

City of Albuquerque

Request for Proposal

Solicitation Number: RFP2005-023-SB

**“Design, Construct and Operate a
Fuel Station & Food Facility Concession”
Albuquerque International Sunport**



Mandatory Pre-Proposal Conference: Thursday, May 19, 2005

Proposal Due Date: Thursday, June 16, 2005 - NLT 4:00 PM (MDT)

The date and time proposals are due shall be strictly observed.

City of Albuquerque
Department of Finance and Administrative Services
Purchasing Division

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INTRODUCTION

The City of Albuquerque Aviation Department ("City") is requesting proposals from all interested and qualified Offerors desiring to Design, Construct and Operate a Fuel Station & Food Facility Concession at the Albuquerque International Sunport ("Airport"). The intent of the concession is to provide the services anticipated herein to accommodate airport users, the traveling public, rental car customers, airport employees, and other people using the Airport and its adjacent roads.

The City has identified as the new Fuel Station & Food Facility site, a parcel of land approximately three (3) acres in size located at the southwest corner of University Boulevard and Aircraft Ave. SE, on the northerly portion of Tract L (combined Tracts A-2 & A-3 from Municipal Addition #9) of the Sunport Municipal Addition, Section 33, Township 10 N, Range 3 E.

The City intends that the concession be awarded to an Offeror who has the experience and qualifications to design, construct and operate a Fuel Station & Food Facility ("Facility") that includes at least the following four (4) modules:

- A **24-hour SELF-SERVE Fuel Station**. The Fuel Station must include an adequate number of pumps to meet the anticipated demand, and must offer the following types of fuel: gasoline with 86, 88, 90 or above octane levels, #2 diesel, and E-85 (ethanol)
- A **24-hour Convenience Store** offering an assortment of merchandise and sundries
- A **Fast Food Restaurant** offering drive-thru services that is also equipped with an indoor seating area
- A **24-hour Car Wash**

The documents contained in this Request for Proposal ("RFP") use the terms "proposal" and "offer," and "proposer" and "offeror" interchangeably.

An agreement will be awarded to the Offeror responding to this RFP who submits a proposal that meets all of the qualifications of the City as set forth herein and offers a financial package that provides the greatest benefit to the City. The City has the right to reject any and all proposals at its sole discretion.

General Information – Albuquerque International Sunport: Albuquerque International Sunport is the principal air carrier airport serving the Albuquerque Area

and the State of New Mexico. Owned by the City of Albuquerque and operated by the City's Aviation Department, the Airport is 5 miles southeast of downtown Albuquerque. The City also owns and operates Double Eagle II Airport, a general aviation reliever airport.

Albuquerque International Sunport is classified as a medium hub airport by the Federal Aviation Administration ("FAA"). According to Airport records, in 2000 approximately 3.1 million passengers enplaned at the Airport. According to Airports Council International-North America records, Albuquerque ranked as the 55th largest passenger airport in the United States in 2002. The Airport primarily serves an origin-destination (O&D) air traffic market—approximately 90% of the passengers using the Airport begin or end their trips in the Albuquerque area and other parts of the State. Southwest Airlines uses the Airport as a connecting point for its service between cities in Texas to the east and cities in Arizona, California, Nevada, Oregon, Utah, and Washington to the west. Southwest Airlines continues to be the Airport's dominant carrier with just over half of the market share in 2001 and 2002. Since 1987, Southwest has more than doubled its share of enplaned passengers at the Airport, from 21.3% to 53.6%.

Historical Passenger Activity

Calendar Year	Enplanements	Deplanements
1996	3,308,048	3,310,703
1997	3,138,663	3,151,355
1998	3,069,629	3,079,568
1999	3,131,951	3,131,853
2000	3,146,208	3,146,250
2001	3,089,703	3,093,903
2002	3,063,036	3,054,610
2003	3,033,839	3,018,040
2004	3,174,051	3,150,098

Statistical Information – Albuquerque International Sunport: Albuquerque International Sunport is centrally located in the State of New Mexico and is the only airport in the State that provides scheduled major and national airline service.

As of January 2005, fourteen (14) passenger airlines provided scheduled airline service at the Airport, including eight (8) major and national airlines (America West, American, Continental, Delta, Frontier, Northwest, Southwest, and United), four (4) regional airlines (Chautauqua, Horizon, Mesa, and SkyWest) and two (2) commuter airlines (Mesa and Westward). Today, the airlines offer nonstop flights to 36 cities from Albuquerque.

In addition, seven (7) all-cargo airlines (Aero Charter & Transport, Airborne Express, BAX Global, Empire Airlines, FedEx, South Aero, and United Parcel Service) provided service at the Airport.

Airport Facilities: The passenger facilities of the Airport include a terminal complex (“Terminal Complex”) with more than 500,000 square feet of interior space that presently has twenty-three (23) air carrier aircraft gates (as well as one (1) regional/commuter gate area serving two (2) commuter airlines. Twenty-three (23) of the air carrier gates are situated in a linear east-west concourse, parallel to the Terminal Complex and connected to it via a terminal-concourse connector. The eastern portion of the concourse is referred to as Concourse A and the western portion is referred to as Concourse B. The remaining gate is at the west end of the Terminal Complex and is used for international arrivals only.

The Terminal area includes a two-level terminal loop roadway system, a 3,400-space automobile parking structure and a 480 space surface parking lot. On March 17, 2001, the Airport opened a new Consolidated Rental Car Facility located on approximately 76 acres of Airport property southwest of the Terminal Complex comprised of a customer service building, ready/return parking area and service center facilities. The Consolidated Rental Car Facility is currently utilized by eight (8) rental car companies – Avis, Budget, Dollar, Hertz, Advantage, Thrifty, Enterprise, and Vanguard.

The Airport has three (3) principal runways for air carrier use: Runway 8-26 (reconstructed in 1997), the primary air carrier/military runway, is 13,775 feet long and 300 feet wide; Runway 3-21, reconstructed in 1995 as an air carrier runway, is 10,000 feet long and 150 feet wide and Runway 17-35, a crosswind runway, is 10,000 feet long and 150 feet wide. An additional crosswind runway (Runway 12-30) is used by general aviation aircraft. In addition to the reconstruction of Runways 3-21 and 8-26, recent improvements to the airfield at the Airport include the expansion of an air cargo apron and reconstruction of the remaining portion of Taxiway A. In 1999, Runway 12-30 was reconstructed in concrete to extend and expand the runway to 6,000 feet in length and 150 feet in width.

For more information regarding the Airport visit our website, <http://www.cabq.gov/airport>

PART 1 INSTRUCTIONS TO OFFERORS

1.1 RFP2005-023-SB, "Design, Construct and Operate a Fuel Station & Food Facility Concession - Albuquerque International Sunport."

1.2 Proposal Due Date: Thursday June 16, 2005, NLT 4:00 PM (MDT)
The time and date of Proposal submittal closing will be strictly observed.

1.2.1 Mandatory Pre-Proposal Conference. A mandatory pre-proposal conference is scheduled as follows:

Date and Time: Thursday, May 19, 2005, 10:00 a.m. (MDT)
City of Albuquerque - Aviation Department
Albuquerque International Sunport - Press Room
2200 Sunport Blvd., SE
Albuquerque, New Mexico 87106

1.2.2 Mandatory Pre-Proposal Conference Attendance. This is a *mandatory* pre-proposal conference. Failure to attend by an authorized representative of the Offeror will result in the rejection of any subsequent offer submitted. In the case of a joint venture, the attendance by any authorized representative of any of the parties to the joint venture will satisfy this requirement.

1.2.3 The City will have in attendance, key personnel to answer questions or discuss issues that may arise. **Questions should be prepared prior to the pre-proposal conference and a copy of such questions submitted to the purchasing representative on the day of the pre-proposal conference.**

1.3 City Purchasing Office. This Request for Proposal ("RFP") is issued on behalf of the City of Albuquerque Aviation Department by the City Purchasing Office, which is the sole point of contact during the procurement process. All communications regarding this RFP shall be directed in writing to the Purchasing Office to the attention of Suzanne Boehland as stated herein. Written communication may be made via e-mail, facsimile, U.S. mail, or delivery service.

1.4 Authority. Chapter V, Article V of the Revised Public Purchases Ordinance of the City of Albuquerque, 1994, ("Public Purchases Ordinance"). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, enacted this Ordinance to provide maximum local self-government. To that end, it is intended that this Ordinance govern all purchasing

transactions of the City and serves to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98.K, NMSA 1978.

1.5 Acceptance of Offer. Acceptance of Offer is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

1.5.1 City Public Purchases Ordinance.

1.5.2 City Purchasing Rules and Regulations. These Rules and Regulations (hereinafter "Regulations") are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

1.5.3 Civil Rights Compliance. Acceptance of Offer is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances relating to the enforcement of civil rights. Offeror additionally certifies to abide by and cooperate in the implementation of the policies and practices set forth in the City Affirmative Action Plan. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Division, Community Services Department.

1.5.4 Americans with Disabilities Act Compliance. Offeror certifies and agrees, by submittal of its Offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and Federal regulations promulgated thereunder.

1.5.5 Bonding Compliance.

1.5.5.1 Proposal Bond. Each Proposal shall be accompanied by a Proposal Bond issued by a surety duly authorized to conduct business in the state of New Mexico and acceptable to the City in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). The Proposal Bond is submitted as a guaranty that the Offeror, if awarded the Agreement, will promptly execute such Agreement in accordance with the Request for Proposal and in the manner and form required by the Agreement documents. The Proposal Bond of all offerors will be retained until the Agreement is awarded or other disposition is made thereof.

The Proposal Bond of all Offerors will be promptly returned following the occurrence of one of the following, a) the Agreement has been executed and the required security deposit, proof of insurance, performance bond, and labor and materials bond, have been furnished to the City; b) the time specified in the proposal documents has elapsed so that Offeror may withdraw the Offer; or c) all Proposals have been rejected.

Should Offeror refuse to enter into such Agreement or fail to furnish such bonds or proof of insurance, the amount of the Proposal Bond shall be forfeited to the City as liquidated damages, not as a penalty. Proposals submitted without the required Proposal Bond, written by a surety, as stated above will **automatically be rejected**. The awarded Offeror must be named as principal on the bonds.

1.5.5.2 Proposal Bond Requirements.

1.5.5.2.1 All bonds must be written by a surety duly authorized to conduct business in the State of New Mexico and listed as approved in the current Federal Register listing. The bonds shall be written on the forms provided in this Request for Proposals.

1.5.5.2.2 NO THIRD PARTY BONDS WILL BE ACCEPTED.

1.5.5.2.3 CASHIER'S CHECKS, CERTIFIED CHECKS, PERSONAL CHECKS, LETTERS OF CREDIT, CASH OR OTHER SUBSTITUTES WILL NOT BE ACCEPTED IN LIEU OF THESE BONDS.

1.5.5.2.4 FAILURE TO SUBMIT THE PROPOSAL BOND WRITTEN BY A SURETY AS STATED ABOVE WILL BE CAUSE FOR AUTOMATIC REJECTION OF THE OFFER.

1.5.6 Ethics.

1.5.6.1 Fair Dealing. The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent Agreement or for securing more favorable treatment with respect to making a recommendation of award.

1.5.6.2 Conflict of Interest. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under the Agreement resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting Agreement, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

1.5.7 Participation/Offeror Preparation. Offeror may not use the consultation or assistance of any person, firm, or company who has participated in whole or in part in the writing of these Specifications or Scope of Services, for the preparation of their offer or in the management of business if awarded this Agreement.

1.5.8 Debarment or Ineligibility Compliance. By submitting its offer in response to this RFP, the Offeror certifies that a) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and b) should any notice of debarment, suspension, ineligibility, or exclusion be received by the Offeror, the Offeror will notify the City immediately.

1.5.9 Goods Produced Under Decent Working Conditions. It is the policy of the City not to purchase, lease, or rent goods for use or for resale at the City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines under decent working conditions as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than forty-eight (48) hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [*Council bill No. M-8, Enactment No. 9-1998*]

1.6 DBE Requirements. The City of Albuquerque Aviation Department has established a Disadvantaged Business Enterprise ("DBE") program that includes an annual participation goal of 15.6%, as a part of its Federally approved FAA, DBE Program, in accordance with 49 CFR Part 26. Based on the nature of the services to be provided by the successful Offeror regarding this RFP, The City of Albuquerque Aviation Department has determined that a Race-Neutral measure (refer to Part 5, Proposal Form 8 of this RFP) will be a part of this RFP, in accordance with 49 CFR Part 26.51(b). The successful Offeror is, therefore, strongly encouraged to make a good faith effort to assist the City of Albuquerque Aviation Department in reaching its overall annual DBE participation goal, by using the services of Small Business Enterprises (SBE)/ Woman

Business Enterprises (WBE)/and Certified DBE's whenever possible. Race-Neutral Measure means a program that is, or can be, used to assist all small businesses. For purposes of this section, race-neutral includes gender-neutrality.

1.7 City Contact (per paragraph 1.3 above). Suzanne Boehland, Senior Buyer, City of Albuquerque, Department of Finance and Administrative Services, Purchasing Division, PO Box 1293, Albuquerque, New Mexico 87103. Phone (505) 244-7786 or (505) 842-4278 (FAX) or email: sboehland@cabq.gov. All questions must be submitted in writing throughout the procurement process, within the timeframe provided below.

1.8 Contracting Agency. The Agreement resulting from this RFP will be administered by the City of Albuquerque Aviation Department.

1.9 Clarification. Any explanation requested by an Offeror regarding the meaning or interpretation of this Request For Proposal must be submitted to the City Contact in writing not less than fifteen (15) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. Oral explanations or instructions given before the submission of offers will not be binding. Any information given to a prospective Offeror concerning this RFP will be furnished to all prospective Offerors as an addendum of this RFP if such information is necessary to Offerors in submitting offers on this RFP or if the lack of such information would be prejudicial to uninformed Offerors.

1.10 Submission of Offers. The Offeror's sealed proposal must be in the format outlined in Part 2 of this RFP and mailed or delivered pursuant to the following requirements:

1.10.1 Envelope Preparation. Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- 1.10.1.1 Name and Address of Offeror
- 1.10.1.2 Closing Date and Time of RFP
- 1.10.1.3 RFP Number
- 1.10.1.4 RFP Title

1.10.2 Ship, Deliver, or Hand-Carry Sealed Offers to: Office of the City Clerk, City /County Government Center, 11th Floor, One Civic Plaza, Albuquerque, New Mexico 87102. **Mark all packages as stated above.** Use this address for packages sent via non United States Postal Service carriers.

1.10.3 Mail Sealed Proposals to: Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 4:00 PM (MST) of the day of closing.

ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK AS SPECIFIED HEREIN.

1.10.4 No other methods of offer delivery. Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

1.10.5 Submit one (1) original and nine (9) copies of your Proposal.

1.10.6 Modification. Offers may be modified or withdrawn only by written notice, provided such notice is received prior to the Proposal Due Date.

1.10.7 Failure to Submit Offer. If no offer is submitted, the City will not return the Request for Proposal.

1.11 Receipt of Proposals. The only acceptable evidence to establish the time of receipt of Proposals at the City Clerk's Office is the time-date stamp of that Office on the Proposal wrapper or other documentary evidence of receipt maintained by that Office.

1.12 Acknowledgment of Addenda to the Request for Proposal. Receipt of Addenda to the RFP by an Offeror must be acknowledged a) by signing and returning the Addenda, or b) by letter. Such acknowledgment may be submitted with the offer. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

1.13 Proposed Concession Lease and Agreement. An example of the proposed Agreement to be entered into is provided in Part 6 of this RFP. Please state that you accept the terms and conditions of the Agreement, or note exceptions pursuant to Part 5, Proposal Form 5, Section 5, of this RFP.

1.14 Evaluation Period. The City reserves the right to analyze, examine and interpret any offer for a period of ninety (90) days after the hour and date specified for the receipt of offers.

1.15 Evaluation Assistance. The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

1.16 Rejection and Waiver. The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

1.17 Debarment of Offeror. Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of an Agreement, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

1.18 Award of Agreement.

1.18.1 When Award Occurs. Award of Agreement occurs when evidence of acceptance by the City is provided to the Offeror. **A Recommendation of Award does not constitute award of Agreement.**

1.18.2 Award. If an Agreement is awarded, it shall be awarded to the responsive and responsible Offeror whose offer conforming to the RFP will be most advantageous to the City as set forth in the Evaluation Criteria.

1.18.3 Approval of Bonds, Insurance, and Security Deposit. Even though the Offeror may have been given notice to proceed, it shall not begin any work under the Agreement until the required bonds, insurance, and security deposit have been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove bonds, certificates, policies, or the insurance by the City shall relieve the Offeror of full responsibility to maintain the required insurance in full force and effect. If part of the Agreement is sublet, the Offeror shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Offeror's insurance policies.

1.18.4 Agreement Term. The initial Agreement Term shall be for a period of twenty (20) years. The City shall retain an option to extend the Term for an additional five (5) year period at its sole discretion.

1.18.5 Type of Agreement. Concession Lease and Agreement ("Agreement").

1.18.6 Debarment/Cancellation of Agreement. Upon receipt of notice of debarment of an Offeror awarded an Agreement as a result of this RFP or

other ineligibility of the Offeror, the City shall have the right to cancel the Agreement with the Offeror for cause as provided in accordance with the terms of said Agreement.

1.18.7 Graffiti Free. When required, the Operator shall furnish equipment, facilities, or other items required to complete these services that are "graffiti free." Failure of Offeror to comply with this requirement may result in cancellation of the Agreement resulting from this RFP.

1.19 Cancellation. This RFP may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interest of the City.

1.20 Proposal Rejection and Disqualification. Proposals may be rejected for any of the following reasons:

- 1.20.1 Failure to attend the Mandatory Pre-Proposal Conference;
- 1.20.2 Failure to provide a Proposal Bond in the amount and form described in this RFP;
- 1.20.3 Failure to meet the Minimum Qualifications as outlined in this RFP;
- 1.20.4 Lack of evidence of Offeror's ability to operate as proposed;
- 1.20.5 Failure to offer a Minimum Initial Capital Investment that meets or exceeds the Minimum Initial Capital Investment established in this RFP;
- 1.20.6 Failure to offer a Minimum Monthly Guarantee that meets or exceeds the Minimum Monthly Guarantee established in this RFP;
- 1.20.7 Failure to offer a Percent of Gross Revenues Fee that meets or exceeds the Percent of Gross Revenues Fee established in this RFP;
- 1.20.8 Evidence of collusion among Offerors;
- 1.20.9 Omissions or fraudulent statements in Offeror's proposal; and
- 1.20.10 Outstanding debts to the City of Albuquerque.

1.21 Negotiations. Negotiations may be conducted with the Offeror recommended for award of Agreement.

1.22 City-Furnished Property. No material, labor or facilities will be furnished by City unless provided for in this RFP.

1.23 Proprietary Data. This RFP shall be open to public inspection after award of Agreement, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the Proposal and each page shall be clearly marked and readily separable from the Proposal in order to facilitate public inspection of the non-confidential portion of the Proposal. Prices and makes and models or catalog numbers of the items offered, deliveries, and

terms of payment shall be publicly available regardless of any designation to the contrary. The City of Albuquerque will endeavor to restrict distribution of the material designated as confidential or proprietary to only those individuals involved in the review and analysis of the Proposals. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978).

1.24 Local and Resident Preferences. A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance for this RFP. The "**Local Preference Certification Form**" and instructions are in Part 5 of this RFP. If a completed Local Preference Certification Form, or a current and correct Resident Preference Number, or evidence to indicate that a company is a manufacturer (if applicable) is not received with the Offeror's response, a preference will not be applied for that offer. The Form, the Number or other evidence will not be acceptable after the Proposal Due Date. For those offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

1.25 REQUEST FOR PROPOSAL ("RFP") PROTEST PROCESS.

1.25.1 When. If the protest concerns the RFP components or other matters pertaining to the RFP documents, it must be received by the City Purchasing Officer no later than ten (10) working days prior to the Proposal Due Date.

1.25.2 Recommendation of Award. If the protest concerns other matters relating to this RFP, the protest must be filed within ten (10) working days after the receipt of notice of the Recommendation of Award.

1.25.3 Timely Protests. Protests must be received by the City Purchasing Officer prior to the appropriate deadline as set out herein, or they will not be considered valid. The City Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

1.25.4 How to File. Protests shall be addressed to the City Purchasing Officer, must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic, or electronic protests will not be accepted.

1.25.5 Required Information. Protests shall contain at a minimum the following:

- The name and address of the protesting party;
- The number and title of the RFP;
- A clear statement of the reason(s) for the protest;
- Details concerning the facts, which support the protest;
- Attachments of any written evidence available to substantiate the claims of the protest; and
- A statement specifying the ruling requested.

Address Letters as follows: Envelopes should clearly indicate:

- | | |
|--|---|
| <ul style="list-style-type: none">- Ronn D. Jones- Purchasing Officer- City of Albuquerque- DFAS, Purchasing Division- P.O. Box 1293- Albuquerque, New Mexico 87103 | <p>RFP Number and Title
PROTEST</p> |
|--|---|

1.25.6 All protests will be responded to by the City Purchasing Officer upon evaluation. The City Purchasing Officer will, after evaluation of a protest, issue a response. Only the issues outlined in the written protest will be considered by the City Purchasing Officer.

1.25.7 Protest Hearing. If a hearing is requested, the request must be included in the Protest and received within the time limit to be allowed. A filing fee of Twenty and 00/100 Dollars (\$20.00) must accompany the request for hearing. Only the issues outlined in the protest will be considered by the City Purchasing Officer, or may be raised at a protest hearing. The granting of a hearing shall be at the discretion of the City Purchasing Officer following review of the request.

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PART 2 PROPOSAL FORMAT

2.1 Proposal Format. Offerors must complete and submit all required proposal forms and other documentation as required, and must adhere to all instructions contained in this RFP. Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content. The information contained in the subsections of this Part 2 are intended to assist in the completion of the required proposal forms in Part 5 of this RFP.

The materials and information requested in Part 5 of this RFP must be completed in full as a condition of the Proposal and submitted in one (1) original and nine (9) copies. The original Proposal shall be clearly marked as "Original" on the cover of the Proposal. A checklist of items to be completed and submitted with Offeror's Proposal is provided at the beginning of Part 5.

2.1.1 Local Preference Certification (Part 5, Proposal Form 1 of this RFP).

2.1.2 Business Information (Part 5, Proposal Form 2 of this RFP).

- a) Name and address of the organization.
- b) The form of organization, e.g., individual, partnership, joint venture, corporation, limited liability company (LLC).
- c) For joint ventures, partnerships and limited liability companies, identify the ownership interest of each party. Include the names, addresses, and telephone numbers of each party.
- d) Name, address, phone number, FAX number, and email address of the person who represents the Offeror.

