



BOARD OF SUPERVISORS AGENDA ITEM REPORT

CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 18, 2022

*** = Mandatory, information must be provided**

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Tucson Airport Authority, Inc.

***Project Title/Description:**

Sheriff's Hangar Lease located at 1901 E. Aero Park Blvd.

***Purpose:**

Enter into a 30-year lease agreement with Tucson Airport Authority (TAA) for Sheriff's Hangar, which County will construct. Hangar will accommodate Sheriff's newest, larger fixed-wing and rotary aircraft. Hangar will support operations, storage, staff offices, training space and minor aircraft maintenance.

***Procurement Method:**

Exempt per Section 11.04.020

***Program Goals/Predicted Outcomes:**

Build and lease space from TAA for hangar to accommodate Sheriff's fixed-wing and rotary aircraft operations, storage, staff offices and training spaces and minor maintenance.

***Public Benefit:**

Overall increase in public safety for the community. Newly constructed Sheriff's hangar will improve aircraft support operations which will include the most up-to date facilities to support an increase in the number of aircraft Sheriff can store and maintain. Hangar facilities allows for more and larger aircraft and provide improved environment for training and maintenance resulting in increase uptime for air operations.

***Metrics Available to Measure Performance:**

Overall increase in public safety for the community through improve aircraft storage, maintenance and training facilities.

***Retroactive:**

No

Contract / Award Information

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 23-165
Commencement Date: 10/18/2022 Termination Date: 6/1/2053 Prior Contract Number (Synergen/CMS): _____
☒ **Expense Amount: \$*** \$ 1,329,295.62 ☐ Revenue Amount: \$ _____
***Funding Source(s) required:** General Fund

Funding from General Fund? ☒ Yes ☐ No If Yes \$ 1,329,295.62 % 100
Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No
If Yes, is the Contract to a vendor or subrecipient? _____
Were insurance or indemnity clauses modified? ☒ Yes ☐ No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? ☐ Yes ☒ No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Is there revenue included? ☐ Yes ☐ No If Yes \$ _____
***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:**

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____
***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____
***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____

Contact: Kevin Button
Department: Facilities Management Telephone: 520-724-8230
Department Director Signature/Date: Sheila Hollen for Lisa Josker 10.13.22
Deputy County Administrator Signature/Date: [Signature] 10/13/2022
County Administrator Signature/Date: [Signature] 10/13/2022
(Required for Board Agenda/Addendum Items)

Pima County Department of Facilities Management

Project: Sheriff's Hangar Lease located at 1901 E. Aero Park Blvd.

Contractor: Tucson Airport Authority, Inc.

Amount: \$ 1,329,295.62

Contract No.: CT-FM-23-165

LEASE

PARTIES AND ADDRESSES:

"AUTHORITY":

TUCSON AIRPORT AUTHORITY, INC.,
an Arizona nonprofit corporation
Tucson International Airport
7250 S. Tucson Blvd, Suite 300
Tucson, Arizona 85756

"TENANT":

**PIMA COUNTY
AN ARIZONA POLITICAL SUBDIVISION
FACILITIES MANAGEMENT
150 W. CONGRESS STREET 3RD FLOOR
TUCSON, AZ 85701**

Exhibits:

All Exhibits are annexed to this Sublease and
incorporated herein by this reference.

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RECITALS

- A. TAA has leased from the City of Tucson, a municipal corporation, the airport known as Tucson International Airport located in Pima County, State of Arizona (the "Airport").
- B. Tenant desires to sublease from TAA a portion of the Airport, with the address 1901 E. Aero Park Blvd. Tucson, AZ 85756, as shown on the attached **Exhibit A**, together with certain improvements thereon (the "**Premises**") to be constructed by Tenant pursuant to the Work Letter attached as Exhibit B ("**Work Letter**").

COVENANTS AND CONDITIONS

ARTICLE 1 - PREMISES

1.1 PREMISES

TAA does hereby demise and let unto Tenant, for its exclusive use and occupancy, and Tenant does hereby lease from TAA, the Premises, together with all improvements thereon, subject to all utility easements and rights of way that encumber the Premises.

1.2 CONDITION OF PREMISES

Tenant accepts the Premises from TAA in As Is condition, with no warranty or representation, express or implied, of any kind, relating to the condition of the Premises or improvements thereon whether or not known or disclosed.

Should Tenant desire any inspection report, environmental assessment, survey, creation of a legal description, drainage report, or any similar study, Tenant shall be responsible for the same at Tenant's sole expense.

1.3 ACCESS

Tenant is granted the right of reasonable access to the Premises over such other portions of the Airport as are necessary to provide reasonable access to and from the Premises. TAA reserves the right to designate the location of such access and to change its location from time to time, as TAA deems reasonably necessary and appropriate.

1.4 SHARED USE TAXILANE

Tenant acknowledges that Tenant's use of the taxilane, shown in Exhibit C, is non-exclusive and that the taxilane is subject to use by other Airport tenants. Tenant will be solely responsible for the maintenance, repair, upkeep, and insurance of the apron. TAA will be solely responsible for maintenance, repair, upkeep, and insurance for the taxilane including the connector(s) between the apron and taxilane.

ARTICLE 2 - TERM

2.1 INITIAL TERM

- 2.2 The initial term (the "**Initial Term**") of this Lease shall be for a period of 30 years commencing on the date of Substantial Completion (as defined in section 4.1) (the "**Rent Commencement Date**"). The Initial Term, together with the extensions or renewals exercised by Parties will be referred to as the "Term"). The Parties acknowledge that certain obligations under various articles herein will commence on the date this agreement is fully executed (the "**Effective Date**").

2.3 HOLDOVER

If Tenant holds over after the expiration or earlier termination of this Lease without the express written consent of TAA, Tenant shall become a Tenant at sufferance only, at a rental rate equal to two hundred percent (200%) of the rent in effect upon the date of such expiration or termination, and shall be subject to the terms, covenants and conditions of this Lease. Acceptance by TAA of rent after such expiration or termination shall not result in a renewal or extension of this Lease. The foregoing provisions of this Section are in addition to and do not affect TAA's rights specified herein, or any rights of TAA provided by law for such holding over. If Tenant fails to surrender the Premises upon such expiration or termination despite TAA's demand to do so, Tenant shall indemnify and hold TAA harmless from all loss, claim or damage TAA incurs, including without limitation, a claim made by a successor tenant for failure to provide possession of the Premises and any attorney's fees and costs incurred by TAA related thereto.

2.4 SURRENDER OF PREMISES

Upon the expiration or earlier termination of this Lease, Tenant shall (a) peaceably surrender the Premises and all alterations and additions thereto, (b) broom clean the Premises, (c) remove all trade fixtures, (d) leave the Premises in good order, repair and condition, reasonable wear and tear excepted, and (e) comply with any other provisions herein.

ARTICLE 3 - RENT [AND FLOWAGE CHARGES], [FLOWAGE CHARGES AND CONTRACT BOND]

- 3.1 **RENTABLE SQUARE FEET.** The rentable square footage of the Premises is approximately 99,269 square feet. ("**RSF**").

3.2 BASE RENT

Tenant covenants and agrees to pay TAA rent during the Term beginning on the Rent Commencement Date an amount equal to \$.36 per RSF per year, which equals \$35,736.84 per year ("**Annual Rent**") or \$2,978.07 per month.

3.3 COMMENCEMENT OF RENTAL OBLIGATIONS

The first installment of rent shall be due upon the Rent Commencement Date, which is defined as the earlier of (i) Substantial Completion of the Improvements, as described in

Section 4.1, hereof or (ii) June 1, 2023. In the event that the Rent Commencement Date is a day other than the first day of the month, the first rental payment shall be prorated to reflect the number of days remaining in the applicable calendar month. Subsequent installments shall be due, in advance, on the first day of each succeeding calendar month during the Term of this Lease. Any invoice provided by TAA is for courtesy only, and any failure of TAA to send such an invoice shall not relieve Tenant of its obligation hereunder to pay the rent in a timely manner. Please include identification of your leasehold in the memo area, submitting payment to the TAA lockbox address:

Tucson Airport Authority
7250 S. Tucson Blvd., Suite 300
Tucson, AZ 85756

3.4 INTEREST/ADMINISTRATIVE CHARGE

Payments not received when due shall accrue interest from the due date at the rate of one and one half percent (1.5%) per month. In addition, if any payment due hereunder is more than ten (10) days past due, Tenant shall pay TAA an amount equal to five percent (5%) of such payment as an administrative charge to help offset the administrative burden created by late payments.

3.5 PERIODIC RENT ADJUSTMENT

On the second anniversary of Rent Commencement Date, and every two years thereafter, the Base Rent will be adjusted above the immediate preceding year on January 1 at the same rate as the increase, if any, in the Consumer Price Index All Urban Consumers –U.S. City Average All Items, not seasonally adjusted, 1982-1984 = 100 reference base, provided that in no event shall the annual rent be lower than the Base Rent. In the event publication of the CPI is terminated, or its method of calculation is significantly altered, then such periodic adjustment shall be made by application of the index that, in TAA's reasonable discretion, is the index most commonly used in the aviation industry or, if there is no such standard, in the rental industry generally.

3.6 FUELING POLICY

In the event that Tenant stores or supplies fuel on the Premises, Tenant shall comply in all respects with TAA's requirements regarding the storage, handling, and supply of fuel on the Airport, and shall pay all applicable fees, pursuant to TAA's fueling policy, as it may be amended from time to time by TAA.

3.7 CONTRACT BOND

On or before the Commencement Date hereof, Tenant shall furnish an unconditional, irrevocable letter of standby credit, in a form reasonably acceptable to TAA, or such other security approved by TAA to assure the faithful and full performance by Tenant of this Lease and to stand as security for the payment by Tenant of any valid claim by TAA against Tenant. The letter of credit shall be drawn in favor of TAA upon a bank that is satisfactory to TAA and that is authorized to do business in Arizona. Such irrevocable letter of credit shall be in an amount equal to three months' rent; shall be in a form that is satisfactory to

TAA and shall remain in effect without interruption during the Term of this Lease and sixty (60) days thereafter. If the term of the letter of credit is less than the Term of this Lease, Tenant shall deliver to TAA written notice from the bank of its renewal no later than sixty (60) days before the stated expiration of the letter of credit.

