ITEM # 15-0258

PROPERTY ACCESS AGREEMENT

AGREEMENT made this 16th day of April 2015, by and between the CITY OF SANTA FE, NEW MEXICO, a municipality and political subdivision of the State of New Mexico (City), and JET CENTER AT SANTA FE REAL ESTATE, LLC, a New Mexico limited liability company (JCSF) (collectively, the Parties).

WHEREAS, the City owns and operates the Santa Fe Municipal Airport (Airport), located in the City of Santa Fe, Santa Fe County, New Mexico; and

WHEREAS, on February 25, 2015 the City approved by ordinance a lease with JCSF (the Lease) for three parcels of land at the Airport identified Lease Parcel B (Parcel B), Lease Parcel C (Parcel C), and Lease Parcel D (Parcel D) (collectively, the Premises), together with the unimpeded right of access thereto; and

WHEREAS, the City has the right to terminate its lease (the Landmark Lease) for that certain parcel of land identified in the Lease as the Landmark Lease Area upon payment of the balance of the purchase price then due for the building located on the Landmark Lease Area identified in the Lease as Building 3002; and

WHEREAS, the Lease requires JCSF to prepay two years' rent for the Premises (the Prepaid Rent) and requires the City to use the Prepaid Rent to pay down the balance of the Building 3002 purchase price and to terminate the Landmark Lease in accordance with its terms; and

WHEREAS, the Lease provides that thereafter the City may, but need not, lease to JCSF any or all of the Landmark Lease Area upon such terms and conditions as the Parties may then agree, taking into account the City's future needs relating to the expansion of the Airport Terminal; and

WHEREAS, the City does not intend to occupy Building 3002 until late 2015 or early 2016 and wishes to accelerate the construction by JCSF on Parcel B of the hanger and permanent terminal provided for under the Lease (the Parcel B Improvements); and

WHEREAS, JCSF is willing to accelerate the construction of the Parcel B Improvements if it is permitted to use and occupy Building 3002 as a temporary terminal during the period the Parcel B Improvements are under construction (the Construction Period); and

WHEREAS, the City is willing to rent Building 3002 and the land on which it is located to JCSF upon the terms and conditions generally set forth herein (the 3002 Lease Terms), with the understanding that they will be set forth in a separate written agreement between the Parties, containing such other terms and conditions as the Parties may agree upon and which are generally incorporated in other similar Airport leases;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, it is agreed as follows:

1. The City will terminate the Landmark Lease when funds from the Prepaid Rent are available and will enter into a lease with JCSF for Building 3002 as of the termination date (the Building 3002 Lease) providing in part for following Building 3002 Lease Terms:

(a) A twenty-four (24) month base term, with one (1) six (6) month extension term, the latter to be granted by the City, which grant shall not be unreasonably withheld, upon a showing by JCSF that the construction of the Parcel B Improvements is incomplete for reasons beyond the control of JCSF.;

(b) Provision by JCSF on or before the date the Building 3002 Lease takes effect (the 3002 Effective Date) of space usable by the City and by current occupants of Building 3002 for temporary offices during the period the Construction Period in a temporary modular building (TMB) to be located on Airport property between Building 3002 and the Airport Terminal on a site identified by the City (the TMB Site);

(c) JCSF's undertaking to repair and maintain the Building 3002 Lease property during the term of the Building 3002 Lease;

(d) JCSF's agreement to remove the TMB at the completion of the Construction Period; and

(e) Payment by JCSF of fair market value rent (FMV Rent), to be offset by JCSF's costs of providing and removing the TMB and of effecting repairs (but not maintenance) to the Building 3002 property, with the understanding that in no event, if said costs exceed the FMV Rent, shall the City be obligated to make any payments to JCSF on account of such excess.

2. The City grants to JCSF and its representatives permission to enter upon the TMB Site from the date of execution of this Agreement through the termination date of the Building 3002 Lease for the limited purposes of setting up, installing and securing the TMB (collectively, the Work) and to use and occupy the TMB for office and reasonably related uses (the Permitted Uses). Such right of access shall extend to and include such land owned by the City adjacent to the TMB Site as JCSF may reasonably require to carry out and complete the Work or in furtherance of the Permitted Uses, provided that the City approves such extended right of access in advance.

3. The City grants JCSF the right to undertake all necessary and reasonable steps to perform the Work, provided that the City has first approved all such work and JCSF has obtained all necessary permits therefor.

4. The right of access shall include the right to enter upon the TMB Site by JCSF or its authorized representatives with all vehicles, equipment, tools, or other items necessary to carry out the Work and to use and occupy the TMB for the Permitted Uses.

5. JCSF agrees that it will provide the City with at least two (2) business days written notice in advance of commencing the Work. JCSF will thereafter coordinate the Work with the City's designated representative.

6. JCSF will at all times after it has entered upon the TMB Site hereunder take all reasonable steps to secure the TMB Site and to carry out the Work and use and occupy the TMB Site for the Permitted Uses in a manner that does not pose an unreasonable risk of harm to persons or property and will remove and dispose of any hazardous or other waste material generated in the conduct of the Work or in the use and occupancy of the TMB Site for the Permitted Uses.

7. JCSF agrees to make reasonable efforts to carry out the Work in a manner which will minimize disruption or damage to the City's operations, and to employ all customary, necessary, and appropriate security measures while undertaking the Work.