2.1.2.1 Other References. Part 5, Proposal Form 2 of this RFP. Provide a representative listing of other business entities, including contact person and telephone number, with a description of each entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

2.1.3 Minimum Qualifications and Experience. City has set a criteria for the Minimum Qualifications and Experience that the Offeror must meet or exceed to be considered as submitting a responsive Proposal. Any Offeror who does not meet these Minimum Qualifications and Experience shall not have its Proposal considered by the City.

The Minimum Qualifications and Experience listed below pertain to the Offeror's Business Entity. If the Business Entity is a partnership, LLC or a joint venture, the partners, LLC investors, or joint venture parties that will manage the design, construction, and operation of the Fuel Station & Food Facility Concession shall be identified. The Business Entity shall meet the following Minimum Qualifications and Experience in order to have the Proposal considered by the City:

2.1.3.1 Experience. Part 5, Proposal Form 3 of this RFP. Offeror must provide evidence that it has the necessary experience and capacity to fulfill the requirements of the Fuel Station & Food Facility Concession Lease and Agreement. At a minimum, within the last ten (10) years, Offeror must have at least five (5) years ("Qualifying Years") of continuous experience in the design, development, construction, management, and operation of a fuel station & food facility concession that is similar in scope and complexity as that which is contemplated under this RFP. Additionally, Offeror must provide evidence of experience designing, constructing, and operating at least two (2) other fuel station & food facility concessions essentially the same in size and scope as the Facility proposed under this RFP.

Those Business Entities submitting Proposals that are typically involved in only the design, development, and construction of a fuel station & food facility such as the one contemplated under this RFP, but not necessarily involved in the management or operation of the Fuel Station & Food Facility, must provide evidence of contracts with a qualified Business Entity to manage and operate the Fuel Station & Food Facility Concession, which meets the above requirements.

2.1.3.2 Defaults, Terminations, Judgments. Part 5, Proposal Form 3 of this RFP. Provide the name, location, and date, if any, of any of Offeror's development projects, facility management contracts, or any related business ventures for which it has been placed in default and/or which have been terminated, either voluntarily or involuntarily, prior to the expiration of their terms, within the past five (5) years. The reason(s) for such default and/or termination shall be indicated. For the same period of time, list any judgments or orders that have been issued affecting Offeror's business operation and any pending lawsuits for the termination of any business operated by the Offeror or any of its owners, officers, directors or management employees.

2.1.3.3 Financial. Part 5, Proposal Form 4 of this RFP. Offeror, must have a Business Entity net worth of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) and provide at least three (3) satisfactory credit and banking references. Offeror must have sufficient identified credit and/or funds available for the required minimum initial capital investment of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00).

Offeror must demonstrate gross revenues of not less than One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) per year for each Qualifying Year as specified in Section 2.1.3.1 above. The gross revenues of Offeror, including all joint venture partners and other business combinations as appropriate, may be included within Offeror's calculation of the gross revenues to meet this requirement.

2.1.3.4 Bankruptcy. Part 5, Proposal Form 4 of this RFP. Provide a statement advising whether Offeror or any of its principals, officers, directors, subsidiaries, or related entity's have been parties to any bankruptcy proceedings in the past seven (7) years.

2.1.4 Facility Master Plan. Part 5, Proposal Form 5 of this RFP. Offeror must provide information, which, at a minimum, includes the following plans and strategies to describe the Offeror's Master Plan for the Facility that will meet or exceed the scope and complexity of the concession that is contemplated under this RFP:

2.1.4.1 Plans of Facility to be Constructed. Provide a detailed site development plan indicating user access, relationship of each Module of the Facility to the site and to each other, and the landscape concepts. In addition, provide a physical layout with plans and renderings of each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash). Plans and renderings submitted with the Proposal should be eight and one-half inches (8½") by eleven inches (11") or eleven inches (11") by seventeen inches (17") folded to eight and one-half inches (8½") by eleven inches (11"). Offerors may submit one additional set of thirty-six inches (36") by twenty-four inches (24") plans and/or renderings in a separate package.

If a franchise is proposed for any portion of the Facility, for each such franchise, describe all design concepts, signs, and features required under the franchise agreement.

2.1.4.2 Facility Merchandising Plan. Describe in detail, the merchandising plan for each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash). This information should include, but not be limited to, the brand identification of gasoline products, the types of automotive accessories items offered, the predominant fast food products theme, convenience store items, car wash options, and other relevant information related to each Module.

2.1.4.3 Management and Operating Plan - describe Offeror's plan to ensure a quality Facility. The plan should include the following:

- a) Organizational chart and its relationship to the Offeror's business structure;
- b) Resumes of key management personnel including resume of on-site managers;
- c) Qualifications, responsibilities, and the decision-making ability of its various levels of personnel;
- d) Quality Control Program (must provide actual copy of program);
- e) Customer service philosophy;
- f) Forecasts of gross sales for the first five (5) years of operation for each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash);
- g) Personnel Policies and Training Program (must provide actual copies of the policies and program);
- h) Staffing; and
- i) Hours of Operation.

2.1.5 Minimum Initial Capital Investment. Part 5, Proposal Form 6 of this RFP. In accordance with Part 6, Section 4 of this RFP, Offeror must state a cost commitment for the Minimum Initial Capital Investment for proposed improvements and other start-up costs. Offeror should also specify the source of funds (cash, bank loan, etc.) for the Minimum Initial Capital Investment. Although the City has established a sum of **One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)** as a Minimum Initial Capital Investment, **Offeror may propose a higher Minimum Initial Capital Investment.** Further, any deficit in the actual Minimum Initial Capital Investment relative to the proposed Minimum Initial Capital Investment must be paid to the City as additional compensation.

2.1.6 Proposed Minimum Monthly Guarantee (“Guarantee”). Part 5, Proposal Form 6 of this RFP. In accordance with Part 6, Section 9.2 of this RFP, a Guarantee will be required during the term of the Agreement. Offeror shall pay City a Guarantee of **Twenty Thousand and 00/100 Dollars (\$20,000.00)** per month, or a monthly amount proposed by Offeror, **whichever is greater**, beginning the first day of the month following Date of Beneficial Occupancy (“DBO”).

2.1.7 Proposed Percentage of Gross Revenues Fee. Part 5, Proposal Form 6 of this RFP. In accordance with Part 6, Section 9.3 of this RFP, a Percentage of Gross Revenues Fee will be required during the term of the Agreement. Offeror shall pay City a Percentage of Gross Revenues Fee of **five percent (5%)**, or an amount proposed by Offeror, **whichever is greater**, derived from the sale of all products, goods, and services, excluding fuel, at the Facility.

2.1.8 Mid-Term Refurbishment. Within the last six (6) months of the ninth (9th) year of the Term, Operator shall submit detailed plans and schedules for the Mid-Term Refurbishment of the Facility. The City has set a minimum Mid-Term Refurbishment Investment threshold of **Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00)**. Following approval of plans and schedules by City, Operator shall complete all Mid-Term Refurbishments within six (6) months of the City's date of approval. This Mid-Term Refurbishment shall be for renovation and equipment replacement, and shall not include ordinary maintenance items.

If the Term of the Agreement is extended in accordance with Part 6, Section 8 of this RFP, the Operator will be required to complete an additional refurbishment of the Facility. Within the last six (6) months of the twentieth (20th) year of the Term, Operator shall submit detailed plans and schedules for additional Facility renovation. The City and Operator shall jointly decide the level of investment required for this additional refurbishment based on the condition of the Facility at that time. This additional refurbishment shall be for renovation and equipment replacement, and shall not include ordinary maintenance items.

2.1.9 Land Rental Fee. The initial Land Rental Fee, commencing upon the Effective Date of the Agreement, shall be **Thirty Nine Thousand and 00/100 Dollars (\$39,000.00)** per year.

If the Term of the Agreement is extended in accordance with Part 6, Section 8 of this RFP, the Land Rental Fee will be established based on the value of the land as determined by an appraisal at that time.

2.1.10 Retail Motor Vehicle Fuels Sales Fee. In addition to the Percentage of Gross Revenues Fee and the Land Rental Fee, Operator shall pay City a Retail Motor

Vehicle Fuels Sales Fee based on the volume of Retail Motor Vehicle Fuels, as defined in Part 6, Section 2.37 of this RFP, sold monthly according to the following thresholds:

- \$0.00** per gallon on sales of 0 – 75,000 gallons;
- \$0.01** per gallon on sales of 75,001 gallons – 150,000 gallons; and
- \$0.02** per gallon on sales in excess of 150,000 gallons.

2.1.11 Projected Gross Revenues, Net Income, and Cash Flow. Offeror must include a good faith estimate of the expected annual revenues, expenses, net income, and cash flow to be derived from the Fuel Station & Food Facility Concession over the Term of the Agreement. Offeror may use a format of its choice, but must include, at a minimum, projected annual gross sales, gross revenues, direct expenses, including, but not limited to maintenance, general and administrative expenses, depreciation, interest expense, and debt service.

2.1.12 Local Participation Plan. Part 5, Proposal Form 7 of this RFP. Describe the extent of local participation pertaining to the management and operation of the Fuel Station & Food Facility Concession. Local participants may include joint ventures, limited liability companies, partners, and licensees.

Attach to your Proposal a Local Participation Form for each Local Participant in your Proposal and copies of all agreements both actual and proposed, between Offeror and local participants. Local Participation (not to be confused with Local Preference) is ***highly encouraged***, but is not mandatory.

2.1.13 Disadvantaged Business Enterprises (“DBE”) Participation Plan. Part 5, Proposal Form 8 of this RFP. Describe the extent of DBE participation in the areas of responsibility pertaining to the management and operation of the Fuel Station & Food Facility Concession. These DBE participants may include joint ventures, limited liability companies, partnerships, and licensees.

Attach to your Proposal a Disadvantaged Business Enterprises Participation Form for each DBE included in your Proposal and copies of all agreements, both actual and proposed, between Offeror and DBEs. Offerors are ***required*** to take all necessary and reasonable steps to achieve the Aviation Department’s DBE goal, as further explained in Part 1, Section 1.6 of this RFP.

2.1.14 Additional Information. Include other information relevant to your operation that you believe to be pertinent but not required in this Section 2.1.

PART 3

SCOPE OF SERVICES

3.1 Fuel Station & Food Facility Concession Objectives. The City desires to enter into a Concession Lease and Agreement (“Agreement”) for a Fuel Station & Food Facility (“Facility”) with a qualified and responsive entity or individual to design, construct, and operate an innovative, state-of-the-art Facility. The City is seeking a concession program at the Airport that will accomplish the following: a) Create a quality Facility to accommodate Airport passengers, the traveling public, car rental customers, and Airport employees; b) Develop an aesthetically appealing Facility that creates a positive impression on its users; c) Provide the highest quality in products and services, and incorporate best practices of facilities management and operation to achieve the highest level of customer satisfaction; d) Maximize Facility’s gross sales to provide the highest level of revenues for the Airport; and e) Provide opportunities for local participation within the local business community and for Disadvantaged Business Enterprises.

3.2 Facility Site. The City has identified as the new Fuel Station & Food Facility site, a parcel of land approximately three (3) acres in size located at the southwest corner of University Boulevard and Aircraft Ave. SE, on the northerly portion of Tract L (combined Tracts A-2 & A-3 from Municipal Addition #9) of the Sunport Municipal Addition, Section 33, Township 10 N, Range 3 E.

The selected Offeror shall be responsible for all site development work, including, but not limited to, rough grading, fine grading, drainage, asphalt, utilities, concrete pavement, and storm water management.

3.3 Operator’s Obligations. The Offeror who is awarded the Agreement under this RFP (“Operator”), at its sole cost and expense, shall be required to design, construct, operate, and maintain a high-quality, customer service oriented Facility to accommodate the traveling public and other Airport users. The Facility must include, at a minimum, the following four (4) Modules:

- **A 24-hour SELF-SERVE Fuel Station.** The Fuel Station must include an adequate number of pumps to meet the anticipated demand, and must offer the following types of fuel: gasoline with 86, 88, 90 or greater octane levels, #2 diesel, and E-85 (ethanol).
- **A 24-hour Convenience Store** offering an assortment of merchandise and sundries.

- A **Fast Food Restaurant** offering drive-thru services that is also equipped with an indoor seating area.
- A **24-hour Car Wash**.

3.4 Facility Concepts and Designs. Offeror's are encouraged to use their creativity, innovation, and experience in the design, development, and construction of a first-class, user-friendly Fuel Station & Food Facility Concession to provide exceptional customer service and maximize revenues to the Airport. When evaluating the design of the Facility, Offeror should consider the following elements:

- Access to the Facility in relation to drive lanes and driveways to provide easy customer access from George Road and University Boulevard and line of sight distances for approaching traffic.
- Traffic circulation between the Modules of the Facility as well as adequate parking for convenient use of each Module.
- Architectural plans and specifications to reflect the City's overall objectives for the aesthetic character of the Facility, compatibility with other Airport facilities, and quality of improvements. Consideration should be given to style, exterior color schemes, construction materials, and wording and placement of all signs. If a franchise is proposed for any portion of the Facility, for each such franchise describe all design concepts, signs, and features required under the franchise agreement.
- Landscaping concept that will enhance the appearance of the Facility, create an interesting and appealing streetscape, and still meet the City's desired goals for water conservation.

NOTE: The acceptance of a Proposal by the City does not constitute approval of the Offeror's submitted designs.

3.5 General Guidelines for Development and Maintenance of the Facility. As Operator prepares its designs and plans for the development of the site and the construction of the Facility, consideration must be given to the following permits, licenses, and approvals:

- Permits and approvals from the City of Albuquerque Planning Department, Fire Department, and Environmental Health.
- Permits and approvals from the National Board of Fire Underwriters or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions.

- Permits and approvals from the New Mexico Environment Department Underground Storage Tank Bureau for Underground Storage Tanks (“UST”) and fuel distribution systems.
- Permits and approvals for necessary Storm Water Management, Sediment, and Erosion Control requirements.
- Submittal of a Notice of Intent (“NOI”) to the Environmental Protection Agency (“EPA”) for site development and Facility construction.
- Submittal of a Storm Water Pollution Prevention Plan (“SWPPP”).
- Submittal of a Spill Prevention Controls and Countermeasures Plan.

3.6 Proposed Management and Operating Plan. Offeror’s Management and Operating Plan shall include at a minimum, the following:

- Operator shall provide a Facility that consists of a self-service Fuel Station, a Convenience Store, a Fast Food Restaurant offering drive-thru service with an indoor seating area, and a Car Wash. The Fuel Station, Convenience Store, and Car Wash shall be open for public service every day at all hours of the day and night (twenty-four (24) hours per day and seven (7) days per week) unless otherwise agreed to in writing by the City. The Fast Food Restaurant shall be open to the public seven (7) days per week and during such hours as will provide adequate service to Airport users, as determined by the City.
- Service performed and products sold at the Facility shall be of the highest quality.
- Operator shall provide competent and fully trained personnel possessing all required licenses to perform the services referred to in this RFP.
- Operator shall provide self-service gasoline and diesel fuel of a major brand, which means the primary trade name or trademark most commonly associated with and identified with a producer or refiner's brand of suitable octane grades (at least three grades) to meet the demand of the traveling public. In addition to these fuels, E-85 (ethanol) shall also be provided. Operator may, at its option, provide full-service gasoline pumps in addition to self-service pumps. In any event, Operator shall provide full service as required by the Americans with Disabilities Act (“ADA”).
- Operator shall accept at least four (4) major credit cards such as Visa, American Express, Master Card and at least one major oil company card with self-service automatic card readers available at the Fuel Station service islands.

- Operator shall sell limited automotive accessories typically sold in gasoline stations, such as motor oils, transmission fluids, windshield wiper blades and coolants, and shall provide air of sufficient pressure for inflating car and larger truck tires.
- Offeror shall include in its plan for the Convenience Store Module, the sale of items typically sold in similar facilities in the Albuquerque area, with primary emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products and services. A list of proposed categories of merchandise should be included with Offeror's Proposal. Sales of any such items are subject to the prior and continuing approval of the City.

NOTE: The acceptance of a Proposal by the City does not constitute approval of the Offeror's proposed merchandise list.

- To accommodate the requirement for the Fast Food Restaurant Module, Operator shall design, construct, and provide all necessary supplies and equipment for the preparation of a full service menu to include breakfast, lunch, and dinner items as typically found in other fast food restaurants. Offeror shall provide with its Proposal, detailed information concerning the predominant fast food theme along with a proposed menu. Any franchise requirements should be included in this information.
- Prices for all goods and services offered at the Facility shall be at the prices charged for comparable items offered in the Albuquerque Metropolitan Area. Operator will provide to City, a schedule of comparable pricing for all goods and services at the Facility for City's use when approving Operator's price list. No hotels, resorts, malls, or specialty stores will be allowed for comparison.
- The following services are PROHIBITED at the Facility, including, but not limited to:
 - a) Automotive service, repair and maintenance, including but not limited to, oil changes, tune-ups, tire repairs, and changing and general minor repair services.
 - b) The storage of any unattended vehicles.
 - c) Towing/emergency road service.
 - d) Ground transportation services.
 - e) Automobile rentals.

3.7 Maintenance. Operator shall keep and maintain the entire Premises and the Facility in clean, orderly, safe, and sanitary condition and state of repair and shall

make all repairs, renewals, and replacements as and when necessary. This requirement shall pertain to all improvements constructed thereon including, but not limited to, the Facility's interior, exterior, utility system, roof and structural portions, the Premises' paved and landscaped areas, curbs, drains, USTs, oil/water separators and appurtenances. Operator shall keep the Premises free of safety hazards and unlawful obstructions.

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PART 4 EVALUATION OF OFFERS

4.1 Selection Process. The Mayor of the City of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Evaluation Committee (“Committee”). On the basis of the Evaluation Factors established in Section 4.2.1 below, of this RFP, the Committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Committee. Offerors should be prepared to respond to requests by the Purchasing Office on behalf of the Committee for oral presentations, facility surveys, demonstrations or other information deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award an agreement on the basis of the initial written Proposals submitted to the City.

4.2 Evaluation Criteria. The following general criteria, not listed in order or significance, will be used by the Committee in recommending agreement award to the Mayor. The Proposal factors will be rated on a scale of **0 - 1000** with numeric relationships as stated below:

4.2.1 Evaluation Factors.

0 – 200 Points – Qualifications and Experience.

- Number of years and type of experience as it relates to the concepts set forth in this RFP
- Review of Offeror’s existing facilities with regard to concepts being proposed, including photographs, renderings, and drawings submitted by Offeror with this Proposal
- Sales volume of Offeror’s existing facilities
- Financing capability, personal resources, credit check
- Professional references as they relate to Offeror’s capabilities to design, construct, and operate a Fuel Station & Food Facility Concession
- Organization of Proposal and adherence to RFP instructions

0 – 175 Points – Fuel Station & Food Facility Master Plan.

- The quality of site development as it relates to user accessibility, relationship of each Module of the Facility to the site and to each other Module, and the landscape concepts
- Creative and innovative design for each Module of the Facility as it relates to the concepts set forth in this RFP, and including any franchise requirements as appropriate
- Architectural renderings and drawings of the proposed Facility to evaluate the overall design and theme

0 – 175 Points – Management and Operating Plan.

- Organizational chart and its relationship to the Offeror’s business structure
- Resumes of key management personnel including resumes of on-site managers
- Qualifications, responsibilities, and the decision-making ability of its various levels of personnel
- Quality Control Program (must provide actual copy of program)
- Customer service philosophy
- Forecasts of gross sales for the first five (5) years of operation for each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash)
- Personnel Policies and Training Program (must provide actual copies of the policies and program)
- Staffing
- Hours of Operation

0 – 175 Points – Local Participation.

- Level of opportunity provided to Local Businesses, as defined in Part 5, Proposal Form 7 of this RFP

0 – 125 Points – Facility Merchandising Plan.

- Merchandising Plan for each Module of the Facility
- Brand identification of gasoline products
- Predominant fast food products theme
- Franchise agreements
- Pricing strategy

0 – 150 Points – Proposed Compensation to the City.

- Initial Capital Investment: Up to 50 Points
- Minimum Monthly Guarantee: Up to 50 Points
- Percentage of Gross Revenues Up to 50 Points

Note: For the purposes of awarding points for this section only, the proposed compensation to the City shall be evaluated using ration methodology. See the following example.

Using this method, the proposal offering the most compensation to the City receives the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the highest. This is determined by applying the following formula:

$$\frac{\text{Offer Being Evaluated}}{\text{Highest Proposed Offer}} \times \text{maximum points available} = \text{awarded points}$$

Example: The highest proposed offer for the Initial Capital Investment is \$2,000,000. The next highest proposed offer is \$1,750,000. The total points available for Initial Capital Investment = 50 points.

$$\frac{\$1,750,000}{\$2,000,000} = 0.875 \times 50 = 43.75 \text{ points}$$

The highest offer receives 50 points and the 2nd highest offer receives 43.75 points.

4.2.2 Although Disadvantaged Business Enterprise (“DBE”) participation is not included in the Evaluation of Offers, Part 5, Proposal Form 8 of this RFP, must be completed and signed by Offeror or Offeror’s Proposal will be disqualified.

4.2.3 Local Preference. Local and Resident Preference: A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance, for this procurement. The "Local Preference Certification Form" (Part 5, Form 1) and instructions of this RFP must be completed and signed by Offeror in order to be considered for additional 5%. If a completed Local Preference Certification Form, or a current and correct Resident Business Preference Number (“Number”) is not received with the Offeror's response, a preference will not be applied for that offer. The Form or the Number will not be accepted after the deadline for receipt of proposals. For those Offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

4.3 Additional Points for Community Involvement. The City has implemented a program to assist Albuquerque’s young adults in finding summer employment with local businesses. The object is to benefit the community by providing meaningful work experiences for young people and assisting businesses to locate summer staffing. This program is called the City’s Summer Youth JOBS Initiative. To encourage participation in this program, an additional fifty (50) points will be added to the total composite score of any offeror who volunteers to do **one or more** of the following:

4.3.1 To hire one or more youth(s) (ages 16 - 21) for a minimum of eight (8) weeks for at least forty (40) hours per week of employment placement during the period of May 15 to September 1 of each year during the term of its Agreement with the City, to pay at least a minimum wage to the youth hired, to provide a meaningful work experience for the youth and an understanding of basic employment rules and requirements, to hire the youth through the New

Mexico Department of Labor Dial-A-Teen Office, and to follow all applicable laws and regulations regarding the hiring of young adults; or

4.3.2 To contribute at least Two Thousand and 00/100 Dollars (\$2,000.00) to the City's Summer Youth JOBS Initiative Fund for each one (1) year period during the term of its Agreement with the City. The funds will be used to provide employment for youth with other employers.

4.3.3 An Offeror must certify in a written statement submitted **with** its proposal its willingness to participate in this program and to meet the selected requirements outlined above in order to be eligible for these additional points.