As an alternative to the letter of credit, Tenant shall have the option of furnishing TAA with a valid surety bond, in an amount equal to three months' rent, issued in a form reasonably acceptable to TAA. The bond shall be issued by a surety company which is an admitted insurer in the State of Arizona qualified to do business in the State of Arizona and acceptable and satisfactory to TAA. The surety bond shall be maintained and kept by Tenant in full force and effect during the Term of this Lease and sixty (60) days thereafter and shall be conditioned to assure the faithful and full performance by Tenant of this Lease and to stand as security for the payment by Tenant of any valid claim by TAA against Tenant. The surety company may issue the performance bond for a term of one (1) year and may renew said performance bond annually; provided, however that Tenant shall deliver written notice of such renewal from the surety company to TAA no later than sixty (60) days before the stated expiration of the bond.

Tenant shall be obligated to maintain a contract bond in a form acceptable to TAA, as provided above, which shall be in effect during the Term of the Lease without a lapse in the covered period. Tenant shall provide a renewal or replacement contract bond at least sixty (60) days prior to the date of any expiration or cancellation of the contract bond.

Nothing herein shall be construed to limit any other legal rights or remedies which TAA may have against Tenant.

ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS

4.1 TENANT IMPROVEMENTS

Tenant shall construct improvements on the Premises pursuant to the Work Letter attached as **Exhibit B** hereto (the "**Improvements**"). Tenant acknowledges that the timely design and construction of the Improvements is a material part of the consideration for this Lease and that failure to timely design and construct the Improvements in a good and workmanlike manner and in compliance with approved plans and specifications will constitute a default hereunder. "Substantial Completion" shall occur when all Improvements and work to be constructed and installed in the Premises pursuant to the Work Letter have been completed in a good and workmanlike manner and approved by TAA, which will not be unreasonably withheld, and a certificate of occupancy has been provided by the appropriate government authority.

4.2 TITLE TO IMPROVEMENTS

Any Improvements constructed on the Premises shall, upon installation, become the property of TAA subject to the lease between TAA and the City and subject to Tenant's rights pursuant to this Lease.

4.3 APPROVAL OF PLANS, CONTRACTOR

Tenant shall not construct or alter or modify any buildings, structures, or other improvements on the Premises without TAA's prior written approval of its plans and specifications, which approval shall not be unreasonably withheld. TAA's approval shall not constitute an opinion or warranty that the improvements comply with local building codes, or any other applicable law and Tenant shall indemnify and defend TAA from all claims relating thereto.

Tenant shall not use a contractor, for construction on the Premises, to which TAA has reasonable objections. Tenant shall, prior to commencing any construction on the Premises, submit to TAA the name of the contractor that it proposes using for the project. If TAA does not notify Tenant, in writing, within ten (10) days thereafter, that TAA objects to the contractor, TAA will be deemed to have no objection the contractor selected by Tenant. If TAA does so notify the Tenant, the Tenant will select another contractor that is acceptable to TAA. Not objecting to a contractor by TAA does not constitute an endorsement of that contractor.

4.4 COMPLIANCE WITH APPLICABLE REGULATIONS AND APPROVED PLANS; STANDARDS OF CONSTRUCTION

Tenant must comply with all guidelines, minimum standards, and rules and regulations of TAA regarding construction of any improvements on the Premises and with all applicable laws, regulations, and ordinances, whether federal, state or local, including all applicable building, electrical, and fire codes. Tenant shall indemnify and hold harmless TAA from and against any cost, expense, loss, or liability incurred by it as a result of any violation by Tenant of any applicable law, ordinance, or regulation in the construction of improvements on the Premises. Any improvements built by Tenant on the Premises shall comply in all respects to the plans and specifications previously approved by TAA pursuant to Section 4.2 above, and shall be constructed in a good and workmanlike manner, free of material defects.

4.5 LEASEHOLD MORTGAGE

TAA agrees that it will consent to a mortgage or deed of trust on Tenant's leasehold interest hereunder granted to a lending institution to secure a loan, the proceeds of which will be used entirely to pay for the construction of improvements on the Premises; provided, however, that the language of such mortgage or deed of trust and of all related documents that require the execution, approval, or consent of TAA shall be subject to the prior review and approval of legal counsel for TAA, and that all legal fees incurred by TAA in connection with such legal counsel review and approval shall be paid by Tenant. The leasehold mortgagee, upon taking possession or upon foreclosure or taking an assignment in lieu thereof, shall be liable for all future rents and obligations hereunder and shall attorn to TAA.

4.6 COMPLIANCE WITH FAR PART 77

Tenant shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in connection with any improvements or modification or alteration of improvements on the Premises.

4.7 MECHANICS' LIENS; PAYMENT BOND

Tenant shall promptly pay all entities supplying labor or materials in connection with any construction by Tenant on the Premises and shall obtain waivers of mechanics and materials liens from such contractors and suppliers as a condition of such payment. Tenant further agrees to indemnify and hold TAA harmless from the imposition of any mechanics', materialmen's or other similar liens imposed against the Premises or Tenant's interest therein as a result of any action or inaction by Tenant or Tenant's employees, agents, or contractors. In the event that a lien is recorded against the Premises as a result of the construction or improvement thereof, Tenant shall cause the lien to be removed pursuant to A.R.S. § 33-1004 within fifteen (15) days of notice to either TAA or Tenant of the lien. If Tenant fails to timely remove the lien, TAA may, but shall not be obligated to, cause the removal of the lien. Tenant shall reimburse TAA for all costs and fees incurred by TAA and associated therewith including, without limitation, attorneys' fees and costs within five (5) days of receipt of notice from TAA of such costs and expenses.

Tenant shall, in addition, prior to commencement of any construction, require the contractor to provide a labor and materials payment bond in the full contract amount to protect claimants supplying labor and materials in connection with the construction. The bond shall comply in all respects with the requirements of A.R.S. § 33-1003 as it may be amended or renumbered from time to time. The bond shall be issued by a surety company acceptable to TAA and duly licensed for such undertaking in the state of Arizona and shall be accompanied by a power of attorney disclosing the authority of the person executing it on behalf of the surety. The bond and a copy of the contract shall be recorded in the office of the Pima County Recorder as required under A.R.S. § 33-1003, and a copy of the bond shall be provided to the President/CEO of TAA.

4.8 PERFORMANCE BOND

Tenant shall, in addition, prior to commencement of any construction, require the contractor to provide a performance bond in the full contract amount conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions thereof. The bond shall be in a form reasonably acceptable to TAA; shall be issued by a surety company acceptable to TAA and duly licensed for such undertaking in the state of Arizona; and shall be accompanied by a power of attorney disclosing the authority of the person executing it on behalf of the surety.

ARTICLE 5 - USE OF PREMISES

5.1 PERMITTED USES

The Premises leased exclusively to Tenant hereunder may be used for aircraft storage operations, including operations support, staff and training spaces, i.e. (to the extent that

such use(s) comply with all applicable FAA regulations, zoning restrictions, and all other applicable laws, rules and regulations) and for no other purpose, without TAA's written consent. Aircraft size shall not exceed Aircraft Design Group II.

Tenant shall not perform any maintenance on aircraft or other vehicles on the Premises other than Minor Maintenance and shall not store or allow the storage of any flammable, hazardous or toxic materials. For purposes of this Section 5.1, the term "Minor Maintenance" shall be limited to routine maintenance of aircraft or vehicles which does not cause any violation of any applicable law, ordinance, regulation or code on the Premises and which does not create a risk of fire, damage or hazardous waste.

5.2 INDEMNITY

To the extent permitted by law, Tenant agrees to fully indemnify and save and hold harmless TAA and the City of Tucson for, from and against all claims, fines, damages, penalties, actions and all expenses, including reasonable attorneys' fees incidental to the investigation and defense thereof, related to or arising out of the use, occupancy, or maintenance of the Premises by Tenant, its agents, employees, subtenants or contractors. TAA shall give to Tenant prompt and reasonable notice of any such claims or actions against it covered by this indemnity and Tenant shall have the right to investigate, compromise and defend the same. Any counsel retained by Tenant to investigate, compromise or defend any claims, fines, damages, penalties or actions shall be acceptable to TAA in its sole and absolute discretion, and TAA expressly retains the right to join in any investigation, compromise and defense should it deem such action necessary or appropriate.

5.3 DANGEROUS CONDITIONS

Tenant agrees to exercise reasonable care when using the Premises and all improvements thereon to discover and promptly remedy any conditions that may pose an unreasonable risk of harm to members of the general public or that may constitute a violation of law. If an unsafe, defective or dangerous condition, or violation of the law is discovered, Tenant warrants that no one other than Tenant and TAA employees, agents and representatives will be admitted to the Premises and no property belonging to any party other than Tenant and TAA will be transported to, collected at or stored upon the Premises until the unsafe, defective or dangerous condition, or violation of law is corrected.

5.4 COMMUNICATIONS; INTERFERENCE WITH OPERATIONS OF TAA.

Tenant shall not install any data, telecommunications, video or radio equipment (wired or wireless) except as provided in TAA's Premises Distribution System Policy and Procedures, as it may be amended from time to time. Tenant shall not enter into any third party agreements regarding data, telecommunications, video or radio installations without the prior written approval of TAA, which will not be unreasonably withheld by TAA. Contracted third party installation of telecommunications equipment is allowable only with written approval from TAA, which will not be unreasonably withheld by TAA.

Tenant acknowledges that TAA has special safety and operational concerns regarding TAA's communication ability at the Airport. Therefore, Tenant shall operate any and all

of its communications equipment (wired or wireless) in a manner that will not cause interference to TAA's operations of the Airport. Upon any notification from TAA, the FAA or the police or fire departments of any interference caused by Tenant's operation, Tenant shall cease and desist all communications operations, transmissions and uses related to the Premises. Tenant may not resume communications operations until TAA has so notified Tenant in writing. If such interference persists, or if TAA deems it necessary for the orderly development of the Airport, TAA may require the relocation of Tenant's communications equipment to other locations with the Airport which are reasonably suitable for the purposes and uses for which this Lease has been entered into by Tenant. Should such relocation be necessary, Tenant agrees, at Tenant's sole cost and expense, to move its improvements and all other communication equipment to the new location within ninety (90) days of written notice by TAA.

ARTICLE 6 - INSURANCE

6.1 INSURANCE REQUIRED

At all times during the Term of this Lease (except as otherwise provided), Tenant shall obtain and maintain in full force and effect, with a company or companies authorized to transact the business of insurance in the State of Arizona, of sound and adequate financial responsibility, with a rating of at least A-, VII, from A.M. Best Co., in Best's Rating Guide, selected by Tenant and reasonably acceptable to TAA, the following insurance (either as part of any other policy or policies carried by Tenant, or separately):

A. Builder's Risk Insurance

During any construction on the Premises by Tenant (whether new construction or remodeling, renovation, restoration or repair), Tenant shall keep, or cause the contractor performing such construction to keep, the improvements being built, remodeled, or restored, insured under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the improvements.