8. The City shall at all times have the right to inspect the activities of JCSF, its employees, agents, contractors, and/or subcontractors on the TMB Site and to stop the Work if it observes any violation of the terms of this Agreement or of applicable law or if the Work is not consistent with the City's approvals.

9. Prior to undertaking the Work, JCSF shall, in consultation with the City, cause all utilities and other underground structures located in the Work area to be marked in accordance with accepted construction practices.

10. JCSF acknowledges that the City is a public body, and as a result is subject to certain requirements of law mandating the release and disclosure of certain records and information in its possession, including, among other things, this Agreement, and related documents and information, upon the written request of others.

11. Prior to entering upon the TMB Site and commencing the Work pursuant to this Agreement, JCSF's contractors and consultants shall obtain insurance coverage for liabilities arising out of the performance of any work or entry authorized herein, including, without limitation, the use and occupancy of the TMB for the Permitted Uses. Such insurance coverage shall be maintained for the duration of the term of this Agreement and shall include (a) comprehensive general liability insurance written on an occurrence basis, including completed operations coverage, products liability coverage, and independent contractors coverage, with a combined single limit provision for bodily injury and/or property damage of a least One Million and 00/100 Dollars ($1,000,000.00), (b) comprehensive automobile liability insurance with a single limit provision, written on an occurrence basis, covering all owned vehicles, hired vehicles, and non-owned vehicles for all personal injury, death, and property damage, of at least One Million and 00/100 Dollars ($1,000,000.00), (c) professional liability coverage, where applicable, including coverage for all errors and omissions, of at least One Million and 00/100 Dollars ($1,000,000.00), and (d) worker's compensation liability insurance within statutory limits. The City shall be listed as an additional insured on all potentially applicable insurance policies and original certificates of insurance evidencing the same shall be furnished by JCSF to the City prior to the commencement of any activities authorized hereunder.

12. JCSF agrees to perform the Work and to use and occupy the TMB Site for the Permitted Uses at its own risk and shall defend, indemnify, and hold harmless the City from and against all claims, causes of action, suits, losses, damages, fines, and expenses resulting from personal

injury or property damage arising out of the Work or the Permitted Uses, including, but not limited to, any releases or threats of release of hazardous material and/or oil caused by the negligence or intentional misconduct of JCSF, its agents, employees, contractors, or representatives, while performing the Work or otherwise during the term of this Agreement, provided that JCSF shall not be liable to the City for any claims, causes of action, suits, losses, damages, fines, and expense to the extent the same are caused by the intentional misconduct or negligence of the City, its agents, employees, contractors, or representatives, or to the extent the same are attributable to the presence of hazardous material and/or oil on or about the TMB Site at the time JCSF first enters thereon to perform the Work, unless in the last instance, such personal injury or property damage is attributable to JCSF's intervening negligence or intentional misconduct. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City that might exist.

13. This Agreement is binding on the Parties' officers, employees, agents, principals, successors, and assigns.

14. Notices required to be given to the Lessor shall be hand-delivered, sent via email, overnight courier service, or by certified mail, postage prepaid, addressed to:

Airport Manager
Santa Fe Municipal Airport
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955.2006
jrbultheis@santafenm.gov

With a copy to: City Manager
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955.6848
bksnyder@santafenm.gov

City Attorney
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955.6961
kabrennan@santafenm.gov

Any approvals, consents and/or notices to be given to the Lessee shall be hand-delivered, sent via overnight courier service or sent by certified mail to:

Jet Center at Santa Fe Real Estate, LLC
Attn: John Marchman
c/o Felker, Ish, Ritchie, & Geer, P.A.
911 Old Pecos Trail

Santa Fe, NM 87505

or to such other addresses as may be provided from time to time by each of the Parties to the other in accordance with the notice requirements of this Paragraph 14.

15. JCSF shall comply with all applicable provisions of local, state, or federal law, regulation, or ordinance, including, but not limited to, Santa Fe City Code (SFCC) § 28-1, known as the "Living Wage Ordinance" And SFCC § 10-7, known as the "Pest Management Policy."

16. The Parties represent and warrant each to the other that they have the authority to enter into this Agreement and that the person executing this Agreement for each is duly authorized to do so.

17. This Agreement may not be assigned, or otherwise transferred by either of the Parties, without the express prior written consent of the other.

18. This Agreement represents the final, complete and exclusive written expression of the intentions of the Parties with respect to its subject matter, and supersedes any and all previous communications, representations, agreements, promises or statements, either oral or written, by or between the Parties, but not including the Lease.

19. This Agreement may not be modified, except by written agreement executed by both Parties.

20. The Parties are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture, or agency agreement between the Parties and no party shall have the power to bind the other in any respect.

21. This Agreement shall be construed in accordance with the internal law of the State of New Mexico.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument as of the dates set forth below their respective signatures.

THE CITY OF SANTA FE

By: _____
Brian K. Snyder
City Manager

ATTEST:

Yolanda Y. Vigil

Yolanda Y. Vigil
City Clerk

APPROVED AS TO FORM:

Kelley A. Brennan
City Attorney

JET CENTER AT SANTA FE REAL ESTATE, LLC

By: _____
John Marchman
Its Managing Partner