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PART 5 REQUIRED PROPOSAL FORMS

Offeror's Checklist

Proposal Form 1 – Local Preference Certification Instructions & Form (2 pages)

Proposal Form 2 – Business Information Statement (4 pages)

Proposal Form 3 – Qualifications and Experience Statement (2 pages)

Proposal Form 4 – Financial Information Statement (4 pages)

Proposal Form 5 – Fuel Station & Food Facility Master Plan (2 pages)

Proposal Form 6 – Investment and Compensation Offer (3 pages)

Proposal Form 7 – Local Participation Form (4 pages)

Proposal Form 8 – Disadvantaged Business Enterprises Participation Form (4 pages)

Proposal Form 9 – Offeror's Disclosure Form (2 pages)

NOTE: All forms in this Part 5 *must* be completed in full and submitted with each Proposal, one (1) original and nine (9) copies.

OFFEROR'S CHECKLIST

Checklist of Items to be Completed and Submitted with Proposal. The following forms and questionnaires are to be completed in full, fully executed, signed, and included as part of the Proposal you submit:

1. Proposal

- One (1) Original and nine (9) copies of your Proposal.

2. Forms

- Local Preference Certification Form (see Part 5, Proposal Form 1 of this RFP).
- Business Information Statement (see Part 5, Proposal Form 2, of this RFP).
- Qualifications and Experience Statement (see Part 5, Proposal Form 3 of this RFP),
- Financial Information Statement (see Part 5, Proposal Form 4 of this RFP).
- Fuel Station & Food Facility Master Plan (see Part 5, Proposal Form 5 of this RFP).
- Investment and Compensation Offer (see Part 5, Proposal Form 6 of this RFP).
- Local Participation Form (see Part 5, Proposal Form 7 of this RFP).
- Disadvantaged Business Enterprises Participation Form (see Part 5, Proposal Form 8 of this RFP).
- Offeror's Disclosure Form (see Part 5, Proposal Form 9 of this RFP).
- Letter in support of the City's Summer Youth JOBS Initiative (see Part 4, Section 4.3).

3. Name of Proposed Surety for Security Deposit

- State name of surety if bond is to be provided for the Security Deposit Part 6, Section 11 of this RFP or identify financial institution providing Letter of Credit.

4. Insurance

- Provide evidence of ability to comply with insurance requirements described in Part 6, Section 12 of this RFP (such as insurance binder or certificates of insurance)

5. Addenda Sheets (if applicable)

- Acknowledge, sign and respond to all Addenda issued for this RFP.

6. Proposal Bond

- Proposal Bond in the amount of Twenty-Five Thousand Dollars and 00/100 (\$25,000.00) in substantially the same format as provided in Part 7 of this RFP.

**INSTRUCTIONS FOR
LOCAL PREFERENCE CERTIFICATION FORM**

1. **ALL INFORMATION MUST BE PROVIDED.** A 5% local preference is available for this procurement. To qualify for this preference, an Offeror **MUST** complete and submit this Form with its offer. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. The form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.
2. **LOCAL PREFERENCE PRECEDENCE OVER STATE PREFERENCE.** The local preference takes precedence over the State Resident Business Preference and only one of the two preferences will be applied to any one offer. If it is determined that the local preference applies to one or more Offerors in any solicitation, the State Resident Business Preference will not be applied to any offers.
3. **PHYSICAL LOCATION MUST BE STATED.** To qualify for the local preference, a business must have a location in the Albuquerque Metropolitan Area (Abq. Metro Area). The business location inserted on the form must be a physical location, street address or such. Do not use a post office box or other postal address.
4. **ADDITIONAL REQUIREMENT.** To qualify for this preference, the principal Offeror (i.e. the business, not the individual signing the form) if it is a corporation, must be a New Mexico corporation with its articles of incorporation filed with the New Mexico Public Regulation Commission.
5. **DEFINITIONS.** The following definitions apply to this preference:
 - The Abq. Metro Area includes all locations within the City of Albuquerque and Bernalillo County, and within any municipality (i.e. incorporated city, town or village) contiguous to the City of Albuquerque and Bernalillo County.
 - A resident of the Abq. Metro Area is a person who occupies a dwelling in the Area and who manifests an intent to maintain that dwelling on a permanent basis.
 - A principal Offeror is a single Offeror, a business which is the prime contractor or one of the prime contractors and not a subcontractor, or a partner or joint venturer submitting an offer in conjunction with other businesses.
6. **ADDITIONAL DOCUMENTATION.** If requested, a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form.

9/24/02

Local Preference Certification Form

RFP/RFB NO: _____

Business

Name: _____

Business Location (in Abq. Metro Area): _____

Business Type: SELECT ONE

- Corporation – Indicate state of corporation  _____
- Partnership – Indicate “general” or “limited”  _____
- Sole Proprietorship (Single Owner with employees) _____
- Individual (Single Owner/No employees)  _____
- Other – Indicate status  _____

Additional Information: (PROVIDE IF BUSINESS IS A CORPORATION)

Date of incorporation in the State of New Mexico  _____

Certifications

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

Signature or Authorized Individual: _____ 

Printed Name: _____

Title: _____

Date: _____

YOUR MUST RETURN THIS FORM WITH YOUR OFFER

9/24/02

BUSINESS INFORMATION STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Fuel Station & Food Facility Concession Lease and Agreement.

Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No: (____) _____ **FAX No:** (____) _____

Email Address: _____

B. Information of Offeror, if different from above, for purposes of Notice(s) or other communication relating to the Proposal and the proposed Fuel Station & Food Facility Concession Lease and Agreement. (If Offeror is other than a designee or authorized person, provide the name of an individual who can answer for Offeror).

Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No: (____) _____ **FAX No:** (____) _____

Email Address: _____

2. BUSINESS STRUCTURE. Offeror intends to operate the Fuel Station & Food Facility Concession as a:

_____ Corporation _____Partnership _____Sole Proprietorship
_____Joint Venture _____Ltd. Liability Company (LLC)
Other_____

A. CORPORATE OR LLC STATEMENT (COPIES REQUIRED, PLEASE ATTACH TO FORM) If a corporation, LLC or corporation/LLC-in-formation, answer the following:

- 1) Date of Incorporation or Formation: _____
- 2) State of Incorporation or Formation: _____
- 3) Is the corporation or LLC authorized to do business in New Mexico?
 Yes - As of what date? _____
 No
- 4) Furnish the following information on the principal officers of the corporation or LLC, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. PARTNERSHIP STATEMENT If a partnership, answer the following:

- 1) Date of Organization _____
- 2) General Partnership _____
- 3) Limited Partnership _____
- 4) Other: _____
- 5) Has the partnership done business in New Mexico?
 Yes – When? _____
 No

- 6) Furnish the following information of each general partner and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. JOINT VENTURE STATEMENT If a joint venture, answer the following:

- 1) Date of Organization: _____
- 2) Has the joint venture done business in New Mexico?
- Yes – When? _____
 - No
- 3) Detail structure of joint venture (% of each joint venturer).
- 4) Furnish the following information for each joint venturer, identifying the key joint venturer, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 5) Where (which state) was joint venture formed?
- _____
- _____

- 6) Is the joint venture currently authorized to do business in New Mexico?
- _____ Yes _____ No

D. SOLE PROPRIETORSHIP If sole proprietorship, answer the following:

- 1) Proprietor's Full Name: _____
- 2) Address: _____
- 3) Company Name: _____
- 4) Company Address: _____
- 5) How long in business under this company name? _____

E. OTHER BUSINESS REFERENCES. Provide a representative listing of other business entities, including contact person and telephone number, with a description of each of these entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ **Title:** _____

(CORPORATE SEAL)

Dated: _____, 2005

QUALIFICATIONS AND EXPERIENCE STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Fuel Station & Food Facility Concession Lease and Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

B. Is the Offeror currently engaged in the fuel station and food facility business?

- yes How long _____
- no

Provide history of experience Offeror has in the development and operation of a fuel station and food facility concession. (Attach answer to this Form).

C. Are the principal owner(s) and/or manager(s) of the Offeror currently engaged in the fuel station and food facility business?

- yes
- no

Proposal Form 3 – Page 2 of 2

Attach resumes of the principal owners and managers of Offeror including specifically the individual who will be the primary contact to City for the agreement and concession matters and the individuals who will be primarily responsible for the day-to-day operations of the Fuel Station & Food Facility Concession. (Attach answer to this Form).

D. Provide a listing of up to two (2) current fuel station & food facility concessions operated by the Offeror including the following information for *each* concession (attach answer to this Form):

- 1) Name and location of each facility.
- 2) Lease and agreement dates – commencement and expiration dates.
- 3) Description of the facilities Master Plans.
- 4) Photographs showing the actual facility locations and modules.
- 5) Annual gross sales of each facility for the years 2000 through 2004.
- 6) For each facility that Offeror is operating under a management contract, provide name and telephone number of owner.

E. Give name, location, and date of all fuel station and food facility concession agreements, if any, for which Offeror has been placed in default, terminated, or suspended within the past five (5) years for any reason, either voluntarily or involuntarily, prior to the expiration of the contractual term. List any judgments pending, or any pending lawsuits or unresolved disputes for the termination of fuel station and food facility concessions operated by Offeror within the past five (5) years. (attach answer, if necessary, to this Form.)

If none, indicate not applicable "N/A " here: _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ **Title:** _____

(CORPORATE SEAL)

Dated: _____, 2005

FINANCIAL INFORMATION STATEMENT

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Fuel Station & Food Facility Concession Lease and Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ **FAX No. (____)** _____

E-Mail Address: _____

2. FINANCIAL INFORMATION. Provide financial statements of your organization, as follows:

A. If a publicly held corporation (attach information to this Form):

- 1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K for your last three (3) fiscal years.
- 2) The most recent Form 10Q since the last Form 10K was submitted.
- 3) Any form 8Ks in your last fiscal year.

B. If a privately held organization (attach information to this Form):

- 1) Provide complete income tax returns or financial statements, for the three (3) most current years, including notes thereto, certified by corporate official as to accuracy, or income tax return of owners for qualifying years.
- 2) List credits (business and personal) detailing names, addresses, phone numbers, account numbers, current balances and contact persons.
- 3) Disclosure of long-term receivables and payables, including current status. Provide details and documents including contact person(s).
- 4) List bank accounts, detailing bank name, address, account numbers, current balance by account, contact person(s), and phone numbers.
- 5) Real estate declared as assets (provide legal description).

3. FINANCING. All Offerors must specify how they are going to finance the venture, including debt financing, equity financing, or other forms of financing. Depending on the type of financing, the company will need to provide the following:

A. Bank Financing -- A letter of commitment from a bank for the amount of anticipated financing required to complete the initial capital investment for the development of the Fuel Station & Food Facility Concession to which this proposal applies (attach to this Form).

B. Internal Resources of the Company -- Recent balance sheet of the Offeror demonstrating sufficient liquid assets in excess of current liabilities. Indicate assets that are intended to be used for the initial capital investment for the development of the Fuel Station & Food Facility Concession to which this proposal applies (attach to this Form).

C. Personal Resources -- Details of personal assets available and supporting documentation of those resources. For example, if real property is to be sold to finance development and operations under this proposal, then provide evidence of the current value of the asset(s) to be sold, and details of any liens and/or mortgages currently held on the property (attach to this Form).

D. Cash Infusion or Loan from Shareholder or Corporate Parent (attach to this Form).

- 1) Written statement from the shareholder or corporate parent of the amount to be funded and the terms of that funding.
- 2) Supporting documentation (i.e. balance sheet) of resources of the shareholder or corporate parent.

4. BANKRUPTCY. Provide a statement advising whether Offeror or any of its principals, officers, or directors have been parties to any bankruptcy proceedings in the past seven (7) years.

5. SURETY INFORMATION

A. Have you ever had a bond or surety cancelled or forfeited?

- Yes. If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture (attach to this Form).
- No

B. Provide information, including name of surety/bonding company that indicates your ability to qualify for, obtain, and submit the Proposal Bond, and the name of the surety/bonding company (or bank for letter of credit) you will use to provide the Security Deposit that must be submitted to City if you are awarded this Fuel Station & Food Facility Concession Lease and Agreement.

C. List the insurance companies you will use to meet the insurance requirements of the proposed Fuel Station & Food Facility Concession Lease and Agreement (Part 6, Section 12 of this RFP) and provide certificates of insurance or insurance binders (attach to this Form).

6. CONFIDENTIALITY OF RECORDS. Offeror should indicate by page number the identification of any portions of their Proposal, which they deem confidential, or which contains proprietary information or trade secrets, copyrights, patents or patents pending. Offeror should provide justification of why materials, upon request, should not be disclosed by City under the Inspection of Public Records Act §14-2-1 NMSA 1978. City may otherwise use or disclose the data submitted by Offeror. The Offeror's opinion of proprietary information is not necessarily binding upon City (attach to this Form).

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ **Title:** _____

(CORPORATE SEAL)

Dated: _____, 2005

FUEL STATION & FOOD FACILITY MASTER PLAN

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Fuel Station & Food Facility Concession Lease and Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ **FAX No.** (____) _____

E-Mail Address: _____

2. FUEL STATON & FOOD FACILITY MASTER PLAN.

A. Plans of Facility to be Constructed: Provide a detailed site development plan indicating user accessibility, relationship of each Module of the Facility to the site and to each other, and the landscape concepts. In addition, provide a physical layout with plans and renderings of each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash). Plans and renderings submitted with the Proposal should be eight and one-half inches (8½") by eleven inches (11") or eleven inches (11") by seventeen inches (17") folded to eight and one-half inches (8½") by eleven inches (11"). Offerors may submit one additional set of thirty-six inches (36") by twenty-four inches (24") plans and/or renderings in a separate package in accordance with Part 2, Section 2.1.4.1 of this RFP.

If a franchise is proposed for any portion of the Facility, for each such franchise describe all design concepts, signs, and features required under the franchise agreement.

B. Facility Merchandising Plan: Describe in detail, the merchandising plan for each Module of the Facility (Fuel Station, Convenience Store, Fast Food Restaurant, Car Wash). This information should include, but not be limited to, the brand identification of gasoline products, the types of automotive accessories items offered, the predominant fast food products theme, convenience store items, car wash options, and other relevant information related to each Module in accordance with Part 2, Section 2.1.4.2 of this RFP.

C. Management and Operating Plan: Detail on separate sheet(s): Offeror's proposed management structure, style and method of operation based on the following: personnel training, customer service philosophy, affirmative action program, and quality control. Provide names of key management personnel and forecasts of gross sales in accordance with Part 2, Section 2.1.4.3 of this RFP.

3. CONDITIONS OF PROPOSAL SUBMITTAL. Submittal of this Proposal constitutes a firm offer to City and may be accepted by City at any time prior to midnight on the ninetieth (90th) day after the date specified in this RFP for receipt of offers.

4. CONDITIONS OF AWARD OF AGREEMENT. City, with Offeror's approval, may extend its consideration after the aforementioned date. City may, at its option, accept this proposal as received. In such event, City will so notify Offeror by Notice of Award and with the advance written notice transmit to Offeror the required Concession Lease and Agreement. Offeror agrees to execute the Agreement and deliver the duly executed Concession Lease and Agreement to City within fourteen (14) days from receipt of such Agreement from City. Required security deposit, construction bonds, certificates of insurance, building permit, and Operator work permit must be submitted prior to issuance by the Director of Aviation of a Notice to Proceed with the improvements.

5. REQUIRED CONCESSION LEASE AND AGREEMENT. By submitting this Proposal Form, Offeror agrees to enter into the required Concession Lease and Agreement included in Part 6 of this RFP.

6. CONFLICT IN LANGUAGE. If any language or information contained in this Proposal Form conflicts with the proposed Concession Lease and Agreement included in Part 6 of this RFP, then the language of the Agreement shall govern.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2005

INVESTMENT AND COMPENSATION OFFER

1. GENERAL INFORMATION. The Offeror hereby certifies that all statements herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

A. Name, address and telephone number of Offeror exactly as it should appear in the proposed Fuel Station & Food Facility Concession Lease and Agreement.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ **FAX No.** (____) _____

E-Mail Address: _____

2. PROPOSED MINIMUM INITIAL CAPITAL INVESTMENT. City has set a Minimum Initial Capital Investment threshold of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) for the development and start-up costs of a Fuel Station & Food Facility Concession. However, **Offeror may propose a greater Initial Capital Investment** than the minimum threshold set by the City. Please state below the Minimum Initial Capital Investment you propose to expend in the development of the concession in accordance with this RFP.

No more than fifteen percent (15%) of Offeror's proposed Minimum Initial Capital Investment shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges and all other "soft" costs. No less than eighty-five percent (85%) of the proposed Minimum Initial Capital Investment shall be for labor and materials.

Based on the terms, provisions and conditions of this RFP, the undersigned hereby agrees to make a Minimum Initial Capital Investment in the amount indicated below. Offeror agrees that if the actual Minimum Initial Capital Investment made in the development and start-up of the Fuel Station & Food Facility Concession is less than the amount shown below, the remaining amount will be paid to City.

ENTER AMOUNT HERE:

Proposed Minimum Initial Capital Investment:

_____ Dollars (\$_____.00)
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the One Million Five Hundred Thousand and 00/100 dollars [\$1,500,000.00] Minimum Initial Capital Investment as required by City.)

3. PROPOSED COMPENSATION TO CITY. As consideration for the privilege of developing and operating a Fuel Station & Food Facility Concession, Offeror shall pay to City each month, for the full Term of the Agreement, the greater of a Minimum Monthly Guarantee or a Percentage of Gross Revenues Fee applicable to Gross Revenues derived from the sale of all products, goods, and services (excluding fuel) at the Facility.

A. Minimum Monthly Guarantee (“Guarantee”). In accordance with Part 6, Section 9.2 of this RFP, a Guarantee will be required for the full Term of the Agreement. Offeror shall pay City an initial Guarantee of **Twenty Thousand and 00/100 Dollars (\$20,000.00)** per month, or a monthly amount proposed below by Offeror, **whichever is greater.**

ENTER AMOUNT BELOW:

Proposed Minimum Monthly Guarantee:

_____ Dollars (\$_____.00)
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Twenty Thousand and 00/100 dollars [\$20,000.00] Minimum Monthly Guarantee as required by City.)

B. Percentage of Gross Revenues Fee. In accordance with Part 6, Section 9.3 of this RFP, Offeror shall pay City a Percentage of Gross Revenues Fee equal to **five percent (5%)** of Gross Revenues derived from the sale of all products, goods, and services (excluding fuel) at the Facility, or an amount proposed below by Offeror, **whichever is greater.**

ENTER AMOUNT BELOW:

Proposed Percentage of Gross Revenues Fee:

_____ Percent (_____%)
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the five percent [5%] of Gross Revenues Fee as required by City.)

NOTE: If the Term of the Agreement is extended in accordance with Part 6, Section 8 of this RFP, the Percentage of Gross Revenues Fee established for the Term will apply during the extension period.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2005

LOCAL PARTICIPATION FORM

A. SUBMIT this form with your proposal.

B. INSTRUCTIONS:

1. This form shall be submitted by Offeror who elects to have one or more local businesses participate in the development and operation of a Fuel Station & Food Facility Concession as it pertains to this RFP.
2. All addresses provided must be complete street addresses and current phone numbers. Post Office box numbers shall not be considered.
3. Submit supplemental pages if the number of entries provided under each item of information is insufficient.

C. LOCAL BUSINESS means an entity that:

1. Currently operates a business that is authorized by the State of New Mexico, and is in good standing with the governing authorities of the State of New Mexico; and
2. Fifty-one percent (51%) or more of the ownership is by people who are domiciled and who reside in New Mexico. In the instance of ownership by business entities other than individuals (corporations, partnerships, joint venturers) each such business entity shall be owned in excess of fifty-one percent (51%) by people who are domiciled and reside in New Mexico.

D. THE ALBUQUERQUE METROPOLITAN AREA means the following New Mexico Counties: Bernalillo, Sandoval, Santa Fe and Valencia **for purposes of this form only.**

E. LOCAL PARTICIPANT is a Local Business that owns and operates a business entity pursuant to Section C above.

F. *FOR EACH LOCAL PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION CONTAINED IN SECTIONS 1 THROUGH 9 OF THIS FORM (use additional sheets as necessary):*

1. Name: _____
Street Address: _____
City: _____ State: _____ ZIP: _____
Telephone No. (____) _____ FAX No. (____) _____
Email Address: _____

Proposal Form 7 – Page 2 of 4

2. Area of direct responsibility for the development and operation of a Fuel Station & Food Facility Concession for the Local Participant if your Proposal is accepted:

3. The type of business experience that will be provided by the Local Participant:

4. Date of formation of business of Local Participant in New Mexico: _____

5. Names, addresses and current phone numbers of all businesses operated by the Local Participant in the Albuquerque Metropolitan Area:

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No.(____) _____

Email Address: _____

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No.(____) _____

Email Address: _____

6. The name, residential address and current phone numbers of each owner of the Local Participant that is domiciled and resides in the Albuquerque Metropolitan Area and percent of ownership:

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No.(____) _____

Email Address: _____ Percentage Ownership _____

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No.(____) _____

Email Address: _____ Percentage Ownership _____

7. Name, address and current phone numbers of all business entities other than individuals listed above with an ownership in the interest with percent of ownership:

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No.(____) _____

Email Address: _____ Percentage Ownership _____

Proposal Form 7 – Page 4 of 4

8. Names, addresses and current phone numbers of all owners domiciled and residing in the Albuquerque Metropolitan Area for each of the business entities listed in the preceding paragraph, giving percent of ownership.

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No. (____) _____

Email Address: _____ Percentage Ownership _____

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No. (____) _____

Email Address: _____ Percentage Ownership _____

9. Describe the business relationship between the Offeror and the Local Participant:

_____ Partnership _____ Joint Venturer
_____ Subtenant Other _____

NOTE: Attach the Agreement, sublease or other business arrangement documentation (actual or proposed) to this Local Participation Form.

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ Title: _____

(CORPORATE SEAL)

Dated: _____, 2005

DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION FORM

- A. **SUBMIT** this form with your proposal.
- B. **INSTRUCTIONS:**
1. This form **must** be completed, signed and submitted by **all** Offerors with their Proposal to Develop and Operate a Fuel Station & Food Facility Concession. Offerors must make good faith efforts to meet the Disadvantaged Business Enterprises (DBE) participation goal established for this RFP. The Offeror can meet this requirement in one of three ways: **First**, if the Offeror is itself a certified DBE; **second**, documenting commitments for participation by certified DBE firms; or **third**, documenting good faith efforts.
 2. In the event the Offeror qualifies as a DBE as defined below, please provide DBE Certificate or Control Number (DBE Part I below).
 3. All addresses provided must be complete street addresses. Post Office box numbers shall not be considered. All phone numbers provided must be current.
 4. Submit supplemental pages if the number of entries provided under each item of information is insufficient.
- C. **DISADVANTAGED BUSINESS ENTERPRISES (DBE)** means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it and has been duly certified in the state in which they do business.
- D. **GOOD FAITH EFFORTS** means efforts to achieve a DBE goal or other requirement of the DBE program, which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements. Evidence of good faith efforts include the names, addresses and current telephone numbers of DBEs that were considered, and evidence as to why agreements could not be reached for DBEs to participate in the program.
- E. **THE ALBUQUERQUE METROPOLITAN AREA** means the following New Mexico Counties: Bernalillo, Sandoval, Santa Fe and Valencia **for purposes of this form only**.
- F. **A DBE PARTICIPANT** is a business that has a direct area of responsibility in the development and operation of the Fuel Station & Food Facility Concession.