B. Liability Insurance

A comprehensive insurance policy or policies providing for the protection of Tenant against:

- (1) general liability, including all direct or contingent loss or liability for damages for bodily injury, personal injury, death or damage to property, including loss of use thereof, occurring on or in any way related to the Premises or occasioned by reason of occupancy by and the operations of Tenant or any sublessee, guest or invitee upon, in and around the Premises including but not limited to any elevators and escalators therein and any sidewalks, streets or public ways adjoining the Premises, with limits of \$3,000,000 per occurrence for personal injury or death or damage to property, with coverage at least as broad as that provided by INSURANCE SERVICES OFFICE COMMERCIAL GENERAL LIABILITY COVERAGE form CG0001 (Occurrence Form), and such policy or policies shall cover all of Tenant's operations on the entire Premises, including but

not limited to any elevators and escalators therein and any sidewalks, streets or other public ways adjoining the Premises; and

- (2) automobile liability covering owned, non-owned, leased and hired vehicles with combined single limits of no less than \$1,000,000 per occurrence.

C. Workers Compensation; Employers Liability

- (1) Workers compensation coverage and limits as statutorily required by the state of Arizona and all other applicable states of operation.
- (2) Employers Liability limits of at least \$1,000,000 per accident.

D. Property Insurance

Insurance against loss or damage to any improvements on the Premises, covering all risks of damage or loss. The amount of such insurance shall be at least equal to the repair or replacement value of the improvements on the Premises, if available, with no coinsurance penalty provision, and otherwise to the full insurable value of the improvements as determined by a recognized appraiser or insurer selected by Tenant and approved by TAA. The above requirement may be alternatively met through self insurance pursuant to A.R.S. §§ 11-261 and 11-981 at no less than the minimum coverage levels set forth in this agreement.

6.2 DEDUCTIBLE

The deductible for any policy required hereunder shall not exceed \$1,000.

6.3 MODIFICATION OF REQUIREMENTS

TAA may adjust or increase liability insurance amounts and requirements as TAA deems reasonably necessary, or as may be required because of changes in the insurance requirements imposed by TAA's insurer or by applicable law. Tenant shall comply with such adjustments or increases within such reasonable time period as is requested by TAA.

6.4 CERTIFICATES

Upon or prior to the commencement of the Term of this Lease and at least annually thereafter Tenant shall furnish to TAA certificates of insurance showing the amount and type of the insurance then in effect that is required to be procured and maintained by it hereunder and stating the date and term of the policies. Tenant shall, upon request, supply TAA with certified copies of all applicable insurance policies, riders, endorsements and declaration pages. Certificates evidencing any renewal, replacement or extension of any or all of the insurance required hereunder, shall be delivered by Tenant to TAA not less than thirty (30) days prior to the expiration of any policy of insurance renewed, replaced or extended by the insurance represented by any such certificate. Each policy of insurance required hereunder shall provide for not less than thirty (30) days' notice to TAA and Tenant before such policy may be canceled or materially modified.

6.5 ADDITIONAL INSURANCE

The provisions of this Lease as to insurance required to be procured and maintained shall not limit or prohibit, or be construed as limiting or prohibiting, TAA or Tenant from obtaining any other or greater insurance with respect to the Premises or improvements thereon or the use and occupancy thereof that either or both of them may wish to carry, but in the event TAA or Tenant, as the case may be, shall procure or maintain any such insurance not required by this Lease, the cost thereof shall be at the expense of the party procuring or maintaining the same.

6.6 ADDITIONAL INSURED

All insurance required by this Article shall be procured and maintained in the name of Tenant and shall add TAA and the City of Tucson and their directors, officers, members, employees, volunteers and agents as additional insureds as their interests appear. All policies required under this Article for property and builder's risk insurance shall provide for payments of the losses to Tenant and TAA as their respective interests may appear; provided that during the period of any construction, any builder's risk insurance carried pursuant hereto may provide for payment to the contractor, as its interest may appear.

6.7 PRIMARY INSURANCE; CROSS LIABILITY; SEVERABILITY OF INTERESTS

All insurance policies required to be procured and maintained by Tenant, [with the exception of Workers Compensation and Employers Liability] shall provide or be endorsed to provide:

- A. Tenant's insurance coverage shall be primary insurance with respect to TAA and the City of Tucson and their directors, officers, members, employees, volunteers and agents. Any insurance or self-insurance maintained by TAA and the City of Tucson is excess of and non-contributing with Tenant's insurance.
- B. Tenant's insurance coverage shall state that Tenant's insurance shall apply separately to each insured except with respect to the limits of the liability and shall contain no cross-liability exclusions.

6.8 USE OF PROCEEDS

Proceeds of any liability and property damage insurance required under this Article shall be applied toward extinguishing, satisfying or remedying the liability, loss or damage with respect to which such proceeds may be paid.

6.9 WAIVER OF SUBROGATION

Each party hereto waives all claims for recovery from the other party for any loss or damage to any of its property on the Premises insured under valid and collectible insurance policies to the extent of any recovery collected from such policies. All policies required under this Article shall provide or be endorsed to provide that the insurer agrees to waive all rights of subrogation against TAA and the City of Tucson and their directors, officers, members, employees and agents.

6.10 INSURANCE BY AUTHORITY

TAA may, upon written notice to Tenant, procure and maintain any or all of the insurance required of Tenant under this Article. In such event, all costs of such insurance procured and maintained by TAA on behalf of Tenant shall be the responsibility of Tenant and shall be fully reimbursed to TAA within ten (10) business days after TAA advises Tenant of the cost thereof.

6.11 PROPERTY INSURANCE

- A. TAA may procure and maintain insurance against loss or damage to any improvements on the Premises to the full insurable value of the improvements as determined by a recognized appraiser or insurer selected by TAA. The insurance procured hereunder may be procured and maintained as part of or in conjunction with any other policy or policies carried by TAA. Proceeds of insurance procured under this section shall be payable to TAA.
- B. Tenant shall fully reimburse TAA for the cost of such insurance attributable to the Premises. In the event of any claim(s) paid with respect to the Premises, Tenant shall be responsible for and shall pay to TAA the full value of the applicable deductible, if any, from such claim(s). Tenant shall fully reimburse TAA within ten (10) business days after TAA advises Tenant of the cost of any applicable premium or deductible.

Tenant shall be solely responsible for insuring Tenant's trade fixtures and other personal property within the Premises.

ARTICLE 7 - UTILITIES

7.1 TENANT'S RESPONSIBILITIES

Tenant shall, at no cost or expense to TAA, provide any public utility, water and sewage lines and connections that are needed in connection with any buildings, structures or other improvements placed on the Premises by Tenant and shall be responsible for the maintenance of such lines and connections. Additionally, Tenant may install internet and telecommunications infrastructure to support hangar operations. If requested in advance to do so by Tenant, TAA will grant reasonable rights-of-way on or across the Airport to suppliers of public utility services, and internet service providers, for the purpose of supplying Tenant with such services, but TAA reserves the right to designate the lands along which such rights-of-way shall be granted so as to cause the least inconvenience in the operation of the Airport and other Airport tenants. Tenant shall pay for all utility and telecommunications services supplied to the Premises.

7.2 TAA'S RIGHTS AND RESPONSIBILITIES

Notwithstanding the execution of this Lease, TAA retains the right to the continued use of such utility lines and services as are presently on the Premises and the right to repair the same, when necessary, in TAA's sole discretion, including but not limited to any utility

easements on the Premises. TAA shall conduct such repairs in such a manner and at such times as to not unreasonably interfere with Tenant's operations.

ARTICLE 8 - REPAIR AND MAINTENANCE

8.1 REPAIR AND MAINTENANCE

Tenant shall, at no expense to TAA, maintain and repair the Premises and all improvements located thereon (including any structural components thereof) and shall keep the same in a neat, clean, safe condition and in a manner that is compatible with all other nearby Airport properties, and in compliance with all applicable laws, rules, regulations, and orders. Representatives of TAA shall have the right to conduct an annual inspection, accompanied by a representative of Tenant, for the purpose of verifying Tenant's compliance with its maintenance and repair obligations. TAA shall be the sole judge of the quality of maintenance, upkeep, and repair. TAA shall notify Tenant in writing of any deficiencies, and Tenant will promptly remedy the same. TAA shall be furnished with follow-up inspections to verify that the additional work has been done. This shall not limit TAA's rights under Section 18.1.

8.2 CASUALTY AND RESTORATION

If any of the improvements and facilities, including those which cannot be insured, are rendered untenable or unusable because of fire or other casualty, this Lease shall not terminate, but Tenant shall be obligated to repair or restore any such damaged improvements and facilities, whether or not covered by insurance.

ARTICLE 9 - TAXES

9.1 TENANT'S RESPONSIBILITY

Tenant shall pay before delinquency any and all taxes levied or assessed (i) against the Premises; (ii) against or by reason of personal property located in, on or about the Premises; (iii) because of Tenant's right to possession of the Premises and improvements thereon; (iv) by any government body as the result of Tenant's operations; and (v) as the result of rentals payable under this Lease. All such taxes and assessments for partial years shall be apportioned and adjusted on a time basis.

9.2 PROTEST

Tenant shall have the right at its own cost and expense to contest the amount or validity of any such tax or assessment and to bring or defend any actions involving the amount or validity of any such tax or assessment in its own name or, if necessary, in the name of TAA; provided that, if unsuccessful, Tenant shall pay and discharge any such tax or assessment so contested, together with any penalties, fines, interest, costs and expenses, including reasonable attorneys' fees, that may result from any such action by Tenant, and provided that, pending resolution of the protest, Tenant shall take any actions necessary (including conditional payment of the amount in dispute) to prevent the attachment or accrual of any tax lien or penalty.

ARTICLE 10 - RULES, REGULATIONS AND LAWS

10.1 COMPLIANCE WITH ALL APPLICABLE LAWS

Tenant and all persons operating under the rights granted hereby shall observe and obey all reasonable and lawful rules and regulations and minimum standards with respect to the use of the Airport which have been or may in the future be adopted by TAA for general application and shall further abide by all applicable laws, statutes, ordinances, rules, orders, and regulations of all governing bodies which are now in effect or which may hereafter be put into effect.

10.2 NON-DISCRIMINATION

A. Non-Discrimination Covenants

- (1) The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant.

This provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964

- (2) A. The Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) (attached here at Exhibit D) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, TAA will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

- (3) The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that 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, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, and that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (4) If applicable, Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

B. Non-Compliance

Non-compliance with a provision of this Section shall constitute a material breach hereof and in the event of such non-compliance TAA shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of TAA or the United States, either or both shall have the right to judicially enforce these provisions.

