessor agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

18.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

18.16 Approvals and Inspections. All approvals, reviews and inspections by Lessor under this Agreement or otherwise are for Lessor's sole benefit and not for the benefit of Lessee, its contractors, engineers or other consultants or agents, or any other person.

18.17 Recording. Within ten (10) days after the effective date of this Agreement, Lessee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

18.18 Statutory Cancellation Right. In addition to its other rights hereunder, Lessor shall have the rights specified in A.R.S. § 38-511.

[SIGNATURE PAGES FOLLOW]

EXECUTED as of the date first given above.

LESSEE: **JET AVIATION SCOTTSDALE JET
CENTER REAL ESTATE LLC**, an Arizona
limited liability company

By: _____

~~John Marchman~~

~~David H. Best~~

Its: ~~Managing Member~~ Vice President

and GM

LESSOR: **CITY OF SCOTTSDALE**,
an Arizona municipal corporation

By: _____

~~W. J. "Jim" Lane~~ David D.

Ortega, Mayor

ATTEST:

~~Carolyn Jagger~~ Ben Lane, City Clerk

APPROVED AS TO FORM:

~~Bruce Washburn~~ Sherry R. Scott, City Attorney

By: ~~Michael Hamblin~~ Eric C. Anderson, Assistant City Attorney

Gary P. Mascaro, Aviation Director

~~Katie Galloway~~ George Woods, Jr., Risk Management Director

STATE OF ~~TEXAS~~NEW JERSEY)
) ss.
County of ~~Harris~~Bergen)

The foregoing instrument was acknowledged before me this ____ day of _____ ~~2018~~2023, by ~~John Marchman, Managing Member~~David Best, Vice President and GM of Jet Aviation ~~Scottsdale-Jet Center Real Estate~~, LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____ ~~2018~~2023, by ~~W~~David D. J. "Jim" LaneOrtega, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

Exhibit A.1

Legal Description of Air Commerce Parcel

Exhibit B.1

Legal Description of Greenway Hangars and Shades Parcel

Exhibit C.1

Site Plan for Air Commerce Parcel

Exhibit D.1

Site Plan for Greenway Hangars and Shades Parcel

Exhibit E.1

Standards for Letters of Credit

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. Letter of Credit Requirements. The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:

1.1. The Letter of Credit is clean, unconditional, and irrevocable.

1.2. The Letter of Credit is payable to City upon presentation of the City's draft.

1.3. City may make partial draws upon the Letter of Credit.

1.4. The Letter of Credit is conditioned for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.

1.5. Within ten (10) days after City's draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer in Maricopa County, Arizona upon which the issuer may endorse its payments.

1.6. The issuer specifies a telefax number, email address and street address at which City may present drafts on the Letter of Credit at a specified.

1.7. The Letter of Credit is valid until a specified date.

1.8. The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.

1.9. The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce.

1.10. The Letter of Credit need not be transferable.

2. Approved Forms. The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

2.1. Except as approved in writing by City's Chief Financial Officer or designee, the form of the Letter of Credit shall be in the form set out below.

2.2. Except as approved in writing by City's Chief Financial Officer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

3. Issuer Requirements. The issuer of the Letter of Credit shall meet all of the following requirements:

3.1. The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented.

3.2. The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to City.

3.3. The issuer shall have a net worth of not less than \$1 billion.

FORM OF LETTER OF CREDIT

Date _____, 20__

Letter of Credit No.: _____

City Treasurer
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, AZ 85253

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in your favor at the request and for the account of _____ in the aggregate amount of _____ (\$ _____), available upon presentation of your draft in the form attached hereto as **Schedule "1"**.

We will honor each draft presented to us at our above office in compliance with the terms of this Letter of Credit. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. Drafts may be presented by any of the following means:

1. By telefax to (____) _____ - _____.
2. By _____ email _____ to _____.
3. By hand or overnight courier service delivery to:

This Letter of Credit is valid until _____, 20__ and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce. This Letter of Credit is not assignable.

_____ [bank name] _____, a _____
By _____ [bank officer's signature] _____
_____ [bank officer's name printed] _____
Its _____ [bank officer's title] _____
Phone _____ bank officer's phone number] _____

FORM OF DRAFT ON LETTER OF CREDIT

To: _____

From: City Treasurer
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, Arizona 85253

Date: _____, 20____

Ladies and Gentlemen:

Pursuant to your Credit No. _____, the City of Scottsdale hereby demands cash payment in the amount of _____ (\$_____).

Please make your payment to the City of Scottsdale in the form of a wire deposit to:

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the City Treasurer of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at 480-312-2427 so that I can correct it. Also, please immediately notify the City Attorney at 480-312-2405.

Thank you.

City of Scottsdale, City Treasurer

Exhibit F.1

MONTHLY REPORT ITEMS

1. For each portion of the Premises:
 - 1.1 The name of the user or occupant.
 - 1.2 The name and date of the agreement permitting such use or occupancy.
 - 1.3 The names of the parties to such agreement.
 - 1.4 The suite number, location and square footage of the space used or occupied.
 - 1.5 The name and business phone number of the user or occupant and the name and after hours phone number of a responsible representative for such user or occupant.
 - 1.6 The business name and type of business activity being conducted.
2. For any new use or occupancy commenced, a complete copy of the executed agreement permitting such use or occupancy, together with copies of all permits, licenses or similar permissions, registrations or agreements related to such use or occupancy will be provided, upon request to the Lessor.
3. For each portion of the Premises capable of aircraft storage:
 - 3.1 The number of aircraft based at such portion of the Premises.
 - 3.2 For each aircraft based at such portion of the Premises:
 - 3.2.1 Make, model, year and registration number.
 - 3.2.2 Owner's name, address and telephone number.



COMMISSION INFORMATION REPORT

Discussion and Possible Action for a Recommendation to the Planning Commission and City Council regarding case 15-ZN-2022

Agenda Item No.: 4

Meeting Date: 09/20/23

Staff Contact: Bryan Cluff,
Planning & Development Area
Manager

Phone: (480) 312-2258

ACTION

Discussion and Possible Action for a Recommendation to the Planning Commission and City Council regarding case 15-ZN-2022, a request by owner for a zoning district map amendment, amending the stipulations and development plan of case 14-ZN-1991, increasing the allowed building height from 36 feet to 42 feet 4 inches and the allowed floor area ratio from 0.25 to 0.79 to allow for redevelopment of the site into a new 3-story residential health care facility including up to 143 residential healthcare units having 164 beds (both minimal and specialized care) on a +/- 5.78-acre site with Central Business Planned Community District (C-2 PCD) zoning.

PURPOSE

To provide the Airport Advisory Commission information on the proposed zoning district map amendment for a site located within the AC-1 Airport Influence Area, as it relates to the 14 CFR Part 150 Noise Compatibility Study, and possible action to recommend approval to City Council.

KEY CONSIDERATIONS

- Proximity of proposed site to Scottsdale Airport (approximately 1.27 miles southeast of the terminal).
- Proposed site located within the AC-1 area of the Airport Influence Zones, requiring FAA Height Analysis, fair disclosure notice and dedication of an Avigation Easement.
- Scottsdale Airport 14 CFR Part 150 Noise Compatibility Study Land Use Measures 2, 4 and 6 triggered.
- Airport Overlay Zone Matrix allows the proposed uses in the AC-1 area with conditions.
- The existing zoning (C-2 PCD) allows for the proposed Residential Healthcare land use; zoning amendments are addressing floor area and building height limitations.
- The total number of residential care units (for-rent) within the proposed development is up to 143 units (25.2 du/ac).
- Proposed building height is 42'-4" (inclusive of rooftop appurtenances).

OTHER RELATED POLICIES, REFERENCES

- 2010 Greater Airpark Character Area Plan
- 2035 General Plan
- 2005 Scottsdale Airport 14 CFR Part 150 Noise Compatibility Study
- Zoning Ordinance

ATTACHMENTS:

1. Context Aerials
2. Part 150 Airport Influence Zones Map
3. Part 150 Noise Contours Map
4. General Plan 2035 Future Land Use Map

5. Greater Airpark Character Area Plan and Land Use Map
6. Zoning Map (Existing)
7. Site Plan
8. Building Height Transitions Plan
9. Conceptual Building Elevations

Action taken:



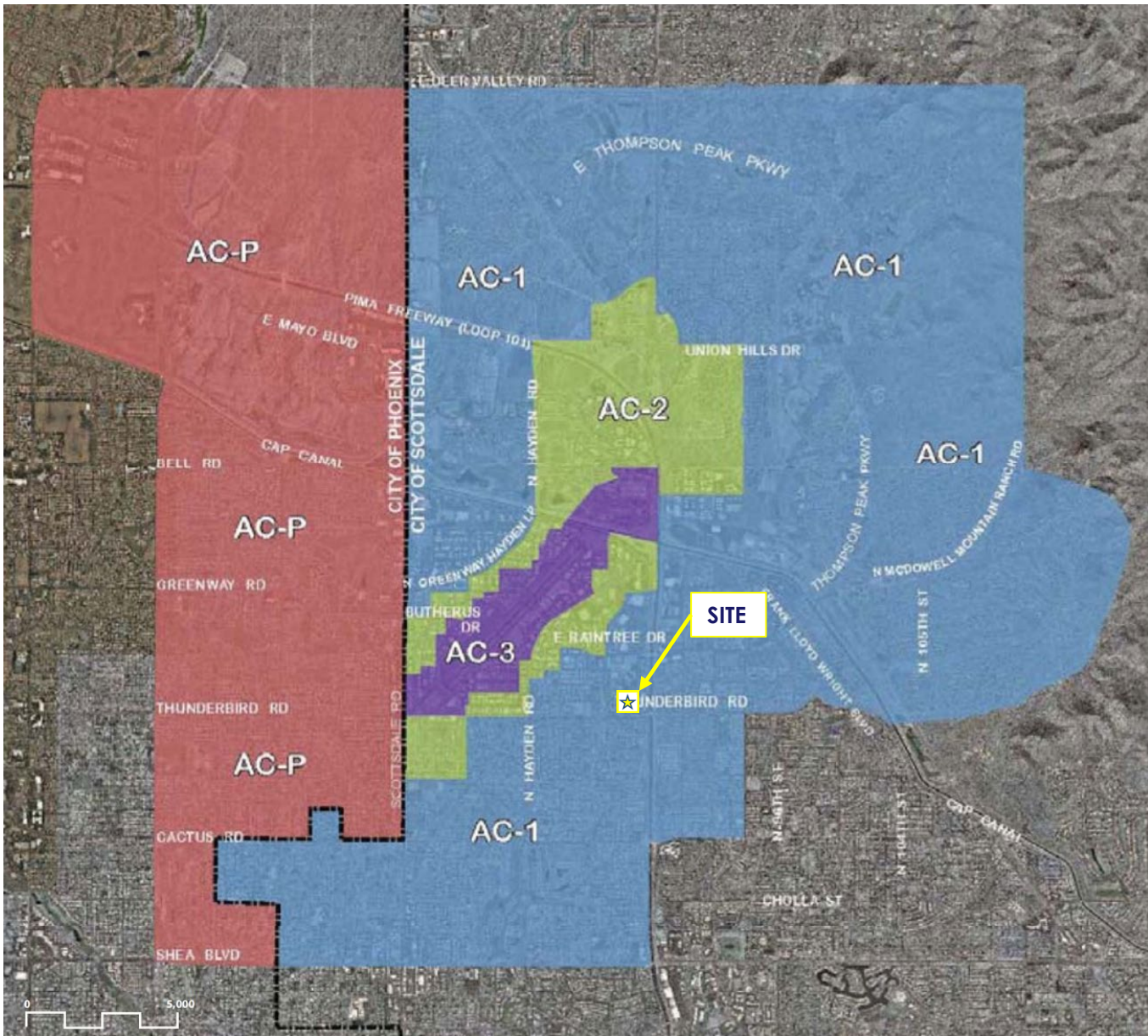
Context Aerial

15-ZN-2022



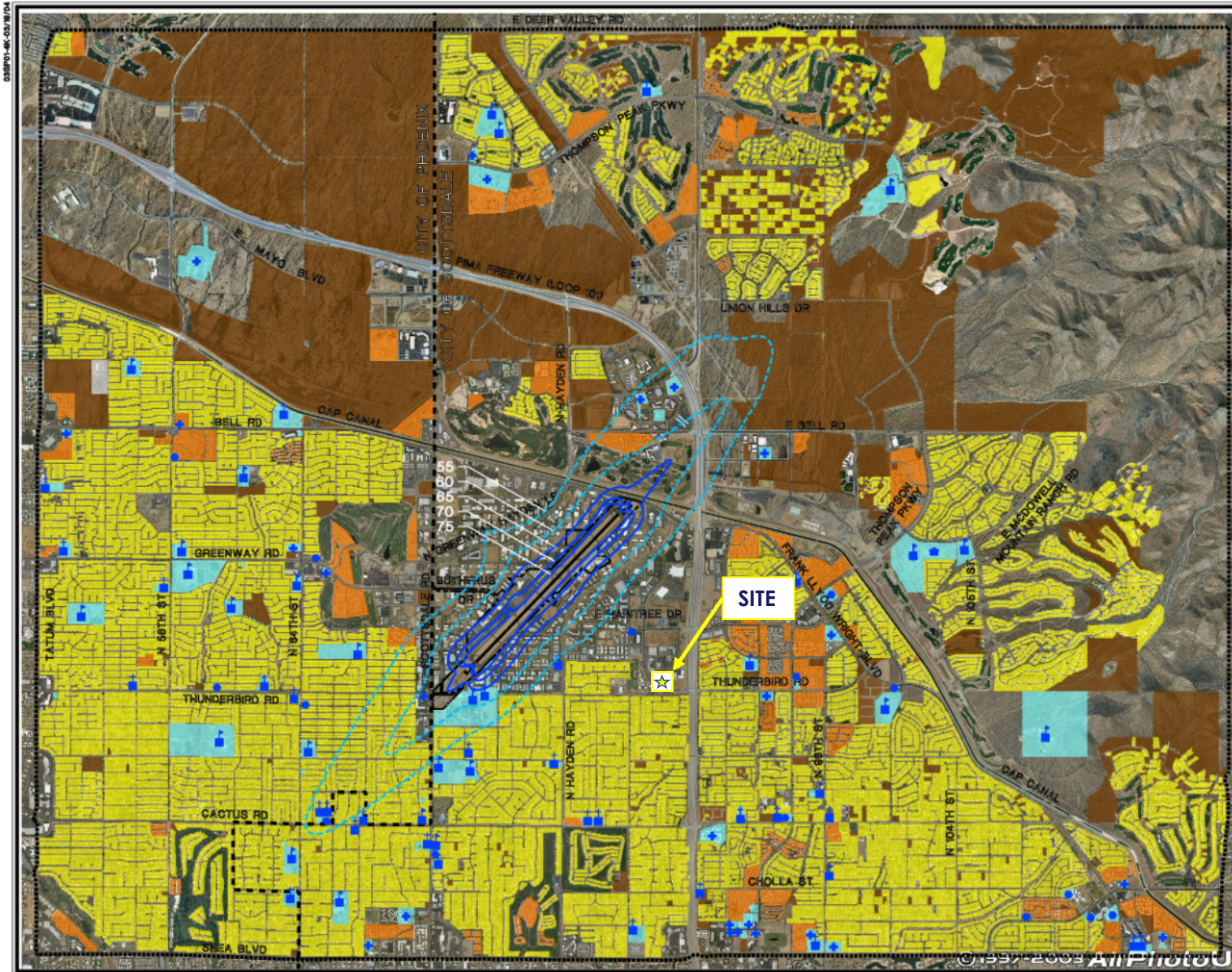
Close-up Aerial

15-ZN-2022



Part 150 Airport Influence Zones Map

Attachment 2



- LEGEND**
- Detailed Land Use Study Area
 - - - - - Municipal Boundary
 - Airport Property
 - Single-Family Residential
 - Multi-Family Residential
 - Noise Sensitive
 - Daycare Facility
 - Library
 - Medical/Dental/Nursing
 - Museum
 - Place of Worship
 - School
 - Undeveloped Areas Planned for Residential Development
 - 2025 Noise Exposure Contour, Marginal Effect
 - 2025 Noise Exposure Contour, Significant Effect

Source: Coffman Associates Analysis, Maricopa County Assessors Database.
 Photo: Todd Photographics Service.

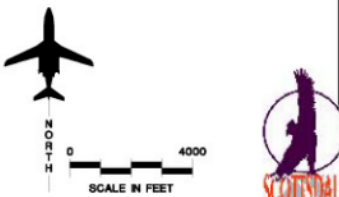
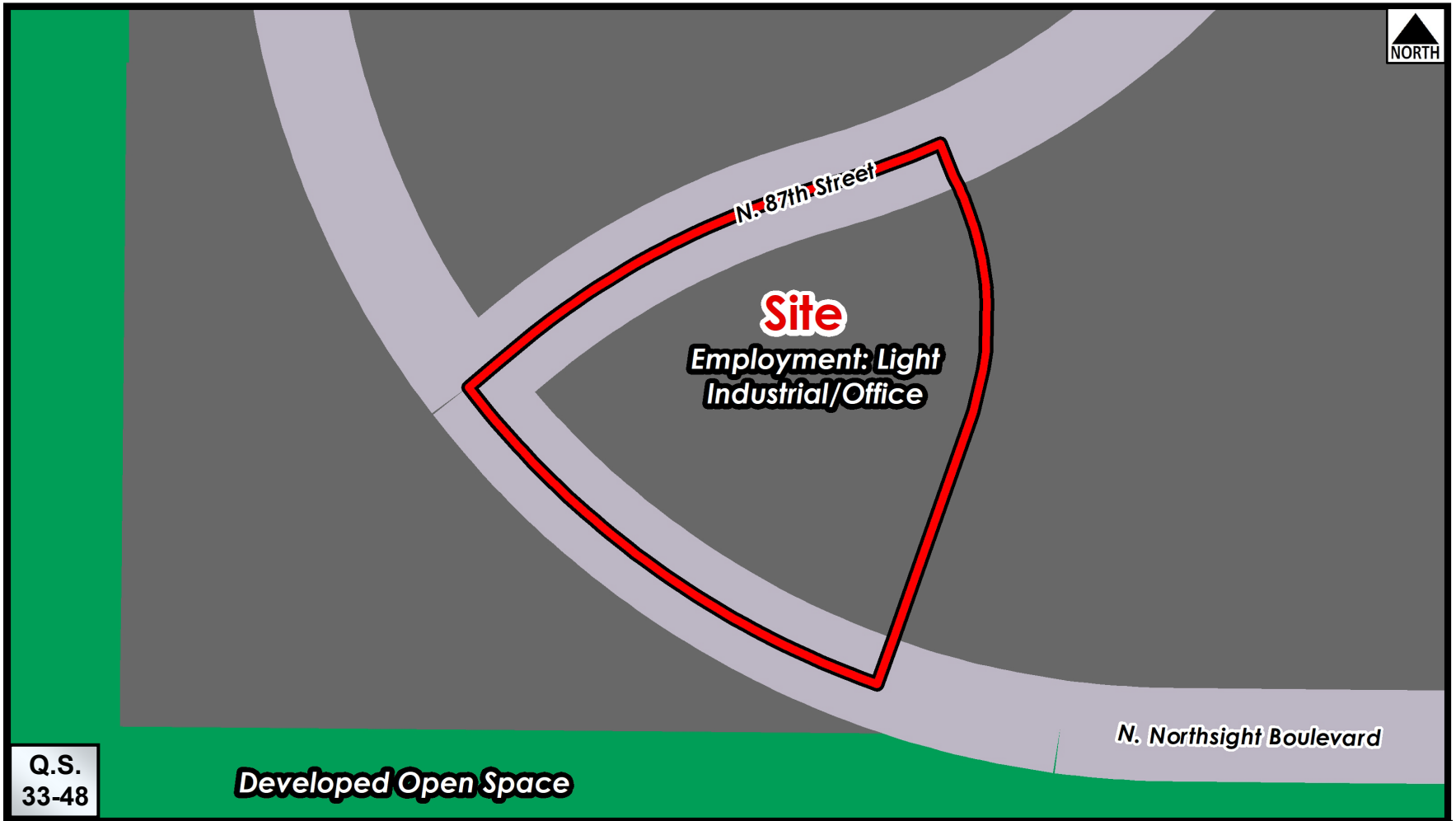


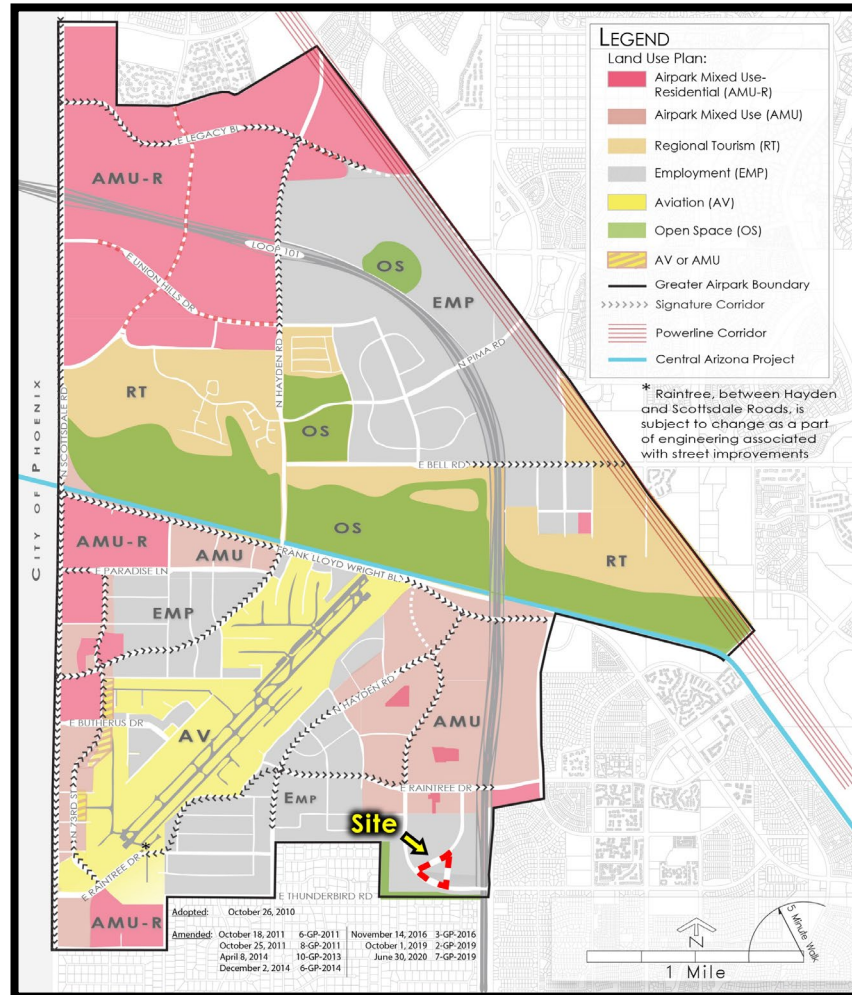
Exhibit 4K
 2025 NOISE EXPOSURE CONTOURS WITH LAND USE