PART I – OFFEROR IS ITSELF A DBE

If Offeror is a DBE, please provide your DBE Certificate/Control No.: _____.

PART II – OFFEROR OBTAINED DBE PARTICIPATION

FOR EACH DBE PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION CONTAINED IN SECTIONS 1 THROUGH 8 OF THIS FORM (use additional sheets as necessary):

1. Name, address and current phone numbers of the DBE Participant:

DBE Participant Name: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No. (____) _____

Email Address: _____

2. DBE Certificate or Control Number: _____

3. Area of direct responsibility of the DBE Participant for the development and operation of the Fuel Station & Food Facility Concession if your Proposal is accepted: _____

4. The type of business experience that will be provided by the DBE Participant: _____

5. Name and addresses of all businesses operated by the DBE Participant:

DBE Participant's Business Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No. (____) _____ FAX No. (____) _____

Email Address: _____

Proposal Form 8 – Page 3 of 4

6. The name and residential address of each **owner** of the DBE Participant and percent of ownership:

Owner's Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Percentage Ownership: _____

7. Name and address of all business entities **other than individuals listed above** with an ownership interest with percent of ownership:

Business Entities w/Ownership Interest: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Owner's Name: _____ Percentage Ownership: _____

8. Describe the business relationship between the Offeror and the DBE Participant:

_____ Partnership

_____ Joint Venturer

_____ Subtenant

_____ Limited Liability Company (LLC)

Other _____

Attach the Agreement, sublease or other business arrangement documentation (actual or proposed) to this DBE Participation Form.

PART III – OFFEROR'S GOOD FAITH EFFORTS TO OBTAIN DBE PARTICIPATION

FOR EACH DBE CONTACTED BUT WHO WAS UNAVAILABLE TO PARTICIPATE, PROVIDE THE FOLLOWING INFORMATION (use additional sheets as necessary):

Name of DBE entity: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No.: (____) _____ FAX No.: (____) _____

Proposal Form 8 – Page 4 of 4

Type of Business Operated: _____

Contact: _____ DBE Certificate/Control No.: _____

Reason this entity was unavailable to participate: _____

Name of DBE entity: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone No.: (____) _____ FAX No.: (____) _____

Type of Business Operated: _____

Contact: _____ DBE Certificate/Control No.: _____

Reason this entity was unavailable to participate: _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ **Title:** _____

(CORPORATE SEAL)

Dated: _____, 2005

OFFEROR'S DISCLOSURE FORM

GENERAL INFORMATION. The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Offeror Name: _____

Address: _____

City: _____ **State:** _____ **ZIP:** _____

Telephone No. (____) _____ FAX No. (____) _____

E-Mail Address: _____

Disclose the name of each officer, director, principal and owner of each proposing entity and/or shareholder who owns or controls five percent (5%) or more of the business entity. This page may be photocopied if additional space is required. The individuals listed below are disclosed as having the noted relationship with the business entity/Offeror listed above. Show appropriate letter in the box to the left.

KEY: A=Officer	E=Controller of 5% or more of stock
B=Director	F=Spouse
C=Principal	G=Child under the age of 18
D=Owner	

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____
- 12. _____

CERTIFICATION: I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

Name: _____ **Title:** _____

(CORPORATE SEAL)

Dated: _____, 2005

PART 6
Proposed Concession Lease and Agreement

**Albuquerque International Sunport
Fuel Station & Food Facility
Concession Lease and Agreement**

Operator Name

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**Albuquerque International Sunport
Fuel Station & Food Facility
Concession Lease and Agreement**

This Concession Lease and Agreement ("Agreement") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and _____ a _____ organized and existing under the laws of the State of _____ ("Operator").

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

Section 1. Recitals.

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

1.2 Operator is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Operator; and

1.3 City issued a Request for Proposal, RFP2005-023-SB, titled "Design, Construct, and Operate a Fuel Station & Food Facility", dated _____, 2005, which is attached hereto as **Exhibit B**; and

1.4 Operator submitted its Proposal, dated _____, 2005, in response to RFP2005-023-SB, which Proposal is attached hereto as **Exhibit C**, and Operator was selected by City via EC No. _____ dated _____, 2005; and

1.5 City and Operator desire to enter into a Concession Lease and Agreement for the design, construction, and operation of a Fuel Station & Food Facility at the Airport upon the terms and conditions stated in this Agreement; and

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

Section 2. Definitions.

2.1 “Agreement” means this Concession Lease and Agreement for the Fuel Station & Food Facility.

2.2 “Airport” means the Albuquerque International Sunport, as shown in **Exhibit A** attached hereto and such real property that may be acquired throughout the Term of this Agreement for City use.

2.3 “Building Codes” means those sets of codes, standards and regulations as adopted by the County of Bernalillo from time to time that are applicable to the construction of Operator’s improvements at the Airport. Said codes may be revised from time to time as necessary by the County.

2.4 “Calendar Year” means each twelve (12) month period from January 1 to December 31, except for the first Calendar Year of this Agreement, which shall commence on the Commencement Date of this Agreement and will end on December 31 of that Calendar Year.

2.5 “Certificate of Occupancy” means that Notice that Operator shall be required to deliver to City stating that Operator is ready to take possession of the Premises, as set forth in Section 4 of this Agreement.

2.6 “City” means the City of Albuquerque, a municipal corporation organized and existing under the laws of the State of New Mexico.

2.7 “Commencement Date” means the date Operator is obligated to commence payment of the Minimum Monthly Guarantee, Percentage of Gross Revenues Fee, Retail Motor Fuels Sales Fee, and other miscellaneous fees under this Agreement. This date shall be the Date of Beneficial Occupancy (“DBO”) or the first day of the seventeenth (17th) month immediately following the Effective Date, whichever occurs first.

2.8 “Construction Period” means the time period from the commencement of the construction of the Leasehold Improvements upon the Land, to the DBO of the Premises, during which Operator’s Minimum Capital Investment and installation and construction of all Leasehold Improvements shall be completed.

2.9 “Contaminant” means any Hazardous Material as defined in subsection 23.2.6 of this Agreement.

2.10 “Contaminated” means containing a Contaminant.

2.11 "Contamination" means any Contaminant released into the air, soil or groundwater.

2.12 "Contractors" means as to a person, each of its contractors and consultants.

2.13 "Convenience Store" means that portion of the Facility with primary retail emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products and services.

2.14 "Corrective Action" means action to assess, monitor, or perform corrective action, which may include natural attenuation, on a Hazardous Substance that has been released.

2.15 "Date of Beneficial Occupancy" ("DBO") means the first day on which the Fuel Station & Food Facility is ready for occupancy and open to the public for business.

2.16 "Department" means the City of Albuquerque Aviation Department, or its successor agency.

2.17 "Director" means City's Director of Aviation or such other person designated by City to exercise functions with respect to the rights and obligations of City under this Agreement.

2.18 "DOT" means the United States Department of Transportation and any Federal agency succeeding to its jurisdiction.

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

2.20 "Environmental Agency" means any governmental agency with jurisdiction over any Hazardous Substances on, under, or released from the Premises.

2.21 "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment.

2.22 "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.

2.23 "Facility" means the entirety of the Leasehold Improvements installed and/or operated on the Land.

2.24 “Facility Modules” means the separate Leasehold Improvements required for the operation of the Fuel Station & Food Facility, including the fuel station, the convenience store, the fast food restaurant, and the car wash.

2.25 “Fast Food Restaurant” means that portion of the Facility offering a quick serve food and beverage menu, typically provided in a franchise format, accommodating drive-thru service, carryout service, and indoor seating.

2.26 “Fuel Sale Equipment” means all fuel tanks, fuel piping, fuel dispensers, and point-of-sale fuel sale equipment located on or under the Premises. Fuel Sale Equipment that Operator installs at the Premises will be considered to be its Trade Fixtures as defined in subsection 2.42 of this Agreement.

2.27 “Fuel Station” means that portion of the Facility installed and/or operated on the Premises that are devoted to the storage and dispensing of motor fuels.

2.28 “Gross Revenues” means the total amount of money or the value of other considerations received from selling property or performing services upon, into or out of any part of the Airport, whether for cash or on credit, whether collected or not.

2.28.1 Specific Inclusions. Gross Revenues include but are not limited to the following:

- a) the total amount of money or the value of other consideration received shall be included whether payment is for cash or on credit and whether or not such amount is collected;
- b) all credit losses, credit charges, or credit deductions incurred by Operator or imposed on Operator by reason of Operator’s acceptance or use of credit cards or other credit or charge arrangements;
- c) all Aviation Department Airport rents and fees required of Operator under the terms and conditions of this Agreement. Should such fees be added to customer charges, such additional charges shall also be included in Gross Revenues.

2.28.2 Specific Exclusions. Excluded or deducted from Gross Revenues are the following:

- a) federal, state, municipal or other government excise taxes (except Federal manufacturer’s excise taxes), use, sales, privileges or retailer’s occupation taxes now or hereafter imposed and required to be collected by Operator directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Operator to any governmental agency;

- b) receipts from the sale or trade-in value of any equipment used on the Airport and owned by Operator;
- c) the value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Operator where such exchanges or transfers are not made for the purpose of avoiding a sale by Operator which otherwise would be made from or at the Airport;
- d) receipts in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers;
- e) receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Operator, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
- f) receipts from the sale to Operator's employees of uniforms or clothing where such uniforms or clothing are required to be worn by such employees as a condition of their employment;
- g) revenues received from the non-exclusive right to sell State of New Mexico Lottery Tickets;
- h) rents and fees paid to Operator by its sublessees approved by City occupying any portion of the Premises; provided, however, that the Gross Revenues of such sublessees shall be included in Operator's Gross Revenues for the purposes of calculating Percentage of Gross Revenues Fee pursuant to Section 9 of this Agreement;
- i) revenues derived from customers not generated through the Airport, or by Airport-related business activities of the Operator not included in this Agreement.

2.29 "Land" means a certain tract of land at the Airport approximately three (3) acres in size located at the southwest corner of University Boulevard and Aircraft Ave. SE, on the northerly portion of Tract L, combined Tracts A-2 & A-3 from Municipal Addition #9, of the Sunport Municipal Addition, Section 33, Township 10 N, Range 3 E, as further described in **Exhibit D** ("Land").

2.30 "Leasehold Improvements" means all items of improvement constructed and affixed to the Land and all fixtures and equipment affixed thereto in such a manner that they cannot be readily removed without damage to the remainder of the improvements and without substantially changing the character of the improvements.

2.31 "Moveable Equipment" means only such equipment that has not been installed, attached, or affixed to walls, ceilings, floors, or been made a part of any utility infrastructure.

2.32 "Operator" means the tenant or lessee, or its authorized representatives, performing under this Agreement.

2.33 "Premises" means the entirety of the Land and all Leasehold Improvements installed or constructed upon the Land.

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

2.35 "Representative" means as to a person, each of its employees, agents, subsidiaries, divisions, franchisees, and dealers.

2.36 "Request for Proposal" ("RFP") means the RFP2005-023-SB, entitled "Design, Construct, and Operate a Fuel Station & Food Facility" dated _____ 2005, including all addenda, which proposals were requested and under which this Agreement was awarded.

2.37 "Retail Motor Vehicle Fuels" means, and is limited to, unleaded gasoline with 86, 88, 90 or greater octane levels; E-85 (ethanol); and #2 diesel sold to the motoring public at the Facility unless otherwise mutually agreed to by City and Operator.

2.38 "Rules and Regulations" means those Rules and Regulations as described in Section 23 of this Agreement.

2.39 "Signs" means any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content, maintained or displayed on the Premises.

2.40 "Tanks" means all tanks, storage containers, vaults, clarifiers, oil/water separators, lift stations, pumps, vapor recovery units, and hoists, together with all associated piping and ancillary equipment.

2.41 "Term" means the term of this Agreement, which shall be for a period of twenty (20) years commencing on the Effective Date of this Agreement.

2.42 "Trade Fixtures" means any signs, electrical or otherwise, used to identify Operator's business; all machinery and equipment used in conjunction with the handling of fuel in or about the Premises, whether or not such machinery or equipment is bolted or otherwise attached to the Premises; any lift, hoist, compressor or other mechanical device used to operate the fuel station; any equipment and furnishings used to display products

and operate the Convenience Store; any equipment and furnishings used to operate the Fast Food Restaurant; any mechanical device used to operate the Car Wash; and all other miscellaneous office equipment, furnishings, and personal property.

Section 3. Land. City, for and in consideration of the rents and fees reserved in this Agreement and each of the covenants, conditions and agreements set forth in this Agreement to be kept and performed by Operator, hereby leases to Operator for its exclusive use, and Operator hires and takes from City upon the conditions, covenants and agreements set forth in this Agreement, all of which Operator accepts, a certain tract of land at the Airport approximately three (3) acres in size ("Land"). The Land is located at the southwest corner of University Boulevard and Aircraft Ave. SE, on the northerly portion of Tract L (combined Tracts A-2 & A-3 from Municipal Addition #9) of the Sunport Municipal Addition, Section 33, Township 10 N, Range 3 E, as depicted in **Exhibit D**.

3.1 Acceptance of Land. Operator has inspected the Land and accepts the Land in its present condition, and agrees to make any changes on the Land necessary to conform to this Agreement. Operator further agrees to make any changes required by federal, state, and local law applicable to Operator's use of the Land, and obtain necessary permits for its use.

Section 4. Leasehold Improvements. Operator's Leasehold Improvements ("Improvements") required under this Agreement for the operation of the Fuel Station & Food Facility and any future projects, modifications, alterations or improvements of any kind shall not be erected, placed, assembled, constructed or permitted at the Premises without strict adherence to this Section 4, and all applicable laws, Airport standards, regulations, and permit requirements, including those of City.

4.1 Approval by Director. No Improvements or alterations of any kind shall be erected, placed, assembled, constructed or permitted on the Premises until preliminary and final plans depicting the type of use, location, size and design are prepared by an architect and/or engineer licensed to practice in the State of New Mexico and the plans have been approved in writing by City.

Operator shall submit to Director, complete plans and specifications for all Improvements, modifications, or alterations Operator makes to the Premises and obtain written approval from Director prior to beginning construction and installation. Approval by Director shall concern architectural and aesthetic matters, and Director shall be entitled to reject designs submitted and require Operator to resubmit designs until approval by Director is given. First-class standards of design and construction are required, and all of Operator's Improvements shall conform with all applicable laws. The approval by Director shall not constitute a representation or warrant that Operator has complied with said laws. In the event Director disapproves any portion of the plans and specifications submitted by

Operator, Operator shall promptly submit necessary modifications and revisions thereof. There shall be no substantial changes or alterations made in said plans and specifications after the initial approval by Director without the advance written approval of Director. City agrees to act promptly upon requests for approval of plans and specifications, and modifications thereto.

Any review or approval by Director of Operator's plans or any inspection by City of the Improvements or materials, shall not be deemed to constitute a waiver or release by City of any obligation or responsibility of Operator under this Agreement, or an assumption of any risk or liability by City with respect thereto; and Operator shall make no claim against City on account of such review, approval, or inspection. City's reviews, approvals and inspections shall not constitute assumption by City of any responsibility for the adequacy of the design or construction. Such responsibility shall remain totally with Operator and Operator's architects, engineers and contractors. Operator shall cause all Improvements authorized under this Agreement to be constructed only by a contractor properly licensed by the State of New Mexico to construct such Improvements.

4.2 Construction Plans and Specifications.

4.2.1 Preliminary Plans. Operator shall, within sixty (60) days following the Effective Date of this Agreement, deliver to Director for approval, four (4) sets of preliminary plans for the Improvements prepared and stamped by an architect or engineer licensed to practice in the State of New Mexico. Prior to the preparation of such preliminary plans, Operator shall contact Director to schedule a pre-project meeting to brief City staff on the proposed Improvements.

Such preliminary plans shall show the full extent of the Improvements to be constructed, including but not limited to, grading, drainage, landscaping, paving, signs, structural details and utility locations, showing the relationship of the proposed Improvements to all adjacent Airport parcels, public roadways, or service roadways. Civil engineering plans shall include drawings submitted on a scale not smaller than one (1) inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no event shall the scale be smaller than one sixteenth (1/16) inch equal to one (1) foot. Plans shall include complete specifications in sufficient detail for Director to determine compatibility with City's overall objectives for the aesthetic character and quality of the Improvements. Architectural submittals shall include an accurate architectural perspective color rendering, including the proposed exterior color, scheme, style, materials, and wording and placement of all signs.

Within ten (10) days following receipt thereof, Director shall review such preliminary plans, and transmit to Operator written approval or rejection thereof, in whole or in part. In the event of rejection, within fifteen (15) days after receipt of the rejection notice, Operator

shall amend such plans to comply with the items set forth in the rejection notice, and resubmit them to Director for approval. Director shall notify Operator within ten (10) days thereafter of his decision regarding the revised plans.

Operator warrants that City may use all plans and specifications submitted by or on behalf of Operator, for purposes relevant to and consistent with this Agreement, but for no other purposes whatsoever.

4.2.2 Final Plans and Construction Schedule. Within sixty (60) days following Operator's receipt of Director's approval of the preliminary plans, Operator shall deliver to Director for approval, four (4) sets of final construction plans and specifications for construction of the Improvements, together with a schedule for such construction. The final plans and specifications shall substantially conform to the preliminary plans previously approved by Director and shall be submitted to Director prior to submitting the plans to other applicable agencies.

Within ten (10) days following receipt thereof, Director shall review the final plans and specifications and construction schedule, and shall transmit to Operator written approval or rejection thereof, in whole or in part. In the event of such rejection, within fifteen (15) days after receipt of the rejection, Operator shall amend such plans and specifications to comply with the items set forth in the rejection notice and shall submit the amended plans and specifications to Director. Director shall notify Operator within ten (10) days thereafter of his decision regarding the amended plans and specifications. Upon Director's approval of the final plans and specifications for construction of the Improvements, together with a schedule for construction, they shall be attached and incorporated into this Agreement as **Exhibit E**. Director's approval of such plans shall not infer approval by other City or controlling agencies. After approval of the plans by Director, Operator has full responsibility for obtaining all other required approvals and permits for the Improvements.

4.2.3 Modification of Final Plans. Any modifications to the approved final plans, including environmental mitigation measures, modifications imposed by City of Albuquerque Code Enforcement Division, or construction change orders, shall be submitted to Director for approval prior to construction. Following Director's approval of Operator's final plans and specifications, Operator shall not alter nor modify such plans and specifications in any manner whatsoever without the prior written approval of Director. Operator shall submit all such requests for such approval in the form of a written change order to Operator's construction contractor, and shall provide Director a reasonable time to review it before directing the contractor to proceed with the changed work. Director shall notify Operator in writing of approval or rejection of such change order, in whole or in part. In the event of such rejection, Operator shall amend and resubmit the change order within fifteen (15) days for additional review by Director or abandon the proposed change.

City recognizes that it is common practice to make numerous minor changes with respect to work and materials during the course of construction where such changes will not substantially alter plans or specifications previously approved by Director. City will employ a summary procedure in order to expedite the review and approvals process for such minor changes.

4.3 Permits, Licenses, and Approvals. Operator shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of improvements or installation of equipment on the Premises, and any other licenses, permits, or approvals necessary for the conduct of Operator's operations at the Airport, from federal, state (New Mexico Environment Department), and local controlling authorities. These shall include, but not be limited to:

a) Permits, licenses, and approvals for the Underground Storage Tanks ("UST") and fuel distribution systems; and

b) Permits, licenses, and approvals for its activities pursuant to the regulations of the United States Environmental Protection Agency, the New Mexico Environment Department; and

c) Permits, licenses, and approvals of 1) the City of Albuquerque Planning Department, Albuquerque Fire Department, and the City of Albuquerque Building Department and 2) the National Board of Fire Underwriters or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions; and

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

e) Submittal of a Notice of Intent ("NOI") to the Environmental Protection Agency ("EPA") prior to the start of site development and construction and shall provide, implement, and be responsible for, a Storm Water Pollution Prevention Plan ("SWPPP") during all phases of the work. Operator shall provide a copy of the NOI to City prior to the start of any work at the site.

Upon completion of the construction, Operator will be responsible for submitting a Notice of Termination ("NOT") to the EPA, and will provide a copy of the NOT to City.

f) City's Approval of its Spill Prevention Controls and Countermeasures Plan.

4.4 Environmental Review and Approval. Operator shall, prior to the installation of any improvements, and as a condition of this Agreement, obtain all approvals required by federal, state, including New Mexico Environment Department, or local laws as necessary, to comply with the provisions of subsection 2.20 above, and this subsection 4.4.

Operator recognizes that any required environmental review and approval may result in the imposition of 1) conditions requiring a modification of proposed improvements, 2) additional requirements to mitigate the environmental impact of the proposed improvements, or 3) a requirement that such improvements not go forward because of environmental concerns.

In the event the results of any such review process prior to the installation of any improvements require modification of Operator's improvements or impose mitigation requirements, either of which is unacceptable to Operator, then Operator shall have the right to terminate this Agreement upon thirty (30) days written notice to City following such determination by Operator. If Operator fails to terminate this Agreement within such thirty (30) day period for either of such reasons, the right to so terminate shall be deemed waived and this Agreement shall remain in full force and effect.

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

a) Operator has delivered to Director for approval, and Director has approved, certificates of insurance for coverage evidencing Operator's construction contractor's 1) "all risk" type Builders' Risk Insurance coverage and Workers' Compensation Insurance coverage and, 2) compliance with the applicable insurance provisions of Section 12 below; and

b) Operator's construction contractor has duly executed a Labor and Materials Payment Bond with a surety authorized to do so in the State of New Mexico, in an amount equal to its contract for construction of the Improvements to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property. Operator shall provide City with a true copy of such executed bond, upon request by Director.

Operator shall be solely responsible for payment and pay promptly, as due, all persons supplying labor and materials to such contractor for all elements of such construction and any alteration of or improvement to the Premises. Operator shall keep the Premises free and clear of all mechanics liens resulting from any construction thereto by or on behalf of

Operator and shall permit no lien or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Operator may contest the correctness or validity of any such lien, but Operator shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien; and

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

d) Operator has obtained at its sole expense all necessary licenses and permits required for construction of Improvements or installation of equipment on the Premises, and any other licenses or permits necessary for the conduct of Operator's operations at the Airport; and

e) Operator shall submit to Director a copy of the building permits issued to Operator by the City of Albuquerque Building Inspection Division; and

4.6 Coordination of Construction. Operator shall cooperate with the Aviation Department in the construction and installation of Operator's Improvements. Operator agrees that all construction and installation of said Improvements at the Airport shall be accomplished without interfering with other users of the Airport. Operator shall notify Director of its intention to commence construction of the Improvements at least forty-eight (48) hours before commencement of such work or delivery of any material to be used in such work at the Premises.