C. Subleases

Tenant agrees that it shall insert the provisions of this Section in any sublease or other agreement by which Tenant grants a right or privilege to any person, firm or entity to render accommodations and/or services to the public on the Premises subleased.

10.3 AFFIRMATIVE ACTION

To the extent such regulations and laws are applicable to Tenant, Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that it will require that its covered sub-organizations provide assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.

10.4 FEDERAL AVIATION REGULATIONS; AIRPORT ACCESS

Tenant and all persons operating under the rights granted hereunder shall comply with all applicable Federal laws and Federal Aviation Regulations with respect to aircraft

operations and airport security at the Airport. Tenant shall at all times take all reasonable steps to control, police and regulate the use of the Premises and of the Airport premises to prevent unauthorized persons and the general public from obtaining access to the Airport. Such steps by Tenant shall include, but not be limited to, steps requested by TAA and those required under Federal regulations. Tenant must secure the Premises so that there is no inadvertent or purposeful unauthorized entry in or upon the Airport by people, vehicles, or animals.

10.5 FAR PART 139 SAFETY STANDARDS AND INSPECTIONS

Tenant and all persons operating under the rights granted hereunder shall comply with Part 139 of the Federal Aviation Regulations with respect to airport operations and safety, and shall comply with the standards established by TAA pursuant to Part 139. Tenant shall at all times take reasonable steps for the safe handling of aviation fuel and such steps shall include, but not be limited to, steps requested by TAA and those required under Federal Regulations. Tenant shall take immediate corrective action upon notice from TAA of noncompliance with Part 139 or with the standards established pursuant thereto. Tenant shall permit TAA to physically inspect the Premises for purposes of determining Tenant's compliance with Part 139 and this Section.

10.6 STATE AND FEDERAL AVIATION REGULATIONS

Tenant will conduct its operations and activities on the Airport so as to conform to all applicable regulations of the United States Department of Transportation and the Aeronautics Division of the Arizona Department of Transportation.

10.7 EXCLUSIVE RIGHTS PROHIBITED

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §§ 40103(e) *[and 47107(a)(4)]*.

10.8 ENVIRONMENTAL LAWS

A. Definitions

- (1) "Environmental Laws" means any and all laws, rules, regulations, regulatory agency guidance and policies, ordinances, applicable court decisions, and airport guidance documents, directives, policies (whether enacted by any local, state or federal governmental authority, or by TAA) now in effect or hereafter enacted that deal with the regulation or protection of the environment (including the ambient air, ground water, surface water, waste handling and disposal, and land use, including substrata land), or with the generation, storage, disposal or use of chemicals or substances that could be detrimental to human health, the workplace, the public welfare, or the environment.
- (2) "Extremely Hazardous Substances" means any substance or material designated by the United States Environmental Protection Agency as an "extremely hazardous substance" under either Section 302(a)(2) of the

Superfund Amendments and Reauthorization Act ("SARA") (42 U.S.C. § 11002(a)(2)) or any other Environmental Law.

- (3) "Hazardous Material" means all substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic or a "contaminant" or "pollutant" under any Environmental Law (including, but not limited to, Extremely Hazardous Substances and Toxic Chemicals).
- (4) "Release" means any releasing, abandoning, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.
- (5) "Toxic Chemicals" means any substance or material subject to Section 313 of SARA (42 U.S.C. § 11023) or the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., or any comparable Environmental Law.

B. Compliance

- (1) Compliance with Environmental Laws Generally. Tenant, at its own expense, shall ensure that Tenant and Tenant's agents, employees, contractors, invitees, sublessees, and any third party that comes in contact with the Premises comply with all present and hereafter enacted Environmental Laws, and any amendments thereto, affecting operations on the Premises. In the event of a conflict between this provision and the mandate set forth in Paragraph 10.1, above, the interpretation most favorable to TAA shall apply.
- (2) Governmental Submittals. Tenant shall timely, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of any governmental authority having jurisdiction (the "Government") under the Environmental Laws with respect to any activity or operation on the Premises during the term of this Lease, including, but not limited to, timely submittal of permit applications and renewals, notices, and approvals. Should the Government determine that an environmental investigation of any kind and/or a cleanup plan be prepared or that a cleanup should be undertaken because of any Release or threat of a Release of Hazardous Materials at the Premises which occurs or may have occurred during the term of this Lease, regardless of whether Tenant caused the Release by any act or omission, then Tenant shall promptly and timely, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans in accordance with all requirements of the Government.
- (3) Information Sharing. Tenant shall provide to TAA a copy of any and all information, reports, and applications submitted to the Government as

described in Paragraph 10.8B(2), whether such submittal is routine with respect to any regulatory refinement or in response to a Release or threatened Release of any Hazardous Material, and whether the impetus for such submittal is generated by Tenant, or by an inquiry or action by the Government or another third party. At no cost or expense to TAA, Tenant shall promptly provide all information requested by TAA to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental conditions on or adjacent to the Premises. Tenant shall immediately notify TAA of any correspondence or communication from any governmental authority regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises.

- (4) Change in Use of Premises. Tenant shall immediately notify TAA of any change in Tenant's operation on the Premises that will change or has the potential to change the nature or extent of Tenant's or TAA's obligations or liabilities under the Environmental Laws.

C. **Hazardous Materials**

- (1) No Violation. Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its agents, employees, contractors, invitees, sublessees or any third party in violation of any Environmental Law, provided that, in no circumstances shall Tenant cause or permit any Extremely Hazardous Substance or Toxic Chemical to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises. Tenant shall promptly notify TAA of any action or condition that is contrary to any prohibition in the previous sentence.
- (2) Cleanup. Without limiting the foregoing, if the presence of any Hazardous Material introduced in, on, under or about the Premises during the term of this Lease by any person results in any adverse impact whatsoever to the value, condition, operations, or activities of the Premises, including the environment on, under, or about the Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that TAA's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Premises. In the event Tenant shall fail timely to commence or cause to be commenced or fail diligently to prosecute to completion such actions as are necessary to return the Premises to the conditions existing prior to the introduction of any Hazardous Material to the Premises, TAA may, but shall not be obligated to, cause such action to be performed, and all costs and expenses (including, without limitation, attorneys' fees) thereof or incurred

by TAA in connection therewith shall be paid by Tenant promptly upon demand.

D. Clean Water Act

- (1) Non-Stormwater Discharges. Notwithstanding Paragraph 10.8(B)(1), Tenant shall not cause or permit any direct discharge of non-stormwater flows under a National Pollutant Discharge Elimination System ("NPDES") permit unless specifically authorized in writing by TAA.
- (2) Stormwater Discharges. Notwithstanding Paragraph 10.8(B)(1), any discharge of stormwater by Tenant or from Tenant's operations at the Premises shall comply with the NPDES Storm Water Multi-Sector General Permit ("MSGP") for industrial activities and with any multi-sector permit obtained by TAA. Tenant shall timely submit a Notice of Intent to TAA indicating that it is subject to the TAA permit. Tenant shall timely prepare a Storm Water Pollution Prevention Plan ("SWPPP") that conforms to TAA's SWPPP and that covers Tenant's operations or activities at the Premises. Tenant shall be solely responsible for all fees, assessments, and other costs charged by any governmental authority in connection with the issuance of any permit or any inspection or related event in connection with the NPDES MSGP or with respect to the Premises.

E. Indemnity

To the extent permitted by law, Tenant shall indemnify, defend and hold harmless TAA, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and costs (including legal and investigation fees or costs) arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any party or governmental authority of any kind, alleging or arising in connection with (i) contamination of, or adverse effects on the environment (whether known, alleged, potential, or threatened), or (ii) alleged or potential violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are brought as a result (whether in part or in whole) of any activity or operation on or release from the Premises (caused in whole or in part by any person or entity other than TAA) during the term of this Lease. This obligation includes but is not limited to all costs and expenses related to investigation and/or cleaning up the Premises and all land, soil and underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as TAA bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises during the term of this Lease. This indemnification of TAA by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or present in the soil or ground water on, under or about the Premises. The parties agree that TAA's right to enforce Tenant's promise to

indemnify is not an adequate remedy at law for Tenant's violation of any provision of this paragraph; TAA shall have all the rights and remedies set forth in this Lease as well as all other rights and remedies provided by law.

F. Subtenants

Tenant shall insert the provisions of this section in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

ARTICLE 11 - SUPERIOR RIGHTS

11.1 AGREEMENTS WITH UNITED STATES

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between TAA and the United States, relative to the development, operation or maintenance of the Airport. Failure of Tenant or any occupant to comply with the requirements of any existing or future agreement between Tenant and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Tenant's rights hereunder.

11.2 RIGHTS OF GOVERNMENT DURING WAR OR NATIONAL EMERGENCY

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

Tenant and TAA recognize that during the time of war or national emergency the City of Tucson, owner of the Airport, has the right to enter into agreements with the United States government for military or naval use of part or the entire Airport. If any such agreement is executed by the City of Tucson, the provisions of this Lease, insofar as they are inconsistent with the provisions of any agreement so made by the City of Tucson with the United States government, shall be subject to the terms of such agreement and Tenant shall have no claim against TAA or the City of Tucson for any loss or damage sustained by Tenant because of the making of such agreement by the City of Tucson. In such event, however, the amounts, if any, payable from the City of Tucson or the United States for improvements placed on the Premises by Tenant shall be paid to Tenant if this Lease is in effect at the time of such taking.

11.3 RIGHTS OF TAA

TAA reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Tenant and without interference or hindrance from Tenant, its agents, employees, subtenants or other occupiers of the Premises.

TAA reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard.

11.4 AGREEMENTS WITH CITY OF TUCSON

This Lease is subject to the existing lease between TAA and the City of Tucson and to the provisions of any existing or future agreement between the City of Tucson and TAA.

11.5 ABATEMENT OF OBLIGATION TO CONSTRUCT OR REBUILD

Inasmuch as this Lease contains certain provisions concerning repairs, replacement and rebuilding of damaged or destroyed buildings, construction of buildings, quiet enjoyment and other related causes applicable to the parties to this Lease, and inasmuch as the Premises constitute a portion of a public Airport, it is agreed that the parties hereto shall not be required to repair, replace, rebuild or construct any building or portion of any building so long as the obligated party is prevented from so doing by action of the United States government or any agency or department thereof.

ARTICLE 12 - RESERVATION OF AVIGATION EASEMENT

12.1 EASEMENT

There is hereby reserved to TAA for the use and benefit of aircraft using the Airport a right of flight for the passage of aircraft in the airspace above the uppermost surface of the Premises, together with the right to cause such noise as may be inherent in the operation of any aircraft now known or hereafter used for navigation of or flight in said airspace, or landing at, or taking off from, or operating on the Airport.