Existing General Plan 2035 Future Land Use Map
+/- 5.78 acres of Employment: Light Industrial / Office

15-ZN-2022

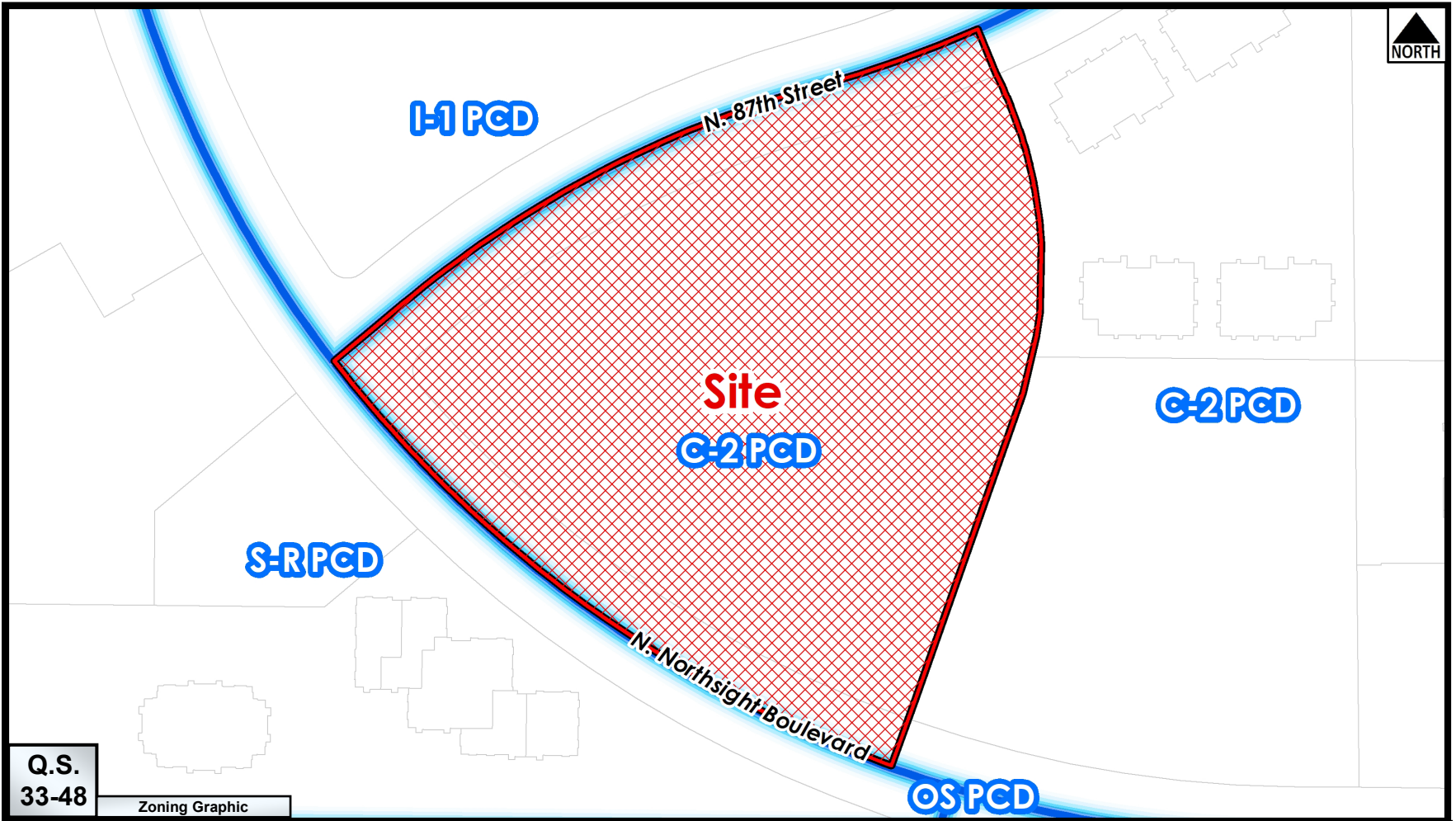
Attachment 4



Greater Airpark Character Area – Land Use Plan

15-ZN-2022

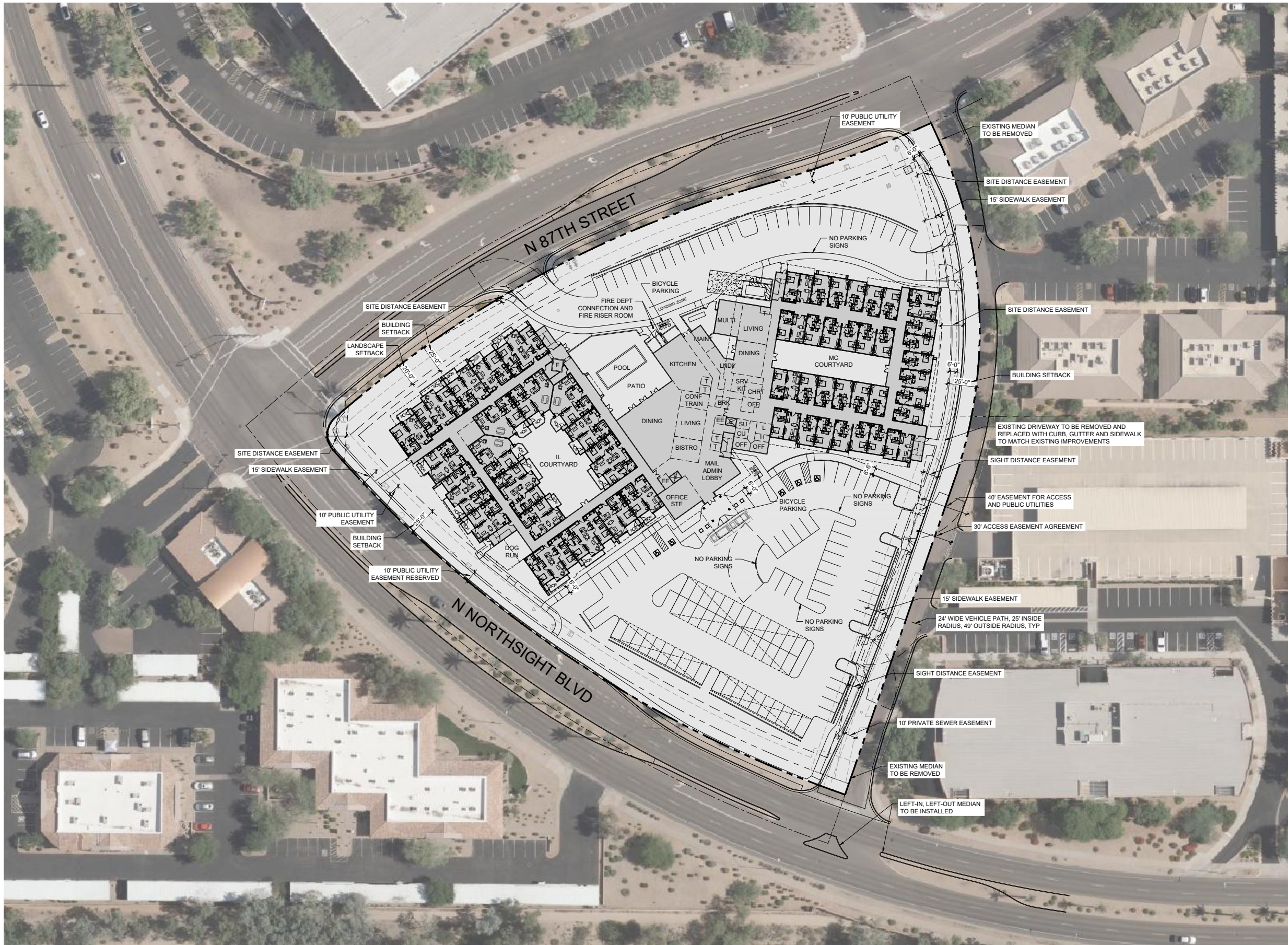
Attachment 5



Existing Zoning

15-ZN-2022

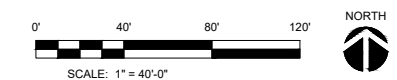
Attachment 6



SITE PLAN INFORMATION

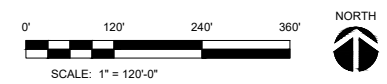
APN:	215-53-005D
ZONING:	C-2 (EXISTING)
SITE AREA:	±196,467 SF, 4.51 ACRES
BUILDING AREAS:	
IL/AL/MC BLDG. (3-STORY):	
1ST FLOOR:	58,747 SF
2ND FLOOR:	49,635 SF
3RD FLOOR:	49,678 SF
OVERALL PROPOSED BUILDING AREA:	158,060 SF
COVERED PARKING:	7,632 SF
LOT COVERAGE:	
(58,747 SF + 7,632 SF) / 196,467 SF:	33.8 %
FAR:	
1ST FLOOR:	57,784 SF
2ND FLOOR:	49,436 SF
3RD FLOOR:	49,479 SF
TOTAL FAR FLOOR AREA:	156,699 SF
FAR (156,699 SF / 196,467 SF):	0.798
DWELLING UNIT DENSITY:	
142 DU / 4.51 AC:	31.5
OCCUPANCY TYPE(S):	
INDEPENDENT LIVING:	I-1
ASSISTED LIVING:	I-1
MEMORY CARE:	I-2
COMMONS:	A-2/A-3/B
C.O. SCOTTSDALE PARKING CALCULATION:	
MC (32 BEDS @ 0.7 / BED):	22 SPACES
AL (50 BEDS @ 0.7 / BED):	35 SPACES
IL (39 1BR UNITS @ 1.25 / UNIT):	49 SPACES
IL (21 2BR UNITS @ 1.25 / UNIT):	26 SPACES
TOTAL PARKING REQUIRED:	132 SPACES
TOTAL PARKING PROVIDED:	126 SPACES
PARKING RATIO:	0.89
BICYCLE PARKING CALCULATION:	
1 SPACE PER EVERY 10 REQUIRED VEHICLE SPACES	
(132 VEHICLE SPACES DIVIDED BY 10 = 13.2 SPACES):	14 SPACES
TOTAL BICYCLE PARKING REQUIRED:	14 SPACES
BICYCLE PARKING PROVIDED:	14 SPACES
BED/UNIT BREAKDOWN:	
INDEPENDENT LIVING UNITS:	60
ASSISTED LIVING BEDS:	50
MEMORY CARE BEDS:	32
TOTAL UNITS:	142
FIRST FLOOR AREA: 57,785 SF	
IL 1-BD: (2 UNITS @ 689 SF) = 1,378 SF	
IL 1-BD: (7 UNITS @ 756 SF) = 5,292 SF	
IL 1-BD: (4 UNITS @ 997 SF) = 3,988 SF	
IL 2-BD: (7 UNITS @ 1,091 SF) = 7,637 SF	
MC STUDIO: (26 BEDS @ 360 SF) = 9,360 SF	
MC 1-BD: (6 BEDS @ 561 SF) = 3,366 SF	
FIRST FLOOR TOTAL BED/UNIT AREA: 31,021 SF (53.7% EFF.)	
TOTAL UNIT COUNT: IL = 20; MC = 32	
SECOND FLOOR: 49,038 SF	
IL 1-BD: (2 UNITS @ 689 SF) = 1,378 SF	
IL 1-BD: (7 UNITS @ 756 SF) = 5,292 SF	
IL 1-BD: (4 UNITS @ 997 SF) = 3,988 SF	
IL 2-BD: (7 UNITS @ 1,091 SF) = 7,637 SF	
AL STUDIO: (6 BEDS @ 360 SF) = 2,160 SF	
AL 1-BD: (6 BEDS @ 561 SF) = 3,366 SF	
AL 1-BD: (13 BEDS @ 753 SF) = 9,789 SF	
SECOND FLOOR TOTAL BED/UNIT AREA: 33,610 SF (68.0% EFF.)	
TOTAL UNIT COUNT: IL = 20; AL = 25	
THIRD FLOOR: 49,038 SF	
IL 1-BD: (2 UNITS @ 689 SF) = 1,378 SF	
IL 1-BD: (7 UNITS @ 756 SF) = 5,292 SF	
IL 1-BD: (4 UNITS @ 997 SF) = 3,988 SF	
IL 2-BD: (7 UNITS @ 1,091 SF) = 7,637 SF	
AL STUDIO: (6 BEDS @ 360 SF) = 2,160 SF	
AL 1-BD: (6 BEDS @ 561 SF) = 3,366 SF	
AL 1-BD: (13 BEDS @ 753 SF) = 9,789 SF	
THIRD FLOOR TOTAL BED/UNIT AREA: 33,610 SF (67.9% EFF.)	
TOTAL UNIT COUNT: IL = 20; AL = 25	

Site Plan





Transition Plan
(Building Heights)





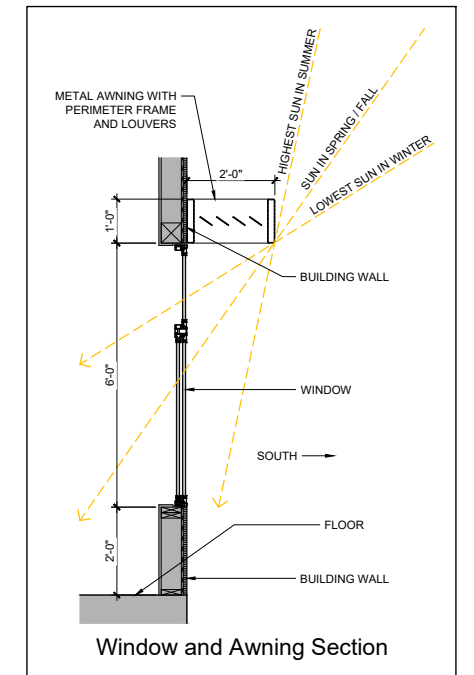
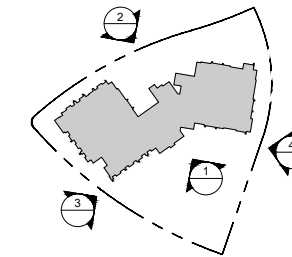
1 - Southeast Elevation



2 - Northwest Elevation

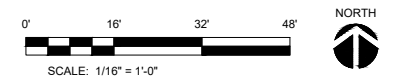


3 - Southwest Elevation



4 - East Elevation

Building Elevations





COMMISSION ACTION REPORT

Adopt Resolution No. 12920 Authorizing Contract No. 2023-134-COS with Mead & Hunt, Inc. to provide Engineering Services at Scottsdale Airport

Agenda Item No.: 6

Meeting Date: 09/20/23

Staff Contact: Chris Read,
Assistant Aviation Director -
Operations

Phone: (480) 312-2674

ACTION

Airport Advisory Commission considers recommending to City Council, Adoption of Resolution No. 12920 Authorizing Contract No. 2023-134-COS with Mead & Hunt, Inc. to provide Engineering Services at Scottsdale Airport.

PURPOSE

This contract will provide for a full range of engineering services at Scottsdale Airport for a variety of projects over the next five years including, but not limited to project design, analysis, project management, etc.

KEY CONSIDERATIONS

- The Aviation and Purchasing Divisions were responsible for the preparation of the Request for Qualifications (RFQ) and the solicitation of qualified airport engineering firms from across the country.
- The RFQ was properly advertised in accordance with State Procurement Law Title 34. Approximately 24 engineering firms downloaded the solicitation; only one applicant, Mead & Hunt, Inc., submitted a Statement of Qualifications (SOQ).
- The RFQ Selection Committee included three (3) members from the City's Aviation staff.
- The Selection Committee selected Mead & Hunt, Inc. as the most qualified firm using a points-based ranking system.
- The City's Purchasing Director performed and approved a sole bidder determination because only one firm submitted a proposal.
- Mead & Hunt has been performing airport engineering services for Scottsdale Airport since 2015.
- A reasonableness of cost review was conducted in 2015 by a third party to ensure that the hourly rates of Mead & Hunt, Inc. were comparable to industry rates in Arizona. Since 2015, Mead & Hunt has received hourly rate adjustments in accordance with the Consumer Price Index each year. Mead & Hunt has agreed to continue to work under these rates for this new contract.
- Furthermore, as the individual projects come forth, each "Authorization of Services" for design and construction administration will be compared with an Independent Fee Estimate to ensure that costs are fair and reasonable throughout the life of the contract.

Attachment(s): 1. Draft Resolution No. 12920
2. Draft Contract No. 2023-134-COS

Action Taken:

RESOLUTION NO. 12920

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT NO. 2023-134-COS WITH MEAD & HUNT, INC., A CONTRACT FOR PROFESSIONAL AIRPORT ENGINEERING SERVICES AT SCOTTSDALE AIRPORT.

WHEREAS, the City of Scottsdale requires the services of a qualified engineering firm to conduct its critical airport development projects; and

WHEREAS, on June 7, 2023 the City issued a Request for Qualifications ("RFQ") to solicit qualified engineering firms to perform a full range of airport engineering services at Scottsdale Airport for a variety of projects over the next five years including, but not limited to project design, analysis, project management, etc.; and

WHEREAS, one firm submitted a responsive proposal to the RFQ and those proposals were subsequently evaluated by a committee comprised of three members from City staff; and

WHEREAS, ~~the~~ the committee selected Mead & Hunt, Inc as the most qualified firm; and

WHEREAS, The Purchasing Director has approved continuing the award process with Mead & Hunt, Inc. and the fees negotiated are fair and reasonable and other prospective persons or firms had a reasonable opportunity to respond; and

WHEREAS, on September 20, 2023 the Airport Advisory Commission recommended approval of Mead & Hunt, Inc.; and

WHEREAS, the City desires to enter into an agreement with Mead & Hunt, Inc. for the professional engineering services described above; and

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. That the Mayor of the City of Scottsdale is hereby authorized and directed to execute agreement No. 201823-055134-COS, a contract for professional airport engineering services with Mead & Hunt, Inc.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 10th day of October 2023.

ATTEST:

CITY OF SCOTTSDALE,
an Arizona municipal corporation

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney



CITY OF SCOTTSDALE
ENGINEERING SERVICES CONTRACT

CONTRACT NO. 2023-134-COS

THIS CONTRACT, entered into this ____ day of October, 2023, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and Mead & Hunt, Inc, a Wisconsin corporation, the "ENGINEER."

RECITALS

- A.** The Mayor of the City of Scottsdale is authorized by the City Charter to execute contracts for professional services; and
- B.** The City intends to contract for Airport Engineering services with Mead & Hunt, Inc. to design and manage several airport improvement projects, including; drainage plan update, rehab or reconstruct runway, taxiway and aprons, design and construct new taxiways, airfield access gates and parking garage and other projects as necessary at Scottsdale Airport. and
- C.** The Engineer is qualified to render the services desired by the City.

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, the City and the ENGINEER agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

1.1 Scope of Services

Consultant shall provide the professional airport engineering services required by this Contract, which is summarized in Section 1.3 of this contract and further detailed in the entire Request for Qualifications No. RFSQ-042023-077 identified as Airport Engineering Services and is incorporated into this Contract by this reference as fully as if written out below. Consultant's proposal submitted in response to Request for Qualifications No. RFSQ-042023-077 and dated June 7, 2023 is incorporated into this Contract by this reference as fully as if written out below.

If any provision incorporated by reference from the Request for Qualifications conflicts with any provision of the Consultant's proposal, the provision of the Request for Qualifications will control. If any provision of the Consultant's proposal, including but not limited to any limitation of liability or disclaimer of

warranty language, conflicts or is in any way inconsistent with any provision of this Contract, this Contract will control.

The Consultant shall act under the authority and approval of the Contract Administrator to provide the services required by this Contract.

The Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by the City, FAA, and ADOT, the services generally outlined below and specifically indicated in future Authorization of Services agreed upon by the City. The Consultant may utilize the services of Subcontractors when such services are warranted and previously agreed upon in writing by the City.

The Consultant must obtain all necessary information to complete the tasks requested by the City

The Engineer will provide the Engineering services required by this Contract.

The Engineer is assigned the tasks specified in the attached Exhibit A, Airport Capital Improvement Program, which is incorporated by reference and made a part of this Contract. If any provision of the Engineer's proposal, including but not limited to any limitation of liability or disclaimer of warranty language, conflicts or is in any way inconsistent with any provision of this Contract, this Contract will control.

The Engineer must obtain all necessary information to complete the tasks specified in Exhibit A, Airport Capital Improvement Program.

1.2 Acceptance and Documentation

- A. Each task will be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City will provide all necessary information to the Engineer for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Engineer.