Operator shall be responsible for obtaining and paying for any temporary utilities needed during construction and installation of Operator's Improvements.

Operator and its construction contractors and installers shall at all times keep the construction and installation sites and surrounding areas clean, orderly, safe, free of accumulated construction debris and waste materials, and shall be solely responsible for removal of all construction debris and waste materials to a suitable licensed landfill off the Airport.

4.7 Delay in Completion. All construction and installation of all Improvements to the Premises must be completed within the Construction Period as defined in subsection 2.8 above, and as further outlined in the Construction Schedule contained in **Exhibit E** of

this Agreement. Completion of Improvements after those dates shall be subject to assessment of liquidated damages in the amount of One Thousand and 00/100 Dollars (\$1,000.00) per day payable to City by Operator. A delay in the completion of any construction or installation of Improvements beyond the time allowed in **Exhibit E** or other schedule approved in advance in writing by Director shall not postpone Operator's obligation to pay all rents and fees required pursuant to Section 9 below.

4.8 Certificate of Occupancy. Within ten (10) days following completion of the construction of Operator's Improvements, Operator shall submit a copy of the Certificate of Occupancy, pursuant to subsection 2.5 above, to Director. Within ten (10) days following receipt of the Certificate of Occupancy, Director may schedule, with Operator, an inspection of the Improvements for purposes of confirming compliance with the final plans and any subsequent modifications to the final plans.

4.9 Improvements by Operator to Remain Throughout Term. All of Operator's Improvements, alterations, modifications, equipment, or trade fixtures constructed or installed by Operator on the Premises pursuant to this Section 4 shall remain on the Premises throughout the Term, unless otherwise approved in writing by Director.

4.10 Removal of Unapproved Improvements. Improvements made on the Premises without Director's written approval as required under this Section 4 or portions of improvements that are not constructed as indicated and specified on approved plans will be considered to be unapproved improvements constructed or installed in violation of the provisions of this Agreement. Unapproved improvements shall be removed by Operator, at Operator's sole expense, within ninety (90) calendar days after Operator's receipt of written notice to do so from Director.

4.11 As-Built/Certified Drawings. Within sixty (60) days after receipt of a Certificate of Occupancy, Operator shall furnish to City, one (1) set of original reproducible record drawings on reproducible mylar sheets (twenty-four (24) inches by thirty-six (36) inches) showing the "as-built" improvements, and one (1) set of first generation plain bond photo copy. Certified drawings shall be dated and stamped by the engineer or architect of record. A complete set of digital format Auto CAD 2000 or earlier version drawings, reflecting the same information as the certified drawings, shall be delivered at the same time. Delivery of the Auto CAD drawings shall be on CD (compact disc), along with necessary printing/plotting information to allow City to reproduce drawings as originally designed. If Operator fails to provide said "as-built" drawings, City may hire a registered architect or registered engineer to provide the same and shall recover the cost of the said drawings, plus a fifty percent (50%) overhead administrative fee from Operator. Upon request of City, Operator shall inspect the Improvements jointly with City to verify compliance with the "as-built" drawings.

4.12 Construction Cost Statement. Operator shall construct Improvements to the Premises in the same form and design as stated in the Final Plans and Specifications previously approved by Director and as shown in **Exhibit E**, in an amount of no less than **One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)** or the amount accepted by City in Operator's Proposal, whichever is greater. Not more than fifteen percent (15%) of the foregoing amount shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges, and all other "soft" costs. Not less than eighty-five percent (85%) of the foregoing dollar amount shall be for labor and materials of the construction of Operator's Improvements required in this Agreement.

Within forty-five (45) calendar days following completion of the Improvements, Operator shall submit for approval by Director, a verified statement of final construction costs, certified by Operator's duly appointed chief financial officer or an independent Certified Public Accountant, in detail satisfactory to Director, showing the actual cost to Operator of all elements of such Improvement construction. At City's request, Operator shall also provide to City receipted invoices for labor and materials covering all construction and all fixtures, including furniture, trade fixtures, and equipment. City shall provide written approval or rejection of the verified statement of final construction costs submitted to Director in accordance with this subsection 4.12 within sixty (60) days following such submission. In the event Operator fails to make expenditures on the construction of its Improvements as approved by Director, and in the dollar amount as specified above, Operator will pay City the difference between the amount expended on the construction of Operator's Improvements and the amount required above. Such payment will be made by Operator to City within thirty (30) days following receipt by Operator of City's notice for payment.

4.13 Failure to Make Improvements. In the event Operator fails to substantially complete the required Improvements within the Construction Period as outlined in the Construction Schedule contained in **Exhibit E** or other schedule approved in advance in writing by Director, in an amount equal to at least ninety percent (90%) of the amount required in subsection 4.12 above, such failure shall be a material breach of this Agreement, and at City's option, this Agreement may be terminated by giving Operator thirty (30) days advance written notice. Operator shall not be entitled to a cure period, and the provisions of Section 13 below, shall not govern a termination under this subsection 4.13. City shall be entitled to take ownership of Operator's Improvements upon termination pursuant to this subsection 4.13 subject to any indebtedness thereon or, solely at City's option, proceed pursuant to Section 17 below.

4.14 Future Improvements. Operator shall make no alterations to the Premises, following completion of construction of the Improvements, nor construct additional improvements upon the Premises without the prior written approval of Director,

in accordance with the procedures applicable to the improvements as set forth in this Section 4.

4.15 Mid-Term Refurbishment Requirement. Within the last six (6) months of the ninth (9th) year of the Term, Operator shall submit detailed plans and schedules for the Mid-Term Refurbishment of the Improvements. The conditions under which the work is to be performed and the method of proceeding with, and performing the same, shall be governed by the provisions of this Section 4. The Minimum Mid-Term Refurbishment Investment shall be no less than **Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00)** and shall be spent without additional consideration or privileges, or extension of the Term.

No more than fifteen percent (15%) of the foregoing dollar amount shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges, and all other "soft" costs. No less than eighty-five percent (85%) of the foregoing dollar amount shall be for labor and materials for Operator's Mid-Term Refurbishment. Following approval of plans and schedules by City, Operator shall complete all Mid-Term Refurbishment within six (6) months of the City's Notice to Proceed. This Mid-Term Refurbishment shall be for the renovation of the Improvements and for the replacement of fixtures, furniture, trade fixtures, and equipment, but shall not include ordinary maintenance items.

Within forty-five (45) calendar days following completion of the Mid-Term Refurbishment, Operator shall submit for approval by Director, a verified statement of final Mid-Term Refurbishment costs, which shall be prepared in accordance with the requirements of subsection 4.12 above. In the event Operator fails to make expenditures on its Mid-Term Refurbishment as approved by Director and in the dollar amount as specified above, Operator will pay City the difference between the amount expended on Operator's Mid-Term Refurbishment and the amount required above. Such payment will be made by Operator to City within thirty (30) days following receipt by Operator of City's notice for payment.

If the Term is extended in accordance with Section 8 below, Operator will be required to complete an additional refurbishment of the Improvements. Within the last six (6) months of the twentieth (20th) year of the Term, Operator shall submit detailed plans and schedules for this additional refurbishment. City and Operator shall jointly decide the level of investment required for this additional refurbishment based on the condition of the Improvements at that time. This additional refurbishment shall be made pursuant to this subsection 4.15 and shall be for renovation of the Improvements and for the replacement of fixtures, furniture, trade fixtures, and equipment, but shall not include ordinary maintenance items.

Section 5. Premises. Operator, and its subtenants and assignees approved by City, are hereby granted the exclusive right and privilege to use the Premises, which shall include the Land and the Leasehold Improvements constructed upon the Land, for the operation of a Fuel Station & Food Facility.

5.1 Use of Premises. In addition to certain rights granted elsewhere in this Agreement, Operator is authorized to offer the following goods and services for sale to the public at the Premises:

- a) The approved types of fuels as required in accordance with RFP 2005-023-SB (**Exhibit B**) at the **Fuel Station**; and
- b) The approved categories of food, beverages, automotive accessories, and other related travel items in the **Convenience Store** as established in subsection 6.3 below; and
- c) The approved types of food and beverages for the **Fast Food Restaurant** as established in subsection 6.3 below; and
- d) The services provided at the **Car Wash** as established in subsection 6.3 below.

5.2 Limitations on Use of Premises. The limitations governing Operator's use of the Premises shall include but are not limited to the following prohibited uses:

- a) Selling any goods or services not approved in writing by Director, pursuant to this Agreement; and
- b) Soliciting or advertising goods or services not approved in writing by Director, pursuant to this Agreement; and
- c) Allowing any sale by auction on the Premises, without the prior written consent of Director; and
- d) Soliciting or distributing materials on the Airport in any manner: 1) within the Premises which are not incidental to Operator's business; or 2) outside the Premises, without the prior written consent of Director; and
- e) Providing automobile service, towing, or maintenance without the prior written consent of Director; and

- f) In any way obstructing or interfering with the rights of others at the Airport; and
- g) Using or allowing the Premises or the Airport to be used for any improper, immoral, or unlawful purpose; and
- h) Obstructing the sidewalks, roadways or passageways adjacent to the Premises; and
- i) Installing above ground fuel storage tanks.

5.3 No Other Obligation of City.

5.3.1 Operator acknowledges that City has made no representations or warranties concerning the suitability of the Premises for Operator's use or for any other use, and that except as expressly provided in this Agreement, City shall have no obligation to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any improvements, furnishings, fixtures, trade fixtures or equipment constructed, installed, or used on or in the Premises.

5.3.2 Operator hereby confirms that it has made its own investigation of the costs of doing business under this Agreement, including the costs of constructing improvements to the Premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory and equipment needed to operate from the Premises; that it has done its own projections of the volume of business it expects to generate in operating from the Premises; that it is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement on a profitable basis.

5.3.3 City does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to Operator by City or anyone on its behalf and City shall not be responsible for any inaccuracies in such statistics or their interpretation.

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

5.3.5 City shall not be liable to Operator for any interruption in or curtailment of any utility service. City shall not be liable for damages to persons or property for any such interruption, nor shall such interruption in any way be construed as

cause for rents or fees abatement or operate to release Operator from any of its obligations hereunder, except that, if the interruption is caused solely by the act or omission of City and the interruption continues for more than seventy-two (72) hours, rents or fees will be abated for the duration of the interruption.

5.3.6 City shall not be liable to Operator for any loss of business or damages sustained by Operator as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Airport by any governmental agency.

Section 6. Operational Requirements.

6.1 Operating Standards. Operator shall furnish all services provided at the Facility on a fair and reasonable basis to all users of the Airport and the general public. The service shall be prompt, courteous, and efficient. Operator shall maintain and operate the Facility in a first-class manner and shall keep the entire Premises in a safe, clean, orderly and inviting condition at all times, satisfactory to City. Operator shall continuously maintain the necessary licenses and certificates, and permits to operate the Facility and shall post them conspicuously as required by applicable state and local law.

6.1.1 Staffing. Operator shall maintain a sufficient number of properly trained personnel to ensure that all customers of the Facility receive prompt and courteous service at all times. All such personnel, while on or about the Premises, shall be polite, clean, appropriately attired, and neat in appearance. Employees of Operator shall wear appropriate identification badges at all times, showing the name of Operator and the employee.

6.1.2 Hours of Operation. Operator shall submit to Director for approval its' proposed hours of operation for each of the Facility Modules. Such hours will remain unchanged unless and until Operator obtains prior written approval by Director. Except as otherwise expressly agreed to by City, Operator shall provide all services required under this Agreement seven (7) days a week during such hours as approved by City, and in accordance with RFP2005-023-SB (**Exhibit B**).

6.1.3 Management. The operation and maintenance of the Premises shall be under the constant, direct supervision of trained, qualified, and experienced manager(s) employed by Operator. Operator's manager(s) shall be authorized to accept any notice required or allowed by this Agreement, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the Facility. Operator's manager(s) shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager(s).

6.2 Business Conduct. Operator shall maintain and conduct its operations in a proper business-like manner so as not to disturb or be offensive to other persons or customers on the Premises. Operator shall not solicit business anywhere at the Airport, except in a proper manner on the Premises.

6.2.1 Customer Complaints. In the event any customer submits a written complaint to Operator or City (and forwarded to Operator) about Operator's operations at the Facility, Operator shall respond within fifteen (15) days in writing to such complaint and make a good faith effort to explain, resolve and/or rectify the cause of the complaint. Operator shall provide to City a copy of the complaint and its response thereto.

At Director's request, Operator shall meet with Director to review any complaints or concerns, and shall promptly take such corrective actions as may be necessary to allay such complaints or concerns.

6.3 Listing of Merchandise and Services. Operator shall prepare a complete list indicating all merchandise or services to be offered for sale for each Facility Module as established in Operator's RFP Proposal (**Exhibit C**). This list shall be subject to approval by Director and, after such approval, will be attached to this Agreement as **Exhibit F**. Changes to the merchandise list shall be requested in advance in writing and shall require the approval of Director, who shall determine if such changes are consistent with this Agreement. The decision of Director shall be final. The failure on the part of Operator to request such changes shall not relieve it of its obligation to seek such approval from City, nor shall City's failure to notice that unapproved merchandise or services are being offered for sale relieve City of its right to require Operator to a) stop selling such merchandise or service immediately upon receipt of notification, or b) demand that Operator submit a written request to add such merchandise or service to the approved list.

Operator shall sell merchandise and services only in accordance with the terms and conditions of this Agreement. Operator shall not offer for sale any merchandise or service, or engage in any activity not specifically provided for under the terms of this Agreement. Operator shall supply sufficient merchandise to fully stock its business on the Premises. Operator shall not misrepresent to its customers the quality or grade of products sold, the point of origin, or utilize false or deceptive merchandising terms or advertising.

6.4 Pricing and Monitoring Policies. Operator shall comply with the following pricing policy at the Facility Modules:

a) All fuel will be priced no higher than the prices of fuel offered at other comparable fuel stations in the Albuquerque Metropolitan Area. Operator will provide to City, a schedule of comparable pricing for all fuels sold at the Fuel Station for City's use when approving Operator's price list.

b) All sundries (e.g. aspirin, film, tobacco, chewing gum, combs, and other like products), pre-packaged snack items (e.g. bags of potato chips, pretzels, candy, and other like products), and beverages offered at the Convenience Store shall be at the prices charged for comparable items offered in the Albuquerque Metropolitan Area. Operator will provide to City, a schedule of comparable pricing for all goods and services at the Convenience Store for City's use when approving Operator's price list. No hotels, resorts, malls, or specialty stores will be allowed for comparison.

c) The price charged for books, newspapers, magazines and other products, where prices are pre-printed on the item by the distributor or manufacturer, shall not exceed the pre-printed price.

d) All food and beverage items offered at the Fast Food Restaurant shall be at the prices charged for comparable items, including those items at franchise outlets, in the Albuquerque Metropolitan Area. Operator will provide to City, a schedule of comparable pricing for all food and beverage items at the Fast Food Restaurant for City's use when approving Operator's price list.

6.5 Payment Processing.

6.5.1 Customer Receipts. Receipts shall be properly itemized, reflect precisely the actual sale of goods or services and date of sale, and present individual prices, totals, and taxes. All customers shall be thanked for patronage.

6.5.2 Traveler's Checks, Credit, Charge, and Debit Cards. Operator shall accept traveler's checks and nationally recognized credit or charge cards (e.g., American Express, Discover, MasterCard, VISA), and bank debit cards for any purchase of Five and 00/100 Dollars (\$5.00) or more.

6.6 Exorbitant Prices, Inadequate Quality, and Other Issues. At any time during the Term, Director may, at its option, survey prices, rates and charges and the quality of service and commodities then in effect at other fuel station and food facilities in the Albuquerque Metropolitan Area. If said survey concludes that the quality of any products, goods and/or services being offered by Operator is not as high as the quality at other facilities in the Albuquerque Metropolitan Area or that any prices being charged by Operator at the Facility are not in compliance with subsection 6.4 above, Director shall then have the right to require compliance with this Section 6 and require Operator to improve products, goods, and/or services offered at the Facility. Upon receipt of written notice from Director, Operator shall thereafter charge the appropriate prices, improve quality and/or service as directed by Director so that Operator becomes compliant with the provisions of this Agreement.

Failure on the part of Operator to promptly correct, rectify, or modify its price, quality, or service upon such written notice from Director shall be cause for termination of this Agreement by City under the provisions of Section 13 below.

6.7 Merchandising Displays. Operator shall utilize attractive merchandising displays that entice potential customers to purchase goods. Operator shall develop and implement creative and effective merchandising displays within the Facility; those displays may include without limitation window displays, display cases, promotional displays, and attractive packaging. All signage and merchandising displays must be approved by City.

6.8 Refuse Disposal and Storage. Operator shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Airport of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with, Operator's use of the Premises. Such arrangements shall include, but not be limited to, the use of suitable covered, concealed, metal receptacles at the Premises for the temporary storage of all such garbage, trash, and other refuse. Such suitable metal receptacles shall be located in a concealed location on the Premises.

Operator shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Operator shall keep all garbage and recyclable materials in durable, fly and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors or covers, and shall be kept covered when material is not being deposited in them. Operator shall clean the containers as necessary to prevent odors. Operator shall not allow boxes, cartons, barrels or other similar items to remain within view of public areas.

Operator shall not store or permit to be stored any materials, parts or vehicles in, on or about the Premises that are not incidental to Operator's operations at the Premises. Director at his sole discretion may limit, modify, relocate or require removal of any materials, parts or vehicles stored on the Premises that Director feels are not incidental to those operations. Director may inspect the Premises from time to time for storage of such items throughout the Term. Director shall provide Operator with verbal or written notification in the event Operator is storing such unapproved trash, garbage, materials or items in, on or about the Premises. Operator shall have forty-eight (48) hours to remove from the Premises any such unapproved items that are identified in Director's verbal or written notification.

6.9 Deliveries. Operator shall arrange for the timely delivery of all goods, products and fuel at such times, in such location(s) and in a manner satisfactory to Director. Such deliveries shall not impact the public or other Airport users accessing the Premises or block any adjacent Airport roadways.

Operator shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading, and services to the Premises during such times as Director may reasonably require from time to time. Operator shall not allow delivery trucks or other vehicles servicing the Premises to park or stand in front of, or at the rear of, such other areas at the Airport adjacent to the Premises.

City reserves the express right to further reasonably regulate the activities of Operator and its suppliers with the deliveries and servicing of the Premises and Operator agrees to abide by such further regulations of City.

Notwithstanding the above provisions of this subsection 6.9, Retail Motor Vehicle Fuel deliveries may be made to the Premises at any time. That is, at any hour on any day except when Director or duly appointed designee verbally notifies Operator, or Operator's on-site Facility Manager, or qualified Supervisor of an emergency situation on the Airport. Declaration of an emergency situation shall be at the sole discretion of Director.

6.10 Signs. Any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content, shall not be erected, maintained, or displayed on the Premises, or elsewhere at the Airport, without the prior written consent of Director. Operator shall submit detailed drawings of all proposed signs at the Premises, which include height, location, dimensions, materials and colors to Director for approval.

6.11 Hazardous Use.

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

6.11.2 Testing. Operator shall measure the amount of fuel in each tank on a daily basis and, by comparison to figures for fuel delivered and fuel sold, determine that there is no leakage from the fuel storage system or fuel distribution system. If fuel or hazardous material loss is detected, or is suspected, Operator shall notify City and the New Mexico Environment Department Underground Storage Tank Bureau within twenty-four (24) hours of the first indication of loss. Operator shall then immediately conduct all

appropriate tests for leaks in the underground storage tanks and lines. If leaks are discovered, Operator shall assume responsibility for any necessary clean up and removal of fuel that has leaked from the system, as well as necessary system repair, in accordance with applicable rules and regulations.

Operator shall inspect, service, or empty, as per manufacturer's specifications, the oil/water separators at least every one hundred twenty (120) days for the first three hundred sixty-five (365) day period ("Initial Inspection Period") following receipt of Certificate of Occupancy for the Facility. After this Initial Inspection Period, Operator shall regularly inspect, service, or empty the oil/water separators in accordance with a schedule reflecting the need identified during the Initial Inspection Period. Disposal of contents will be in accordance with federal, state, and local regulations. A copy of the inspection schedule shall be submitted to City for its approval.

6.11.3 Notice to City and Corrective Action. In the event Operator discovers or creates a hazardous or potentially hazardous condition on the Premises or on the Airport, Operator shall give immediate verbal notice to City and, if necessary, the New Mexico Environment Department. Such hazardous condition shall be corrected as soon as possible by Operator if the hazardous condition is on the Premises. If the hazardous condition is outside the Premises and is not the result of any action or operation of Operator, City shall correct or cause such condition to be corrected as soon as possible. Regardless of the location of the hazardous condition, Operator shall close to the public that part of the Premises impacted by such condition until it is safe for public use.

6.12 Noise, Odors, and Annoyance. Operator shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Premises or annoy, disturb or be offensive to other users of the Airport, and shall take all reasonable measures, using the most practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors or vibrations, and to maintain the lowest possible sound level in its operations.

6.13 Director's Right to Object. Director shall have the right to raise objections to the conditions of the Premises or Operator's practices and conduct, including, but not limited to objections to all matters identified in this Section 6 and to require such Premises conditions or Operator practices or conduct to be remedied by Operator.

Section 7. Maintenance of Premises. Operator shall be obligated, without cost to City, to maintain the Premises in accordance with Operational Requirements set forth in Section 6 above, and at Operator's sole cost and expense, in accordance with all applicable laws and regulations, whether now or hereafter enacted, and the terms of this Agreement. Operator shall:

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

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

7.3 Maintain the Premises and all Leasehold Improvements installed and constructed by Operator thereon, or any additional improvements or modifications made or installed by Operator during the Term, including but not limited to, all preventative maintenance and all structural repairs, replacements, rebuilding, and painting necessary to keep the Premises in the condition existing at the time the Leasehold Improvements were completed, excepting reasonable wear and tear not adversely affecting the structural integrity, or the efficient and proper utilization, or appearance of the Premises;

7.4 Be responsible for all preventative maintenance, repairs and repainting of the driveways and travel lanes adjacent to and on the Premises constructed by Operator;

7.5 Allow City or its authorized agents at any time, without notice, to enter upon the Premises to determine if the maintenance required pursuant to this Section 7 is being performed to the satisfaction of City. If it is determined that the maintenance is not satisfactory in accordance with the requirements of this Agreement, City shall notify Operator in writing. If Operator does not perform the required maintenance within fifteen (15) days after receipt of such written notice, City, or its agents, shall have the right to enter upon the Premises and perform the maintenance. The cost for the performance of any such maintenance by City, plus fifteen percent (15%) for administrative fees, shall be borne by Operator. Any maintenance required to avoid harm to the Facility, its contents, tenants or other persons shall be performed immediately by Operator without need of written notice by City, or City may itself perform such maintenance at Operator's expense.

7.6 Maintain the Premises in a first class manner and keep the Premises in a safe, clean orderly and inviting condition at all times, satisfactory to City.