12.2 STRUCTURES; ELEVATION LIMIT

Tenant, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises that exceeds the mean sea level elevations contained in 14 CFR Part 77 or amendments thereto, or interferes with the runway and/or taxiway "line of sight" of the control tower. In the event these covenants are breached, TAA reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Tenant.

12.3 USE OF PREMISES

Tenant, by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, TAA reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Tenant.

ARTICLE 13 - ASSIGNMENT AND SUBLEASE

13.1 TAA'S CONSENT REQUIRED

Tenant shall not, directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively "Assignment"), or permit the Premises to

be occupied by anyone other than Tenant or sublet the premises or any portion thereof ("Sublease") without TAA's prior written consent, and subject to the terms and conditions contained in this Article 13.

13.2 REQUEST

If Tenant desires at any time to enter into an Assignment of this Lease or a Sublease of the Premises or any portion thereof, Tenant shall request, in writing, at least ninety (90) days prior to the proposed effective date of the Assignment or Sublease, TAA's consent to the Assignment or Sublease, and shall provide TAA with the following information:

- (1) The name of the proposed assignee, subtenant or occupant, and the names of its major stockholders, officers, partners or members;
- (2) A description of the proposed assignee's, subtenant's or occupant's business to be carried on in the Premises;
- (3) The terms and provisions of the proposed Assignment or Sublease (including any rentals or other consideration involved) and a copy of the documents being used; and
- (4) Such financial information concerning the proposed assignee, subtenant or occupant and other reasonable information regarding the transaction which TAA shall have requested following its receipt of Tenant's request for consent.

13.3 CONSENT; RECAPTURE OF PREMISES

- A. TAA shall within sixty (60) days after TAA's receipt of the request from Tenant referred to in Section 13.2 above, either (a) consent to the proposed Assignment or Sublease, (b) refuse to consent to the proposed Assignment or Sublease, or (c) terminate this Lease in full (with respect to an Assignment) or terminate it in part (with respect to a Sublease) and, if TAA wishes, enter into a lease directly with the proposed assignee or subtenant. Failure of TAA to notify Tenant which option it has selected shall be deemed to be a refusal to consent to the proposed Sublease or Assignment. Notwithstanding the above, in the event that TAA elects' option (c) above, it shall pay to Tenant the unamortized portion of the cost of the Improvements (assuming amortization of such cost over the Term [Initial Term] hereof at the Tenant's actual interest cost or, if Tenant did not finance the construction, at a reasonable interest rate as determined by TAA in its reasonable discretion).

In the event of an assignment or sublease, Tenant shall promptly provide to TAA a copy of the fully executed sublessee or assignment.

- B. TAA and Tenant agree that TAA shall be entitled to take into account any fact or factor which TAA reasonably deems relevant to such decision. At a minimum, the prospective tenant shall meet TAA's minimum standards with respect to financial capability and responsibility, management qualifications and experience, general

reputation to conduct authorized activities, and such other factors as TAA deems appropriate, including without limitation:

- (1) business experience and expertise;
- (2) intended use of the Premises;
- (3) the quality and nature of the business and/or services to be conducted in or from the Premises and in any other locations as reflected by, among other things, average sales or revenue;
- (4) the compatibility and suitability of the business of the proposed tenant to that of other tenants and the Airports; and
- (5) whether there then exists any default by Tenant pursuant to this Lease or any non-payment or non-performance by Tenant under this Lease which, with the passage of time and/or the giving of notice, would constitute a default hereunder.

Moreover, TAA shall be entitled to be reasonably satisfied that each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded TAA by this Lease is not impaired or diminished by such Assignment or Sublease. In no event shall there be any substantial change in the use of the Premises in connection with any Assignment or Sublease except as expressly approved in writing by TAA in advance. TAA and Tenant acknowledge that the express standards and provisions set forth in this Lease dealing with Assignment and Sublease have been freely negotiated and are reasonable as of the date hereof.

13.4 ADDITIONAL CONSIDERATION

If TAA consents to the Sublease or Assignment, Tenant may enter into such Assignment or Sublease of the Premises or portion thereof, but only upon substantially the same terms and conditions set forth in the notice furnished by Tenant to TAA pursuant to Section 13.2 above; provided, however, that in connection with such Assignment or Sublease, as a condition to TAA's consent, Tenant shall pay to TAA one hundred percent (100%) of the excess, if any, of (i) in the case of an Assignment, the rental and other payment obligations of the proposed assignee under the terms of the proposed Assignment over the rental and other payment obligations of Tenant under the terms of this Lease, and any other consideration paid for the Assignment, or (ii) in the case of a Sublease, the amount proposed to be paid by the subtenant over the proportionate amount of rental and other payment obligations required to be paid by Tenant to TAA under the terms of this Lease as applicable to the portion of the Premises to be subleased, less, in either case, the reasonable, actual, out-of-pocket expenses incurred by Tenant in connection with the Sublease or Assignment (such as lease commissions and attorney fees), [and the remaining unamortized cost of the Improvements (assuming amortization of the actual costs of construction over the Term [Initial Term] hereof at the Tenant's actual interest rate or, if Tenant did not finance the construction, at a reasonable interest rate as determined by TAA in its reasonable discretion)]. In determining the amount paid for an assignment of this

Lease in a transaction in which other assets of the Tenant are sold in addition to the Lease, the amounts paid shall be reasonably allocated among the various assets according to their value, and Tenant shall provide TAA with written documentation regarding the allocation and the basis for it.

13.5 NO RELEASE OF TENANT; FURTHER ASSIGNMENTS

No consent by TAA to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by TAA to any Assignment or Sublease shall not relieve Tenant of the obligation to obtain TAA's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Section shall be void and, at the option of TAA, shall constitute a material default by Tenant under this Lease. The acceptance of rent or payment of any other monetary obligation by TAA from a proposed assignee or subtenant shall not constitute the consent by TAA to such Assignment or Sublease.

13.6 CHANGES IN OWNERSHIP

Any sale or other transfer, including transfer by consolidation, merger or reorganization, of twenty-five percent (25%) or more of the voting stock or membership interests of Tenant in a single or related transactions, if Tenant is a corporation or limited liability company, or any sale or other transfer of twenty-five percent (25%) or more of the partnership interest in Tenant, if Tenant is a partnership, shall be deemed to be an Assignment for purposes of this Section. As used in this subsection, the term "Tenant" shall also mean any entity that has guaranteed Tenant's obligation under this Lease, and the prohibition hereof shall be applicable to any sales or transfers of stock or partnership interests of said guarantor.

13.7 LIABILITY OF ASSIGNEE/SUBTENANT

Each assignee, subtenant or other transferee shall assume, as provided in this subsection, all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of rent and all other monetary obligations hereunder, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed; provided, however, that the assignee, subtenant, or other transferee shall be liable to TAA for rent only in the amount set forth in the Assignment or Sublease. In connection with a Sublease, Tenant or the subtenant shall deliver to TAA an instrument (acceptable in form and substance to TAA) agreeing that subtenant shall be bound by all of the terms and conditions of this Lease, other than those pertaining to rent, applicable to the subleased space and that subtenant shall, at TAA's sole option, attorn to TAA as lessor under the Sublease if this Lease is terminated for any reason and TAA chooses to keep the Sublease in effect. In connection with an Assignment, Tenant and the assignee shall deliver to TAA a copy of the Assignment, which shall be in form and substance reasonably satisfactory to TAA, by which assignee expressly assumes all obligations of Tenant under this Lease.

13.8 BANKRUPTCY

- A. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 101 et seq., (the "Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to TAA, shall be and remain the exclusive property of TAA and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting TAA's property under the preceding sentence not paid or delivered to TAA shall be held in trust for the benefit of TAA and be promptly paid or delivered to TAA.
- B. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed, without further act or deed, or have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to TAA an instrument confirming such assumption.

13.9 TAA'S FEES

Within ten (10) days of TAA's delivery of a written invoice, identifying such costs and expenses, Tenant shall reimburse TAA for its expenses and attorneys' fees incurred in processing an Assignment or Sublease, but in no event less than Five Hundred Dollars (\$500.00) for each such proposed transfer to cover the legal review and processing expenses of TAA, whether or not TAA shall grant its consent to such proposed transfers.

ARTICLE 14 - COMMISSIONS

14.1 REAL ESTATE BROKER COMMISSION

Tenant warrants that they have not dealt with any brokers, real estate agents or licensees or finders with respect to this transaction and the Premises and that there are no real estate commissions owing, except as specifically disclosed by Tenant and otherwise provided for herein. If Tenant has dealt with any person or real estate broker with respect to leasing or renting the Premises, Tenant shall be solely responsible for the payment of any sum due such person or firm and Tenant shall indemnify and hold TAA harmless from any liability in respect thereto, including attorney's fees and costs incurred by TAA.

ARTICLE 15 - DEFAULTS AND REMEDIES

15.1 DEFAULT BY TENANT

Tenant shall be in default under this Lease upon the occurrence of any of the following "Events of Default":

- A. Tenant shall fail to pay when due any installment of rent payable pursuant to this Lease and such failure shall continue unremedied for a period of five (5) days after written notice from TAA; provided that Tenant shall not be entitled to the benefit of more than two (2) such grace periods of five (5) days under this paragraph A within any calendar year.

- B. Tenant shall fail to furnish TAA with a valid surety bond or letter of credit, or a notice of renewal of such bond or letter of credit sixty (60) days before the stated expiration thereof, as provided in Section 3.7 and such failure shall continue unremedied for a period of five (5) days after written notice from TAA.
- C. Tenant or any of Tenant's agents, employees, guests, invitees, or subtenants, shall use Premises for any unlawful or illegal purpose and such use shall continue for a period of three (3) days after written notice from TAA; provided that Tenant shall not be entitled to the benefit of more than one (1) such grace period of three (3) days under this paragraph C during the Term of this Lease.
- D. Tenant fails to continue its active use of the Premises in accordance with the covenant to operate set forth in Section 5.1 for thirty (30) consecutive days or more, and such failure shall not be remedied within thirty (30) days after written notice from TAA, provided that Tenant shall not be entitled to the benefit of more than one (1) such grace period of (30) days under this paragraph D during the Term of this Lease.
- E. The actions of Tenant or any of Tenant's agents, employees, guests, invitees, or subtenants are in violation of the Airport Security Plan and result in official warning, notice or other action from the TAA Police Department and/or the Transportation Security Administration five (5) times in any twelve (12) month period, or fifteen (15) times during the Term of this Lease.
- F. Tenant shall fail to observe or perform any other covenant, agreement or obligation hereunder and such failure shall not be remedied within thirty (30) days (or such additional time as is reasonably required in the opinion of TAA to correct any such failure, if Tenant has instituted corrective action and is diligently pursuing the same) after TAA shall have given Tenant written notice specifying which covenant, agreement or obligation Tenant has failed to observe or perform; provided that Tenant shall not be entitled to the benefit of more than two (2) grace periods under this paragraph within any calendar year.
- G. There is commenced by or against Tenant any case under the Bankruptcy Code (Title 11 of the United States Code) or any other bankruptcy, arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state or foreign law, and with respect to any such case or proceeding that is involuntary, such case or proceeding is not dismissed with prejudice within sixty (60) days of such filing.
- H. Tenant makes a general assignment for the benefit of creditors or applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or other custodian for Tenant or the property of Tenant or any part thereof, or in the absence of such application, consent, or acquiescence, a trustee, receiver or other custodian is appointed for Tenant or the property of Tenant or any part thereof, and such appointment is not discharged within sixty (60) days.
- I. Any action is commenced against Tenant to foreclose any lien or mortgage or other rights of Tenant in or to the Premises.