1.3 Scope of Services

The Consultant shall render services as the City's professional Airport Engineering Consultant, giving consultation and advice as needed. The Consultant shall provide professional airport Engineering services for a full range of aviation needs at Scottsdale Airport, including but not necessarily limited to airport project design, project construction administration, fiscal evaluations, architectural design and operations evaluations as may be necessary, which are subject to various local, state, and federal (FAA) requirements. Specific airport Engineering projects that are part of an Airport capital improvement project, likely listed on Exhibit A, for which the Consultant may provide professional

Engineering services (“Specific Services”) pursuant to the terms so this contract will be explained and included in an Authorization of Services document. The Consultant may also provide some minimal on-call general Engineering services for the Airport as projects arise (“General Services.”) One or more separate Authorization of Services will be prepared for each Specific Service or General Service Airport Engineering project and when signed by the parties, becomes a part of this Contract. Each Authorization of Services shall set forth, in addition to the services to be performed in connection with that project, the time limits within which such services are to be performed, and compensation to be paid the Consultant for its services provided that the Consultant will in no case be authorized to receive an hourly rate in excess of the maximum hourly rates approved in Section 2 of this Contract.

1.4 Authorization of Services

Prior to initiating any work requested under Sections 1.1 and 1.2 above, the Consultant and City must execute an Authorization of Services as specified within each of these sections. The Contract Administrator shall approve all Authorization of Services, under the terms of this Contract. The Authorization of Services documents approved pursuant to the terms and limitations of this Contract do not require further City Council approval.

2.0 FEES AND PAYMENTS

2.1 Fee Schedule

The consultant will not bill the City and the City will not pay the consultant any more than a total of \$1,000,000 per fiscal year for all project work authorized and performed under this contract in any single fiscal year without first returning to the City Council for further approval.

The Engineer shall be paid at the hourly rates shown in **Exhibit B** and as amended throughout the life of the contract:

2.2 Payment Approval

The time spent for each task must be recorded and submitted to the Contract Administrator. The Engineer must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period.

Monthly payments will be made to the Engineer on the basis of a progress report submitted by the Engineer for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Contract Administrator to determine acceptable completion.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Engineer on a monthly basis.

All charges must be approved by the Contract Administrator before payment.

2.2.1 Payment Terms

The City of Scottsdale's payment terms for engineering work under State of Arizona A.R.S. Title 34 requirements is fourteen (14) days after invoice submittal by the Engineer and the work is certified and approved by the City Contract Administrator.

The City has seven (7) days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the City Contract Administrator. Until such time as such issues are resolved and certified by the City the fourteen (14) day payment term will not have commenced.

2.2.2 Hourly Rate Increases

The Consultant and any Subcontractors may submit revised hourly rate schedules for approval thirty (30) days prior to each anniversary date of the Contract. Failure to do so may result in the denial of any increase requested. The Contract Administrator and Purchasing Director must approve any revised hourly rates in writing. A requested price increase will become effective only after approval by the Contract Administrator and the Purchasing Director and will take effect on the anniversary date of the contract. Approved rate increases will be applied to the unit pricing in the Contract as a percentage increase.

The Contract Administrator shall evaluate the Consultant's performance, services, and records documentation to determine the appropriateness of the increase requested. Third party evaluations may be conducted by the Contract Administrator to ensure rate increases are consistent with industry standards.

The percentage increase in the unit pricing may not exceed the percent in the U.S. City Average "Consumer Price Index" (C.P.I.) All Items, 1982-84=100 for All Urban Consumers for the Percentage Change from the previous twelve (12) months, as published by the U. S. Department of Labor Bureau of Labor Statistics. Please note that the percentage increase in the unit pricing may not exceed 5% per annum.

The percentage increase in the unit pricing may not exceed 5% per annum.

2.2.3 General Services

Compensation for General Services authorized by the City shall be based on and shall be no more than the maximum approved hourly rates subject to the agreed upon maximum hours or limits, which will include any expenses incurred by the Consultant and/or Subcontractors as set forth in the corresponding approved Authorization of Services. The City, based upon the submittal of expense reports and/or receipts, if requested, shall reimburse eligible expenses.

3.0 GENERAL TERMS AND CONDITIONS

3.1 Contract Administrator

The Contract Administrator for the City will be Chris Read, or designee. The Contract Administrator will oversee the performance of this Contract, assist the Engineer in accessing the organization, audit billings, and approve payments. The Engineer must submit all reports and special requests through the Contract Administrator. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

3.2 Term of Contract

The Term of the Contract is for 5 Years.

The term of this Contract is for a 3-year period. This Contract must be approved by the City Council of the City of Scottsdale, Arizona and signed by its Mayor and attested by the City Clerk. The City and Engineer may mutually agree to extend this Contract for upon the recommendation of the Contract Administrator and the concurrence of the Purchasing Director without further approval of the City Council.

3.3 Termination or Cancellation of Contract

The City may terminate this Contract or abandon any portion of the project that has not been performed by the Engineer.

Termination for Convenience: The City has the right to terminate this Contract or any part of it for its sole convenience with thirty (30) days written notice. If terminated, the Engineer must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Engineer will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Engineer and the City, based on the Scope of Work.

If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Engineer's compensation will be based on this determination. The City will make this final payment within sixty (60) days after the Engineer has delivered the last of the partially completed items. The Engineer will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the Engineer's suppliers or Subcontractors, which the Engineer could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Contract or any part of it with seven (7) days' notice if the Engineer defaults, or if the Engineer fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Contract Administrator or failure to provide the City, upon request, with adequate assurances of future performance are all causes allowing the City to terminate this Contract for cause. Upon cancellation for cause, the City will not be liable to the Engineer for any amount, and the Engineer will be liable to the City for all damages sustained by the default which caused the cancellation.

If the Engineer is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately after giving notice to the Engineer.

If the City cancels this Contract or any part of the Contract services, the City will notify the Engineer in writing, and upon receiving notice, the Engineer must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Engineer must deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.

The Engineer must appraise the work it has completed and submit its appraisal to the City for evaluation.

If the Engineer fails to fulfill in a timely and proper manner its obligations, or if the Engineer violates any of the terms of this Contract, the City may withhold any payments to the Engineer for the purpose of setoff until the exact amount of damages due the City from the Engineer is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

3.4 Funds Appropriation

If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Engineer at least thirty (30) days before the end of its current fiscal period and will pay to the Engineer all approved charges incurred through the end of that period.

3.5 Audit

The City may audit all of the Engineer's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Engineer's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the City's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Engineer or any of his payees. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Engineer's records and personnel throughout the term of this Contract and for a period of three (3) years after the final payment.

The Engineer must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a

written Contract between the Engineer and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Engineer to the City in excess of 1% of the total Contract billings, the actual cost of the City's audit must be reimbursed to the City by the Engineer. Any adjustments and payments made as a result of the audit or inspection of the Engineer's invoices and records will be made within a period of time not to exceed 90 days from presentation of the City's findings to the Engineer.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

3.6 Ownership of Project Documents

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Engineer.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the City concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. The City will release the Engineer from any liability for the preparation of final construction plans by others.

3.7 Completeness and Accuracy

The Engineer will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Engineer and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Engineer. Additional construction added to the project will not be the responsibility of the Engineer unless the need for additional construction was created by any error, omission, or negligent act of the Engineer. The City's acceptance of the Engineer's work will not relieve the Engineer of any of its responsibilities.

3.8 Attorney's Fees

Should either party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees, reasonable costs and expenses as determined by the court. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action.

3.9 Successors and Assigns

This Contract shall be binding upon the Engineer, its successors and assigns, including any individual, or other entity with or into which the Engineer may merge, consolidate, or be liquidated, or any individual or other entity to which the Engineer may sell or assign its assets.

3.10 Assignment

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

3.11 Subcontractors

The Engineer may engage Subcontractors as required for the timely completion of this Contract. If the Engineer subcontracts any of the work required by the Contract, the Engineer remains solely responsible for fulfillment of all the terms of this Contract.

The Engineer will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the City. The Engineer will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Engineer will pay Subcontractors the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the Engineer. No Contract between the Engineer and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Engineer fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions:

- A. To hold the Engineer in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;
- C. Reject all future offers to perform work for the City from the Engineer for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

3.12 Alterations or Additions to Scope of Services

The total Scope of the Engineering Services to be performed is stated in this Contract and any exhibits thereto. Any services requested outside the Scope of Work are additional services. The Engineer will not perform these additional services without a written Change Order approved by the City. If the Engineer performs additional services without a written Change Order, the Engineer will not receive any additional compensation.

3.13 Modifications

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

3.14 Conflict of Interest

The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Engineer any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation will be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. 38-511).

The Engineer will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the City's publication of documents for bidding.

3.15 Force Majeure

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

3.16 Taxes

The fee listed in this Contract includes all taxes applicable to the services authorized. The City will have no obligation to pay additional amounts for taxes of any type.

3.17 Advertising

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale Contract Administrator and by the City Attorney.

3.18 Counterparts

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

3.19 Entire Agreement

This Contract contains the entire understanding of the parties and no representations or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

3.20 Arizona Law

This Contract must be governed and interpreted according to the laws of the State of Arizona.

3.21 Equal Employment Opportunity

During the performance of this Contract, the Engineer will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

No Preferential Treatment or Discrimination:

In accordance with Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

3.22 Compliance with Federal and State Laws

The Engineer accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Engineer accepts the applicability to it of A.R.S. §34-301 and 34-302. The Engineer shall include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the Engineer warrants to the City that the Engineer and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Engineer and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Engineer or any of its subcontractors will be considered a material breach of this Contract and may subject the Engineer or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Engineer or any subcontractor who works on this Contract to ensure that the Engineer or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Engineer and any of its subcontractors to ensure compliance with this warranty. The Engineer agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Engineer or any of its subcontractors in material breach of this Contract if the Engineer and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The “E-Verify Program” means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Engineer enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Engineer will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Engineer’s failure to assure compliance by all its’ subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The Engineer further agrees that all services provided under this Agreement are subject to compliance with the Required Federal Contract Provisions for FAA Airport Improvement Program Projects a copy of which is attached hereto as Exhibit C.

3.23 Compliance with Americans with Disabilities Act

Engineer acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Engineer will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Engineer agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Engineer, its employees, agents or assigns will constitute a material breach of this Contract.

3.24 Israel Boycott Prohibition

By executing this contract, [Contractor] certifies that it is not currently engaged in and will not for the duration of this contract engage in boycott activity proscribed by A.R.S. § 35-393 et seq.

3.25 Forced Labor of Ethnic Uyghurs

Contractor warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Contractor becomes aware during the term of the Agreement that the Contractor is not in compliance with this paragraph, the Contractor shall notify the City within five business days after becoming aware of the noncompliance. Failure of Contractor to provide a written certification that the Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

3.26 Evaluation of Engineer's Performance

The Engineer will be evaluated regarding its performance of this Contract. This evaluation may include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of Plans (line work, lettering, etc.)
- Working Relationship with City Staff and Others
- Availability
- Communication Skills (meetings, correspondence, etc.)

This evaluation will be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

3.27 Notices

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other address the parties may substitute by giving written notice as required by this section.

On behalf of the Engineer:

Scott Van Gompel, P.E.
8800 E. Raintree Dr., Suite 285
Scottsdale, AZ 85260

On behalf of the City:

Aviation Department
Attn: Chris Read
15000 N. Airport Drive #100
Scottsdale, AZ 85260
480-312-2674

If hand delivered, Notices are deemed received on the date delivered. If delivered by certified or registered mail, Notices are deemed received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

3.28 Independent Contractor

The services the Engineer provides to the City are that of an Independent Contractor, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.29 Ineligible Bidder

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which it prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which it prepared the specification.

3.30 Indemnification

To the fullest extent permitted by law, Engineer, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any act or omission, negligence, recklessness, or intentional wrongful conduct by Engineer in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Engineer's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.0 INSURANCE

A current Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally Certificates of Insurance submitted without referencing a Contract number may be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

- A. General: The Engineer agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Engineer, the Engineer must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to City. Failure to maintain insurance as required may result in cancellation of this Contract at the City's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, City does not represent that coverage and limits will be adequate to protect the Engineer. The City reserves the right to review any and all of the insurance policies and endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Engineer from, nor may it be considered a waiver of Contractor's obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Engineer must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by The City of Scottsdale, unless specified otherwise in this Contract.

4.1 Insurance Representations and Requirements – Cont'd

- D. Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all

“claims made” policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the “claims made” coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- E. Policy Deductibles and or Self-Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Engineer is solely responsible for any deductible or self-insured retention amount and the City, at its option, may require the Engineer to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Engineer must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Engineer in this Contract. The Engineer is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Engineer must furnish the Contract Administrator with Certificate(s) of Insurance, or formal endorsements issued by the Engineer’s insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Engineer’s must forward renewal Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

4.1 Insurance Representations and Requirements – Cont’d

Certificates shall specifically cite the following provisions endorsed to the Engineer’s policy:

- 1. The City of Scottsdale, its agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
 - a) Commercial General Liability

- b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Engineer's insurance must be primary insurance for all performance of work under this Contract.
 3. All policies, except Professional Liability insurance if applicable, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Engineer under this Contract.
 4. If the Engineer receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Engineer's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

4.2 Required Coverage

- A. Commercial General Liability: The Engineer must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- B. Professional Liability: The Engineer must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose acts, mistakes, errors and omissions the Engineer is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Engineer must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.
- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of this contract, the Engineer must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on the Engineer's owned, hired, and non-owned vehicles assigned to or used in the performance of the Engineer's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- D. Workers Compensation Insurance: Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and

state statutes applicable to Contractor's employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. If the Contractor is a sole proprietor or a single member limited liability company with no employees and has elected not to purchase Workers' Compensation Insurance; a completed and signed Workers' Compensation Waiver Form will substitute for the insurance requirement.

5.0 SOFTWARE LICENSES

If the Engineer provides to the City any software licenses, the following provisions apply:

5.1 Source Code Availability

- A. The Engineer must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
 - 1. The Engineer becomes insolvent; or
 - 2. The Engineer ceases to conduct business; or
 - 3. The Engineer makes a general assignment for the benefit of creditors;
or
 - 4. A petition is filed in Bankruptcy by or against the Engineer.
- B. Use of the Source Code may not be subject to any greater restrictions than use of the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified will remain subject to the restrictions of Section 5.1(B).

5.2 Proprietary Protection

- A. The City agrees that if the Engineer informs the City that the Software is confidential information or is a trade secret of the Engineer; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Engineer shall not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.
- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of

Court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Engineer's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Engineer must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 Non-Infringement

The Engineer warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Engineer will defend, at the Engineer's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Engineer's opinion the Software is likely to become the subject of a claim of infringement, the Engineer will, at its option and its expense:

1. Procure for the City the right to continue using the Software; or
2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or –
3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

5.4 Third Party License

The Engineer shall sublicense to the City any and all third- party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third-party license, the Engineer shall be responsible to negotiate acceptable terms or to supply Software from another source with terms acceptable to the City. The City's acceptance of the third-party license terms will not be unreasonably withheld.

6.0 SEVERABILITY AND AUTHORITY

6.1 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 Authority

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

7.0 Request for Taxpayer I.D. Number & Certification I.R.S. W-9 Form

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.irs.gov under its forms section.

8.0 DONATIONS

No donations allowed. To avoid the appearance of impropriety, Contractor shall not make any donation to the City, of any goods or services during the term of this Agreement, unless it has specifically been approved by the City Manager or designee.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this ____ day of October, 2023.

CITY OF SCOTTSDALE
an Arizona Municipal Corporation

ATTEST:

David D. Ortega
Mayor

Ben Lane
City Clerk

ENGINEER:

By: _____

Its: _____

RECOMMENDED:

Gary P. Mascaro
Aviation Director

George Woods
Risk Management Director

Chris Read
Contract Administrator

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

SAMPLE — Use Most Current Form from Acord

CONTACT NAME:

PHONE (A/C. No. Ext):

Fax (A/C. No):

E-MAIL

ADDRESS:

PRODUCER

CUSTOMER ID#:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

THIS MUST MATCH EXACTLY TO THE CONTRACTOR NAME AND INFORMATION AS LISTED IN THE CONTRACT OR SCOPE OF WORK.

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT. TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY						EACH OCCURENCE	\$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> CCUR	<input type="checkbox"/>	<input type="checkbox"/>				DAMAGE TO RENTED PREMISES (Ea Occurrence)	\$
							MEDICAL EXP (Any One Person)	\$
							PERSONAL & ADV INSURY	\$
							GENERAL AGGREGATE	\$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO	<input type="checkbox"/>	<input type="checkbox"/>				BODILY INJURY (Per person))	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per Accident)	\$
	<input type="checkbox"/> HIRED AUTOS						EACH OCCURENCE	\$
	<input type="checkbox"/> NON-OWNED AUTOS						AGGREGATE	\$
	Umbrella Liab <input type="checkbox"/> OCC							\$
	Excess Liab <input type="checkbox"/> CLAIMS MADE	<input type="checkbox"/>	<input type="checkbox"/>					\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N <input type="checkbox"/>	N/A	<input type="checkbox"/>				WC STATU-TORY LIMITS	OTHER
	(Mandatory in NH) If yes, describe under SPECIAL PROVISIONS BELOW:						EL EACH ACCIDENT	\$
							EL DISEASE . POLICY LIMIT	\$
							EL DISEASE . EA EMPLOYEE	\$

Description of Operations/Locations/Vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability and Auto Liability. All cited insurance shall be primary coverage and waive rights of recovery (subrogation), including Workers Compensation, against City of Scottsdale. Insert Contract # or Purchase Order #

CERTIFICATE HOLDER

City of Scottsdale
Attn: (City of Scottsdale Buyer or Bid & Contract Staff Name)
9191 E. San Salvador Drive
Scottsdale, AZ 85258

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**EXHIBIT A
PROJECT DESCRIPTIONS
SCOPE OF WORK**

**EXHIBIT B
FEE SCHEDULE**

ATTACHMENT A SCOPE OF WORK

Project	Total
Airport Drainage Master Plan Update (AK02)	\$ 350,000
Airport Master Plan Update (AK01)	\$ 700,000
Airport Security Gates (TEMP2939)	\$ 535,000
Airside Ramp Lighting LED Fixture Replacement (AJ01)	\$ 50,000
Aviation Annual Pavement Preservation (AI01)	\$ 200,000
Design Vehicle Parking Structure (TEMP2943)	\$ 900,000
Kilo Ramp Rehabilitation (AG02)	\$ 3,110,950
New Exit Taxiway B9 - Design/Construct (TEMP2934)	\$ 1,300,113
New Exit Taxiways B2 and B15 - Design/Construct (AK04)	\$ 1,810,630
Reconstruct Atlantic Main Apron - Design/Construct (TEMP2941)	\$ 3,125,000
Reconstruct Atlantic South Apron - Design/Construct (TEMP2681-F)	\$ 2,022,500
Reconstruct Gate 1 Taxilane and Taxiway Alpha By-Pass (AK05)	\$ 837,909
Rehabilitate Airport Drive (AJ02)	\$ 933,040
Rehabilitate Runway 03/21 Pavement - Design/Construct (AK03)	\$ 674,000
Rehabilitate Taxiway A and Connectors A1-A10 Pavement - Design/Construct (TEMP2942)	\$ 4,838,770
Rehabilitate Taxiway B and Connector Taxiway Pavement - Design/Construct (TEMP2940)	\$ 4,650,695
Rehabilitate Taxiways A11, A12 Pavement - Design/Construct (TEMP2937)	\$ 3,365,909
Construct New Apron Connector	\$ 600,000
Construct Vehicle Parking Structure	\$ 5,000,000

Exhibit B

MEAD & HUNT, Inc.

Standard Billing Rate Schedule

City of Scottsdale, Arizona

Effective October 10, 2023

Standard Billing Rates

Clerical.....	\$85.50 / hour
Interior Designer, Technical Editor	\$122.00 / hour
Accounting, Administrative Assistant.....	\$107.00 / hour
Technician I, Technical Writer	\$107.00 / hour
Technician II, Surveyor - Instrument Person	\$123.50 / hour
Technician III	\$143.00 / hour
Technician IV	\$150.50 / hour
Senior Technician	\$157.00 / hour
Engineer I, Scientist I, Architect I, Planner I	\$139.00 / hour
Engineer II, Scientist II, Architect II, Planner II.....	\$144.00 / hour
Engineer III, Scientist III, Architect III, Planner III	\$150.50 / hour
Senior Engineer, Scientist, Architect, Planner or Economist	\$156.50 / hour
Project Engineer, Scientist, Architect or Planner.....	\$163.50 / hour
Senior Project Civil Engineer, Construction Manager or Planner	\$187.50 / hour
Senior Project Electrical, Mechanical, Structural Engineer or Architect.....	\$189.50 / hour
Senior Associate.....	\$238.50 / hour

Expenses

Out-Of-Pocket Direct Job Expenses..... At cost
such as reproductions, subconsultants / contractors, and others.

Travel Expense

Company or Personal Car Mileage In accordance with State of Arizona Travel Policy
Air and Surface Transportation..... In accordance with State of Arizona Travel Policy
Lodging and Sustenance..... In accordance with State of Arizona Travel Policy

Billing & Payment

Invoicing is on a monthly basis for work performed.

EXHIBIT C



**FAA
Airports**

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

(Issued on May 24, 2023)

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CURRENT CHANGES

Item	Change
Editorial update made to the January 23, 2023 version (effective May 24, 2023)	The link on page 35 was updated to reflect changes to the Department of Labor website.
Editorial updates made to the November 17, 2022 version (effective January 23, 2023)	Pages 7, 16, 19, 20, 25, and 42 of Appendix A were edited to correct grammatical mistakes, update internal document links, and correct the name of the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

CONTRACT GUIDANCE

1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates federal contract provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program (AIP). The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) **While this document is intended to assist Sponsors with their compliance efforts, it does not alter or modify the terms of any applicable statute or regulation, is not a substitute for reading the regulation and the applicability matrix, and each corresponding document section, nor does it constitute legal advice.**
- 3) Federal laws and regulations require that a Sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 4) For purposes of remaining compliant with its obligations, a Sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 5) Terminology:
 - a. The term **“Sponsor”** is used in this document to mean either an obligated Sponsor on a project that is not federally funded, or a Sponsor on an AIP funded project. A Sponsor is a “recipient” of federal assistance when receiving AIP or other FAA grant funds.
 - b. The term **“Owner”** of a public use airport is generally used in the solicitation or contract clauses because of its common use in public contracts. An Owner becomes an obligated Sponsor upon acceptance of the AIP grant assurances associated with current or prior AIP grant funded projects.
 - c. For purposes of determining requirements for contract provisions, the term **“contract”** includes professional services, and subcontracts and supplier contracts such as purchase orders.
 - d. The term **“contractor”** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
 - e. The term **“bid”** is understood to mean a bid, an offer, or a proposal.
 - f. The term **“applicant”** is understood to mean the following in different contexts:
 - i. For the Equal Employment Opportunity (EEO) clause, the term **“applicant”** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).