Section 8. Term. The Term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years unless sooner terminated pursuant to any provision of this Agreement.

8.1 Option to Extend Term. City shall have the option to extend the Term for one (1) additional period of five (5) years. Director shall provide Operator written notice of exercise of such five (5) year option at least twenty-four (24) months prior to the end of the Term. Following receipt of City's notice, Operator shall, within six (6) months, deliver to City written notice of Operator's acceptance or rejection of the five (5) year extension.

In the event that Operator provides City with written notice of acceptance, Operator shall be granted the extension period provided that Operator is in full compliance with all terms and conditions of this Agreement at the time the additional five (5) year term is scheduled to commence; otherwise, City shall have the right to withdraw its notice to extend the Term.

In the event that Operator fails to provide City with written notice of acceptance, Operator shall be deemed to have declined the five (5) year extension of the Term as provided for above.

8.2 Holding Over. Holding over by Operator after the expiration of the Term, whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month Agreement at the rents and fees reserved in Section 9 below.

Section 9. Rents and Fees. As consideration for the privilege of operating the Fuel Station & Food Facility, throughout the Term, Operator shall pay all rents and fees required under this Agreement to City as provided for, and in the manner prescribed in this Section 9. If the Commencement Date, Effective Date, or the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, respectively, rents and fees for the partial first or last calendar month will be prorated.

9.1 Land Rental Fee. Beginning on the Effective Date, Operator shall pay to City a Land Rental Fee for the use of the Premises. The initial Land Rental Fee shall be **Thirty-nine Thousand and 00/100 Dollars (\$39,000.00)** per year, **Three Thousand Two Hundred Fifty and 00/100 Dollars (\$3,250.00)** per month, payable in advance and without invoice, on the first day of each calendar month.

The Land Rental Fee will be adjusted by City at the end of the fifth (5th) year, the tenth (10th) year, and the fifteenth (15th) year of the Term based upon a fair market value appraisal of the Land at the time of each adjustment. The Land Rental Fee shall be adjusted by the change in the fair market value of the land for the next five (5) year period of the Term versus the fair market value of the land for the then current five (5) year period. An appraisal to establish the fair market value for the land for the next five (5) year period shall be completed at least sixty (60) days prior to the beginning of the next five (5) year period.

If the Term is extended in accordance with subsection 8.1 above, the Land Rental Fee will be established based on the value of the land as determined by a fair market value appraisal at the time of such extension.

9.2 Minimum Monthly Guarantee. During the Term, Operator agrees to pay a Minimum Monthly Guarantee (“Guarantee”). Beginning on the Commencement Date, the initial Guarantee for each month will be **Twenty Thousand and 00/100 Dollars (\$20,000.00)**, or the amount proposed by Operator in its RFP Proposal (**Exhibit C**), whichever is greater. The applicable Guarantee will be paid monthly, in advance and without invoice, on the first day of each calendar month throughout the Term. For any period less than one (1) calendar month that this Agreement is in effect, the Guarantee shall be calculated on a pro rata basis, pursuant to this Section 9.

At the end of each Calendar Year, the Guarantee shall be adjusted for the next Calendar Year to a sum of money representing one-twelfth (1/12) of eighty-five percent (85%) of the Percentage of Gross Revenues Fee payable for the preceding Calendar Year calculated in accordance with subsection 9.3 below; provided, however, that in no event shall the Guarantee for any month be less than the Guarantee for the month in which the Commencement Date was established.

9.3 Percentage of Gross Revenues Fee. Beginning on the Commencement Date, Operator shall pay to City a Percentage of Gross Revenues Fee equal to **Five Percent (5%)** or the percentage proposed by Operator in its RFP Proposal (**Exhibit C**), whichever is greater, of Gross Revenues derived from the sale of all products, goods, and services, excluding fuel, at the Facility, or a Guarantee, whichever is greater, for each month of the Term.

Immediately upon Operator's receipt of revenue from sales by Operator, the percentages of the revenue belonging to City shall immediately vest in and become the property of City. Operator shall be responsible as trustee for the revenue until the revenue is delivered to City.

9.3.1 Payment of Percentage of Gross Revenues Fee. Operator agrees to pay to City monthly, the Percentage of Gross Revenues Fee, to the extent that such percentage fee is higher than the Guarantee. Within **fifteen (15) days** after the beginning of each calendar month during the Term, Operator shall pay to City a sum of money that represents the excess of the difference between the Guarantee and the Percentage of Gross Revenues Fee for the previous month. The Percentage of Gross Revenues Fee shall be reported separately from other fees required under this Agreement as provided for in this Section 9, and on the Monthly Statement of Gross Revenues Forms attached hereto as **Exhibit G**.

If the Term is extended in accordance with subsection 8.1 above, the Percentage of Gross Revenues Fee established for the Term will apply during the extension period.

9.4 Retail Motor Vehicle Fuels Sales Fee. In addition to the Land Rental Fee pursuant to subsection 9.1 above, the Minimum Monthly Guarantee pursuant to subsection 9.2 above, and the Percentage of Gross Revenues Fee pursuant to subsection 9.3 above, Operator shall pay City a Retail Motor Vehicle Fuels Sales Fee based on the volume of Retail Motor Vehicle Fuels, as defined in subsection 2.37, sold monthly according to the following thresholds:

- a) **\$0.00** per gallon on sales of 0 – 75,000 gallons;
- b) **\$0.01** per gallon on sales of 75,001 gallons – 150,000 gallons; and
- c) **\$0.02** per gallon on sales in excess of 150,000 gallons.

Within **fifteen (15) days** following the beginning of each calendar month during the Term, Operator shall pay to City a sum of money that represents the Retail Motor Vehicle Fuels Sales Fee required based on the Retail Motor Vehicle Fuels sales volumes for the previous month as illustrated above. Such Retail Motor Vehicle Fuels Sales Fee shall be reported separately from other fees required under this Agreement as provided for in this Section 9, and on the Monthly Statement of Retail Motor Vehicle Fuels Sales Form attached hereto as **Exhibit H**.

If the Term is extended in accordance with subsection 8.1 above, the Retail Motor Vehicle Fuels Sales Fee established for the Term will apply during the extension period.

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

- a) If City has paid any sum or sums, or has incurred any obligation or expense, for which Operator has agreed to pay or reimburse City, or for which Operator is otherwise responsible; or
- b) If City is required or elects to pay any sum or sums, or incur any obligation or expense, because of the failure, neglect or refusal of Operator to perform or fulfill any of the terms, conditions or covenants required of it hereunder; or
- c) Pursuant to any separate agreement between the parties not contained herein; or

d) Such other rents and fees for services rendered, such as, but not limited to, utilities, trash removal, telephone, delivery access fees and similar fees.

Operator's obligations pursuant to this subsection 9.5 shall include all interest, cost, damages, and penalties in conjunction with such sums so paid or expenses so incurred by City.

9.6 Place of Payment. Operator shall deliver payments of rents and fees to the office of City's Director of Aviation or at such other place as may be designated by City from time to time. Payment shall be made to the order of the "City of Albuquerque."

9.7 Late Payment Fees. If rents or fees, required by this Agreement are not received by City on or before the date specified in this Agreement, Operator shall pay an interest charge to City of one and one-half percent (1½%) per month (eighteen percent [18%] annually) for each month or partial month that any payment due is not paid. In addition, Operator shall pay an administrative fee to City of **Fifty and 00/100 Dollars (\$50.00)** if it becomes necessary for City to send Operator a late payment notice.

Section 10. Reporting Requirements.

10.1 Monthly Statements of Gross Revenues. Within fifteen (15) days after the close of each calendar month during the Term, Operator shall submit to City, on separate Monthly Statement of Gross Revenues forms, attached hereto as **Exhibit G**, information concerning its Gross Revenues derived from the sale of all products, goods, and services (excluding fuel) at the Facility. These forms shall include all Gross Revenues for the preceding month upon which the Percentage of Gross Revenues Fee payment required in subsection 9.3 above, was computed. **Operator must submit payment with the monthly statements of the Percentage of Gross Revenues Fee.** This statement shall be signed by a responsible accounting officer of Operator. City shall have the right to change the format of the Monthly Statement of Gross Revenues forms and to require Operator to submit other information pertaining to its Gross Revenues, and Operator agrees to use such forms and provide such additional information.

10.1.1 Reporting of Gross Revenues. Operator's monthly and annual reports shall provide information, reported separately, for the Gross Revenues derived from the Convenience Store, Fast Food Restaurant, and Car Wash for which Percentage of Gross Revenues Fees are due.

10.2 Monthly Statement of Retail Motor Vehicle Fuels Sales Fee. Within fifteen (15) days after the close of each calendar month during the Term, Operator shall submit to City, on a Monthly Statement of Retail Motor Vehicle Fuels Sales form, attached hereto as **Exhibit H**, information concerning its Retail Motor Vehicle Fuels Sales derived

from the sale of all fuels at the Facility. This Monthly Statement of Retail Motor Vehicle Fuels Sales shall include all fuels sales for the preceding month upon which the Retail Motor Vehicle Fuels Sales Fee payment required in subsection 9.4 above, was computed. **Operator must submit payment with the monthly statement of the Retail Motor Vehicle Fuels Sales Fee.** This statement shall be signed by a responsible accounting officer of Operator. City shall have the right to change the format of the Monthly Statement of Retail Motor Vehicle Fuels Sales form and to require Operator to submit other information pertaining to its Retail Motor Vehicle Fuels Sales, and Operator agrees to use such form and provide such additional information.

10.3 Accounting Records. Operator agrees to keep full and accurate books showing all of its Gross Revenues and Retail Motor Vehicle Fuels Sales derived from its operations at the Facility, and City shall have the right to inspect, examine, copy and audit such books and records, including, but not limited to Operator's federal, state and local tax returns and New Mexico Gross Receipts tax return records as filed with the State of New Mexico, as further provided in subsection 10.5 below. Such books and records shall include separately maintained original records, which shall include: a) daily dated cash register tapes, including tapes from temporary registers; b) serially numbered sales slips; c) Operator's bank account statements (separate bank accounts shall be maintained for receipts from operations at the Facility and no receipts from any other source shall be deposited in such accounts); d) daily and/or weekly transaction reports; and e) such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of Operator's Gross Revenues and Retail Motor Vehicle Fuels Sales in accordance with Generally Accepted Auditing Standards.

10.4 Annual Reporting. Not later than ninety (90) days following the end of each full Calendar Year (January 1 through December 31) or partial Calendar Year, Operator shall furnish to City, at Operator's sole expense, a certified audited Annual Statement of Gross Revenues and a certified audited Annual Statement of Retail Motor Vehicle Fuels Sales ("Annual Statements") for that Calendar Year, prepared by an independent Certified Public Accountant ("CPA") in accordance with Generally Accepted Auditing Standards. Such Annual Statements shall contain CPA's professional unqualified opinion on the reliability of the financial information presented.

Operator's Annual Statements must itemize, for each month of the Calendar Year, Operator's Monthly Gross Revenues and Monthly Retail Motor Vehicle Fuels Sales as previously reported to City and as audited by Operator's CPA. If such Annual Statements indicates an underpayment of the required Percentage of Gross Revenues Fees or Retail Motor Vehicle Fuels Sales Fees due to City, Operator shall submit payment for such underpayment to City with the Annual Statements.

Following City's receipt of Operator's Annual Statements, City's Auditor shall perform an independent reconciliation of Operator's monthly reports against the Annual Statements. If such reconciliation reveals an overpayment or underpayment by Operator, as determined by City's Auditor, of the required percentage of gross revenues fee, then City's Auditor shall notify Operator in writing of such overpayment or underpayment and issue the appropriate credit or invoice to Operator. If a credit is issued, it shall be taken in the month immediately following such notification.

10.5 Auditing by City. City shall have the right at any time within three (3) years after receipt of Operator's Annual Statements or Monthly Statements to have the books and records of Operator audited during reasonable hours by a certified public accountant including but not limited to the Aviation Department's Auditor, the City's Office of Internal Audit, or its successor agency, or a private certified public accountant; and, in the event that such audit shows Operator's Gross Revenues or Retail Motor Vehicle Fuels Sales as reported by said certified Statements to be more than one percent (1%) in error, detrimental to City, Operator shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional fees found due by such audit shall be paid to City within thirty (30) days of the audit and shall bear interest at the late payment interest rate, refer to subsection 9.7 above, from the date such payment was due until paid; and if Operator has overpaid such fees, Operator shall deduct such excess from the fees to City next falling due, if any, or be paid such excess by City if no fees are owed. Operator shall not be entitled to charge City any interest on such overpayments.

Operator shall maintain records of its Gross Revenues and Retail Motor Vehicle Fuels Sales for a period of at least three (3) years following the end of each Calendar Year and such records shall be available to City for audit or review on request during usual office hours. Operator shall maintain such records at its corporate office and provide them to City, in Albuquerque, New Mexico, upon fifteen (15) days written request.

10.6 Failure to Record. In the event Operator fails to create and preserve part or all of the Gross Revenue records or the Retail Motor Vehicle Fuels Sales records required in this Agreement, Operator shall pay City the Percentage of Gross Revenues Fee and the Retail Motor Vehicle Fuels Sales Fee based on an estimated amount of Gross Revenues and/or the scheduled fee based on the estimated amount of Retail Motor Vehicle Fuels Sales for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues or the estimate of the volume of Retail Motor Vehicle Fuels Sales shall be made by City and shall be based on historical sales of Operator, or other operators situated in similar circumstances as Operator. Failure of Operator to create and preserve such records shall be a material breach of this Agreement by Operator.

Section 11. Security Deposit. Prior to the Commencement Date, Operator shall deposit at the office of Director an Irrevocable Letter of Credit (“LOC”) issued exclusively to City, or a Performance Bond (“Bond”) in a form substantially the same as **Exhibit I** attached hereto and incorporated herein, in an amount equal to twenty-five percent (25%) of the first full Calendar Year Guarantee as established in subsection 9.2 above. The LOC or Bond will be held by City as security for the full and faithful performance of all the terms, covenants and conditions to be performed by Operator under this Agreement. The Bond shall be made payable on demand to the City of Albuquerque. The LOC shall be made to the order of the City of Albuquerque. In the event the Guarantee increases during the Term, so shall the amount of the Security Deposit increase to reflect an amount equal to twenty-five percent (25%) of the increased Guarantee. Any such increase shall occur at the beginning of the next Calendar Year. There shall be no decrease in the Security Deposit, regardless of the change in the Guarantee.

The LOC or Bond shall expressly permit partial payment and shall be issued exclusively to City of Albuquerque. LOCs or Bonds shall allow presentment of claims under the LOC or Bond by City by mail and shall not restrict such presentment to in-person appearances at a particular place. If a Bond is provided, such Bond shall be issued with City of Albuquerque as obligee by a surety licensed to conduct business in the State of New Mexico that has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing the Security Deposit shall provide that it shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement, and shall allow City to make a partial draw on such Security Deposit. In the event of a partial draw, Operator shall immediately reinstate the Security Deposit to the full amount required in this Section. Documents establishing the continuation or replacement of a Bond or LOC shall be received by the Aviation Department no less than thirty (30) days prior to the expiration of the existing bond or LOC. If payments required by Operator under the terms of this Agreement are not made in accordance with the payment provisions set forth in Section 9 above, City shall have the right to forfeit, take, and use as much of such Security Deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. In the event Operator fails to maintain insurance pursuant to Section 12 below, City shall be entitled to obtain such insurance, and City shall have the right to forfeit, take and use as much of such Security Deposit as may be necessary to make payment for such insurance coverage in full and to exercise any other legal remedies to which it may be entitled. The LOC or Bond shall be released by City within sixty (60) days following expiration or termination of this Agreement, provided Operator has fully performed.

City shall have the option of accepting cash security deposits. City shall not be required to place cash security deposits in interest-bearing accounts; however, should City elect to do so, City shall be entitled to all interest earned from such account as compensation for handling such account. City shall not be required to keep cash security deposits in separate accounts.

Section 12. Insurance.

12.1 General Requirements. Operator shall, procure and maintain in full force and effect during the Term, the insurance required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. When requested by City, Operator shall provide to City copies of any or all policies of insurance for the insurance coverage required in this Section 12. Policies of insurance shall be procured for all insurance required herein and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If Operator sublets, or assigns or otherwise transfers any interest in any part of this Agreement, Operator shall include all transferees in Operator's insurance policies or require such transferees to secure insurance to cover all hazards arising from Operator's use of the Airport.

Operator shall not violate the terms or conditions of insurance policies required to be furnished by Operator. Operator shall promptly notify City of any claim of loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

Operator shall furnish City with certificates of insurance by sending the certificates to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119. All insurance certificates shall provide that thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. The form of certificates of insurance shall be substantially the same as **Exhibit J** attached hereto. Documents establishing the continuation or replacement of insurance shall be delivered to the Aviation Department no less than thirty (30) days prior to the continuation or replacement of the insurance coverage.

12.2 Approval of Insurance. Even though a "notice to proceed" may have been given, neither Operator nor any contractors, assignees or other transferees of Operator shall begin any operations pursuant to this Agreement until the required insurance has

been obtained and proper certificates of insurance delivered to Director. Neither approval nor failure to disapprove certificates of insurance by City shall relieve Operator or any transferees of full responsibility to maintain the required insurance in full force and effect.

12.3 Required Insurance.

12.3.1 Commercial General Liability including Automobile.

Operator shall procure and maintain policies of insurance for commercial general liability and vehicle liability for all vehicles used in its operation at the Airport, as further described below. All such policies of insurance shall have liability limits in amounts not less than **Fifteen Million and 00/100 Dollars (\$15,000,000.00)** single limit liability for bodily injury, including death, and property damage in any one occurrence. The insurance policies shall include coverage for Premises (if applicable), operations, and Operator's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to the Airport, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

12.3.1.1 Increased Limits. If, during the term of this Agreement, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, City shall be entitled to require Operator to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

12.3.2 All Risk Property Coverage. Operator shall be solely responsible for obtaining insurance policies that provide all risk property coverage in an amount not less than one hundred percent (100%) of the insurable value of the Facility.

12.3.3 Environmental Impairment Liability. Operator shall be solely responsible for obtaining insurance policies that provide environmental impairment liability coverage in an amount not less than **Five Million and 00/100 Dollars (\$5,000,000.00)** per occurrence with a clean-up cost rider of not less than **Ten Million and 00/100 Dollars (\$10,000,000.00)**.

12.3.4 Contractor Bond and Insurance. Operator shall require any contractor or contractors who perform any work at the Premises on behalf of or for the benefit of Operator to procure contractor's commercial general liability insurance, ground

vehicle liability insurance, property damage insurance, and workers compensation insurance in amounts no less than One Million and 00/100 Dollars (\$1,000,000.00). Operator shall furnish Director with evidence that the contractor has procured such insurance coverage.

12.3.5 Builders Risk Insurance. During any period of construction or reconstruction for which Operator contracts, Operator shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount not less than one hundred percent (100%) of the insurable value of the Facility.

12.3.6 Additional Insured. City of Albuquerque shall be named as an additional insured on each insurance policy referred to in subsections 12.3.1, 12.3.2, 12.3.3, 12.3.4, and 12.3.5 above.

12.3.7 Workers' Compensation Insurance. Operator shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Operator shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. In addition, Operator shall procure and maintain Employers Liability Coverage in an amount not less than **One Million and 00/100 Dollars (\$1,000,000.00)** per occurrence.

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

12.4 Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section, except as allowed by New Mexico law regarding Workers' Compensation, contain a self-insurance retention provision, whether or not in the form of a deductible, for each such amount, Operator shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to the Aviation Department.

12.5 Failure to Maintain Insurance. In the event Operator shall at any time fail to have in effect the insurance required under the provisions of this Agreement, City

shall be entitled to secure the insurance required hereunder at the cost and expense of Operator, providing Operator with fifteen (15) calendar days written notice of its intention to obtain such insurance coverage. Said fifteen (15) days shall run from the date notice is received by Operator. Operator agrees to reimburse City for costs of such insurance plus fifteen percent (15%) thereof for administrative overhead.

12.6 Additional Requirements. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured; provided such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations or omissions of Operator, its officers, agents, employees and independent contractors. City shall have no liability for any premiums charged for such coverage, and inclusion of City as an additional insured is not intended to and shall not make City a partner or joint venturer with Operator in its operations at the Airport.

Section 13. Termination of Agreement.

13.1 Termination: 15-Day Cure Period. This Section shall govern Operator's failure to comply with the following provisions (hereafter "Events of Default"):

- 13.1.1** Pay rents and fees pursuant to Section 9;
- 13.1.2** Provide the reports required in Section 10;
- 13.1.3** Provide and maintain the security deposit pursuant to Section 11;
- 13.1.4** Provide and maintain insurance pursuant to Section 12;

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

13.2 Termination: 30-Day Cure Period. Except for Events of Default which are governed by subsection 13.1 above, City shall be entitled to terminate this Agreement in the event of default by Operator in the performance of any covenant or agreement herein

required to be performed by Operator and the failure of Operator to remedy such default for a period of thirty (30) days following receipt from City of written notice of Events of Default, by sending Operator a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Operator's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination. However, if Operator shall have fully cured all Events of Default identified in the thirty (30) day notice prior to Operator's receipt of the Notice of Termination, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

13.3 Other Termination by City. City may terminate this Agreement by giving Operator thirty (30) days advance written notice as hereinafter provided, based upon one of the following events:

- a) The divestiture of Operator's estate herein by other operation of law;
- b) The abandonment by Operator of its conduct of business at the Airport for a period of fifteen (15) days provided, however, that discontinuance by Operator of business at the Airport during or because of a work stoppage by Operator's employees shall not be construed as abandonment;
- c) The lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as substantially to restrict Operator for a period of at least ninety (90) days, from operating thereon. No cure period, including those for which subsections 13.1 and 13.2 above, provide, shall be required of City for the events listed in this subsection 13.3;
- d) Operator is unable to obtain or maintain a governmental approval, permit, or license and the absence of that approval, permit, or license results in Operator's inability to conduct Retail Motor Vehicle Fuels Sales at the Facility for a period in excess of thirty (30) days.

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

13.5 Termination by Operator: 30-Day Cure Period. Operator shall be entitled to terminate this Agreement in the event of default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of thirty (30) days following receipt from Operator of written notice of Events of Default, by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination. However, if City shall have fully cured all Events of Default identified in the thirty (30) day notice prior to City's receipt of the Notice of Termination, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

13.6 Other Termination by Operator. Operator may terminate this Agreement any time that Operator is not in default in its payments to City hereunder, by giving City sixty (60) days advance written notice as hereinafter provided, based upon one of the following events:

a) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof for Airport purposes, and the remaining in force of such injunction for a period of at least ninety (90) days;

b) The inability of Operator to use, for a period in excess of ninety (90) days, the Airport or any of the Premises, Facilities, rights, licenses, services or privileges leased to Operator hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy, provided that same is not caused by negligence or willful acts or failure to act on the part of Operator;

c) Despite its good faith efforts, Operator is unable to obtain or maintain a governmental approval, permit, or license and the absence of that approval, permit, or license results in Operator's inability to conduct Retail Motor Vehicle Fuel Sales at the Airport for a period in excess of thirty (30) days;

d) The lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as substantially to restrict Operator for a period of at least ninety (90) days, from operating at the Airport;

e) Permanent abandonment of Airport for all scheduled airline service.