- J. Tenant abandons, deserts or vacates the Premises for seven (7) consecutive days or more.

15.2 REMEDIES OF TAA

If Tenant shall be in default hereunder as set forth above, TAA may exercise any of the following remedies in TAA's sole discretion.

A. Termination

TAA may, at its election, give Tenant written notice of its intention to terminate this Lease, which termination shall be effective on the effective date set forth in the notice, or on the date notice is deemed received under Section 18.8 if no effective date is stated. Tenant's rights (including the rights of any sublessee) to possession of the Premises shall cease and, with or without re-entry by TAA, this Lease and the Term shall terminate, and TAA may then re-enter and take possession of the Premises as provided below with respect to reentry without termination. Any such termination must be express, and neither notice to pay rent or to deliver up possession of the Premises given pursuant to law, nor any proceeding instituted by TAA, nor the failure by Tenant for any period of time to pay any of the rent herein reserved, shall of itself operate to terminate this Lease.

B. Reentry Without Termination

As an alternative remedy, TAA may, without terminating this Lease, and after giving Tenant ten (10) days written notice, re-enter the Premises and take possession thereof pursuant to any legal proceedings or notice required by law, in which event Tenant shall remain liable for the payment of all rent and the performance of all conditions contained in this Lease as they come due.

After such re-entry, TAA shall use reasonable diligence to re-let the Premises, or any part or parts thereof, for such period or periods and upon such term or terms and at such reasonable rental or rentals and upon such other conditions as TAA may deem advisable, with the right to make alterations and repairs to the Premises. Tenant and any sublessee hereby irrevocably appoints TAA as the agent and attorney-in-fact of Tenant and any sublessee to enter upon and re-let the Premises and to incur any necessary expenses in doing so, all to be reimbursed by Tenant. Tenant agrees that no acts of TAA in effecting such re-letting shall constitute a termination of this Lease, irrespective of the period for which such re-letting is made or the terms and conditions of such re-letting or otherwise.

C. Removal of Tenant

Upon any re-entry of the Premises by TAA (whether or not the Lease is terminated), TAA may expel Tenant and those claiming through or under Tenant and remove their property and effects (forcibly, if necessary) without being guilty in any manner of trespass and without any liability therefor and without prejudice to any remedies of TAA in the event of default by Tenant, and without liability for any interruption of the conduct of the affairs of Tenant or those claiming through or under Tenant

which may result from such entry. Tenant hereby irrevocably appoints TAA as the agent and attorney-in-fact of Tenant to remove all of Tenant's property whatsoever situated upon the Premises and to place such property in storage in any warehouse or other suitable place in Tucson, Arizona, for the account of and at the expense of Tenant and Tenant hereby exempts and agrees to save harmless TAA from any costs, loss or damage whatsoever arising or occasioned by any such removal and storage of such property by TAA or its duly authorized agents in accordance with the provisions herein contained.

D. Damages

Notwithstanding the termination of this Lease or any re-entry by TAA, Tenant shall continue to be liable for and TAA shall be entitled to recover as damages:

- (1) the sum of all rent that is due and owing as of the date of termination or re-entry and all other sums then owing by Tenant hereunder;
- (2) all rent as it accrues hereunder during the remaining Term or, if TAA elects to terminate the Lease, the discounted present value of the sum of all rentals to be paid for the remaining term of this Lease, calculated by TAA in its reasonable discretion, less any sums that Tenant proves could reasonably be avoided; and
- (3) the reasonable costs incurred by TAA in re-letting the Premises (including brokerage commissions and attorney fees) and the reasonable costs to TAA necessary to place the Premises in condition for re-letting.

E. Credit

Any rent, income, receipts, profits or other monies received or derived by TAA from any re-letting or other use of the Premises by TAA shall, so long as Tenant shall continue to be liable for the payment of rent hereunder, be credited against such rent as received and collected.

15.3 REMEDIES CUMULATIVE

All rights, options and remedies of TAA contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and TAA shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease (including but not limited to any right of "self help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs).

15.4 NO WAIVER

No waiver of any Event of Default of Tenant hereunder shall be implied from any acceptance by TAA of any rent or other payments due hereunder or any omission by TAA to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect an Event of Default in a manner other than as specified in said waiver. The consent or approval by TAA to or of any act by Tenant requiring TAA's

consent or approval shall not be deemed to waive or render unnecessary TAA's consent or approval to or of any subsequent similar acts by Tenant.

15.5 CONTENT OF DEFAULT NOTICE

Any default notice tendered to Tenant hereunder shall be deemed to be sufficient if it is reasonably calculated to put Tenant on inquiry as to the nature and extent of such default, and is made in accordance with Section 18.8.

ARTICLE 16 - TERMINATION BY TENANT

16.1 TERMINATION EVENTS

Tenant may terminate this Lease at any time upon thirty (30) days written notice to TAA upon or after the happening or continuation of any of the following events:

- A. The inability of Tenant to use, for a period of thirty (30) consecutive days, any portion of the rights, licenses, services or privileges of Tenant hereunder because of any law, rule, regulation or other action or failure to act on the part of any United States governmental authority having jurisdiction thereof.
- B. The default by TAA in the performance of any covenant or agreement herein required to be performed by TAA and the failure of TAA to remedy such default for a period of thirty (30) days after receipt of written request or demand from Tenant to remedy the same.
- C. The assumption by the United States government or any authorized agency thereof of the operation or control of the Airport or any part thereof, in such manner as to substantially restrict Tenant for a period of at least thirty (30) consecutive days from conducting any of its operation on the Premises.

16.2 CURE

If any of the foregoing reasons for termination by Tenant cease to exist prior to a termination, then the right to terminate for such reason shall cease.

16.3 NO WAIVER

No waiver by Tenant of TAA's default of any of its obligations hereunder shall be construed to be or act as a waiver by Tenant of any subsequent default by TAA.

ARTICLE 17 - SURRENDER OF POSSESSION, CONDITION OF PREMISES

17.1 SURRENDER

Upon the expiration or earlier termination of this Lease or any extensions thereof, all rights herein granted to Tenant shall cease and terminate and Tenant shall forthwith surrender the Premises to TAA.

17.2 GOOD CONDITION

The Premises shall be returned to TAA in as good condition as at the time of occupancy by Tenant, together with any improvements made by Tenant, except as otherwise provided in this Lease and except for ordinary wear and tear [*and casualty*]. Tenant may remove any and all personal property, including portable buildings, signs, trade fixtures, machinery and equipment from the Premises; provided, however, that Tenant shall repair any damage caused by such removal. Any personal property remaining in the Premises after expiration or termination may be removed, sold or destroyed by TAA at Tenant's expense.

ARTICLE 18 - MISCELLANEOUS

18.1 ENTRY UPON PREMISES

TAA may enter upon the Premises subleased exclusively to Tenant hereunder at any reasonable time, for any purpose necessary, incidental to or connected with the exercise of its governmental functions, or to inspect the Premises for compliance with all applicable laws, rules, regulations and covenants hereunder or to prevent waste, loss or destruction.

18.2 SUCCESSORS AND ASSIGNS BOUND

All the terms, covenants and conditions of this Lease shall extend to and bind the successors and assigns of the respective parties hereto.

18.3 ARTICLE HEADINGS

The article headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Lease.

18.4 SEVERABILITY

If any term or condition of this Lease shall be deemed to be invalid or unenforceable, all other terms and conditions shall remain in full force and effect.

18.5 APPLICABLE LAW

The terms and conditions of this Lease shall be interpreted in accordance with the laws of the State of Arizona.

18.6 INDEPENDENT COUNSEL; CONSTRUCTION OF LEASE

TAA and Tenant each acknowledge that they have been represented by independent counsel in connection with the preparation and review of this Lease and that the fact that this Lease was prepared by TAA's counsel as a matter of convenience shall have no import or significance. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Lease. No remedy or election given by any provisions of this Lease shall be deemed exclusive unless so indicated, but each shall, whenever possible, be cumulative with all other remedies in law or equity. Each provision hereof shall be deemed both a covenant and a condition and shall run with the land for the duration of the leasehold Term or any extensions thereof.

Whenever the content of any provision shall require it, the singular number shall be held to include the plural number and vice versa. The form of this Lease contemplates that Tenant will be an entity and not one or more natural persons. If Tenant is one or more natural persons, then all pronouns referring to Tenant shall be deemed to be appropriately changed to fit those circumstances.

18.7 COSTS AND ATTORNEYS' FEES

A. TAA's Review

Tenant shall pay the expenses (including reasonable attorneys' fees and the fees of other consultants) incurred by TAA in drafting, negotiating and reviewing any of the documents (including, but not limited to, subleases, and plans and specifications of any improvements to be constructed by Tenant) for which TAA's approval is required by the terms hereof.

B. Enforcement of Rights

The non-prevailing party shall promptly pay to the prevailing party, upon demand, all costs and other expenses paid or incurred by the prevailing party (including, without limitation, reasonable attorney's fees) in enforcing or exercising its rights or remedies created by, connected with or provided for in this Lease, whether or not any action or proceeding is brought (including, without limitation, all such costs, expenses and fees incurred in connection with any bankruptcy, receivership, or other court proceedings [whether at the trial or the appellate level]).

18.8 NOTICES; TENANT CONTACT

Except as provided below with respect to emergencies, notice to either party shall be sufficiently served if it is in writing and is physically delivered; sent by certified mail, postage prepaid; or sent by facsimile or electronic transmission, to such party at the address set forth on the first page of this Lease, or to such other location as shall be provided by such party in writing from time to time.