- ii. For all other clauses, the term “**applicant**” means a bidder, offeror, or proposer for a contract.

2. Sponsor Actions

In general, Sponsor’s actions consistent with obligations:

- 1) Include in its procurements the provisions that are applicable to its project.
- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A Sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 3) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a Sponsor must use.
 - (a) Mandatory Language – Whenever a clause or provision has mandatory text, the Sponsor must incorporate the text of the provision without change, except where specific adaptive input is necessary (e.g., such as the Sponsor’s name).
 - (b) No Mandatory Language – For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some Sponsors may have standard procurement language that is equivalent to those federal provisions. In these cases, Sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 4) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g., subcontract or sub-agreement).
- 5) Require the contractor (including all subcontractors) to incorporate the requirements of these contract provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services.
- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor, or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

3. Typical Procurement Steps

The typical procurement steps in a project are:

- 1) Solicitation, Request for Bids, or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically

include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications, and related project documents.

- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates, reviews, and evaluates all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.
- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement with bidder to perform services or provide goods.

4. Applicability Matrix for Contract Provisions

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.

Meaning of cell values in table below:

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
Breach of Contract	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) Construction	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) Equipment/Building Projects	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
Disadvantaged Business Enterprise	\$ 250,000	REQD	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Domestic Preferences for Procurements	\$0	NIS	REQD	REQD	REQD	REQD	Info
Equal Employment Opportunity	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD	Info
Foreign Trade Restriction	\$ 0	REQD	REQD	REQD	REQD	REQD	n/a
Lobbying Federal Employees	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
Occupational Safety and Health Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	\$0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition of Segregated Facilities	\$0	NIS	Limited	REQD	Limited	Limited	n/a
Recovered Materials	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
Right to Inventions	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Seismic Safety	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
Tax Delinquency and Felony Conviction	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Termination of Contract	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Veteran’s Preference	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport Sponsors must include the appropriate Civil Rights – Title VI language in their solicitation notices when they seek proposals for concessions.
3. For ACDBE agreements, use the column for *Non-AIP Contracts*.

APPENDIX A – CONTRACT PROVISIONS

A1 ACCESS TO RECORDS AND REPORTS

A1.1 SOURCE

2 CFR § 200.334

2 CFR § 200.337

FAA Order 5100.38

A1.2 APPLICABILITY

2 CFR § 200.334 requires a Sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.337 establishes that Sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the Sponsor's contracts and subcontracts of AIP funded projects.

Contract Types – The Sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the Sponsor prefers to use different language, the Sponsor's language must fully satisfy the requirements of 2 CFR §§ 200.334 and 200.337.

A1.3 MODEL CONTRACT CLAUSE

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

A2 AFFIRMATIVE ACTION REQUIREMENT

A2.1 SOURCE

41 CFR Part 60-4

Executive Order 11246

A2.2 APPLICABILITY

Minority Participation. Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a Sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A Sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

Female Participation. Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

Contract Types –

Construction – The Sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

Equipment – The Sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g., firefighting and snow removal vehicles).

Professional Services – The Sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g., noise, environmental, etc.).

Property/Land – The Sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – MANDATORY TEXT. The Sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

A2.3 MANDATORY SOLICITATION CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade:	5.8%
Goals for female participation in each trade:	6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is A

A3 BREACH OF CONTRACT TERMS

A3.1 SOURCE

2 CFR Part 200, Appendix II(A)

A3.2 APPLICABILITY

This provision requires Sponsors to incorporate administrative, contractual or legal remedies in the event that a contractor violates or breaches contract terms. The Sponsor must also include appropriate sanctions and penalties.

Contract Types – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is \$250,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200. Select either “contractor” or “consultant” as applicable.

A3.3 MODEL CONTRACT CLAUSE

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the [*Consultant*] or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [*Consultant*] written notice that describes the nature of the breach and corrective actions the [*Consultant*] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the [*Consultant*] must correct the breach. Owner may proceed with termination of the contract if the [*Consultant*] fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A4 BUY AMERICAN PREFERENCE

A4.1 SOURCE

Title 49 USC § 50101

Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*

Bipartisan Infrastructure Law (Pub. L. No. 117-58), Build America, Buy America (BABA)

A4.2 APPLICABILITY

The Buy American Preference incorporates statutory requirements and policies outlined in the in 49 USC § 50101, Executive Order 14005, and BABA.

Section 50101 of 49 USC requires that all steel and manufactured goods used on AIP projects be produced in the United States. This section also gives the FAA the ability to issue a waiver to a Sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A Sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest.
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States.
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Executive Order 14005 advances the Administration's priority to use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The Order directs, to the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting in order to identify American companies that are able to produce goods, products, and materials in the United States that meet Federal procurement needs, prior to consideration of using non-domestic products.

The Bipartisan Infrastructure Law, Build America, Buy America (BABA) Act strengthens Made in America Laws and bolsters America's industrial base, protects national security, and supports high-paying jobs. Under BABA, iron, steel and certain construction materials are required to be 100% produced in the United States.

Under the Bipartisan Infrastructure Law (Pub. L. No. 117-58) BABA three waivers are available for iron and steel, manufactured products, and construction materials when a Federal agency finds that –

- 1) Applying the domestic content procurement preference would be inconsistent with the public interest (a "public interest waiver");

- 2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- 3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

BABA defines construction materials, items that are or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber or drywall.

Items that consist of two or more of the aforementioned materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Buy America Preference requirements flow down from the Sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to temporary equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

Required Documentation

The FAA Buy American Requests. All applications (requests) for an FAA Buy American Preference Waiver includes, at minimum, a completed Content Percentage Worksheet and Final Assembly Questionnaire. Additional information may be requested from the applicant by the FAA. Airport Sponsors, consultants, construction contractors, or equipment manufacturers are responsible for completing and submitting waiver applications. The FAA is unable to make a determination on waiver requests with incomplete information. Sponsors must confirm with the bidder or offeror to assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action. All FAA waivers forms are available from the FAA Buy American Requirements webpage.

Proprietary Confidentiality. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential. Proprietary manufacturing and design information submitted to the Federal Aviation Administration for the purposes of receiving a Buy American Waiver shall not be disclosed outside the FAA. The FAA will provide a written notification to the Airport Sponsor, manufacturer(s), contractor(s) or supplier(s) when a waiver determination is complete.

Timing of Waiver Requests. Sponsors desiring a Type 2 waiver should submit their waiver request, with justification, *before* issuing a solicitation for bids or a request for proposal for a project.

The Sponsor must submit a Type 2, Type 3, or Type 4 waiver request *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

The Buy American Notice of Determination (NOD) Process. The FAA Reauthorization Act of 2018 requires that all approved waivers must be posted to the FAA’s website and remain posted for public comment for 10 days, before becoming effective. All FAA waivers must complete the NOD process. Sponsors are encouraged to wait until approved waivers become effective before executing AIP projects.

Buy American Conformance Lists. The FAA Office of Airports maintains listings of projects and products that have received a waiver from the Buy American Preference requirements for project specific and nationwide use. Each of these conformance lists is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the FAA Nationwide Buy American Conformance list do not require additional submittal of domestic content information. Nationwide waivers expire five years from the date issued, unless revoked earlier by the FAA.

Facility Waiver Requests. For construction of a facility, the Sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment – The Sponsor must meet the Buy American Preference requirements of 49 USC § 50101 and BABA for all AIP funded projects that require materials that are or consists primarily of iron, steel or manufactured goods and construction materials.

Professional Services – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the Sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

Use of Provisions – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully comply with 49 USC § 50101 and BABA.

There are two types of FAA Buy American certifications. The Sponsor must incorporate the appropriate certifications of compliance with FAA Buy American Preference in the solicitation:

- **Construction Projects** involving the replacement, rehabilitation, reconstruction of airfield surfaces such as on runways, taxiways, taxilanes, aprons, roadways, parking lots, etc. – Insert the Certificate of compliance to FAA Buy American Preference based on Construction Projects.

Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects

- **Equipment and Buildings Projects** involving and including the acquisition of equipment such as snow removal equipment, navigational aids, wind cones, and the construction of buildings such as hangars, terminal development, lighting vaults, aircraft rescue & firefighting buildings, etc. - Insert the Certificate of Compliance with FAA Buy American Preference Based on Equipment/Building Projects.

A4.3 MODEL SOLICITATION CLAUSES

A4.3.1 Certification of Compliance with FAA Buy American Preference Statement

FAA BUY AMERICAN PREFERENCE

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,¹ U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA’s Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the U.S.

¹ Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

A4.3.2 Certification of Compliance with FAA Buy American Preference – Construction Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
 - b) To faithfully comply with providing U.S. domestic products.
 - c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
 - d) Certify that all construction materials used in the project are manufactured in the U.S.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A4.3.3 Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
 - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
 - c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
 - b) To faithfully comply with providing U.S. domestic product.
 - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
 - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
 - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

- d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A5 CIVIL RIGHTS - GENERAL

A5.1 SOURCE

49 USC § 47123

A5.2 APPLICABILITY

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

Contract Types – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all Sponsor contracts *regardless* of funding source.

Use of Provision – MANDATORY TEXT. Each contract must include two civil rights provisions. The first general clause must be included in all contracts, lease agreements, or transfer agreements. An additional specific provision must be included; the applicable text is based on whether the contract is a general contract or whether the contract is a lease or transfer agreement. The Sponsor must incorporate the text of the appropriate general clause and specific clause without modification into the contract, lease, or transfer agreement.

The required clauses for each type of contact are summarized in the table below:

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clause that is used for all contracts, lease agreements and transfer agreements	Every contract or agreement regardless of funding source.	A5.3.1
Clause that is used for general contract agreements	This applies to all contracts that do not involve property agreements. It applies to all contracts not covered by A5.3.3 regardless of funding source.	A5.3.2
Clause that is used for lease agreements and transfer agreements	This applies to all property agreements such leases of concession space in a terminal and leases where a physical portion of the airport is transferred for use. It applies to all contracts not covered by A5.3.2 regardless of funding source.	A5.3.3

A5.3 MANDATORY CONTRACT CLAUSES

A5.3.1 General Clause that is used for Contracts, Lease Agreements, and Transfer Agreements

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A5.3.2 Specific Clause that is used for General Contract Agreements

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation [Order DOT 1050.2](#), Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the Sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice – <ul style="list-style-type: none">Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination ClausesAssurance 30(d) of the Airport Sponsors Assurances	<ol style="list-style-type: none">All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; andAll Sponsor proposals for negotiated agreements regardless of funding source.	A6.3.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Clauses for Compliance with Nondiscrimination Requirements</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(1) of the Airport Sponsor Assurances 	<p>Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence).</p> <p>It has been determined that service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements must include this clause.</p>	<p>A6.4.2</p>
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30e.3 of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.</p> <p>This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract.</p>	<p>A6.4.3</p>
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(a) of the Airport Sponsor Assurances 	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility. It applies to agreements not covered by A6.4.4.</p>	<p>A6.4.4</p>

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(4)(b) of the Airport Sponsor Assurances 	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal not covered by A6.4.3.</p>	<p>A6.4.5</p>
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses Assurance 30(e)(2) of the Airport Sponsor Assurances 	<p>Insert this list in every contract or agreement, unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities, which is a rare occurrence.</p> <p>This list can only be omitted if the FAA has determined that the contractor or company is already subject to substantively identical nondiscrimination requirements.</p>	<p>A6.4.1</p> <p>List must be included in all applicable contracts.</p>

A6.3 MANDATORY SOLICITATION CLAUSE

The Sponsor must include this clause in:

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All Sponsor proposals for negotiated agreements **regardless of funding source.**

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

A6.4 MANDATORY CONTRACT CLAUSES

A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Insert this list in every contract or agreement, unless the Sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements, which is a rare occurrence.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq*) (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 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (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);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must

take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

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

A6.4.2 Nondiscrimination Requirements/Title VI Clauses for Compliance

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or

refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.3 Title VI Clauses for Deeds Transferring United States Property

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Sponsor.

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances:

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

A6.4.4 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee,

licensee, lessee, permittee, etc.) 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.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground 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, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities

thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A7 CLEAN AIR AND WATER POLLUTION CONTROL

A7.1 SOURCE

2 CFR Part 200, Appendix II(G)

42 USC § 7401, et seq

33 USC § 1251, et seq

A7.2 APPLICABILITY

Contract Types – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

A7.3 MODEL CONTRACT CLAUSE

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

A8.1 SOURCE

2 CFR Part 200, Appendix II(E)

2 CFR § 5.5(b)

40 USC § 3702

40 USC § 3704

A8.2 APPLICABILITY

Contract Work Hours and Safety Standards Act Requirements (CWHSSA) (40 USC §§ 3702 & 3704) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

Contract Types –

Construction – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

Equipment – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

Property – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

Use of Provision – MANDATORY TEXT. Sponsors must incorporate this text without modification.

A8.3 MANDATORY CONTRACT CLAUSE

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

A9 COPELAND “ANTI-KICKBACK” ACT

A9.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Parts 3 and 5

A9.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 USC § 874 and 40 USC § 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Contract Types –

Construction – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles).

Professional Services –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

Property –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 5.

A9.3 MODEL CONTRACT CLAUSE

COPELAND “ANTI-KICKBACK” ACT

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A10 DAVIS-BACON REQUIREMENTS

A10.1 SOURCE

2 CFR Part 200, Appendix II(D)

29 CFR Part 5

49 USC § 47112(b)

40 USC §§ 3141-3144, 3146, and 3147

A10.2 APPLICABILITY

The Davis-Bacon Act (40 USC §§ 3141-3144, 3146, and 3147) ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Contract Types –

Construction – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

Equipment – This provision applies to all equipment installation projects (e.g., electrical vault improvements) financed under the AIP that exceed \$ 2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g., SRE and ARFF vehicles)

Professional Services – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

Property – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The Sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Fencing Projects – Fencing projects that exceed \$2,000 must include this provision.

Use of Provision – MANDATORY TEXT. 29 CFR part 5 establishes specific language a Sponsor must use. The Sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The Sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

A10.3 MANDATORY CONTRACT CLAUSE

DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits,

apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

A11 DEBARMENT AND SUSPENSION

A11.1 SOURCE

2 CFR Part 180 (Subpart B)

2 CFR Part 200, Appendix II(H)

2 CFR Part 1200

DOT Order 4200.5

Executive Orders 12549 and 12689

A11.2 APPLICABILITY

The Sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally-assisted projects. The Sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

Contract Types – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180 (Subpart B). AIP funded contracts are non-procurement transactions, as defined by 2 CFR § 180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

Use of Provision – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, Sponsor may substitute “bidder/offeror” with “consultant.”

A11.3 MODEL BID/PROPOSAL CERTIFICATION CLAUSES

A11.3.1 Bidder or Offeror Certification

CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

A11.3.2 Lower Tier Contract Certification

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A12 DISADVANTAGED BUSINESS ENTERPRISE

A12.1 SOURCE

49 CFR Part 26

A12.2 APPLICABILITY

A Sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (49 CFR § 26.21). The approved DBE program will identify a 3-year overall program goal that the Sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (49 CFR § 26.45).

Contract Types – Sponsors with a DBE program on file with the FAA must include the following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

Use of Provision –

1. *Solicitations with a DBE Contract Goal* – No mandatory language provided. 49 CFR §26.53 requires a Sponsor’s solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. The Sponsor may require the contractor’s submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race/Gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy requirements for a Sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Assurance for Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED.** Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race/gender neutral means (i.e., no DBE contract goal). Section 26.13 of 49 CFR establishes mandatory language for contractor assurance. The Sponsor must not modify the language. Part 26 of 49 CFR requires Sponsors ensure this clause also flows down into subcontracts (i.e., must be included verbatim in subcontracts).

4. *Prompt Payment for Contracts Covered by DBE Program* – No mandatory language provided. Section 26.29 of 49 CFR requires Sponsors to include a contract clause requiring prompt payment to subcontractors no later than thirty (30) days after the prime contractor receives payment from the Sponsor. The requirement applies to all subcontractors, not just DBEs. The prompt payment language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, such as a specific clause identified in the Sponsor’s approved DBE program plan, the Sponsor’s revised language must fully satisfy these requirements.
5. *Termination of DBE Subcontractors on Contracts with a DBE Contract Goal* - No mandatory language provided. Section 26.53 of 49 CFR prohibits unauthorized removal or replacement of DBE firms listed in response to a solicitation that had a DBE contract goal and sets forth the specific enforcement mechanism recipients must include in prime contracts. The language of A12.3.3 is acceptable to the FAA in meeting the intent of this requirement.
6. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

A12.3 REQUIRED PROVISIONS

A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)

Bid Information Submitted as a matter of responsiveness:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bid Information submitted as a matter of responsibility:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

A12.3.2 Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [City of Scottsdale] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)

Contract Assurance (49 CFR § 26.13; mandatory text provided) –

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the City of Scottsdale. The prime contractor agrees further to return retainage payments to each subcontractor within 30 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 Scottsdale. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –

The prime contractor must not terminate a DBE subcontractor listed in response to [include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears] (or an approved substitute DBE firm) without prior written consent of the City of Scottsdale. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent [Name of Recipient]. Unless [Name of Recipient] consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[Name of Recipient] may provide such written consent only if [Name of Recipient] agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to [Name of Recipient] its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to [Name of Recipient], of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [Name of Recipient] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [Name of Recipient] may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

A13 DISTRACTED DRIVING

A13.1 SOURCE

Executive Order 13513

DOT Order 3902.10

A13.2 APPLICABILITY

The FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

Contract Types – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR § 200.320 (currently set at \$10,000).

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements.

A13.3 MODEL CONTRACT CLAUSE

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

A14 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A14.1 SOURCE

2 CFR § 200, Appendix II(K)

2 CFR § 200.216

A14.2 APPLICABILITY

Sponsors and subgrant recipients are prohibited from using AIP grant funds to:

- a) Procure or obtain,
- b) Extend or renew a contract to procure or obtain, or
- c) Enter into a contract to procure or obtain certain covered telecommunications equipment.

These restrictions apply to telecommunication 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 equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of either).

Contract Types – The Sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

A14.3 MODEL CERTIFICATION CLAUSE

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

A15 DRUG FREE WORKPLACE REQUIREMENTS

A15.1 SOURCE

49 CFR Part 32

Drug-Free Workplace Act of 1988 (41 USC § 8101-8106, as amended)

A15.2 APPLICABILITY

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does **not** apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

Contract Types – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the Sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

Use of Provision – No mandatory or recommended text provided because the requirements do not extend beyond the Sponsor level.

A15.3 CONTRACT CLAUSE

None.

A16 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A16.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

A16.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally-assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types –

Construction – The Sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment – The Sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g., electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g., ARFF and SRE vehicles).

Professional Services – The Sponsor must include contract and specification language into all professional service agreements as required above.

Property – The Sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

Use of Provision – MANDATORY TEXT. 41 CFR § 60-1.4 provides the mandatory **contract** language. 41 CFR § 60-4.3 provides the mandatory **specification** language. The Sponsor must incorporate these clauses without modification.

A16.3 MANDATORY CONTRACT CLAUSE

A16.3.1 EEO Contract Clause

EQUAL OPPORTUNITY CLAUSE

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in

whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

A16.3.2 EEO Specification

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other

training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A17.1 SOURCE

29 USC § 201, et seq

2 CFR § 200.430

A17.2 APPLICABILITY

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

Contract Types – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the Sponsor’s agreement with a professional services firm must include the FLSA provision.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 USC § 201, et seq. The Sponsor must select *contractor* or *consultant*, as appropriate for the contract.

A17.3 MODEL SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A18.1 SOURCE

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR Part 200, Appendix II(I)

49 CFR Part 20, Appendix A

A18.2 APPLICABILITY

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for 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 another award covered by 31 USC § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Contract Types – The Sponsor must incorporate this provision into all contracts exceeding \$100,000.

Use of Provision – MANDATORY TEXT. Appendix A to 49 CFR Part 20 prescribes language the Sponsor must use. The Sponsor must incorporate this provision without modification.

A18.3 MANDATORY CERTIFICATION CLAUSE

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an 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 any Federal contract, grant, loan, or cooperative agreement.
- (2) 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A19 PROHIBITION OF SEGREGATED FACILITIES

A19.1 SOURCE

2 CFR Part 200, Appendix II(C)

41 CFR Part 60-1

A19.2 APPLICABILITY

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Contract Types – AIP Sponsors must incorporate the Prohibition of Segregated Facilities clause (41 CFR § 60-1.8) in any contract containing the Equal Employment Opportunity clause of 41 CFR § 60-1.4. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

Construction – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

Professional Services – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include the installation of noise monitoring equipment.

Property/Land – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60-1. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 41 CFR Part 60-1.

A19.3 MODEL CONTRACT CLAUSE

PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The

Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.1 SOURCE

29 CFR Part 1910

A20.2 APPLICABILITY

Contract Types – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 29 CFR Part 1910.

A20.3 MODEL CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

A21 PROCUREMENT OF RECOVERED MATERIALS

A21.1 SOURCE

2 CFR § 200.323

2 CFR Part 200, Appendix II(J)

40 CFR Part 247

42 USC § 6901, et seq (Resource Conservation and Recovery Act (RCRA))

A21.2 APPLICABILITY

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the Sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Contract Types – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

Construction and Equipment – Include this provision in all construction and equipment projects.

Professional Services and Property – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 2 CFR Part 200.