13.7 Operator's Non-Waiver. Operator's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by City,

shall not be deemed a waiver of any rights on the part of Operator to terminate this Agreement following such failure by City, and shall not be construed to be or act as a waiver by Operator of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by City.

Section 14. Financial Responsibility.

14.1 Taxes, Licenses, Debts. Operator shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Operator's operation on the Premises or Airport, and acquire and keep current all licenses, municipal, state or federal, required as the result of Operator's operations on the Premises or Airport pursuant to this Agreement, and shall not allow any of said taxes, excises or fees to become delinquent. Operator shall pay promptly when due all bills, debts and obligations incurred in connection with its operations or activities on the Premises or Airport and shall not permit them to become delinquent.

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

14.3 Utilities Fees. Operator, at Operator's sole cost and expense, shall make its own arrangements and pay for all fees assessed for any and all of its utilities including but not limited to electrical power, natural gas, water, sanitary sewer, refuse collection and disposal, telephone and communication services, and for any other utility service or other service supplied to or used on the Premises, including any and all connection and metering fees, as billed directly to Operator by utility companies furnishing such services or as invoiced by City. If invoiced by City, Operator shall pay City such costs and fees based upon standard Airport rates and fees as may be established from time to time by City, and meter readings, if any, for amounts used by Operator, within fifteen (15) days following the date of such invoice. Operator agrees that any and all such fees for any and all such services shall be paid before delinquency and that City shall be protected and held harmless by Operator actions.

Section 15. Damage or Destruction of Premises.

15.1 Operator's Responsibility for Repair and Restoration. If at any time during the Term, the Leasehold Improvements or other improvements constructed by Operator upon the Premises, or any part thereof, shall be damaged or destroyed by fire or other occurrence, including an occurrence for which insurance coverage was not obtained, or obtainable, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Operator, at its sole cost and expense, and whether or not the insurance proceeds, if any,

shall be sufficient for the purpose, shall proceed with reasonable diligence, subject to a reasonable time allowance for the purpose of adjusting the insurance loss, to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, including temporary repairs and work necessary to protect the Leasehold Improvements or other improvements from further damage, subject to such changes or alterations as may be approved by City in conformity with the provisions of Section 4 above.

Notwithstanding the above provisions of this subsection 15.1, if 1) the Leasehold Improvements or other improvements constructed by Operator at the Premises are damaged or destroyed by casualty during the last four (4) years of the Term, and 2) the cost of repairing, restoring, replacing, or rebuilding exceeds seventy-five percent (75%) of the replacement value of the Leasehold Improvements and other improvements constructed by Operator at the Premises, Operator may terminate this Agreement by giving a termination notice to City within ninety (90) days after the occurrence of the damage or destruction. Any such notice of termination shall be accompanied by: 1) payment of the Land Rental Fee for the unexpired Term of the Agreement; and 2) payment of estimated Percentage of Gross Revenues Fees and Retail Motor Vehicle Fuels Sales Fees for the unexpired Term of the Agreement. For purposes of this subsection 15.1, such estimated Percentage of Gross Revenues Fees and Retail Motor Vehicle Fuels Sales Fees shall be paid in an amount equivalent to the respective fees paid during the immediately preceding Calendar Year multiplied by the number of Calendar Years of Term remaining. If termination of the Agreement occurs on a date other than the first or last day of a Calendar Year, all fees for the partial Calendar Year will be prorated.

15.2 Conditions for Repair and Restoration. Except as otherwise provided in this Section 15, the conditions under which the repair and restoration of the Leasehold Improvements and other improvements are to be performed and the method of proceeding with and performing same shall be governed by the provisions of Section 4 above, as applicable. The cost of the repair and restoration for which Operator shall be responsible under this Section 15 shall include reasonable fees of an architect or engineer, if any, employed by City for the purpose of examining Operator's plans and specifications and seeing that the repair and restoration conforms therewith, and such other reasonable costs as may be incurred by City in connection with such repair and restoration.

15.3 Payment of Insurance Proceeds. All insurance proceeds paid on account of such damage or destruction under the policies of insurance required by Section 12 above, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof ("insurance proceeds"), shall be applied to the payment of the cost of the repair and restoration, and shall be paid out to or for the account of Operator from time to time as such repair and restoration progresses.

15.4 Insufficient Insurance Proceeds. If the insurance proceeds are not sufficient to pay the entire cost of the repair and restoration, Operator shall supply the amount of any such deficiency and shall apply the same to the payment of the cost of the repair and restoration. Under no circumstances shall City be obligated to make any payment, reimbursement or contribution towards the cost of the repair and restoration.

15.5 Failure to Commence Repair and Restoration. City may terminate this Agreement pursuant to Section 13 above, if the repair and restoration has not commenced within one hundred twenty (120) days after the damage or destruction has occurred or if the repair and restoration, after commencement, does not proceed expeditiously, provided, however, that any delay resulting from causes beyond the control of Operator shall extend the time for commencement or completion of such repair and restoration. On such termination, the insurance proceeds received by or payable to Operator shall be paid to Operator's mortgagee in connection with Leasehold Improvements or other improvements on the Premises, and then to Operator and City as their respective interests may appear.

15.6 Operator's Obligation Continues. In no event shall Operator be entitled to any abatement, allowance, reduction, or suspension of rents or fees because part or all of the Leasehold Improvements or other improvements upon the Premises become untenable or unusable owing to the partial or total damage or destruction thereof. No such damage or destruction shall affect in any way the obligation of Operator to pay the rents and fees herein reserved or required to be paid, nor release Operator from any obligation imposed upon Operator in this Agreement, except as otherwise provided in subsection 15.1 above. Operator shall pay City the Percentage of Gross Revenues Fees and the Retail Motor Vehicle Fuels Sales Fee based on an estimate of Gross Revenues and the estimate of the volume of Retail Motor Vehicle Fuels Sales based on historical sales of Operator.

Section 16. Title to Leasehold Improvements. Title to all Leasehold Improvements, fixtures, and alterations to the Premises made by Operator shall at all times during the Term remain in Operator. Upon expiration of the Term or earlier termination of this Agreement, title to all such Leasehold Improvements, fixtures (other than Trade Fixtures), and alterations, at City's election, shall vest in the City without payment of any further compensation to Operator. During the Term, Operator shall not remove, waste, destroy, demolish, or alter any approved Leasehold Improvements without the written consent of Director.

Upon expiration of the Term or earlier termination of this Agreement, Director may require Operator to remove any and all Leasehold Improvements constructed or installed by Operator on the Premises within one hundred twenty (120) days after receipt of written notice from Director. Operator shall be required to remove the Leasehold Improvements and return the Premises to the same or comparable condition as when originally leased.

Operator shall pay for testing of any Contamination arising during its tenancy. If Operator can show to the sole satisfaction of Director that Contamination was not in any way contributed to or caused by Operator, remediation shall be performed as otherwise set forth in this Agreement.

Section 17. Surrender of Premises. Operator covenants and agrees that on expiration of the Term, or earlier termination as provided in this Agreement, Operator will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, excepted, and City shall have the right to take possession of the Premises. City shall not be required to give notice to quit possession at the expiration date of the Term.

Operator shall have the right, fifteen (15) days prior to the expiration or early termination of this Agreement, to remove or dispose of all Inventory, Trade Fixtures, Moveable Equipment, and other personal property placed by it at its sole expense, in, on, or about the Premises, subject to any valid lien that City may have thereon for unpaid rents or fees, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of the Term. City's occupancy of the Premises, whether by its own staff or by a successor operator, shall include the right to temporarily relocate Operator's Inventory, Trade Fixtures, Moveable Equipment, and personal property to other locations, on or off the Premises, at Operator's sole expense. Operator shall not be entitled to damages or costs of extra moving expense for City's relocation of such Inventory, Trade Fixtures, Moveable Equipment, and personal property, provided, however, that such items remain on the Airport. Operator shall not be entitled to remove non-trade fixtures.

17.1 Removal Damages. In the event Operator removes its Inventory, Trade Fixtures, Moveable Equipment, and other personal property described in Section 17 above, Operator shall repair any damage to the Premises or the Airport caused by such removal. Removal and repair shall be at Operator's sole expense.

17.2 Ownership of Property Not Removed. In the event Operator fails to remove its property, City shall have the options of 1) removing Operator's property at Operator's sole expense, but only in the event Operator takes possession of such property immediately upon such removal; or 2) taking title to Operator's property in lieu of removal on behalf of Operator. In the event City takes title to such property, City shall be entitled to all proceeds of sale of such property as liquidated, damages for the breach of Operator's covenant to remove.

Section 18. Access. Subject to applicable City, state, and federal rules and regulations, Operator shall have for itself and its officers, agents, employees, and invitees reasonable rights of access to and from the Premises.

Section 19. Quiet Enjoyment. Upon payment of all rents and fees, and performance of the covenants and agreements by Operator, and subject to the terms and conditions of this Agreement, Operator shall peaceably have and enjoy the Premises and all of the rights, privileges, and appurtenances granted herein.

Section 20. City's Right to Enter. City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances and with as little interruption of Operator's operations as is reasonably practicable, to enter upon the Premises, accompanied by an authorized representative of Operator, if practicable, for the following purposes:

20.1 To inspect such Premises to determine whether Operator is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection, or security purposes.

20.2 To show and tour the Premises with prospective operators for the Premises and government officials, including but not limited to airport officials and elected officials.

20.3 To enter the Premises to take inventories of Operator's Leasehold Improvements or other improvements.

Section 21. Depreciation and Investment Credit for Federal Income Tax Purposes. In order to preserve the tax exempt status of City Airport revenue bonds, it is a condition of this Agreement that Operator, its successors and assigns in interest under this Agreement hereby agrees that for federal income tax purposes, 1) it shall not claim depreciation or any investment credit with respect to the Premises furnished by City, and 2) it shall make and file an irrevocable election not to claim depreciation or an investment credit, with respect to the Premises furnished by City. When requested, Operator agrees to send a copy of its election to the office of Director.

Section 22. Other Operators and Future Lease Sites. Operator's rights and privileges under this Agreement shall not include any additional concession rights at the Airport; however, Operator shall not be prohibited, because of entering into this Agreement, from submitting a bid or proposal for future concession opportunities as City may issue a Request for Bid or Request for Proposal from time to time. Operator further acknowledges that City may have in the future, other operators in addition to those awarded a lease under this Request for Proposal and under which this Agreement was awarded, who shall have the right to perform essentially the same type of services as those provided by Operator.

Section 23. General Conditions.

23.1 Rules and Regulations. During the Term, Operator shall observe and obey all Rules and Regulations promulgated from time to time by City governing conduct on and operations at the Airport. Operator shall not violate, nor knowingly permit its agents, contractors, or employees acting on Operator's behalf to violate any such Rules and Regulations.

23.2 Hazardous Materials.

23.2.1 Operator's Compliance with Environmental Laws. Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances, defined in subsection 23.2.6 below, or relate to the protection of human health, safety or the environment, and include but are not limited to: The Solid Waste Disposal Act, 42 U.S.C. 3251, et seq.; The Federal Insecticide, Fungicide, and Rodenticide Act/Pesticide Act, 7 U.S.C. Section 13 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; The Oil Pollution Control Act of 1990, 33 U.S.C. Section 2761 et seq.; Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq.; and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Clean Water Act, 33 U.S.C., Section 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico and/or the United States or in regulations promulgated pursuant to such laws.

Operator shall at all times in all respects comply with all Environmental Laws, and any amendments thereto affecting Operator's operation on the Airport, including all federal, state and local laws, ordinances and regulations relating to Hazardous Materials; industrial hygiene; environmental protection of the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any oil, petroleum products, flammable explosives, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitations, any "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances" or "regulated substance" under any such laws, ordinances or regulations. Upon expiration or earlier termination of this Agreement, Operator shall cause all Hazardous Materials introduced to the Airport by Operator or its agents or invitees to be removed from the Airport and transported for use, storage, or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

23.2.2 Indemnification by Operator. Operator shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Operator, its agents, employees, contractors or invitees without the prior written consent of City. City shall not unreasonably withhold or delay consent as long as Operator demonstrates to City's reasonable satisfaction that such Hazardous Material is necessary or useful to Operator's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon, used or kept in or about the Premises.

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

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

The indemnification required by this subsection shall not apply to any Hazardous Material existing on, under or about the Premises prior to the date of full execution of this Agreement. However, the parties recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Material on, under or

about the Premises as of the date of full execution of this Agreement. Even so, the parties agree that, as of the date of full execution of this Agreement, they are not aware of the existence of any Hazardous Material on, under or about the Premises.

23.2.3 Notices. Operator shall immediately notify City in writing of any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials laws related to its operations on the Premises. Except as otherwise provided in subsection 23.2.4 below, Operator shall also provide City as promptly as possible, and in any event within ten (10) business days after Operator first receives or sends the same, with copies of all claims, reports, complaints, notices or warnings or asserted violations relating in any way to the Premises or Operator's use thereof.

23.2.4 Environmental Notices; Indemnification Notices. Operator shall provide City with a copy of any written release reports that Operator is required to submit to any Environmental Agency with respect to releases of any and all Hazardous Materials or Contaminants at the Premises during the Term. Operator shall, within twenty-four (24) hours, provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Operator each shall promptly provide the other with a copy of 1) any claim or demand for Corrective Action that any Environmental Agency issues and 2) any other claim giving rise to either party's indemnification obligations under subsection 23.2.2 above.

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

23.2.6 Hazardous Material Defined. As used herein the term "Hazardous Materials" means any hazardous toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of New Mexico or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is 1) defined as a "Hazardous Waste," under Section 74-4-3 of the New Mexico Statutes (NMSA 1978), 2) designated as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), 3) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. (42 USC Section 6903) or 4) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601 et seq. (42 USC Section 9601).

23.2.7 National Pollutant Discharge Elimination System.

Operator shall comply with all federal and state regulations governing the National Pollutant Discharge Elimination System (NPDES) and applicable sections of Airport's Storm Water Pollution Prevention Plan (SWPPP), including all future amendments of said regulations and procedures as may be adopted by City, state or federal agencies.

23.2.8 Environmental Assessment.

Operator shall cause an environmental assessment to be conducted on the Premises, with a copy of said assessment to be provided to Director, by persons acceptable to Director, at Operator's sole cost and expense, immediately prior to or after, the expiration of the Term or earlier termination of this Agreement, as Director requires.

Operator shall be responsible for and required to, at Operator's sole cost and expense, remediate any Contamination determined by such environmental assessment upon the expiration of the Term or earlier termination of this Agreement unless Operator can provide Director sufficient evidence, to Director's sole satisfaction, that either Contamination existed prior to Operator's construction and operation of the Facility on the Premises, or was not caused, in any part, by Operator.

23.2.9 Operator's Corrective Action Obligation.

Operator shall undertake Corrective Action to remove Contaminants released by Operator, its agents, employees, contractors, or representative during Operator's occupancy of the Premises, if and to the extent required by any Environmental Agency. Operator shall, in consultation with City, determine the schedule, technique, method, and design of the Corrective Action, subject to Environmental Agency requirements and approval, provided, however that Operator may contest and appeal any Environmental Agency decision or directive.

23.3 Post Termination Restoration of Premises.

Upon expiration of the Term or earlier termination of this Agreement, at City's request, Operator shall restore the Premises as closely as reasonably possible to the state that the Premises were in when Operator or its representatives or contractors first entered on the Premises following the Effective Date of this Agreement, unless the restoration is prohibited by applicable law.

23.3.1 Holdover Tenancy.

In the event Operator requires possession of the Premises following the expiration of the Term or earlier termination of this Agreement in order to remove its Leasehold Improvements or other improvements from the Premises, or install Remediation Equipment on the Premises, or perform any Corrective Action that would materially impair ingress, egress, parking, business operations, or City's redevelopment of the Premises, or if a law, governmental order, or court order requires Operator to be in possession of the Premises, this Agreement will not be considered to be renewed. Instead Operator will be considered to be in possession of the Premises under a month-to-month holdover tenancy pursuant to subsection 8.2 above,

until Operator can surrender the Premises to City in a condition that will not materially impair City's redevelopment or use of the Premises. For each month during the holdover tenancy, Operator shall perform all terms, conditions, and covenants contained in this Agreement, at the rents and fees required pursuant to Section 9 above. However, in no event shall the rents and fees be less than those in effect immediately upon expiration the Term or earlier termination of this Agreement. The terms of this Agreement, and specifically those in this subsection 23.3.1, will govern during any holdover tenancy. At City's sole discretion, and at City's written request, Operator shall remove Remediation Equipment from the occupied portions of the Premises at Operator's sole cost and expense, provided the removal of such Remediation Equipment will not hinder any Corrective Action.

23.3.2 Operator's Environmental Access Right. In the event Operator's Remediation Equipment remains on the Premises following the expiration of the Term or earlier termination of this Agreement, Operator and its representatives and contractors will have the right of access to the Premises during normal business hours and business days, to install additional Remediation Equipment; to maintain, modify, monitor, operate, repair or abandon Operator's Remediation Equipment; and to verify to the applicable Environmental Agency that Operator's Corrective Action has been completed. Operator or its representative or contractor shall provide City written notice of its intent to exercise its holdover access right at least two (2) business days prior to exercising such right. Operator will attempt to minimize, to the extent reasonably possible, any interference with the operation of any business conducted at the Premises, except in the case of an emergency, as determined by Operator. In conducting its operations at the Premises following the expiration of the Term or earlier termination of this Agreement, City shall attempt to minimize, to the extent reasonably possible, any interference with Operator's Corrective Action. The holdover access right will terminate when the Environmental Agency issues a letter to Operator stating that, based on certain assumptions and conditions, no further Corrective Action will be necessary and Operator removes or closes its existing Remediation Equipment. If, however, following the Environmental Agency's issuance of such letter, the Environmental Agency requires Operator to perform further Corrective Action, then the access right under this subsection will resume.

23.4 Contract Interpretation.

23.4.1 Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided

that the striking of such covenants, conditions or provisions does not materially prejudice either City or Operator in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

23.4.2 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

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

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

23.4.5 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

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

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

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

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

23.4.10 Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of City.

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

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

23.4.13 Time is of the Essence. Time is of the essence in the performance of this Agreement.

23.5 Subordination.

23.5.1 Subordination to Agreements with the U.S. Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

23.5.2 Other Subordination. The Premises and Airport are, and this Agreement is, subject to and subordinate to the terms of all deeds from the United States of America to City, including but not limited to that certain deed from the United States of

America to City dated December 15, 1962, and filed for record on December 19, 1962, in Volume 672 of Records, Folio 469, with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

23.5.3 Airport Revenue Bond Ordinances. This Agreement is subject to and subordinate to any and all City Ordinances pertaining to Airport Revenue Bonds.

23.6 Discrimination Prohibited.

23.6.1 General. In the use and occupation of the Premises, Operator shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap in violation of any federal, state or local law.

23.6.2 Civil/Human Rights Laws. In the operation and use of the Premises, Operator shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21, 23 and 26, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the New Mexico Human Rights Act, and the Albuquerque Human Rights Ordinance. Operator agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Operator agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

23.6.3 Operator, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that the facilities are constructed, maintained, or otherwise operated on the Airport Premises, for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Parts 21, 23, and 26, and as said regulations may be amended.

23.6.4 Operator, for itself, its successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: a) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c) that Operator shall use the Airport Premises in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, the Albuquerque Human Rights Ordinance, and 49 CFR Parts 21, 23 and 26, and as said regulations may be amended; and Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152 Subpart E, Nondiscrimination Airport in Aid Program, to ensure that no person shall on the grounds of race, color, religion, national origin or ancestry, sex, age, or physical or mental handicap be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E, or such employment activities covered in the New Mexico Human Rights Act, or the Albuquerque Human Rights Ordinance. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Operator assures that it will require that any covered sub-organization similarly will undertake affirmative action programs and that the sub-organization will require assurance from the sub-organization, as required by 14 CFR Part 152 Subpart E, to the same effect.

23.7 No Exclusive Rights. Nothing herein contained shall be deemed to grant to Operator any exclusive right or privilege within the meaning of FAA Advisory Circular 150/5190-5 for the conduct of any activity on the Airport.

23.8 Indemnification Agreement. Operator covenants that it and all of its agents, servants, and employees will use due care and diligence in all of its or their activities and operations at the Airport. Operator agrees to and recognizes the broad nature of this indemnification provision (hereafter the "Indemnification Agreement") and voluntarily makes this covenant and expressly acknowledges the receipt of adequate compensation by the City in support of this Indemnification Agreement.

23.8.1 General Indemnification. Operator agrees to defend, indemnify and hold harmless City and its officers and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses, including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses, of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained

by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Operator, its agents or its employees arising out of the operations of Operator or Operator's performance, purported performance, or non-performance of this Agreement or Operator's activities at the Airport.

23.8.2 Costs. As used in this Indemnification Agreement, "costs" shall include but not be limited to:

- a) all claims of third parties, including government agencies for damages, response costs or other relief;
- b) the cost, expense or loss to the City of any injunctive relief, including preliminary or temporary injunctive relief applicable to the City;
- c) all expenses of evaluation, testing analysis related to Hazardous Substances including fees of attorneys, engineers, consultants, paralegals and experts;
- d) any and all expenses or obligations including attorneys' and paralegal fees incurred at, before or after any trial or appeal therefrom, or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including without limitation, attorneys' and paralegal fees, witness fees (expert or otherwise), deposition costs, copying and telephone fees and other expenses; and
- e) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state agency.

23.8.3 Limitations. Operator shall not be required to indemnify or hold harmless City pursuant to this Section with respect to any bodily injury, death or injury to or destruction of property which results from the negligence or willful misconduct of City, its agents, servants or employees.

23.8.4 Scope of Indemnification. With respect to any claims, actions, suits, damages or judgments caused by or resulting from acts, omissions or operations of Operator, its agents, servants, or employees, Operator shall:

- a) investigate or cause the investigation of accidents involving such injuries;
- b) negotiate or cause to be negotiated settlement of all claims made as may be deemed expedient by Operator, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages against City;

c) pay and satisfy judgments finally establishing the liability of City in all actions defended by Operator pursuant to this Section; and

d) pay, or cause to be paid: 1) all costs taxed against City in any legal proceeding defended or caused to be defended by Operator as aforesaid; 2) any interest accruing up to the date of payment by Operator; 3) all premiums charged upon appeal bonds required in such proceedings; and 4) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should Operator fail to provide the defense and indemnification required herein.