Service of any notice or demand by physical delivery shall be deemed complete upon the date of delivery, or if refused, on the date of such refusal. Service of any notice or demand by certified mail shall be deemed complete at the expiration of three (3) days after the date of the certified mailing if mailed within the continental United States. Service by facsimile or electronic transmission shall be deemed complete upon the date of transmission if an automatically generated confirmation slip shows the transmission to have been initiated prior to 4 p.m., Tucson time, and otherwise on the following day.

Tenant shall also provide to TAA, in writing, the name, address, telephone number(s), and email addresses of a representative of Tenant who TAA can contact, 24 hours per day, 7 days a week, in the event of an emergency, which individual shall be authorized to act on behalf of Tenant.

18.9 SURVIVAL

Indemnities of either party set forth herein shall survive expiration or earlier termination of this Lease.

18.10 TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Lease.

18.11 ADDITIONAL DOCUMENTS

Each party agrees to perform any further acts and to execute and deliver any further documents which may be reasonably necessary to carry out the terms of this Lease.

18.12 NON-WAIVER

No waiver of any condition expressed in this Lease shall be implied by any neglect of TAA to enforce any remedy on account of the violation of such condition if such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by TAA from Tenant after the termination in any way of this Lease or Tenant's rights hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, TAA may receive and collect any rent or other sums due, and such payment shall not waive or affect said notice, suit or judgment.

18.13 FORCE MAJEURE

Force Majeure shall mean delays caused by or resulting from an Act of God, severe weather conditions, war, insurrection, riot, civil commotion, fire or other casualty, strikes, lockouts, inability to obtain labor or materials, governmental regulations, or other causes beyond the party's reasonable control.

Neither party shall have any liability whatsoever to the other party on account of any event of Force Majeure. If this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay caused by any event of Force Majeure. However, an event of Force Majeure shall not in any way affect Tenant's obligation to pay rent or other moneys due, nor shall it extend the Term of this Lease.

18.14 CITY OF TUCSON ANNEXATION PETITION

To the extent permitted by law, Tenant agrees that if at any time during the term of this lease, the City of Tucson presents Tenant with an annexation petition, Tenant will sign that petition in favor of annexation by the City within thirty (30) days after presentation of the petition. Upon any failure to sign said petition within thirty (30) days of presentation of such petition, Tenant shall, to the extent permitted by law, be deemed, for purposes Title 9, Chapter 4, Article 7 of the Arizona Revised Statutes, to have signed the petition and to

be included in the petition. Tenant and the Authority expressly agree that the City of Tucson is an intended third party beneficiary of this lease for the purposes of the enforcement of this condition.

18.15 AUTHORITY TO EXECUTE

Each party represents and warrants to the other that it has the right and authority to enter into this Lease.

18.16 EFFECTIVE DATE

This Lease shall be effective as of the date upon which both parties have executed below ("**Effective Date**").

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year written below.

PIMA COUNTY

TUCSON AIRPORT AUTHORITY, .

Sharon Bronson

By: _____
Danette Bewley, A.A.E.

Chair, Board of Supervisors

President/CEO

Date: _____

Date: _____

ATTEST:

Melissa Manriquez, Clerk of Board

APPROVED AS TO CONTENT:

Sheila Hollen for Lisa Josker
Lisa Josker
Director, Facilities Management

Date: 10.13.22

APPROVED AS TO FORM:

Bobby Yu
Bobby Yu
Deputy County Attorney

Date: 10/13/2022

EXHIBIT A (1 of 3)
Lease Line and Legal Description
Premises

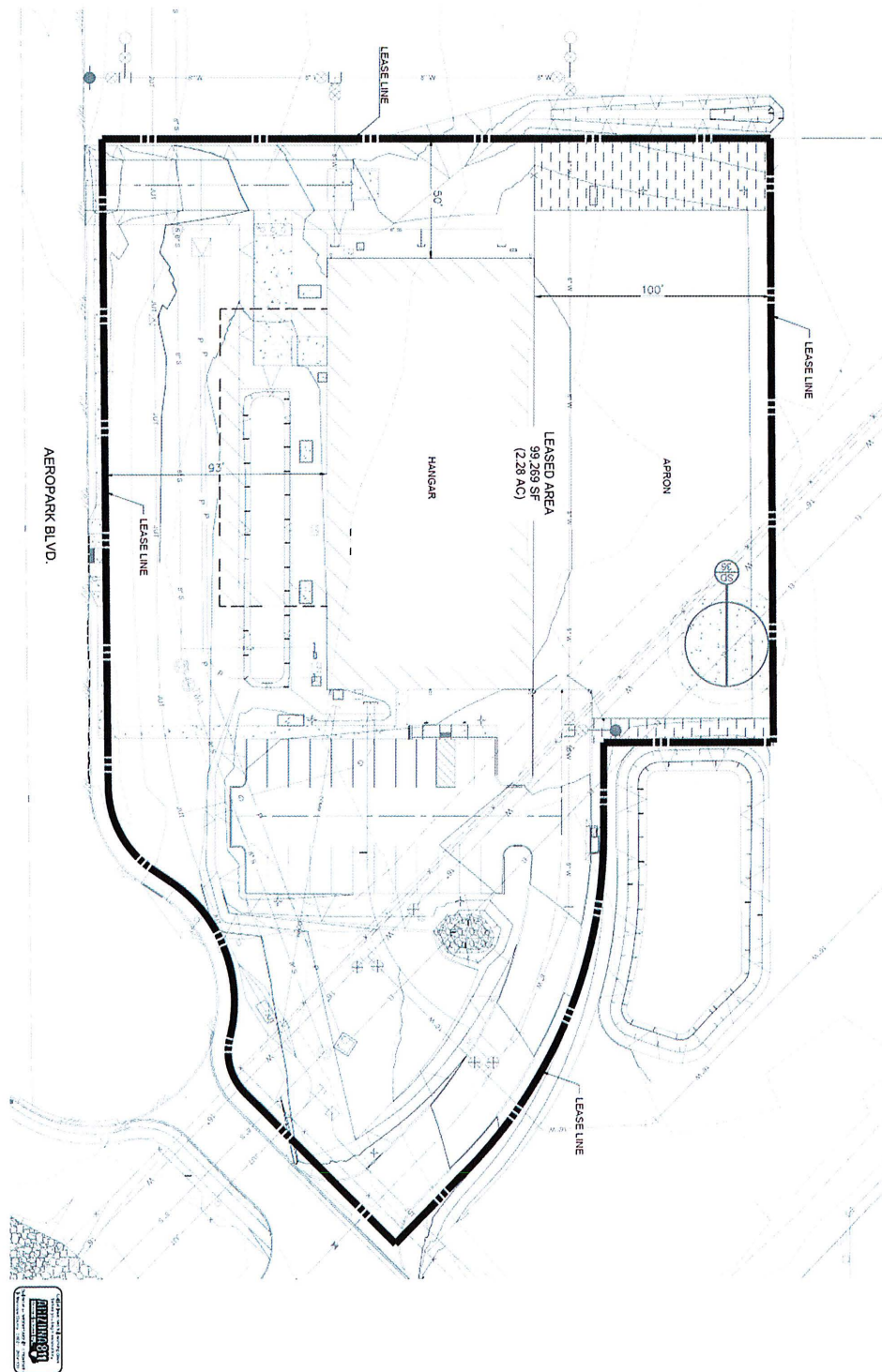


Exhibit A (2 of 3)

Legal Description for 1901 E. Aero Park Blvd.

ALL THAT CERTAIN PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN, COUNTY OF PIMA, STATE OF ARIZONA, DESIGNATED AS "SHERIFF HANGAR LEASE" ON THE DRAWING ATTACHED HERETO AND INCORPORATED HEREIN AS "EXHIBIT A", MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE 3- AND 1/4-INCH BRASS CAP SURVEY MONUMENT MARKING THE SOUTHEAST CORNER OF SECTION 19, TOWNSHIP 15 SOUTH, RANGE 14 EAST, GILA AND SALT RIVER MERIDIAN, FROM WHICH A 3- AND 1/4-INCH BRASS CAP SURVEY MONUMENT MARKING THE SOUTHWEST CORNER OF SAID SECTION 19 BEARS SOUTH 89 DEGREES 20 MINUTES 38 SECONDS WEST;

THENCE, NORTH 00 DEGREES 16 MINUTES 01 SECONDS WEST, 1645.32 FEET, ONTO LAND DESCRIBED IN SEQUENCE NUMBER 20143230547, AND TO THE **TRUE POINT OF BEGINNING**;

THENCE, NORTH 00 DEGREES 03 MINUTES 09 SECONDS WEST, 280.77 FEET;

THENCE, NORTH 89 DEGREES 30 MINUTES 49 SECONDS EAST, 252.01 FEET;

THENCE, SOUTH 00 DEGREES 03 MINUTES 09 SECONDS EAST, 71.34 FEET;

THENCE, NORTH 89 DEGREES 56 MINUTES 51 SECONDS EAST, 38.25 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, SAID CURVE HAVING A RADIUS OF 198.62 FEET;

THENCE, EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 44 DEGREES 34 MINUTES 33 SECONDS, AN ARC DISTANCE OF 154.52 FEET TO A POINT OF TANGENCY;

THENCE, SOUTH 45 DEGREES 28 MINUTES 36 SECONDS EAST, 43.49 FEET;

THENCE, SOUTH 44 DEGREES 48 MINUTES 38 SECONDS WEST, 89.30 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY, SAID CURVE HAVING A RADIUS OF 24.00 FEET;

THENCE, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59 DEGREES 33 MINUTES 20 SECONDS, AN ARC DISTANCE OF 24.95 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 60.00 FEET;

THENCE, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 71 DEGREES 02 MINUTES 11 SECONDS, AN ARC DISTANCE OF 74.39 FEET TO A POINT OF TANGENCY;

THENCE, SOUTH 33 DEGREES 19 MINUTES 47 SECONDS WEST, 8.64 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 42.00 FEET;

THENCE, SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 56 DEGREES 04 MINUTES 39 SECONDS, AN ARC DISTANCE OF 41.11 FEET TO A POINT OF TANGENCY;

THENCE, SOUTH 89 DEGREES 20 MINUTES 32 SECONDS WEST, 270.19 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 99,269 SQUARE FEET, OR 2.28 ACRES, MORE OR LESS.