A21.3 MODEL CONTRACT CLAUSE

PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;
or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

A22 RIGHT TO INVENTIONS

A22.1 SOURCE

2 CFR Part 200, Appendix II(F)

37 CFR Part 401

A22.2 APPLICABILITY

Contract Types – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

A22.3 MODEL CONTRACT CLAUSE

RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

A23 SEISMIC SAFETY

A23.1 SOURCE

49 CFR Part 41

A23.2 APPLICABILITY

Contract Types – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services– Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Construction – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Equipment – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

Land – This provision will not typically apply to a property/land project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

A23.3 MODEL CONTRACT CLAUSE

A23.3.1 Professional Service Agreements for Design

SEISMIC SAFETY

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

A23.3.2 Construction Contracts

SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction

Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

A24 TAX DELINQUENCY AND FELONY CONVICTIONS

A24.1 SOURCE

Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

A24.2 APPLICABILITY

The Sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contract Types – This provision applies to all contracts funded in whole or part with AIP.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of DOT Order 4200.6.

A24.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is (✓) is not (✓) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (✓) is not (✓) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify

the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

A25 TERMINATION OF CONTRACT

A25.1 SOURCE

2 CFR Part 200, Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

A25.2 APPLICABILITY

Contract Types – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the Sponsor. The provision must address the manner (i.e., notice, opportunity to cure, and effective date) by which the Sponsor’s contract will be affected and the basis for settlement (e.g., incurred expenses, completed work, profit, etc.).

Use of Provision –

Termination for Convenience – No mandatory text provided. The Sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR § 200.

Termination for Cause – No mandatory text provided. The Sponsor must include a clause for termination for cause (includes default). The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR Part 200, Appendix II.

Equipment, Professional Services, and Property – No mandatory text provided. The Sponsor may use their established clause language provided that it adequately addresses the intent of 2 CFR Part 200 Appendix II(B), which addresses termination for cause and for convenience.

A25.3 MODEL CONTRACT CLAUSES

A25.3.1 Termination for Convenience

TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.

4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A25.3.2 Termination for Default

TERMINATION FOR CAUSE (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

TERMINATION FOR CAUSE (EQUIPMENT)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR CAUSE (PROFESSIONAL SERVICES)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project; or
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
 2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 3. Suspends the project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A26 TRADE RESTRICTION CERTIFICATION

A26.1 SOURCE

49 USC § 50104

49 CFR Part 30

A26.2 APPLICABILITY

Unless waived by the Secretary of Transportation, Sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

Contract Types – The trade restriction certification and clause apply to all AIP funded projects.

Use of Provision – MANDATORY TEXT. 49 CFR Part 30 prescribes the language for this model clause. The Sponsor must include this certification language in all contracts and subcontracts without modification.

A26.3 MANDATORY SOLICITATION CLAUSE

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A27 VETERAN'S PREFERENCE

A27.1 SOURCE

49 USC § 47112(c)

A27.2 APPLICABILITY

Contract Types – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans [as defined under § 47112(c)] only when they are readily available and qualified to accomplish the work required by the project.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor's language must fully satisfy the requirements of 49 USC § 47112.

A27.3 MODEL CONTRACT CLAUSE

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

A28 DOMESTIC PREFERENCES FOR PROCUREMENTS

A28.1 SOURCE

2 CFR § 200.322

2 CFR Part 200, Appendix II(L)

A28.2 APPLICABILITY

To the greatest extent “practicable,” Sponsors must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S., including, but not limited to iron, aluminum, steel, cement, or other manufactured products.

Contract Types – Must be included in all subawards, including all contracts and purchase orders for work or products under the grant.

Use of Provision – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the Sponsor uses different language, the Sponsor’s language must fully satisfy the requirements of 2 CFR § 200.322.

A28.3 MODEL CERTIFICATION CLAUSE

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.



COMMISSION ACTION REPORT

Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12921 authorizing the award of contract no. IFB – 052023-091 with J. Banicki Construction, Inc. in the amount of \$501,745.50 to construct Taxiway A4 improvements at Scottsdale Airport.

Agenda Item No.: 7

Meeting Date: 09/20/23

Staff Contact: Chris Read,
Assistant Aviation Director -
Operations

Phone: (480) 312-2674

ACTION

The Airport Advisory Commission considers possible action to recommend to City Council Adoption of Resolution No. 12921 authorizing the award of contract no. IFB – 052023-091 with J. Banicki Construction, Inc. in the amount of \$501,745.50 to construct Taxiway A4 improvements at Scottsdale Airport.

PURPOSE

This contract will provide the services necessary to rehabilitate taxiway A4 at the City's Airport.

KEY CONSIDERATIONS

- Taxiway A4 is a short taxiway between Taxiway A and Runway 03/21. See project area map.
- The taxiway pavement is exhibiting moderate cracking and raveling.
- The rehabilitation will involve milling off the pavement, repaving in-kind and finally replacing the markings.
- This Project will be funded with a grant from the FAA that will cover 91.06% (\$456,889.45). The Arizona Department of Transportation will also provide a grant that will cover 4.47% (\$22,428.03). Finally, the Aviation Enterprise Fund will provide a match of 4.47% (\$22,428.02)
- If the contract is awarded as scheduled, the work associated with this project will begin in late October/early November.
- The project will take 9 working days to complete.
- All of this work will take place during the overnight hours while the runway is closed.
- The Aviation Department worked with the City's Purchasing Department to ensure that the project was bid in accordance with Federal, State and local procurement regulations/codes.

Attachment(s): 1. Draft Resolution No. 12921
2. Draft Contract No. IFB-052023-091
3. Project area map

Action Taken:

RESOLUTION NO. 12921

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA AUTHORIZING: 1) CONSTRUCTION BID AWARD NO. IFB-052023-091 WITH J. BANICKI CONSTRUCTION, INC. FOR THE AIRPORT TAXIWAY A4 REBILITATION PROJECT.

WHEREAS, the City of Scottsdale desires to construct Taxiway A4 improvements at Scottsdale airport; and

WHEREAS, J. Banicki Construction., Inc., has offered to provide to the City the requisite construction services necessary for construction of the airport perimeter road improvements project; and

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. That the Mayor of the City of Scottsdale is hereby authorized and directed to execute Construction Bid Award No. IFB 052023-091, in the amount of five hundred one thousand seven hundred forty-five dollars and fifty cents (\$501,745.50) between the City and J. Banicki Construction., Inc. for construction services in connection with the airport taxiway A rehabilitation project.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 10th day of October 2023.

ATTEST:

CITY OF SCOTTSDALE,
an Arizona municipal corporation

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney



**CITY OF SCOTTSDALE
CONSTRUCTION CONTRACT**

BID NUMBER: IFB-052023-091

PROJECT NUMBER: AI02

PROJECT NAME: Taxiway A4 Rehabilitation Project

THIS CONTRACT, entered into this _____ day of October 2023, between J. Banicki Construction, Inc., an Arizona Corporation, herein after designated "Contractor" and the City of Scottsdale, County of Maricopa, and State of Arizona, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, the "City".

WITNESSETH:

The Contractor, in consideration of the sum to be paid Contractor by the City, in the manner and at the time provided, and of the other covenants and agreements contained in this Contract and under the penalties expressed in the bonds provided, agrees, for itself, its heirs, executors, administrators, successors, and assigns as follows:

SECTION 1 - SCOPE OF WORK: The Contractor will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for Bid No. IFB-052023-091, Project No. (AI02) and to completely and totally construct the project and install the material in the project for the City, in a good workmanlike and substantial manner to the satisfaction of the City and under the oversight of the City, or other properly authorized agents and strictly in accordance with the Plans and Specifications prepared for the City, and with any modifications of the Plans and Specifications and other documents that may be made by the City or other properly authorized agents, as provided in this Contract.

The Contractor agrees that this Contract, as awarded, is for Bid No. IFB-052023-091, Project No. AI02, SOLICITATION title Taxiway A4 Rehabilitation Project in the amount of \$501,745.50 and understands that payment for the total work will be made on the basis of the indicated amount(s), as bid in the Bid Form.

SECTION 2 - CONTRACT DOCUMENTS: The Contract Documents consist of the Invitation for Bid, Bid No. IFB-052023-091, Plans, Standard Specifications and Details, Project Manuals, General and Special Provisions, Addenda, if any, and Contractor's Bid, as accepted by the Mayor and Council. Performance Bond, Payment Bond, Certificates of Insurance, and Change Orders, if any, are by this reference made a part of this Contract.

BID NUMBER: IFB-052023-091

PROJECT NUMBER: AI02

PROJECT NAME: Taxiway A4 Rehabilitation Project

SECTION 3 - TIME OF COMPLETION: The Contractor further covenants and agrees at its own proper cost and expense, to do all work as required for the construction of the improvements and to completely construct the project and install the materials, as called for by the Contract Documents free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the bid documents.

SECTION 4 - PAYMENTS: In consideration of the faithful performance of the work as stated in the Contract Documents, which have been made a part of this Contract by reference, and in accordance with the directions of the City, through its Contract Administrator or other properly authorized agent and to City's satisfaction, the City agrees to pay the Contractor the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid and/or lump sum price on the Bid Form. Any progress payments made must be in accordance with the General Terms and Conditions as stated in the Contract Documents and final payment will be made within 60 days after final inspection and acceptance of the work.

SECTION 5 - CONTRACT ADMINISTRATOR IS: Chris Read or designee.

IN WITNESS WHEREOF, 2 identical counterparts of this contract, each of which are for all purposes considered an original, have been duly executed by the parties on the date and year first above written.

CITY OF SCOTTSDALE

By: _____
David D. Ortega, Mayor

CONTRACTOR:

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, #240
Phoenix, AZ 85040

(Mike Abraham, President)

By: _____
(signature of authorized representative)

ATTEST:

BY: _____
Ben Lane, City Clerk

REVIEWED:

George Woods
Risk Management Director

Jenn Myers
Purchasing Director

Chris Read
Contract Administrator

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Eric C. Anderson
Senior Assistant City Attorney

N Airport Dr

N Airport Dr

N Airport Dr

Taxiway A4 Rehabilitation
Project Area

TAC | Private Hangars - SDL

Scottsdale Airport

N 76th Pl

E Evans Rd

E Acoma Dr

E Acoma Dr

E Golding Dr



COMMISSION ACTION REPORT

Discussion and Possible Action to modify the various sections of the Airport Rules and Regulations.

Agenda Item No.: 8

Meeting Date: 09/20/23

Staff Contact: Chris Read,
Assistant Aviation Director-
Operations

Phone: (480) 312-2674

ACTION

Discussion and Possible Action to modify various sections of the Airport Rules and Regulations.

PURPOSE

As part of the Aviation Department overall review of our policies, procedures and regulatory documents, staff evaluated and are recommending updates to the above referenced document of our primary guiding documents for the Scottsdale Airport. The goal of this process is to evaluate the documents to help foster the long-term economic health, enhance the safe operating environment at the airport/airpark and provide clarity of language.

KEY CONSIDERATIONS

- The changes are mostly “clean-up” and clarification within the primary guiding documents.

Attachment(s):

1. Blue lined changes to the primary guiding documents to specific sections.

NOTE: In accordance with Scottsdale Revised Code, Chapter 5-202, copies of the attachment above will be available for review during normal business hours (8:00 a.m. – 5:00 p.m., Monday-Friday, except holidays) at the Scottsdale Airport Administration Offices located at 15000 North Airport Drive, Suite 100, Scottsdale, AZ 85260.

Action taken:

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delivered into the care of a representative of a Fixed Base Operator or specialty service shop authorized to do business on the Airport.

Section 2-10. Use of apron areas(Reserved).

Airport owned apron areas are primarily intended to facilitate movement and operations of hangars, terminals, buildings or other structures associated with the apron space. All Users shall conduct their operations in a manner that promotes the efficient use of Apron space near their facilities and avoids unnecessary use of apron space near others. For any apron space not allocated exclusively to a Lessee through an authorized City Lease, the Aviation Director or designee may institute policies or other directives limiting or restricting the time, place or manner through which any Airport User may utilize such apron space in order to promote the safe, equitable and efficient operation of the Airport for all authorized users.

Section 2-11. Aircraft washing.

- (a) All aircraft washing shall be conducted in accordance with posted rules, only:
 - 1. At approved wash racks/pads, or
 - 2. In accordance with an Approved Wash Plan (AWP).
- (b) City-owned wash racks/pads shall only be used for the purposes of aircraft washing and polishing, or preventive aircraft maintenance.
- (c) Runoff shall be collected and properly disposed of in a manner acceptable to the Aviation Director, in accordance with all federal, state, county, and local law.
- (d) In no case shall aircraft washing be conducted within fifty (50) feet of storm water drainage or dirt/grass areas without containment (berm, tarp, etc.), nor shall wash/wastewater be disposed of in storm water drainage or dirt/grass areas.

Section 2-12. (Reserved).

Section 2-13. Airport perimeter road.

The Airport perimeter road shall only be used by authorized vehicles with appropriate signage as determined by the Aviation Director, which include Airport administration vehicles, fixed base operator fuel trucks, aeronautical business permittees, governmental vehicles, official emergency response vehicles, and other vehicles with prior written approval from the Aviation Director.

Section 2-14. Scheduled passenger service.

Scheduled passenger service conducted in accordance with FAR Part 121 is prohibited.

Section 2-15. Aviation Business Center.

Commercial activity at the Aviation Business Center ("ABC") is limited to City personnel and the tenants of the ABC. The ABC is not available for use as a passenger boarding lounge or any other commercial activity by persons other than ABC tenants and their invited guests unless a specific permit for that purpose has been issued by the City.

Section 4-4. Speed limits.

All vehicles shall be operated in strict compliance with all posted speed limits at the Airport. The maximum speed limit for all vehicles in the airside area, with the exception of authorized municipal vehicles in the performance their official duties, is twenty-five (25) miles per hour or less on the Airport perimeter road or fifteen (15) miles per hour or less elsewhere airside if conditions warrant in order to ensure safe operation.

Section 4-5. Vehicles operating on runway and taxiways.

- (a) No vehicle shall be operated on the runway and taxiways unless so authorized in writing by the Aviation Director.
- (b) Any vehicle authorized to operate on the Airport runway or taxiways comply with FAA Advisory Circular 150/5210-20, as amended. Exceptions to this rule are subject to the Aviation Director's prior written approval.
- (c) All vehicles that are authorized to operate on Taxiway Alpha, Taxiway Bravo, or the runway must be equipped with a two-way aviation radio and a rotating beacon or equivalent as outlined in the FAA Advisory Circular 150/5210-5, as amended, receive a clearance from, and remain in continuous communications with, the Air Traffic Control Tower. The installation of a two-way radio alone does not permit the operation of vehicles on runway or taxiways without prior written permission of the Aviation Director. The rotating beacon or equivalent must be activated while operating in the movement area. If vehicles are not equipped with radios, ~~prior arrangements must be made~~ exceptions must be made in advance with the Aviation Director for good cause shown. Additionally, all vehicle operators shall be conversant with the standard Airport light gun signals. Exceptions to this rule during emergency situations are subject to the Aviation Director's approval.

Section 4-6. Authority to remove vehicles.

The Aviation Director may direct the removal from any area of the Airport any vehicle, at the operator's expense and without liability for damage that may result, which:

- (a) Presents an immediate health, safety, or environmental hazard; or
- (b) Is abandoned;

Section 4-7. Bicycles.

The use of bicycles shall only be permitted during daylight hours and in accordance with all applicable regulations set forth herein for vehicles, except as to regulations that by their nature have no application.

Section 4-8. Scooters, rideshare scooters and miscellaneous vehicles.

No person shall use at the Airport any go-cart, go-ped, skateboard, rollerblade, all terrain vehicle or other vehicle not licensed or otherwise permitted by state law for operation on a public street or highway. This section does not pertain to City vehicles or vehicles used solely



COMMISSION INFORMATION REPORT

Discussion and input regarding Operations Report for July/August 2023

Agenda Item No.: 9

Meeting Date: 09/20/23

Staff Contact: Chris Read,
Assistant Aviation Director-
Operations

Phone: (480) 312-2674

INFORMATION

Airport Monthly Operations Update for July/August 2023

PURPOSE

The purpose of this item is to keep the Airport Advisory Commission informed as to the operational status of the Airport.

BASED AIRCRAFT

	Helicopter	Single Piston	Single turboprop	Twin Piston	Twin Turboprop	Jet	Total
Current Month	48	124	222	7	14	177	392
August 2022	33	128	25	12	17	183	398

OPERATIONS

	August 2022	August 2023	% Δ	2022 YTD	2023 YTD	% Δ
Total	14,085	13,329	-5.4	114,188	111,678	-2.2
IFR	3,925	3,835	-2.3	45,698	40,963	-10.4

ALERTS

Date	Type	Description
7/5/23	1	Bombardier CRJ- thump heard after takeoff
7/14/23	1	Kodiak 100, engine overheat in flight
7/24/23	1	Lear 60, gear would not retract after takeoff
8/23/23	1	Cessna 172, flaps would not retract after takeoff
8/23/23	1	Citation 560, pressurization problem

INCIDENTS

Date	Description
7/1/23	Small fuel spill, Jet Aviation ramp
7/9/23	Unruly person at Jet Aviation facility, PD called
7/11/23	Fuel leak, Jet Aviation ramp
7/13/23	Cessna 172, runway excursion
7/13/23	Unruly person at Atlantic Aviation facility, PD called
7/23/23	Cessna 172, flat main tire upon landing

Commission Information Report

Agenda Item No.: 9

Airport Monthly Operations Update for July/August 2023

INCIDENTS - CONT.

<u>Date</u>	<u>Description</u>
7/23/23	Medical situation at restaurant
7/23/23	CRJ taxied without removing chocks
7/27/23	High winds pushed two small aircraft into each other. No visible damage
8/08/23	Small oil leak, Jet Aviation ramp
8/08/23	Small oil leak, Signature West

ENFORCEMENT ACTIONS

<u>Date</u>	<u>Violation</u>	<u>Enforcement Method Used</u>	<u>Comments</u>
7/1/23	Fuel spill violation	Verbal	1 st Violation
7/5/23	Failure to wait for gate to close before proceeding to destination	Verbal	1 st Violation
7/7/23	Failure to register vehicle with Aviation office	Verbal	1 st Violation
7/15/23	Vehicle parking violation	N.O.V.	1 st Violation
7/22/23	Failure to display airport parking tag	N.O.V.	1 st Violation
7/23/23	Pilot performed touch & go after hours	Verbal	1 st Violation
7/30/23	Failure to submit visiting aircraft notice	Written warning	2 nd Violation

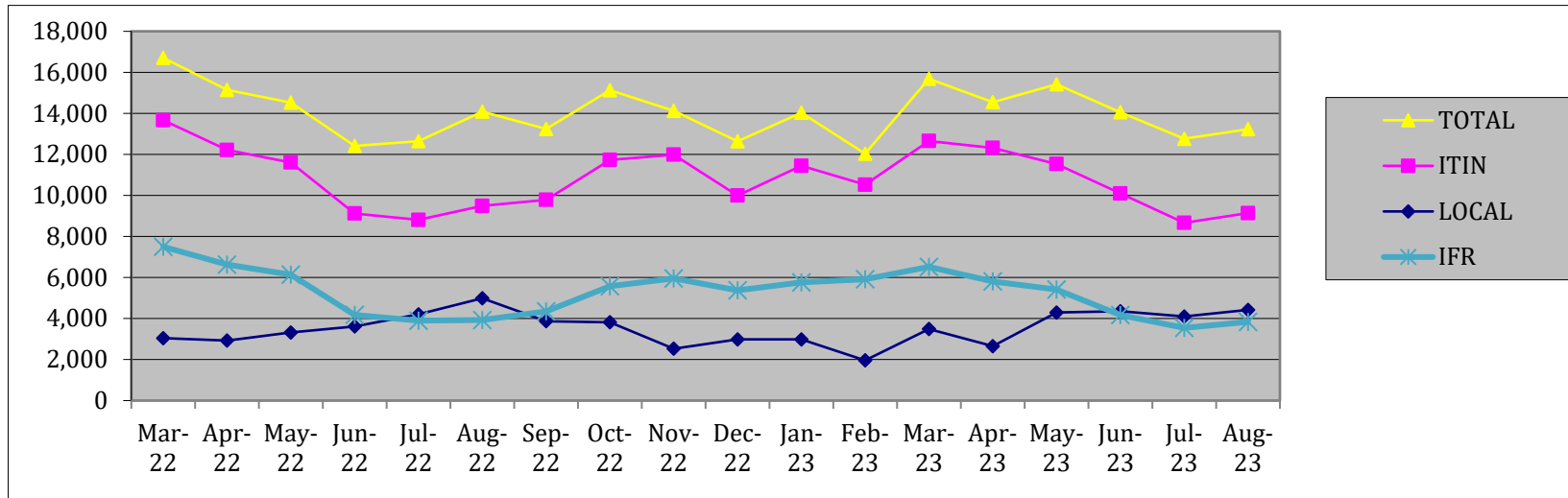
<u>*Revenue (FYTD)</u>		<u>Total Uses Month</u>		<u>Total Uses (FYTD)</u>	
2022/2023	\$99,275	AUGUST 2023	84	2022/2023	173
2021/2022	\$99,075	AUGUST 2022	95	2021/2022	184

*Revenue = User Fees and Overtime Fees Charged to Users
 75,000 lbs. + PPR = 91 (calendar year 2023)

SCOTTSDALE AIRPORT OPERATIONS 2021-2023

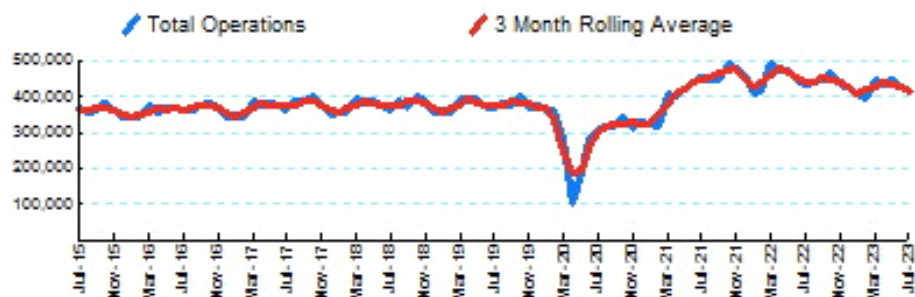


	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23
ITIN	13,667	12,217	11,607	9,118	8,809	9,490	9,785	11,734	11,987	9,996	11,443	10,525	12,654	12,317	11,530	10,097	8,664	9,139
LOCAL	3,041	2,927	3,321	3,617	4,204	4,988	3,870	3,818	2,531	2,984	2,983	1,960	3,489	2,653	4,293	4,353	4,100	4,419
IFR	7,498	6,628	6,139	4,177	3,896	3,925	4,350	5,575	5,954	5,374	5,761	5,914	6,518	5,810	5,414	4,168	3,543	3,835
TOTAL	16,708	15,144	14,527	12,414	12,646	14,085	13,240	15,130	14,125	12,640	14,030	12,037	15,687	14,548	15,417	14,056	12,764	13,229



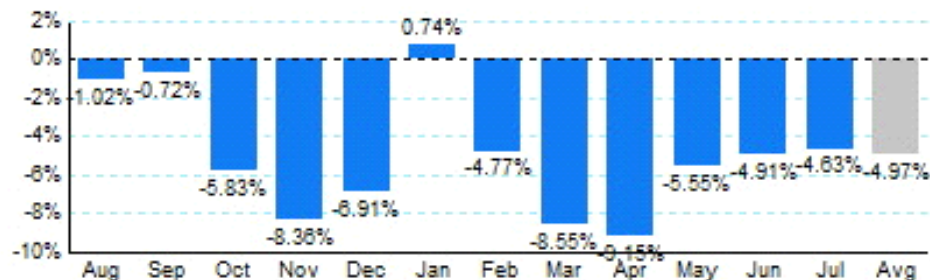


1.Total Business Jet Operations



Source: ETMSC
Note: Operations refer to arrivals and departures.