23.8.5 Miscellaneous. City shall, promptly upon receipt of a notice of claim, give Operator every demand, notice, summons, or other process received in any claim or legal proceeding contemplated therein. In the event City shall fail to give Operator notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Operator in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Operator of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or condition of preserving, asserting, or enforcing any claim or legal liability against City. This subsection shall not be construed as a waiver of City's immunity. The provisions of this subsection shall not be construed to prohibit Operator from seeking contribution or indemnity from any third party that may have caused or contributed to the event for which Operator indemnified City.

23.8.6 Length of Indemnification. Operator's obligations and liabilities under this subsection shall survive the expiration or earlier termination of this Agreement.

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

23.10 Assignment and Subletting. Operator shall not assign, sublet, mortgage, or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of City. Such approval shall not be unreasonably withheld.

23.11 Construction Inconvenience. Operator agrees that from time to time during the Term, City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure and facilities on the Airport (“Construction”), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Operator agrees that it shall not hold City, including its officers, agents, employees and representatives, liable for damages of any nature whatsoever to Operator due to the Construction. Operator shall hold City harmless for all damages arising out of or caused by inconveniences and/or interruptions of its business activities at the Airport, loss of business, and personal injury, including death, and property damage due to the Construction. Operator’s waiver under this paragraph of its rights to make claims for damages include claims based on City’s negligence or intentional conduct and is made voluntarily. Operator acknowledges receipt of adequate compensation by the City in support of this waiver. In the event Construction results in a total denial of access to the Premises by Operator, Operator shall be entitled to an abatement of the rents and fees established in this Agreement, provided however, that such abatement shall be only for each calendar day such access is denied. The amount of abatement for each calendar day shall be the pro rata share of rents and fees for one (1) day of the monthly rents and fees required under this Agreement.

23.12 Ethics.

23.12.1 Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this subsection during the Term, Operator shall disclose in writing to City whether any City Councilor of the City of Albuquerque, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Operator or in any contract, lease or agreement between City and Operator, or in any franchise, concession, right, or privilege of any nature granted by City to Operator in this Agreement or otherwise.

23.12.2 Fair Dealing. Operator covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Operator without collusion on the part of Operator with any person or firm, without fraud and in good faith. Operator also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term, will be, offered or given by Operator, or any agent or representative of Operator, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

23.12.3 Board of Ethics and Campaign Practices. Operator agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator ("Board") with any records or information pertaining in any manner to this Agreement, or both, whenever such records or information are within Operator's custody, are germane to an investigation authorized by the Board, and are requested by the Board.

Operator further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Operator agrees to require that all subcontractors employed by Operator for services performed for this Agreement shall agree to comply with the provisions of this Section. Operator and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

23.12.4 Harassment. Operator shall not harass or annoy City Councilors of the City of Albuquerque or officers or employees of City with requests for modifications resulting in more favorable treatment under this Agreement than the treatment accorded other Operators.

23.13 Approvals, Consents, and Notices. All notices, consents and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation
Certified Mail:	Albuquerque International Sunport PO Box 9948 Albuquerque, New Mexico 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
FAX Transmission:	(505) 842-4278

Operator:
Operator Official:
Title:
Certified Mail and
Personal Delivery:
Telephone:
FAX:

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

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

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

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

23.16 Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the New Mexico Second Judicial District Court located in Bernalillo County, New Mexico or in the United States District Court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination or expiration of this Agreement.

23.17 Compliance with Law. Operator shall comply with all applicable laws, ordinances, rules, regulations and procedures of federal, state, and local governments related to Operator's use of the facilities and the Airport, including, but not limited to Aviation Department rules. Operator shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated thereunder (28 C.F.R. Parts 35, 36, and 37).

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

23.19 Administration of Agreement. The Chief Administrative Officer or his authorized representative shall administer this Agreement for the City of Albuquerque.

23.20 Approval of Agreement. This Agreement shall not become binding until signed by the Chief Administrative Officer.

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

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

City of Albuquerque

By: _____
James B. Lewis, Chief Administrative Officer

Date: _____

By: _____
John D. "Mike" Rice, Director of Aviation

Date: _____

Operator:

By: _____

Date: _____

City of Albuquerque Business Registration No.: _____

NM State Taxation and Revenue Taxpayer ID No.: _____

Federal Taxpayer ID No.: _____

Acknowledgments

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

This instrument was acknowledged before me this _____ day of _____, 2005, by **James B. Lewis**, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

State of _____)
) **ss.**
County of _____)

This instrument was acknowledged before me this _____ day of _____, 2005, by _____ of _____ a _____, on behalf of said _____

Notary Public

My Commission Expires:

Exhibit A

Airport

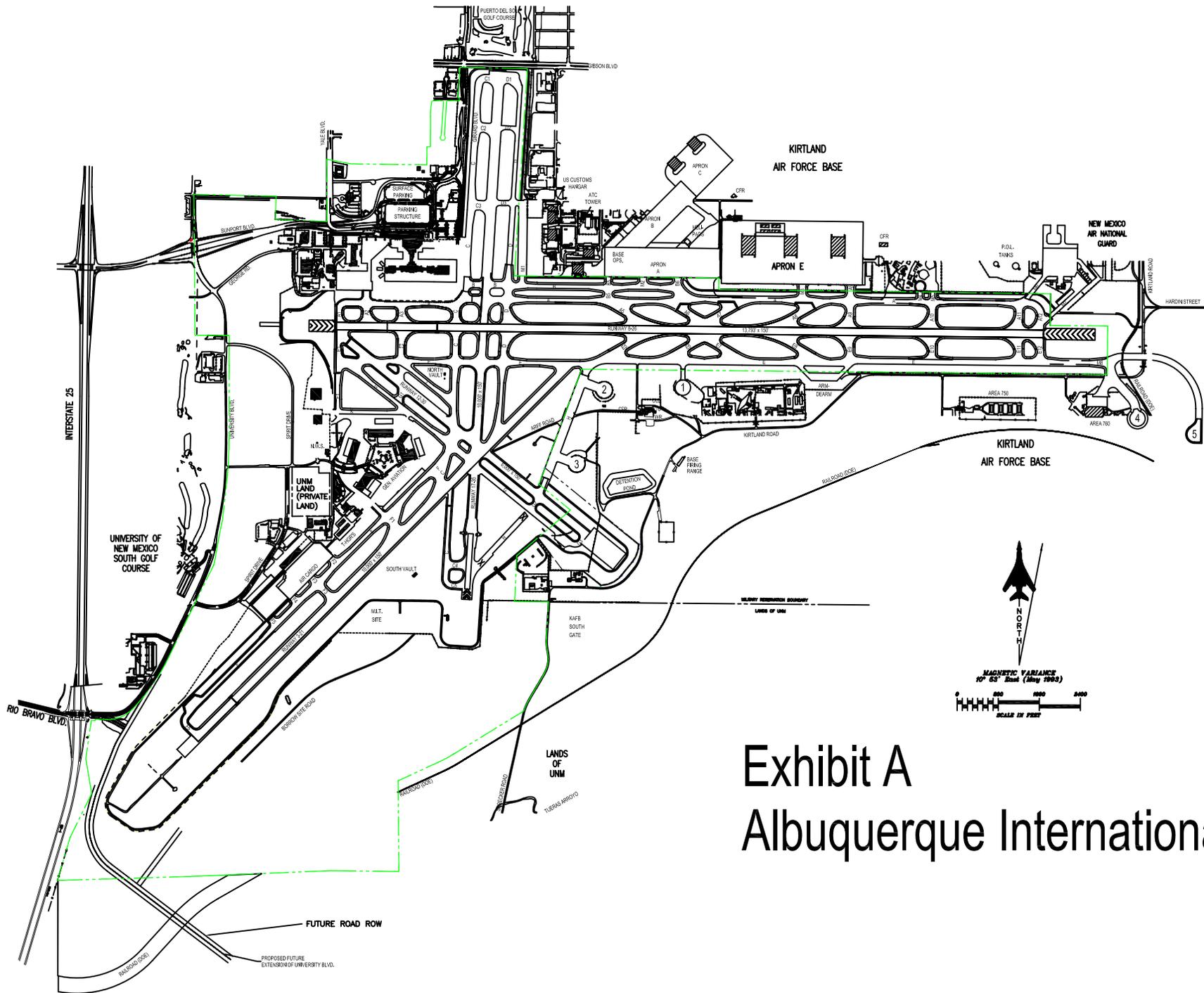


Exhibit A
 Albuquerque International Sunport

Exhibit B

Request for Proposal (“RFP”)

Exhibit C

Proposal

Exhibit D

Land

EXHIBIT D Land Albuquerque International Sunport

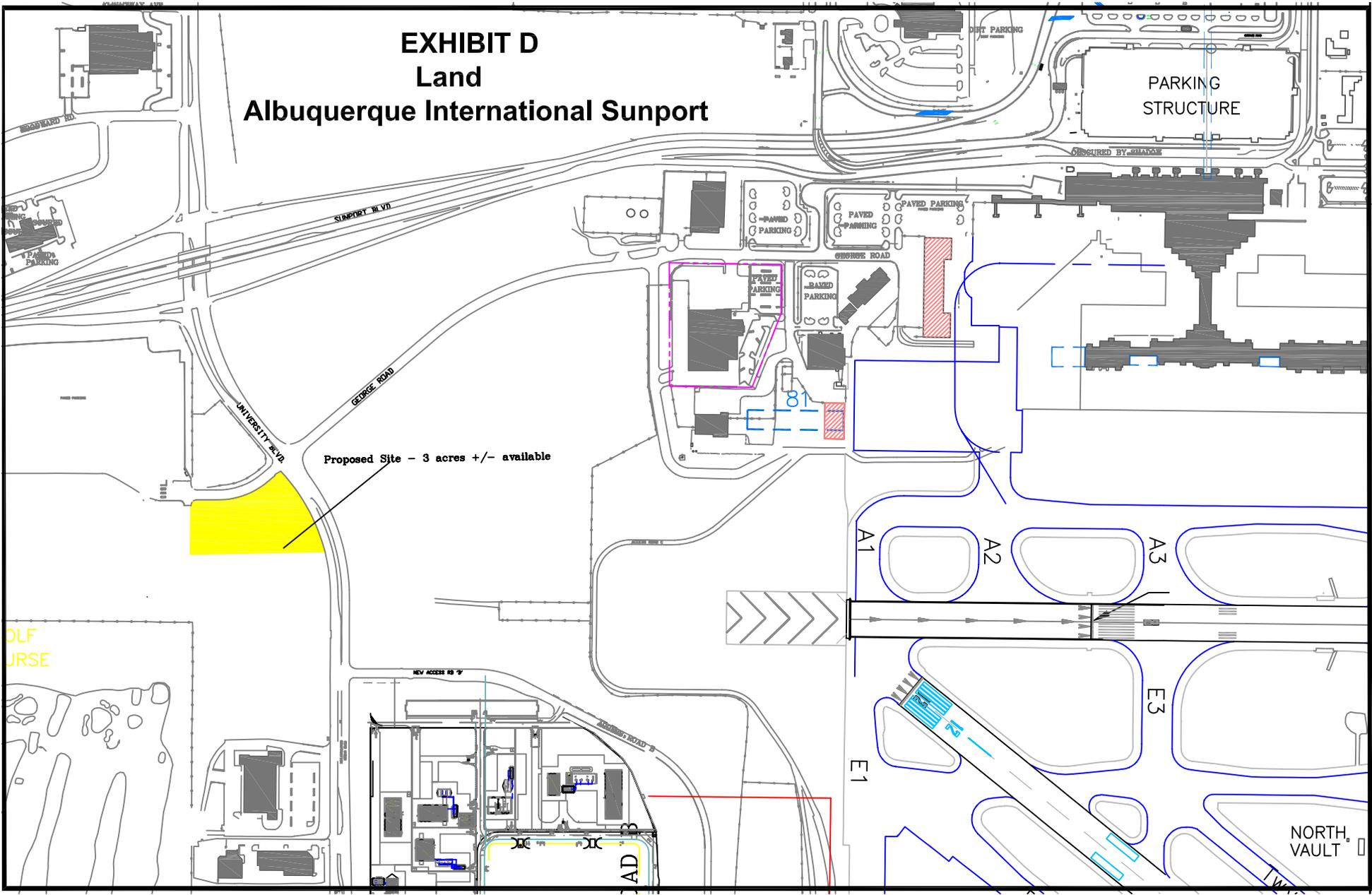


Exhibit E

Final Plans and Construction Schedule

Exhibit F

Merchandise and Services List

Exhibit G

Monthly Statement of Gross Revenues Forms

Monthly Statement of Gross Revenues Convenience Store

For the Month of _____ (month/year)
due on the 15th day of the following month.

Company Name _____

1. **GROSS REVENUES:** \$ _____
2. Less (allowable deductions as listed in Section 2.2.8 of the Agreement):
- a) deductible taxes \$ _____
 - b) equipment sales/trade-in \$ _____
 - c) equipment or merchandise exchanged \$ _____
 - d) equipment refunds \$ _____
 - e) refunds to customers \$ _____
 - f) sale of uniforms to employees \$ _____
 - g) sale of NM lottery tickets \$ _____
 - h) rents and fees paid by sublessees \$ _____
 - i) non-Airport business \$ _____
- TOTAL DEDUCTIONS** \$(_____)
3. **REPORTABLE REVENUE THIS MONTH** \$ _____
(LINE 1 LESS LINE 2)
4. **PERCENTAGE FEE: _____ % OF LINE 3** \$ _____

REMIT AMOUNT ON LINE 4 WITH THIS STATEMENT

MAKE CHECK PAYABLE TO:

City of Albuquerque

PO Box 9948

Albuquerque, NM 87119-1048

Oath of Operator:

The undersigned, being first duly sworn, deposes and says, that the gross revenues detailed on this statement are true and just, and the percentage fee shown is due the City of Albuquerque in accordance with the Fuel Station & Food Facility Concession Lease and Agreement.

Authorized Officer

Signature

Date

**Convenience Store
Exhibit G**

Monthly Statement of Gross Revenues Fast Food Restaurant

For the Month of _____ (month/year)
due on the 15th day of the following month.

Company Name _____

1. **GROSS REVENUES:** \$ _____
2. Less (allowable deductions as listed in Section 2.2.8 of the Agreement):
- a) deductible taxes \$ _____
 - b) equipment sales/trade-in \$ _____
 - c) equipment or merchandise exchanged \$ _____
 - d) equipment refunds \$ _____
 - e) refunds to customers \$ _____
 - f) sale of uniforms to employees \$ _____
 - g) rents and fees paid by sublessees \$ _____
 - h) non-Airport business \$ _____
- TOTAL DEDUCTIONS** \$(_____)
3. **REPORTABLE REVENUE THIS MONTH** \$ _____
(LINE 1 LESS LINE 2)
4. **PERCENTAGE FEE: _____% OF LINE 3** \$ _____

REMIT AMOUNT ON LINE 4 WITH THIS STATEMENT
MAKE CHECK PAYABLE TO:
City of Albuquerque
PO Box 9948
Albuquerque, NM 87119-1048

Oath of Operator:

The undersigned, being first duly sworn, deposes and says, that the gross revenues detailed on this statement are true and just, and the percentage fee shown is due the City of Albuquerque in accordance with the Fuel Station & Food Facility Concession Lease and Agreement.

Authorized Officer

Signature

Date

Fast Food Restaurant
Exhibit G

Monthly Statement of Gross Revenues Car Wash

For the Month of _____ (month/year)
due on the 15th day of the following month.

Company Name _____

1. **GROSS REVENUES:** \$ _____
2. Less (allowable deductions as listed in Section 2.2.8 of the Agreement):
- a) deductible taxes \$ _____
 - b) equipment sales/trade-in \$ _____
 - c) equipment or merchandise exchanged \$ _____
 - d) equipment refunds \$ _____
 - e) refunds to customers \$ _____
 - f) sale of uniforms to employees \$ _____
 - g) rents and fees paid by sublessees \$ _____
 - h) non-Airport business \$ _____
- TOTAL DEDUCTIONS** \$(_____)
3. **REPORTABLE REVENUE THIS MONTH** \$ _____
(LINE 1 LESS LINE 2)
4. **PERCENTAGE FEE: _____% OF LINE 3** \$ _____

REMIT AMOUNT ON LINE 4 WITH THIS STATEMENT
MAKE CHECK PAYABLE TO:
City of Albuquerque
PO Box 9948
Albuquerque, NM 87119-1048

Oath of Operator:

The undersigned, being first duly sworn, deposes and says, that the gross revenues detailed on this statement are true and just, and the percentage fee shown is due the City of Albuquerque in accordance with the Fuel Station & Food Facility Concession Lease and Agreement.

Authorized Officer

Signature

Date

**Car Wash
Exhibit G**

Exhibit H

Monthly Statement of Retail Motor Vehicle Fuels Sales Form

Monthly Statement of Retail Motor Vehicle Fuels Sales

For the Month of _____ (month/year)
due on the 15th day of the following month.

Company Name _____

1. Retail Motor Vehicle Fuels Sales Fee breakdown:

a) **0-75,000 gallons, \$0.00 per gallon**

_____ 75,000 _____ gallons X \$0.00 = \$ _____ -0- _____

b) **75,001-150,000 gallons, \$0.01 per gallon**

_____ gallons X \$0.01 = \$ _____

c) **excess of 150,000 gallons, \$0.02 per gallon**

_____ gallons X \$0.02 = \$ _____

2. **TOTAL DUE CITY**

(total of 1.a, 1.b, and 1.c)

\$ _____

REMIT AMOUNT ON LINE 2 WITH THIS STATEMENT
MAKE CHECK PAYABLE TO:

**City of Albuquerque
PO Box 9948
Albuquerque, NM 87119-1048**

Oath of Operator:

The undersigned, being first duly sworn, deposes and says, that the Retail Motor Vehicle Fuels Sales volumes detailed on this statement are true and just, and the amount shown is due the City of Albuquerque in accordance with the Fuel Station & Food Facility Concession Lease and Agreement.

Authorized Officer

Signature

Date

Exhibit H

Exhibit I

Letter of Credit and Performance Bond Formats

Irrevocable Letter of Credit
(sample format)

Letter of Credit No. _____
Date: _____
Amount: \$ _____

City of Albuquerque
Aviation Department
Albuquerque International Sunport
P. O. Box 9948
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of _____ Dollars (\$_____) for the account of _____ (name of Operator) available by your draft at sight when accompanied by:

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that _____ (name of Operator) has failed to perform the terms, covenants and conditions to be performed as required by the _____ (exact title of the agreement) Agreement dated _____.

This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.

Drafts under this credit must bear upon their face the words:

Drawn under _____ Bank
Letter of Credit No. _____ Dated _____.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before _____.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

[name of bank]

By: _____
Authorized Signature

Performance Bond

(sample format)

Bond No. _____

Know All Men By These Present, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of _____ **Dollars (\$_____)**, lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the above bonded Principal has signed a _____ Agreement with the City of Albuquerque, dated _____.

Now, Therefore, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of _____ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section __ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

In Witness Whereof, the Principal and Surety have hereunto set their Bonds and seals this _____ day of _____, _____.

Attest: _____ Principal
By: _____
Title: _____

Attest: _____ Surety
By: _____
Title: _____

Exhibit J

Certificate of Insurance Format

City of Albuquerque - Aviation Department
PO Box 9948
Albuquerque, NM 87119-1048
Phone (505) 244-7700 FAX (505) 842-7334

Requirements for Certificates and Policies of Insurance -- This sheet should be provided to your insurance agent for purposes of preparing Certificates of Insurance:

Operator shall furnish City with "original" Certificates of Insurance and shall mail or hand-deliver said certificates to the Aviation Department, at the above address. Please also send a copy by FAX to (505) 842-7334.

Certificate holder should read:

City of Albuquerque
Director of Aviation
Albuquerque International Sunport
PO Box 9948
Albuquerque, NM 87119-1048

All certificates of insurance shall provide thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed.

Commercial General Liability Limit: \$15,000,000 each occurrence

Automobile Liability Limit: \$15,000,000 each occurrence

All Risk Property: 100% of the insurable value of the Facility

Environmental Impairment Liability Limit: \$5,000,000 each occurrence/\$10,000,000 clean-up cost rider

Workers' Compensation: \$1,000,000 per occurrence in addition to NM Statutory Limits

NOTE: All certificates of insurance shall include the City of Albuquerque as additional insured except for Workers Compensation and Employers' Liability.

CERTIFICATE OF INSURANCE

PRODUCER

THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY

LETTER **A**

COMPANY

LETTER **B**

COMPANY

LETTER **C**

INSURED

COMPANY

LETTER **D**

COMPANY

LETTER **E**

COVERAGES 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.

C O L U M N	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
<input type="checkbox"/> GENERAL LIABILITY* <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT. <input type="checkbox"/> SELF-INSURANCE RETENTION					GENERAL AGGREGATE	\$
					PRODUCTS- COMP/OP AGG.	\$
					PERSONAL & ADV. INJURY	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED. EXPENSE (Any one person)	\$
					SELF INSURANCE AMOUNT	\$
<input type="checkbox"/> AUTOMOBILE LIABILITY * <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> SELF-INSURANCE RETENTION					COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
						\$
						\$
					SELF INSURANCE AMOUNT	\$
<input type="checkbox"/> EXCESS LIABILITY * <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM					EACH OCCURRENCE	\$
					AGGREGATE	\$
<input type="checkbox"/> WORKERS' COMPENSATION AND <input type="checkbox"/> EMPLOYER'S LIABILITY					<input checked="" type="checkbox"/> STATUTORY LIMITS	
					EACH ACCIDENT	
					DISEASE-POLICY LIMIT	
					DISEASE-EACH EMPLOYEE	
<input type="checkbox"/> OTHER						

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 * CITY OF ALBUQUERQUE IS ADDED AS AN ADDITIONAL INSURED

CERTIFICATE HOLDER

 CITY OF ALBUQUERQUE
 DIRECTOR OF AVIATION
 ALBUQUERQUE INTERNATIONAL SUNPORT
 P.O. BOX 9948
 ALBUQUERQUE, NEW MEXICO 87119-1048

MODIFICATION/CANCELLATION:
 SHOULD ANY OF THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

**PART 7
PROPOSAL BOND**

Proposal Bond
(sample format)

Know All Men By These Present:

That _____, as Principal, hereinafter called the Principal, and _____, a _____, duly organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, as Obligee, hereinafter called City, in the sum of **Twenty-five Thousand and 00/100 Dollars (\$25,000.00)**, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has submitted the accompanying Proposal to Design, Construct and Operate a Fuel Station & Food Facility dated _____, in response to Request for Proposal (RFP) No. RFP2005-023-SB, which Proposal is by reference made a part hereof and is hereinafter referred to as the Proposal.

Now, Therefore, the condition of this obligation is such that, if City shall accept the Proposal of the Principal and the Principal shall enter into the Agreement with City in accordance with the terms of such Proposal, and give such bond or bonds as may be specified in the Request for Proposal or Agreement with good and sufficient surety for the faithful performance of such Agreement, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, 2005.

Principal: _____
By: _____
Title: _____

Attest:

Surety: _____
By: _____
Title: _____