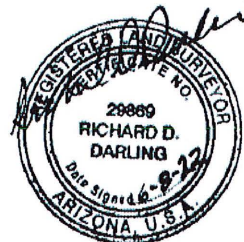


EXHIBIT A

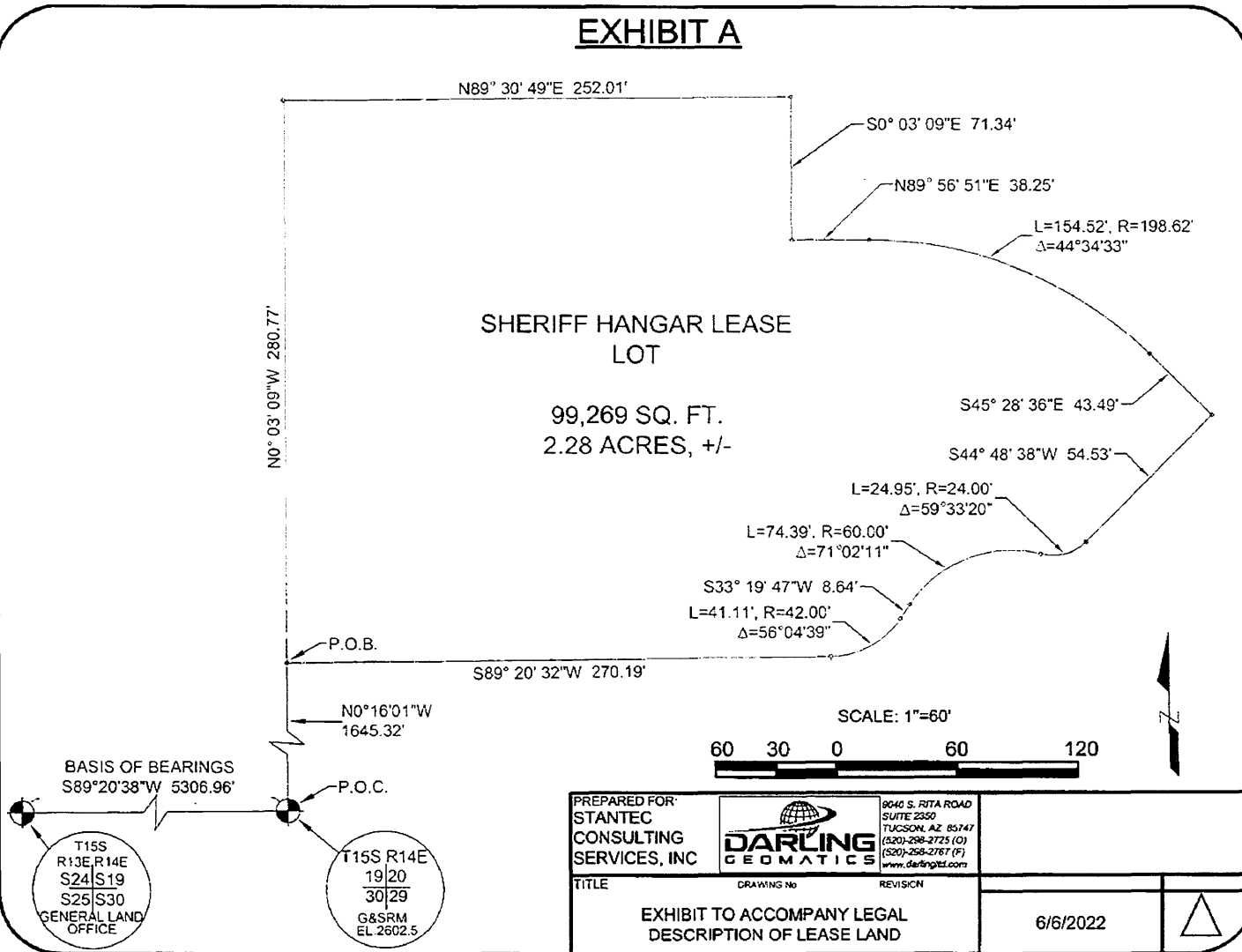


EXHIBIT B

WORK LETTER

TAA: Tucson Airport Authority ("TAA")

TENANT: Pima County, a political subdivision of the state of Arizona ("Tenant")

DATE: October ____, 2022

RECITALS

A. Concurrently with the execution of this Work Letter (the "**Work Letter**"), TAA and Tenant have entered into a lease (the "Lease") covering certain leased premises (the "**Premises**") on the Tucson International Airport in Pima County Arizona, as more particularly described in the Lease. The Premises include the improvements to be constructed by Tenant pursuant to this Work Letter (the "**Improvements**").

B. To induce TAA to enter into the Lease (which is hereby incorporated by reference to the extent that the provisions of the Lease apply hereto) and in consideration of the mutual covenants hereinafter contained, TAA and Tenant hereby agree as follows:

1. Improvements.

- a. The Improvements which Tenant will construct include: an approximately 15,300 square foot hangar facility along with site improvements for the Pima County Sheriff's Department Air Operations Division. The scope is to construct a pre-engineered metal building designed and constructed to house the aircraft, operations support spaces, staff, storage space, restroom facilities, training space and break room. Along with this the work will include parking for staff and an on-site storage and fueling station. The site perimeter will be secured with a perimeter SITA fence. Site lighting will be included as part of the installation. An asphalt apron is to be constructed to connect this facility to the TAA taxiway. The estimated cost of these improvements will be no less than \$ 6,147,156.00.
- b. Tenant will construct the Improvements referenced above at its sole cost and expense in accordance with (i) all applicable laws, rules, regulations, ordinances, governmental and quasi-governmental laws and local codes including, without limitation, O.S.H.A. rules and regulations, the Americans with Disabilities Act ("**ADA**") and/or any comparable state statutes ("Applicable Laws") and (ii) the approved Plans and Specifications as defined in Section 2 below.

2. **Plans and Specifications.** Tenant will be responsible for the preparation of plans and drawings for the Improvements. No later than forty-five (45) days after the Effective Date, Tenant shall provide to TAA all plans and construction drawings for the completion of the Improvements ("**Plans and Specifications**") for TAA's review and approval. If Tenant fails to deliver the Plans and Specifications by this date, TAA may thereafter, but prior to submission of the Plans and Specifications, terminate the Lease and this Work Letter by written notice to Tenant. TAA shall

have thirty (30) days following its receipt of the Plans and Specifications to review the same and notify Tenant in writing of either its approval of the Plans and Specifications or of any modifications that TAA may reasonably require. Tenant shall make any such required modifications at no cost to TAA. If Tenant objects to any modifications required by TAA in the Improvements, the parties shall promptly confer to resolve all issues related to the Plans and Specifications. If the parties cannot agree upon the Plans and Specification, either party may elect to terminate the Lease and this Work Letter on written notice to the other and the parties shall thereafter have no further obligations hereunder. Once approved by both parties, the Plans and Specifications shall not be substantially modified without TAA's prior written consent, which consent will not be unreasonably withheld or delayed. TAA's review of the Plans and Specifications is strictly for its own purposes and TAA's approval shall not be deemed to be an assurance that the Plans and Specifications comply with applicable laws or regulations or meet any other standards.

3. **Construction.** Promptly after approval of the Plans and Specifications, Tenant shall commence and thereafter diligently pursue construction of the Improvements to completion. All work shall be done in a good and workmanlike manner, free of defects, and in compliance with the Plans and Specifications. Tenant acknowledges that the timely and proper design and completion of the Improvements is a material part of the consideration for this Lease. Tenant shall achieve Substantial Completion (as defined in the Lease) of the Improvements no later than June 1, 2023. In the event that Tenant fails to achieve Substantial Completion by this date, TAA may at any time thereafter, but prior to Substantial Completion, do any of the following: (1) terminate the Lease and this Work Letter, effective upon written notice of termination to Tenant, and require Tenant to remove any portion of the Improvements already installed on the Premises and return the Premises to substantially the condition they were in prior to such construction; or (2) terminate the Lease and this Work Letter, effective upon written notice of termination to Tenant, and keep the Improvements as thus far constructed, in which event Tenant shall assign to TAA any plans, specifications, and construction contracts obtained or entered into with respect to the Improvements; or (3) keep the Lease in effect and finish the Improvements, using its own work force or a contractor, and charge Tenant the cost thereof.
4. **Representatives and Notices.** TAA and Tenant each appoint the following individuals to act as their respective representatives in all matters covered by this Work Letter:

Tenant's Representative:	Lisa Josker, Director of Facilities Management
Phone No.	520-724-3104 or FM_Leasing_Services@pima.gov
TAA's Representative:	Danette Bewley, A.A.E, President/CEO
Phone No.	520-573-8100
Fax No.	520-573-0828

All inquiries, requests, instructions and authorizations and other communications with respect to the matters covered by this Work Letter will be submitted to the TAA's Representative or Tenant's Representative, as the case may be. Each party may change its representative under this Work Letter at any time upon three (3) days prior written notice to the other party. Notices will be given in accordance with the notice provisions set forth in the Lease.

5. **Arbitration.** Subject to the parties' rights to terminate under Section 2, any claim, dispute or other matter in controversy which cannot be resolved privately concerning any matter covered by this Work Letter ("Dispute") shall be resolved exclusively by arbitration administered by the American Arbitration Association ("AAA") in Tucson, Arizona. Arbitrations shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq., and administered under the AAA Commercial Arbitration Rule in effect on the date the Dispute is submitted to arbitration, except that the arbitrator shall be an architect experienced in Plans and Specifications and construction or an experienced construction contractor, in each case as appropriate to the matter in dispute, and, in either case, such arbitrators will be licensed or certified to practice in their respective fields by Arizona. If the parties cannot agree on a mutually acceptable single arbitrator from the one or more lists submitted by the AAA, the AAA shall designate a minimum of three (3) persons, who, in its opinion, meet the criteria set forth herein. Each party shall be entitled to strike one of such designees on a peremptory basis, indicating its order of preference with respect to the remaining designees, and the selection of the arbitrator shall be made from among such designees not so stricken by either party in accordance with their indicated order of mutual preference. The arbitrator shall base the arbitration award on accepted design and construction industry customs and practices, applicable law and judicial precedent and, unless both parties agree otherwise, shall include in such award the findings of fact and conclusions of law or industry practice upon which the award is based. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing party in the arbitration shall be entitled to reasonable attorneys' fees and expenses incurred in the resolution of said Dispute.
6. **Default.** Any default under this Work Letter shall be considered a default under the Lease entitling the parties to the remedies set forth therein.

TAA:

TUCSON AIRPORT AUTHORITY, an
Arizona nonprofit corporation

By: _____
Name: Danette Bewley, A.A. E.
Title: President/CEO
Date: _____

TENANT:

Pima County, an Arizona political subdivision

By: Sheila Holben for Lisa Josker
Name: Sheila Holben
Title: Deputy Director
Date: 10.13.22

last@redtv.wire on: May 11, 2022 3:12 PM
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EXHIBIT D

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take

reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).