2.Year Over Year Change in Business Jet Operations Aug 22 - Jul 23 vs. Aug 21 - Jul 22



Source: ETMSC

3.Monthly Trends

Month	Total			Domestic			International		
	2022-2023	2021-2022	Change	2022-2023	2021-2022	Change	2022-2023	2021-2022	Change
Aug	443,560	448,138	-1.02%	381,670	391,248	-2.45%	61,890	56,890	8.79%
Sep	445,926	449,154	-0.72%	388,060	394,386	-1.60%	57,866	54,768	5.66%
Oct	467,328	496,238	-5.83%	407,108	434,386	-6.28%	60,220	61,852	-2.64%
Nov	437,452	477,342	-8.36%	372,284	410,554	-9.32%	65,168	66,788	-2.43%
Dec	427,326	459,058	-6.91%	357,666	390,574	-8.43%	69,660	68,484	1.72%
Jan	410,146	407,152	0.74%	342,222	346,468	-1.23%	67,924	60,684	11.93%
Feb	396,146	415,990	-4.77%	334,066	353,248	-5.43%	62,080	62,742	-1.06%
Mar	450,536	492,664	-8.55%	376,892	415,274	-9.24%	73,644	77,390	-4.84%
Apr	432,482	476,016	-9.15%	363,492	402,982	-9.80%	68,990	73,034	-5.54%
May	446,806	473,042	-5.55%	379,868	403,764	-5.92%	66,938	69,278	-3.38%
Jun	428,102	450,206	-4.91%	363,440	382,244	-4.92%	64,662	67,962	-4.86%
Jul	412,760	432,792	-4.63%	348,706	366,962	-4.97%	64,054	65,830	-2.70%
Total	5,198,570	5,477,792	-5.10%	4,415,474	4,692,090	-5.90%	783,096	785,702	-0.33%

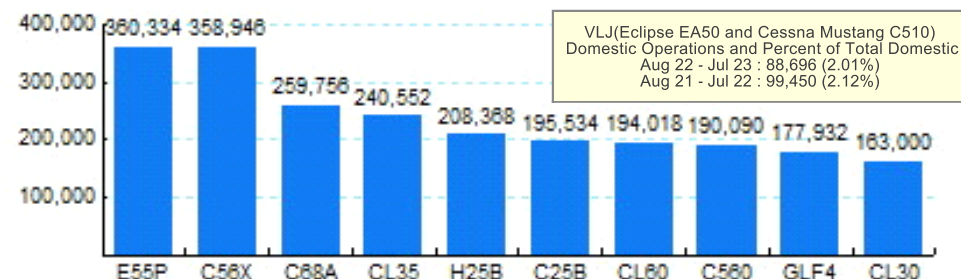
Source: ETMSC
Note: International flights include US to Foreign, Foreign to US and all foreign operations.

4.Overall Trends (Calendar Year)

Year	Total		Domestic		International	
	Operations	Change	Operations	Change	Operations	Change
2013	4,072,848		3,394,942		677,906	
2014	4,235,910	4.00%	3,527,038	3.89%	708,872	4.57%
2015	4,291,174	1.30%	3,605,060	2.21%	686,114	-3.21%
2016	4,349,740	1.36%	3,667,338	1.73%	682,402	-0.54%
2017	4,483,614	3.08%	3,793,700	3.45%	689,914	1.10%
2018	4,520,968	0.83%	3,824,528	0.81%	696,440	0.95%
2019	4,533,920	0.29%	3,836,578	0.32%	697,342	0.13%
2020	3,501,192	-22.78%	3,033,148	-20.94%	468,044	-32.88%
2021	5,099,528	45.65%	4,421,070	45.76%	678,458	44.96%
2022	5,369,454	5.29%	4,577,730	3.54%	791,724	16.69%
2023*	2,976,978		2,508,686		468,292	

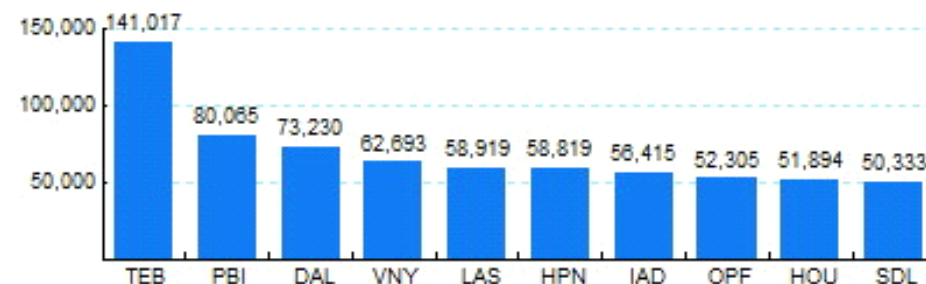
* - Year to date
Source: ETMSC
Note: International flights include US to Foreign, Foreign to US and all foreign operations.

5.Top Ten Aircraft for Domestic Business Jet Operations Aug 22 - Jul 23



Source: ETMSC

6.Top Ten Airports for Domestic Business Jet Operations Aug 22 - Jul 23



Source: ETMSC



COMMISSION INFORMATION REPORT

Discussion and input regarding the Monthly Airport Construction Report for September 2023

Agenda Item No.: 10

Meeting Date: 9/20/23

Staff Contact: Chris Read,
Asst. Aviation Director-Operations

Phone: (480) 312-2674

INFORMATION

Airport Construction Update for September 2023

PURPOSE

The purpose of this item is to keep the Airport Advisory Commission informed as to the status of all construction activity at the City’s airport.

CURRENT PROJECTS

**Airport Perimeter Road Reconstruction Project - (\$1,212,134.50)
August 2023 to September 2023**

<u>% Complete</u>	<u>Completed Work - August</u>	<u>Anticipated Work - September</u>	<u>Operational Impacts</u>
50%	Phase 1 (middle 1/3 of roadway on east side of airport)	Phases 2 and 3, project completion	Sections of perimeter road closed, mostly during the overnight hours









FUTURE PROJECTS

Airport Drive Rehabilitation Project				
<u>Description</u>	<u>Approximate Cost</u>	<u>Status</u>	<u>Estimated Start Date</u>	<u>Estimated Completion Date</u>
Remove and replace various depths of pavement and install new markings.	\$901,015.55	Mobilization Phase	September, 2023	October, 2023

Taxiway A4 Rehabilitation Project				
<u>Description</u>	<u>Approximate Cost</u>	<u>Status</u>	<u>Estimated Start Date</u>	<u>Estimated Completion Date</u>
Remove and replace pavement and install new markings.	\$501,745.50	Award Phase	November, 2023	November, 2023

Main Apron Lighting Rehabilitation Project

<u>Description</u>	<u>Approximate Cost</u>	<u>Status</u>	<u>Estimated Start Date</u>	<u>Estimated Completion Date</u>
Change old inefficient light fixtures over to new L.E.D. fixtures.	\$350,000	Bidding Phase	December, 2023	January, 2024



COMMISSION ACTION REPORT

Discussion and input regarding Airport and Airpark Aeronautical Business Permit Additions, Cancellations, and Revocations

Agenda Item No.: 11

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach
Coordinator

Phone: (480) 312-8482

INFORMATION

Review of Airport and Airpark permittees and major tenant Aeronautical Business Permit additions, cancellations, and revocations.

PURPOSE

Per the request of the Airport Advisory Commission, a report will be provided as needed indicating additions, cancellations, and revocations of Aeronautical Business Permits.

KEY CONSIDERATIONS

- Attached are the current lists of Airport and Airpark permittees.
- List provides what type of aeronautical activity the business is conducting and the contact information.
- Any additions, cancellations, suspensions, and revocations will be highlighted on the list.

Attachment(s):
1. Current Airport Permittee List by Category
2. Current Airpark Permittee List by Category

AIRPORT AERONAUTICAL BUSINESS PERMITS & TENANTS

SEPTEMBER 2023

AIRCRAFT CHARTER, SALES & MANAGEMENT				
BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
ALL ACCESS MOTORSPORTS, LLC dba ALL ACCESS JETS	CHARTER BROKERAGE	SFS	BRADLEY CRAIG	
AMERICAN FLIGHT SUPPORT, LLC	CHARTER BROKERAGE	JA	BEN MOKE	888-245-4017
ASI CHARTER INC. dba PEAK MEDEVAC INTL	AIRCRAFT CHARTER	AASC	EUGENE HAGGAN	720-649-0600
ATLANTIC AVIATION - CHARTER	AIRCRAFT CHARTER	AASC	RICK WIELEBSKI	480-948-2400
BUSINESS AIRCRAFT MANAGEMENT dba EXECUTIVE AIRCRAFT SERVICES	AIRCRAFT CHARTER/SALES/MANAGEMENT	SFS	GORDON JOHNSON	480-905-8659
C. WRIGHT AVIATION, LLC	AIRCRAFT SALES/CHARTER BROKERAGE	AASC	CYGNE LASHAE SWAN	480-500-1818
CB AVIATION, INC.	AIRCRAFT CHARTER/MANAGEMENT	JA	PHIL TORSELLO	801-621-0326
CIRRUS DESIGN CORP DBA CIRRUS AIRCRAFT	AIRCRAFT MANAGEMENT/SALES	AA	RAVI DHARNIDHARKA	865-724-1959
G.G.R. AVIATION	AIRCRAFT MANAGEMENT	SFS	GUY MILANOVITS	480-614-1166
GRANDVIEW AVIATION, LLC	AIRCRAFT CHARTER	SFS	DARRELL BONEBRAKE	888-573-9426
J&S AVIATION	AIRCRAFT MANAGEMENT	MOBILE	SEAN FOWLER	480-241-9437
JET LINX SCOTTSDALE	AIRCRAFT CHARTER/MANAGEMENT	AASC	JON HULBURD	866-538-5469
JET FLEET, LLC	AIRCRAFT SALES	SFS	STEVE GAGE	480-286-0029
JET PROS, LLC	AIRCRAFT CHARTER/BROKERAGE/MANAGEMENT	SFS	MARGARET PIONTEK	480-444-2452
JOHN HOPKINSON & ASSOCIATES	AIRCRAFT SALES	AA	CHRISTINA HOPKINSON	403-637-2250
M&N EQUIPMENT, LLC dba M&N AVIATION	AIRCRAFT CHARTER/MANAGEMENT	SFS	TODD SCHIECK	720-356-4830
MACKIN AVIATION, LLC	AIRCRAFT SALES	AA	BRIAN MACKIN	480-363-0058
MAINE AVIATION AIRCRAFT CHARTER, LLC dba MAC JET CENTER	AIRCRAFT CHARTER	SPH	ALYSAN CARUSO	207-780-1811
PRISMJET, LLC	CHARTER BROKERAGE/MANAGEMENT		SCOTT CASEY	
SAWYER AVIATION	AIRCRAFT CHARTER	AA	CHAD VERDAGLIO	480-922-2723
SET JET	CHARTER BROKERAGE	SPH	WILLIAM SMITH	480-264-6500
SOUTHWEST AERO, LLC	AIRCRAFT SALES	AA	BRIAN MACKIN	480-363-0058

AIRCRAFT RENTAL, LEASING & FLIGHT TRAINING				
BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
AMERICAN FLYERS, INC.	FLIGHT TRAINING	AANC	STEVEN DAUN	954-784-2122
AVIATION RESOURCE GROUP (AERODYNE)	AIRCRAFT RENTAL/FLIGHT TRAINING	AASC	DOUG COX	480-359-7979
CIRRUS DESIGN CORP DBA CIRRUS AIRCRAFT	AIRCRAFT RENTAL/FLIGHT TRAINING	AA	RAVI DHARNIDHARKA	865-724-1959
FLIGHTWORKS INC.	AIRCRAFT RENTAL/LEASING/FLIGHT TRAINING	SFS	RYAN STRAND	602-999-5629
LEGACY FLIGHT TRAINING	FLIGHT TRAINING	ACC	WILLIAM INGLIS	772-539-0420
LEOPARD AVIATION	AIRCRAFT RENTAL/FLIGHT TRAINING	AASC	THOMAS NOON	760-419-2252

PLUS 5 SPORT AERO	FLIGHT TRAINING	JA	BUD DAVIDSON	602-971-3991
SAWYER AVIATION	AIRCRAFT RENTAL/FLIGHT TRAINING	AA	CHAD VERDAGLIO	480-922-5221
SCOTTSDALE EXECUTIVE FLIGHT TRAINING	AIRCRAFT RENTAL/FLIGHT TRAINING	SFS	GUY MILANOVITS	480-614-1166
SDL HOLDINGS - ATP	FLIGHT TRAINING	AASC	JIM KOZIARSKI	904-273-3018
SIERRA CHARLIE AVIATION	AIRCRAFT RENTAL/FLIGHT TRAINING	SFS	SCOTT CAMPBELL	480-390-2346
UNIVERSAL HELICOPTERS, INC.	FLIGHT TRAINING/LEASING	JA	GORDON JIROUX	480-951-6283
VERTICAL WORKS	FLIGHT TRAINING	JA	CHARLES CHADWICK	732-865-1610

AIRCRAFT MAINTENANCE & REPAIR				
BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
ACROPRO LLC	MOBILE AIRCRAFT MAINTENANCE	MOBILE	PIKE KELLY	805-268-4962
ARIZONA AIRCRAFT INTERIOR DESIGN	SPECIALIZED AIRCRAFT REPAIR	SFS	MICHAEL BRYANT	480-832-1330
AVIATION.ONE JET MAINTENANCE LLC	AIRCRAFT MAINTENANCE	SPH	ROB ARCHER	480-923-9135
AZ JET SERVICES	AIRCRAFT MAINTENANCE	SFS	DAVE FERNEAU	602-380-5555
CESSNA AIRCRAFT COMPANY	AIRCRAFT MAINTENANCE	SFS	RANDALL SOUTIERE	480-840-9430
CIRRUS DESIGN CORP DBA CIRRUS AIRCRAFT	AIRCRAFT MAINTENANCE	AASC	RAVI DHARNIDHARKA	865-724-1959
CONSTANT AVIATION, LLC	AIRCRAFT MAINTENANCE	AASC	NATHAN ROMNEY	469-323-4081
DALLAS AIRMOTIVE	AIRCRAFT MAINTENANCE	SFS	DAVID HUTCHISON	214-477-9033
DIRECTMX AVIATION LLC	AIRCRAFT MAINTENANCE	AASC	VAN NGUYEN	520-409-7860
DUNCAN AVIONICS	AIRCRAFT MAINTENANCE	SFS	JIM DAVIS	480-922-3575
G.G.R. AVIATION	MOBILE AIRCRAFT MAINTENANCE	SFS	GUY MILANOVITS	480-614-1166
JET EAST AVIATION	AIRCRAFT MAINTENANCE	SFS	SHAWN GEORGE	216-212-8056
LEARJET/BOMBARDIER INC.	AIRCRAFT MAINTENANCE	SFS	SEBASTIAN MOORE	520-746-5100
PDR SERVICES	SPECIALIZED AIRCRAFT REPAIR	SFS	PHILIP CHAPMAN	480-202-2908
PREMIER AIR CENTER dba WEST STAR AVIATION	AIRCRAFT MAINTENANCE	SFS	RODGER RENAUD	618-258-8020
RUNWAY 3 AVIATION SERVICES, LLC	AIRCRAFT MAINTENANCE	SFS	JEREMY BAILEY	501-762-5816
SAWYER MX, LLC	AIRCRAFT MAINTENANCE	AASC	CHAD VERDAGLIO	480-922-5221
TURBINE ENGINE SPECIALISTS INC.	AIRCRAFT MAINTENANCE	AA	RICKIE RAMEY	817-625-6100
WC AVIATION INC.	AIRCRAFT MAINTENANCE	AA	JORGE DUARTE	323-707-9567

AIRCRAFT WASHING & DETAILING				
BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
AERO PANACHE	AIRCRAFT WASHING	SFS	TODD PUCKETT	602-531-5505
APPEARANCE GROUP	AIRCRAFT WASHING	SFS	DONALD HENRY	480-580-1658
CLASSIC AIR AVIATION	AIRCRAFT WASHING	MOBILE	JON MARPLE	602-574-5376
DETAIL BOYS, LLC	AIRCRAFT WASHING	MOBILE	ALEX DAY	866-899-6241
JB'S EXECUTIVE DETAILING	AIRCRAFT WASHING	MOBILE	JEFFREY BURROWS	480-808-4229
SHINY JETS PHOENIX, LLC	AIRCRAFT WASHING	MOBILE	GREG BIRD	480-268-4286
TIME FOR SALE	AIRCRAFT WASHING	MOBILE	CAROLYN NELSON	602-295-7181

15266070

s2 "Airport"

WEST COAST WASH STATION	AIRCRAFT WASHING	AANC	MIKE ADAMS	480-443-7320
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AUTO RENTAL COMPANIES				
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BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
ALAMO/NATIONAL CAR RENTAL	OFF-AIRPORT RENTAL CAR	OFF	MIKE ROLLINS	480-948-4884
AVIS RENT-A-CAR SYSTEMS	OFF-AIRPORT RENTAL CAR	OFF	PETER SERENA	480-948-4993
ENTERPRISE RENT-A-CAR	RENTAL CAR	SFS	ERIC BULLIS	480-315-8051
GO RENTALS	RENTAL CAR	AA	KAVOUS GITIBIN	480-991-0117
HERTZ RENT-A-CAR	OFF-AIRPORT RENTAL CAR	OFF	STEPHEN BLUM	239-301-7794

FIXED BASE OPERATORS				
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BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
ATLANTIC AVIATION	FIXED BASE OPERATOR	AA	RICK WIELEBSKI	480-948-2400
JET AVIATION OF AMERICA	FIXED BASE OPERATOR	JA	TIMOTHY VALLOWE	
SIGNATURE FLIGHT SUPPORT	FIXED BASE OPERATOR	SFS	GREG GIBSON	480-951-2525

HANGAR, SHADE & OFFICE LEASING SERVICES				
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BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
OUT WEST AVIATION, LLC	HANGAR LEASING	BOX	SHANNON DAY	
SIGNATURE/TAC PRIVATE HANGARS	HANGAR LEASING	SPH	GREG GIBSON	480-951-2525

IN-FLIGHT CATERING SERVICES				
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BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
AIR CULINAIRE WORLDWIDE, LLC	IN-FLIGHT CATERING	MOBILE	CHRIS EVANS	1-800-247-2433
RALEY'S ARIZONA LLC dba AJ'S FINE FOODS	IN-FLIGHT CATERING	MOBILE	HELEN SINGMASTER	480-802-5484
EMILY'S EVENTS LLC	IN-FLIGHT CATERING	MOBILE	EMILY GARNER	480-361-1800
JETFARE CATERING	IN-FLIGHT CATERING	MOBILE	JONATHAN ALLEN	480-771-4161
SQUARE ONE CONCEPTS, INC.	IN-FLIGHT CATERING	MOBILE	ROLAND WOOD	480-941-0101
VOLANTI PRIVATE JET CATERING	IN-FLIGHT CATERING	MOBILE	DEE DEE MAZA	480-636-1722

U.S. GOVERNMENT				
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BUSINESS NAME	ACTIVITY	LOCATION	CONTACT	TELEPHONE
FAA CONTROL TOWER	SDL AIR TRAFFIC CONTROL	TOWER	JONATHAN WILLIAMS	480-609-7585
U.S. CUSTOMS	U.S. CUSTOMS	OPS	OFF. KENNEDY/ARVIZU	480-312-8483

LEGEND:

Green = New Permit
Yellow = Recently Cancelled Permit
Orange = Suspension/Pending Revocation
Red = Permit Revoked

ACC = Air Commerce Center; 14605 N. Airport Drive, Scottsdale, AZ 85260

JA = Jet Aviation; 14650 N. Airport Drive, Scottsdale, AZ 85260

AA = Atlantic Aviation (Main); 14600 N. Airport Drive, Scottsdale, AZ 85260

AASC = Atlantic Aviation South Complex; 14700 N. Airport Drive, Scottsdale, AZ 85260

SFS = Signature Flight Support; 15290 N. 78th Way, Scottsdale, AZ 85260

AANC = Atlantic Aviation North Complex; 15115 N. Airport Drive, Scottsdale, AZ 85260

SPH = Signature Private Hangars, 15003 N. Airport Drive, Scottsdale, AZ 85260

TOWER = FAA Air Traffic Control Tower; 14960 N. 78th Way, Scottsdale, AZ 85260



COMMISSION INFORMATION REPORT

Discussion and Input Regarding Monthly
Financial Report for May 2023

Agenda Item No.: 12

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach Coordinator

Phone: (480) 312-8482

AVIATION OPERATING BUDGET FISCAL YEAR 2022/23

	FY 2022/23		FY 2022/23 Year to Date (through May 2023)			
	Adopted Budget	FY 2022/23 Approved Budget	Approved Budget	Actual	Dollar Variance	% Variance
Revenue	\$8,280,585	\$8,280,585	\$7,396,888	\$8,949,634	\$1,552,746	21%
Expenses	\$3,145,716	\$2,897,515	\$2,689,210	\$2,828,073	\$138,863	5%
Net	\$5,134,869	\$5,383,070	\$4,707,678	\$6,121,561	\$1,413,883	

AVIATION FUND CASH BALANCE

	Operating	CIP Funds	Total
As of 5/31/23	\$11,192,178	\$271,196	\$11,463,374
As of 5/31/22	\$10,203,033	-\$3,164,049	\$7,038,984

MONTHLY REVENUE AND EXPENDITURE COMPARISON (ACTUALS)

	May 2022	May 2023	Dollar Variance	% Variance
Revenue	\$977,782	\$867,132	-\$110,650	-11%
Expenses	\$183,710	\$257,327	\$73,617	40%
Net	\$794,072	\$609,805	-\$184,267	

ACCOUNTS RECEIVABLE AGING REPORT

Aging Report Data as of 6/5/2023

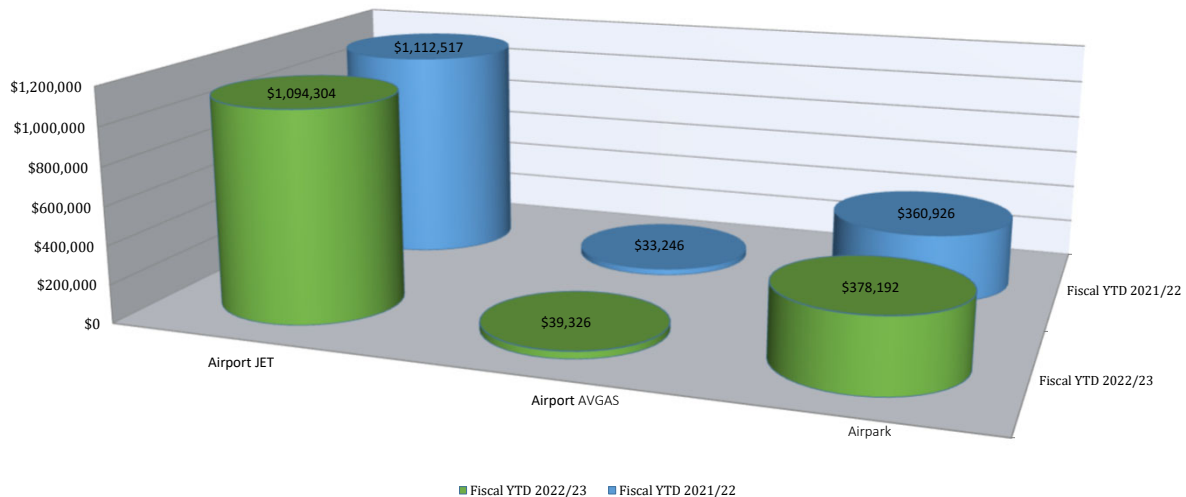
	Current	1-30 Days	31-60 Days	61-90 Days	91-120 Days	>120 Days	Total Amt Due
All Accounts	208,767.09	3,703.04	17.70	-973.96	-107.40	-1,461.50	209,944.97

Fuel Flowage (@ \$0.10 per gallon)

	May 2022			May 2023			% Change From Last Yr	
	Revenue	APR Gallons	% Total	Revenue	APR Gallons	% Total		
Airport JET	\$132,951	1,329,513	76.8%	\$123,239	1,232,394	78.1%	-7.3%	Gal
Airport AVGAS	\$3,768	37,675	2.2%	\$4,491	44,906	2.8%	19.2%	Gal
Airpark	\$36,508	365,076	21.1%	\$29,997	299,972	19.0%	-17.8%	Gal
	\$173,226	1,732,264	100.0%	\$157,727	1,577,272	100.0%	-8.9%	Gal

	Fiscal YTD 2021/22			Fiscal YTD 2022/23			% Change From Last Yr	
	Revenue	Gallons	% Total	Revenue	Gallons	% Total		
Airport JET	\$1,112,517	11,125,171	73.8%	\$1,094,304	10,943,042	72.4%	-1.6%	Gal
Airport AVGAS	\$33,246	332,457	2.2%	\$39,326	393,262	2.6%	18.3%	Gal
Airpark	\$360,926	3,609,262	24.0%	\$378,192	3,781,918	25.0%	4.8%	Gal
	\$1,506,689	15,066,890	100.0%	\$1,511,822	15,118,222	100.0%	0.3%	Gal

Scottsdale Airport Fuel Flowage (@ \$0.10 per gallon) - Fiscal Year-to-Date





COMMISSION INFORMATION REPORT

Discussion and Input Regarding Monthly
Financial Report for June 2023

Agenda Item No.: 12

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach Coordinator

Phone: (480) 312-8482

AVIATION OPERATING BUDGET FISCAL YEAR 2022/23

	FY 2022/23		FY 2022/23 Year to Date (through June 2023)			
	Adopted Budget	Approved Budget	Approved Budget	Actual	Dollar Variance	% Variance
Revenue	\$8,280,585	\$8,280,585	\$8,280,585	\$9,614,786	\$1,334,201	16%
Expenses	\$3,145,716	\$2,897,515	\$3,086,111	\$3,047,786	-\$38,325	-1%
Net	\$5,134,869	\$5,383,070	\$5,194,474	\$6,567,000	\$1,372,526	

AVIATION FUND CASH BALANCE

	Operating	CIP Funds	Total
As of 6/30/23	\$10,027,478	\$613,220	\$10,640,698
As of 6/30/22	\$6,089,933	\$216,940	\$6,306,873

MONTHLY REVENUE AND EXPENDITURE COMPARISON (ACTUALS)

	June 2022	June 2023	Dollar Variance	% Variance
Revenue	\$939,968	\$665,152	-\$274,816	-29%
Expenses	\$218,818	\$219,713	\$895	0%
Net	\$721,150	\$445,439	-\$275,711	

ACCOUNTS RECEIVABLE AGING REPORT

Aging Report Data as of 7/3/2023

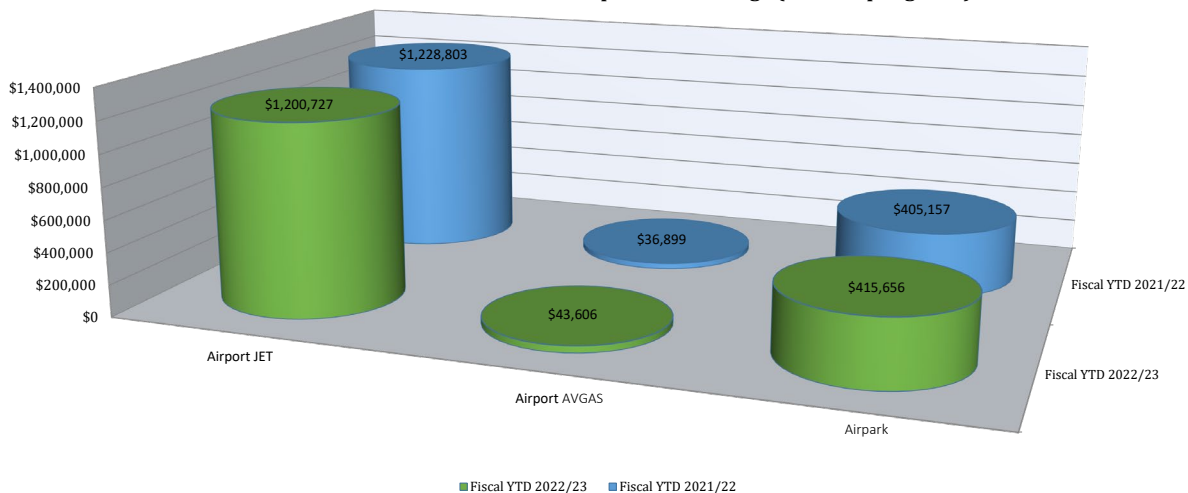
	Current	1-30 Days	31-60 Days	61-90 Days	91-120 Days	>120 Days	Total Amt Due
All Accounts Total	225,084.17	-41.51	-4.93	0.00	-892.73	-1,254.10	222,890.90

Fuel Flowage (@ \$0.10 per gallon)

	June 2022			June 2023			% Change From Last Yr	
	Revenue	MAY Gallons	% Total	Revenue	MAY Gallons	% Total		
Airport JET	\$116,286	1,162,862	70.8%	\$106,423	1,064,227	71.8%	-8.5%	Gal
Airport AVGAS	\$3,653	36,530	2.2%	\$4,280	42,803	2.9%	17.2%	Gal
Airpark	\$44,231	442,305	26.9%	\$37,464	374,637	25.3%	-15.3%	Gal
Total	\$164,170	1,641,697	100.0%	\$148,167	1,481,667	100.0%	-9.7%	Gal

	Fiscal YTD 2021/22			Fiscal YTD 2022/23			% Change From Last Yr	
	Revenue	Gallons	% Total	Revenue	Gallons	% Total		
Airport JET	\$1,228,803	12,288,033	73.5%	\$1,200,727	12,007,269	72.3%	-2.3%	Gal
Airport AVGAS	\$36,899	368,987	2.2%	\$43,606	436,065	2.6%	18.2%	Gal
Airpark	\$405,157	4,051,567	24.2%	\$415,656	4,156,555	25.0%	2.6%	Gal
Total	\$1,670,859	16,708,587	100.0%	\$1,659,989	16,599,888	100.0%	-0.7%	Gal

Scottsdale Airport Fuel Flowage (@ \$0.10 per gallon) - Fiscal Year-to-Date





COMMISSION INFORMATION REPORT

Discussion and Input Regarding Monthly
Financial Report for July 2023

Agenda Item No.: 12

Meeting Date: 09/20/23

Staff Contact: Kelli Kuester,
Aviation Planning & Outreach Coordinator

Phone: (480) 312-8482

AVIATION OPERATING BUDGET FISCAL YEAR 2023/24

	FY 2023/24		FY 2023/24 Year to Date (through July 2023)			
	Adopted Budget	FY 2023/24 Approved Budget	Approved Budget	Actual	Dollar Variance	% Variance
Revenue	\$9,586,458	\$9,586,458	\$789,357	\$1,334,250	\$544,893	69%
Expenses	\$3,315,174	\$3,005,158	\$262,883	\$348,166	\$85,283	32%
Net	\$6,271,284	\$6,581,300	\$526,474	\$986,084	\$459,610	

AVIATION FUND CASH BALANCE

	Operating	CIP Funds	Total
As of 7/31/23	\$5,942,970	\$215,958	\$6,158,927
As of 7/31/22	\$5,376,398	-\$504,430	\$4,871,968

MONTHLY REVENUE AND EXPENDITURE COMPARISON (ACTUALS)

	July 2022	July 2023	Dollar Variance	% Variance
Revenue	\$1,232,373	\$1,334,250	\$101,877	8%
Expenses	\$349,351	\$348,166	-\$1,185	0%
Net	\$883,022	\$986,084	\$103,062	

ACCOUNTS RECEIVABLE AGING REPORT

Aging Report Data as of 8/7/2023

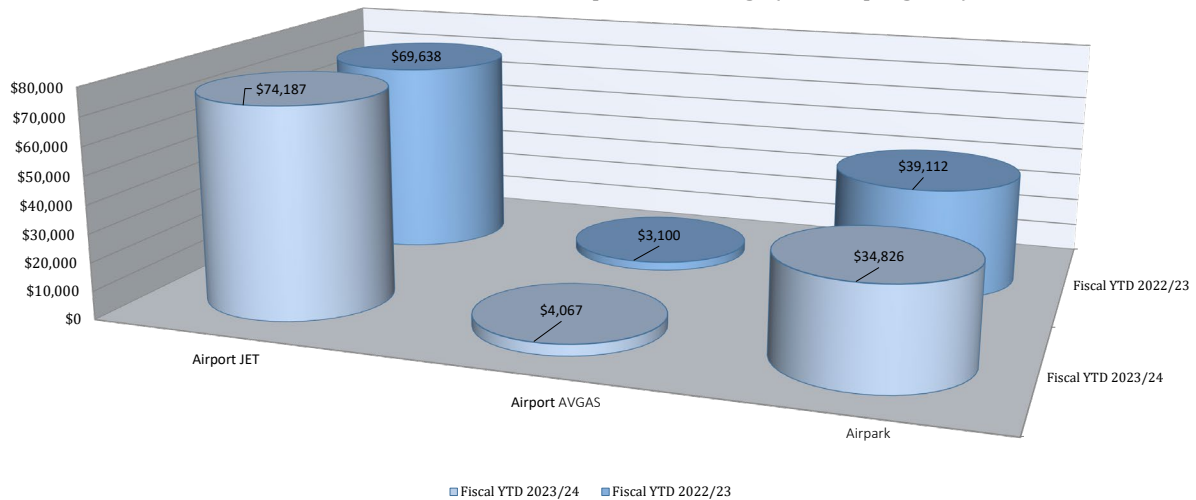
	Current	1-30 Days	31-60 Days	61-90 Days	91-120 Days	>120 Days	Total Amt Due
All Accounts	204,160.87	-139.58	-388.74	-40.00	0.00	-1,717.35	201,875.20

Fuel Flowage (@ \$0.10 per gallon)

	July 2022			July 2023			% Change From Last Yr	
	Revenue	JUN Gallons	% Total	Revenue	JUN Gallons	% Total		
Airport JET	\$69,638	696,376	62.3%	\$74,187	741,871	65.6%	6.5%	Gal
Airport AVGAS	\$3,100	31,001	2.8%	\$4,067	40,673	3.6%	31.2%	Gal
Airpark	\$39,112	391,122	35.0%	\$34,826	348,263	30.8%	-11.0%	Gal
Total	\$111,850	1,118,499	100.0%	\$113,081	1,130,806	100.0%	1.1%	Gal

	Fiscal YTD 2022/23			Fiscal YTD 2023/24			% Change From Last Yr	
	Revenue	Gallons	% Total	Revenue	Gallons	% Total		
Airport JET	\$69,638	696,376	62.3%	\$74,187	741,871	65.6%	6.5%	Gal
Airport AVGAS	\$3,100	31,001	2.8%	\$4,067	40,673	3.6%	31.2%	Gal
Airpark	\$39,112	391,122	35.0%	\$34,826	348,263	30.8%	-11.0%	Gal
Total	\$111,850	1,118,499	100.0%	\$113,081	1,130,806	100.0%	1.1%	Gal

Scottsdale Airport Fuel Flowage (@ \$0.10 per gallon) - Fiscal Year-to-Date





COMMISSION INFORMATION REPORT

Discussion and Input Regarding
Public Outreach Programs and Planning Projects

Agenda Item No: 13

Meeting Date: 09/20/23

Staff Contact: Sarah Ferrara,
Aviation Planning & Outreach
Coordinator

Phone: (480) 312-8482

INFORMATION

Monthly update of the marketing, community, planning and pilot outreach programs at Scottsdale Airport.

PURPOSE

The purpose of this item is to keep the Airport Advisory Commission informed of the airport’s marketing, outreach, and planning projects efforts.

Noise Program Outreach		
Description	Purpose	Status
Phoenix Terminal Area Procedure	The FAA Performance Based Navigation team held initial procedure design meetings.	In progress
Noise Outreach	Will conduct noise outreach as necessary.	Completed
Pilot Outreach		
Description	Purpose	Status
Pilot Briefing & Outreach	Pilot Briefings are hosted by the FAA Air Traffic Control Tower and are typically held annually.	Completed
Voluntary Curfew Outreach (10:00 p.m. - 6:00 a.m.)	The Voluntary Curfew Program is designed to respond to a complaint received for an operation between 10 p.m. and 6 a.m. If a flight is confirmed, a letter is sent out to the operator to ask them for their cooperation in flying outside these hours when possible. The following Voluntary Curfew letters were sent out: June - 1; July - 6 and August - 5.	Completed
Planning Projects		

Description	Purpose	Status
Monitor property development through the Planning Department	Working with the Planning Department to protect the airspace and development uses near Scottsdale Airport. The Planning and Zoning reports listed the following number of projects within the Airport Influence Area: June – 1; July – 3; and August 5.	Completed
Community Outreach and Marketing		
Description	Purpose	Status
Media, social media, & list serve notices	Will employ outreach and marketing efforts as needed. Sent out list serve notices on public comment for proposed pavement improvement within floodplain, taxiway B closure, staff changes and a summer news update.	Completed
Brochures, flyers, other print materials, webpages & videos	Airport staff along with Experience Scottsdale will be at the 2023 NBAA-BACE National Conference in Las Vegas this October.	In process
Community outreach, presentations, and events	Staff available to conduct outreach or present as needed and available. A group from Scottsdale Leadership will come out to the airport for a tour and presentation on Friday, Sept. 29.	In process



COMMISSION INFORMATION REPORT

Discussion and input regarding Quarterly Noise Complaint Summary

Agenda Item No.: 14

Meeting Date: 09/20/23

Staff Contact: Sarah Ferrara,
Aviation Planning & Outreach
Coordinator

Phone: (480) 312-8482

INFORMATION

Aviation staff will update the Airport Advisory Commission regarding aircraft noise complaints received during the second quarter of 2023.

PURPOSE

Community members that wish to report their concerns pertaining to aircraft noise and overflight activity associated with Scottsdale Airport air traffic may do so anytime by calling the aircraft noise report line or by submitting their complaint(s) via the Scottsdale Airport website. Each quarter a summary report is generated to depict the number of noise complaints that were received, along with the number of people who submitted complaints and a map depicting the location of where the complaints were generated.

KEY CONSIDERATIONS

- The quarterly noise complaint summary is used to identify and evaluate trends. It is not used to change flight procedures or restrict aircraft operating activity.
- It is normal to see increases and decreases in aircraft noise complaints associated with changes in weather and seasonal conditions.
- Aviation staff will respond to noise complaints within the Airport Noise Influence Area only when there is a specific request for a callback, or if the complainant is new.

STAFF RESPONSE

The following are callback or email responses by staff, which are responded to outside of the noise complaint system:

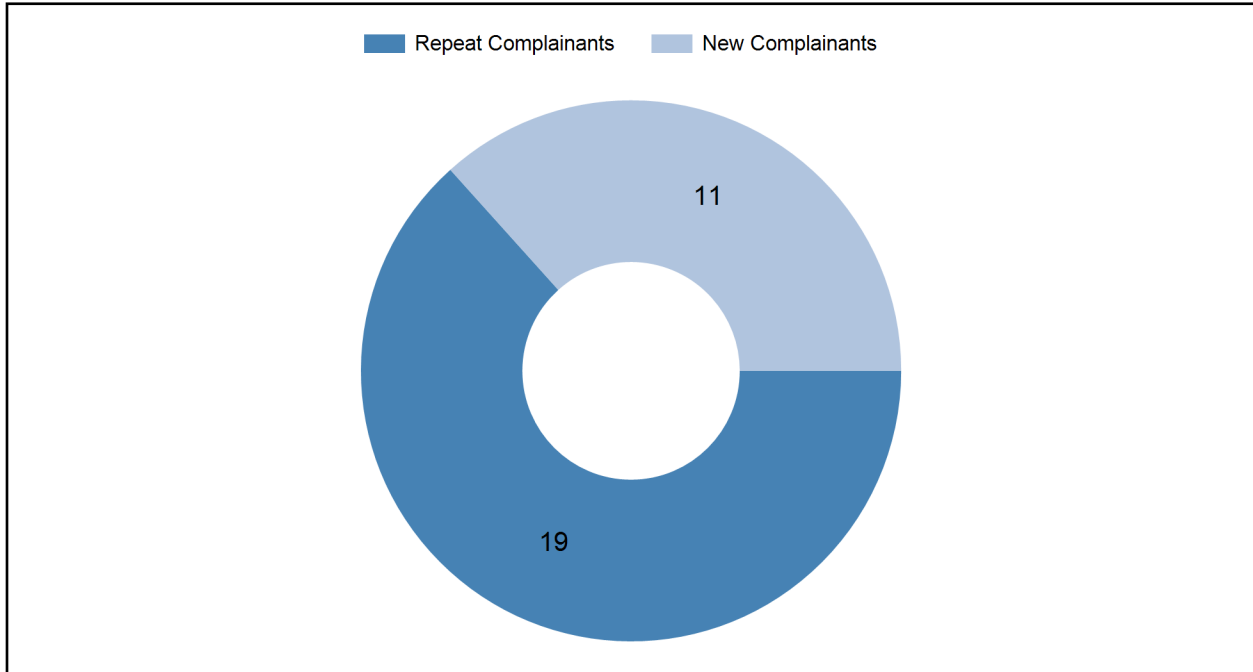
Callbacks: 10	Emails: 1	Total: 11
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Attachment(s): 1. Noise Complaint Summary for April 1 – June 30, 2023

Quarterly Noise Report

April 1 through June 30, 2023

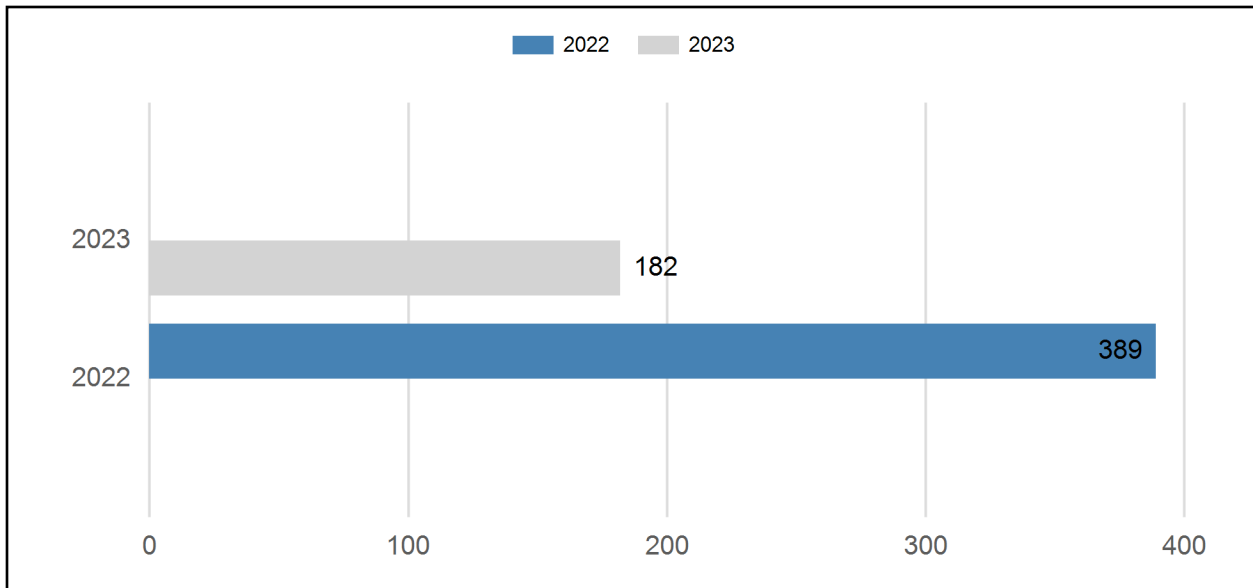
Total Complainant Summary



Year-Quarter	Complainants (Repeat)	Complainants (New)	Total	Percent New
2023 - Qtr 2	19	11	30	37%

This table reflects the number of complainants for "local" complaints received this quarter.

2nd Quarter Complaint Comparison



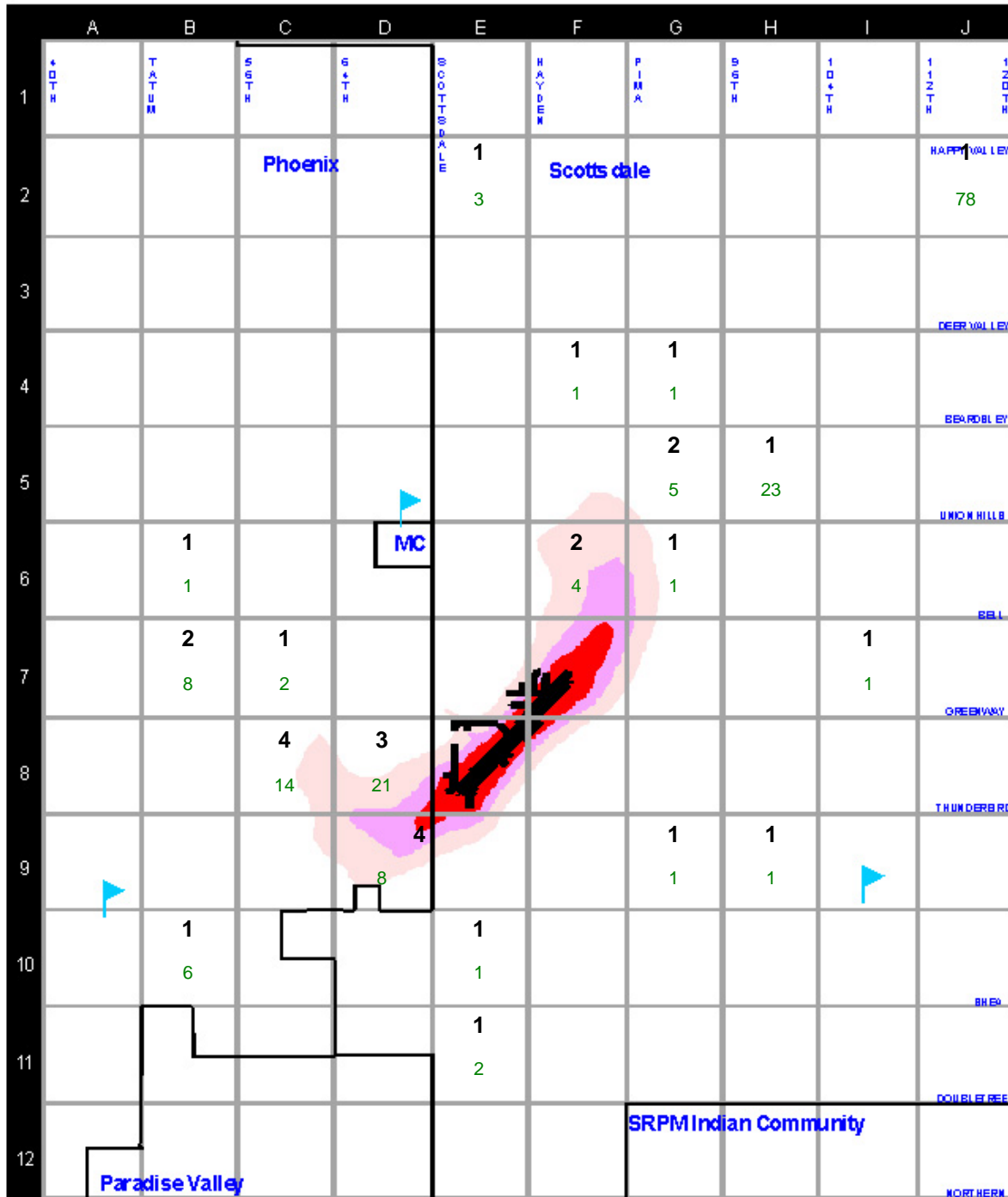
This table shows the total complaints received in the "local" area for this quarter along with a comparison of the same quarter the previous year.

Aircraft Noise Complaint Map

Complaints and complainants within the Airport Influence Area

April 1 through June 30, 2023

The map below represents the Scottsdale Airport Influence Area. Each grid block indicates the total number of complaints (green - on bottom) received per square mile for the summary period, and the number of complainants or people (black - on top) who filed them. Please refer to the map legend below for other map features.



GRIDS NOT SHOWN: UNKNOWN=2/1, BEYOND GRID=2/6

LEGEND		55 DNL Contour	Complainants
		60 DNL Contour	
		65 DNL Contour	
		Reporting Point	Complaints
		City Limits	

Monthly Noise Complaint History

Through June 30, 2023

The following table lists monthly data on the number of complaints and complainants recorded within the "local" or Airport Influence Area (see grid on page two of this report).

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Total
2001 Complainants	36	35	35	24	15	6	17	14	12	18	50	21	283
2001 Complaints	42	48	56	32	36	12	29	17	19	30	70	24	415
2002 Complainants	16	25	29	51	26	36	46	48	41	72	64	60	514
2002 Complaints	22	44	58	113	89	137	110	477	955	569	393	242	3,209
2003 Complainants	104	57	49	31	47	19	46	25	73	64	97	46	658
2003 Complaints	417	310	319	179	170	132	216	226	378	338	408	231	3,324
2004 Complainants	66	76	89	58	28	32	33	32	26	52	69	31	592
2004 Complaints	810	1,105	953	1,145	515	384	477	670	622	1,142	1,423	821	10,067
2005 Complainants	33	59	44	26	25	14	42	19	17	46	33	14	372
2005 Complaints	1,083	1,016	853	709	721	664	1,232	1,270	1,269	2,437	2,195	2,140	15,589
2006 Complainants	18	18	42	29	19	23	19	20	24	33	30	22	297
2006 Complaints	3,101	2,932	2,117	840	478	353	333	474	502	619	551	470	12,770
2007 Complainants	19	26	23	39	15	9	11	21	16	28	89	24	320
2007 Complaints	537	535	405	534	457	169	502	533	599	602	556	541	5,970
2008 Complainants	23	70	70	14	20	8	7	8	8	18	23	16	285
2008 Complaints	476	609	452	31	26	16	11	29	15	55	54	34	1,808
2009 Complainants	11	14	25	10	7	10	13	12	14	29	20	13	178
2009 Complaints	85	72	39	15	23	28	117	38	53	158	85	45	758
2010 Complainants	13	22	19	25	15	7	6	7	10	18	24	22	188
2010 Complaints	63	136	191	125	57	27	19	35	35	77	94	145	1,004
2011 Complainants	16	16	15	15	9	7	12	9	11	16	39	10	175
2011 Complaints	141	190	140	34	24	32	55	53	79	87	77	36	948
2012 Complainants	10	14	14	13	9	20	4	7	7	17	27	17	159
2012 Complaints	65	63	39	35	24	26	7	13	31	62	63	40	468
2013 Complainants	34	21	21	15	8	13	9	10	17	10	34	18	210
2013 Complaints	80	78	67	63	100	127	100	148	164	168	186	147	1,428
2014 Complainants	16	45	23	13	14	11	12	14	6	26	37	23	240
2014 Complaints	173	247	171	144	114	110	123	86	99	165	219	127	1,778
2015 Complainants	37	69	78	35	33	21	19	21	21	33	39	15	421
2015 Complaints	262	239	287	162	199	130	124	117	171	351	306	150	2,498
2016 Complainants	35	40	25	30	22	18	18	28	21	45	55	48	385
2016 Complaints	272	255	275	327	288	165	139	780	467	723	2,139	657	6,487
2017 Complainants	64	77	37	49	34	18	26	18	21	34	43	22	443
2017 Complaints	869	989	1,150	780	543	303	300	312	297	587	766	315	7,211
2018 Complainants	31	32	43	37	33	25	22	26	24	55	50	62	440
2018 Complaints	589	550	746	622	387	189	178	209	134	292	227	30	4,153
2019 Complainants	61	37	34	76	36	27	19	23	37	25	46	41	462
2019 Complaints	262	160	190	743	223	103	83	84	168	132	179	92	2,419
2020 Complainants	39	55	48	39	42	21	39	20	24	25	36	21	409
2020 Complaints	101	130	191	121	98	96	120	66	54	73	82	62	1,194
2021 Complainants	24	27	29	41	27	27	7	14	20	38	40	46	340
2021 Complaints	45	70	106	91	257	89	12	37	114	229	391	346	1,787
2022 Complainants	24	25	34	24	15	11	16	15	16	30	20	34	264
2022 Complaints	115	71	135	225	113	51	85	152	128	195	159	155	1,584
2023 Complainants	19	15	23	16	19	8	0	0	0	0	0	0	100
2023 Complaints	228	94	156	62	81	39	0	0	0	0	0	0	660



COMMISSION INFORMATION REPORT

Administrative report from the Aviation Director, or designee, regarding the status of pending aviation-relative items

Agenda Item No: 15

Meeting Date: 09/20/23

Staff Contact: Gary P. Mascaro,
Aviation Director

Phone: (480) 312-7735

INFORMATION

Discussion regarding status of the Airport Advisory Commission's items to City Council, and aviation-related items approved by Planning Commission, Design Review Board, or City Council.

Attachment(s):

1. Airport Advisory Commission Items to City Council.
2. Aviation-related items to Planning Commission, Design Review Board, or City Council.
3. City Council Meeting Calendar.

**AVIATION-RELATED ITEMS TO PLANNING COMMISSION, DESIGN REVIEW BOARD OR CITY COUNCIL
(Projects that may be on airport, have taxi lane access, have height implications, or have sensitive noise uses)
2023**

AIRPORT COMMISSION DATE	APPROVED	ITEM DESCRIPTION	PLANNING, DRB, OR CITY COUNCIL	APPROVED
N/A	N/A	<p>Seventh Day Adventists Warehouse Building Request by applicant for approval of a site plan, building elevations and landscape plan for a new one-story warehouse building comprised of approximately 243,360 square feet of building area, may have aircraft storage, on a +/- 18-acre portion of property located at 7501, 7509, and 7511 E. Redfield Rd. with Planned Airpark Core Development, Aviation (PCP AV) and Planned Airpark Core Development Employment (PCP EMP) zoning. 14-DR-2022</p>	DR 01-19-23	Approved 7-0
06-21-23	Approved w/Stip 5-0	<p>The Parque Request by owner for a zoning district map amendment from General Commercial (C-4) to Planned Airpark Core Development - Airpark Mixed Use Residential, Planned Shared Development (PCP-AMU-R PSD) including a development plan with bonus development standards for building height and floor area ratio to allow a mixed-use development with approximately 1,236 dwelling units, 223 hotel keys, and 253,000 square feet of commercial floor area on a +/- 32.29 gross acre site located at 16001 N. Scottsdale Road. 13-ZN-2022</p>	PC 09-27-23 CC 11-13-23	? ?
N/A	N/A	<p>Key Essential Hangar Request for the development of an aircraft hangar with accessory office on a one-acre vacant site within the Industrial Park (I-1) zoning located at 16060 N. 82nd St with I-1 zoning. 41-DR-2022.</p>	DR 05-18-2023	Approved 5 - 0
N/A	N/A	<p>Key Essential Hangar – Use Permit Requesting a Conditional Use Permit for a heliport as part of a new aircraft hangar, located at 16060 N. 82nd St with I-1 zoning. 1-UP-2023.</p>	PC 05-10-23 CC 06-13-23	Approved 5-0 Approved on consent 7-0

09-20-23	?	<p>Northsight Residential Health Care</p> <p>Request for a zoning district map amendment, amending the stipulations and development plan of case 14-ZN-1991. Increasing allowed building height from 36 ft to 51 ft and the allowed floor area ration from .25 to 1.15 to allow for redevelopment of the site into a new residential health care facility including up to 270 residential healthcare beds/units on a 5.78-acre site with Central Business Planned Community District (C-2 PCD). 15-ZN-2022</p>	PC 10-25-23	?
N/A	N/A	<p>Augusta One Scottsdale</p> <p>Request by owner for approval of the site plan, landscape plan, and building elevations for a new residential healthcare facility, consisting of 120-units, on a +/- 3.0-acres site located at 7221 E. Legacy Boulevard, with Planned Regional Center and Planned Community Development (PRC PCD) zoning. 30-DR-2021#4</p>	?	?
N/A	N/A	<p>Helm Hangar</p> <p>Request for approval of a site plan, landscape plan and building elevations for 2 new 2-story aircraft hangar/office buildings comprised of two stories with approximately 63,806 square feet of total building area located at 7333 E Helm Drive with Industrial Park (I-1) zoning. 47-DR-2022</p>	DRB 07-06-23	Approved on consent 5-0
N/A	N/A	<p>AFB Development</p> <p>Request by owner for approval of the preliminary plat for a new 55-lot single-family subdivision, on a +/- 40-acre site with Single-family Residential, Planned Community Development (R1-7 PCD) zoning, located at 9402 E. Bell Road. 12-PP-2022</p>	?	?
?	?	<p>Sundown Commons</p> <p>Request by owner for a Zoning District Map Amendment from Central Business (Conditional) (C-2 (C)) to Planned Unit Development, Planned-shared District (PUD PSD) Zoning with a Development Plan on a +/- 8.5 acre site located at 7000 E. Shea Boulevard for a mixed use development including +/- 239 multi-family units and existing commercial buildings. 6-ZN-2023 and 2-GP-2023</p>	?	?
09-20-23	?	<p>AXON</p> <p>Discussion and Possible Action for a Recommendation to the Planning Commission and City Council regarding case 13-ZN-2020#2, a request by owner for a zoning district map amendment from Planned Community District, Industrial Park (P-C I-1) zoning to Planned Community District with P-C comparable Planned Airpark Core,</p>	?	?

		Airpark Mixed-Use - Residential (P-C PCP AMU-R) zoning to accommodate an amendment to the original development plan (13-ZN-2020) to allow for 2,552 multi-family residential units, a hotel, and retail in six five-story buildings, up to 67 feet in height, and an increase in allowed floor area ratio (FAR) from 0.8 to 1.1, on a +/- 41-acre portion of a +/- 68-acre site, located at 8300 E Axon way.		
?	?	Banner Health Medical Campus Request by owner for a zoning district map amendment from Planned Community Development with P-C comparable Central Business District (P-C C-2) and comparable Industrial Park District (P-C I-1) to Special Campus (S-C) District, including development plan, for a new medical campus including full-service hospital with helipad, on a +/- 48-acre site located at 18400 N. Hayden Road.	?	?

**AIRPORT ADVISORY COMMISSION AVIATION ITEMS TO CITY COUNCIL
2023**

AIRPORT COMMISSION DATE	APPROVED	ITEM DESCRIPTION	CITY COUN CIL DATE	APPROVED
03-15-23	7-0	Adopt Resolution No. 12766 Authorizing Lease Agreement No. 2023-038-COS with Out West Rentals LLC, and Lease Agreement No. 2023-039-COS with Cirrus Design Corporation dba Cirrus Aircraft for the lease of General Aviation Box Hangar; and Resolution No. 12767 Authorizing Lease Agreement No. 2023-040-COS with SDL AZ Holdings, LLC dba Atlantic Aviation for the lease of General Aviation Box Hangar Space at the Scottsdale Airport. Staff contact: Carmen Williams, Aviation Finance & Administration Manager, 480-312-8475, cawilliams@scottsdaleaz.gov .	04-18-23	Approved on consent
06-21-23	5-0	Adopt Resolution No. 12859 Authorizing Lease Agreement No. 2023 – 087-COS with Aerobat Ventures, LLC for the lease of General Aviation Box Hangar Space at Scottsdale Airport. Staff contact: Carmen Williams, Aviation Finance & Administration Manager, 480-312-8475, cawilliams@scottsdaleaz.gov .	07-10-2023	Approved on consent
06-21-23	5-0	Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12858 authorizing the award of the base bid and add alternates #1 and #2 for contract no. IFB – 02023-071 with J. Banicki Construction, Inc in the amount of \$1,212,134.50 to construct perimeter road improvements at Scottsdale Airport, and Authorize a FY 2023/24 appropriation contingency transfer up to \$650,000 from the Airport Future Grants Contingency (ZB53) to the Airport Perimeter Road Construction capital project (AI03) to be funded by the Operating Aviation Fund undesignated, unreserve ending fund balance. Staff contact: Chris Read, Ass't Aviation Director – Operations, 480-312-2674, cread@scottsdaleaz.gov .	07-10-2023	Approved on consent
06-21-23	5-0	Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12876 authorizing the award of contract no. IFB – 032023-074 with J. Banicki Construction, Inc. in the amount of \$901,015.55 to construct Airport Drive improvements at Scottsdale Airport, and Authorize a FY 2023/24 appropriation contingency transfer up to \$125,000 from the Airport Match Contingency (ZB52) to the Rehabilitate Airport Drive capital project (AJ02) to be funded by the Operating Aviation Fund undesignated, unreserved ending fund balance. Staff contact: Chris Read, Ass't Aviation Director – Operations, 480-312-2674, cread@scottsdaleaz.gov .	07-10-2023	Approved on consent

09-20-23	?	Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12920 authorizing Contract No. 2023-134-COS with Mead & Hunt, Inc. to provide Engineering Services at Scottsdale Airport.	10-10-23	?
09-20-23	?	Discussion and Possible Action to Recommend to City Council Adoption of Resolution No. 12921 authorizing Contract No. IFB-052023-091 with J. Banicki Construction, Inc. in the amount of \$501,745.50 to construct Taxiway A4 improvements at Scottsdale Airport.	10-10-23	?
9-20-23	?	Adopt Resolution No. 12923 Authorizing a Second Amended and Restated Lease Agreement No. 2018-193-COS-A2 with Jet Aviation Scottsdale, LLC. Staff contact: Gary P. Mascaro, Aviation Director, 480-312-7735, gmascaro@scottsdaleaz.gov	10-10-23	?

2023 City Council Meeting Calendar

JANUARY						
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DECEMBER						
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Key

	Council Meeting
	Special Meeting
	Optional Additional Mtg and/or Study Session
	General Plan
	Events
	City of Scottsdale Holiday
	Election
	No meetings will be scheduled
	Retreat

Jan: 10 - Council Inauguration
11 - MLK Dinner

17 - State of the City Address

Mar: 26-28 - NLC Congressional City Conference

May: 16 - Tentative Budget Adoption

June: 13 - Final Budget Adoption

20 - Special Meeting (Charter Officer Evaluations)

27 - Property Tax Adoption

Revised: 09/27/22

Aug: 28-31 - AZ League Conference (Tucson)

Sep: 1 - AZ League Conference (Tucson)

Nov: 7 - Election Day

15-18 - NLC City Summit

TBD: Council Retreat



COMMISSION ACTION REPORT

Discussion and possible action to modify the Airport Advisory Commission meeting schedule and Commission item calendar

Agenda Item No.: 16

Meeting Date: 09/20/23

Staff Contact: Gary P. Mascaro,
Aviation Director

Phone: (480) 312-7735

ACTION

Review Airport Advisory Commission meeting schedule.

PURPOSE

Pursuant to By-Laws of the Scottsdale Airport Advisory Commission, Section 202, *“Regular meetings of the Commission shall be held on the third Wednesday of each month immediately following the study session, unless otherwise scheduled by majority vote of its members. In the event the Commission desires not to hold the preceding study session, the regular meeting shall begin at 5:00 p.m., unless otherwise scheduled by majority vote of its members.”*

Attachment(s): 1. Airport Advisory Commission meeting schedule

Action taken:

AIRPORT ADVISORY COMMISSION SCHEDULE OF MEETINGS - 2023
 (Including anticipated topics and timeline for discussion)

JANUARY						
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Election of Officers
By-Laws Review
Quarterly Noise Program Update

FEBRUARY						
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Risk Management Update

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Quarterly Noise Program Update
Proposed Aviation Enterprise Fund Five Year Financial Plan

MAY						
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JUNE						
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Experience Scottsdale Update

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No Meeting

AUGUST						
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No Meeting

SEPTEMBER						
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Quarterly Noise Program Update

OCTOBER						
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NOVEMBER						
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DECEMBER						
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