



**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 06/10/15**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 06/01/15**

**ISSUE:**

14. Request for Approval of Lease Agreement – Building 3002 at Santa Fe Municipal Airport; Occupy and Use for Office and Terminal Purposes during Construction of Permanent Facilities on Adjacent Parcels in Accordance with the Lease Approved by the Governing Body at its Regular Meeting on February 25, 2015; Jet Center at Santa Fe Real Estate, LLC. (Jon Bulthuis and Matthew O’Reilly)

**FINANCE COMMITTEE ACTION:**

Approved as Discussion Item.

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS**

With amendment to lease agreement and caption.

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

PROPERTY ACCESS AGREEMENT

AGREEMENT made this 16<sup>th</sup> 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.

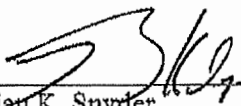
19. This Agreement may not be modified, except by written agreement executed by both Parties.

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.

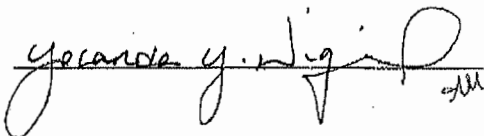
21. This Agreement shall be construed in accordance with the internal law of the State of New Mexico.

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

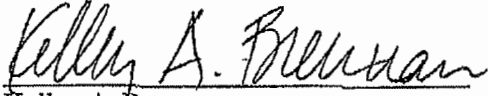
By:   
\_\_\_\_\_  
Brian K. Snyder  
City Manager

ATTEST:

  
\_\_\_\_\_  
Yolanda Y. Vigil

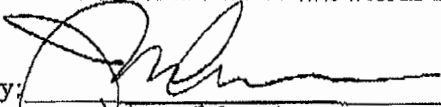
Yolanda Y. Vigil  
City Clerk

APPROVED AS TO FORM:



Kelley A. Brennan  
Kelley A. Brennan  
City Attorney

JET CENTER AT SANTA FE REAL ESTATE, LLC

By:   
John Marchman  
Its Managing Partner



Amendment No. 1  
Santa Fe Municipal Airport Lease Agreement  
Jet Center at Santa Fe Real Estate, LLC

**THIS AMENDMENT TO LEASE** is made and entered into this \_\_\_ day of June, 2015, by and between the CITY OF SANTA FE, NEW MEXICO, a municipality and political subdivision of the State of New Mexico (City or Lessor), and JET CENTER AT SANTA FE REAL ESTATE, LLC, a New Mexico limited liability company (JCSF or Lessee) (collectively, the Parties).

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

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

WHEREAS, the Lease became effective on April 16, 2015; and

WHEREAS, the City is the owner of that certain 14,000 square-foot parcel of land and the building thereon (Building 3002) located between the Airport Terminal and Parcel B (Parcel A); and

WHEREAS, on April 16, 2015 the Parties entered into a Property Access Agreement whereby the City agreed, in consideration of certain undertakings by JCSF, to lease Building 3002 to JCSF for use as office and temporary terminal space; and

WHEREAS, the Lease provides that the City may, but need not, lease to JCSF any or all of Parcel A 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 TBO 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, JCSF has, in accordance with Paragraph 1 (a) of the Property Access Agreement, provided a temporary modular building (TMB) for the City's use without charge during the Term of this Lease on a site approved by the City; and

WHEREAS, the parties wish to amend the Lease in accordance with the Property Access Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **EFFECTIVE DATE.** The Building 3002 lease (3002 Lease) shall be and become effective upon the later of its execution by both Parties and the date the City enters upon and takes possession of Building 3002 and surrenders the same to Lessee.

2. **PREMISES.** Lessor hereby leases to the Lessee and the Lessee leases from the Lessor Building 3002 (A-1 Premises), together with the unimpeded right of access thereto, upon the terms and conditions set forth in this Amendment No. 1.

3. **USE OF THE A-1 PREMISES.**

A. The Lessee shall use the A-1 Premises for temporary office and terminal use (collectively, the Authorized Uses) at the Airport during the Construction Period. The A-1 Premises shall not be used for any other purposes without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned, or delayed.

B. Lessee agrees to maintain the A-1 Premises in the same or better condition during the term of the 3002 Lease and shall return the A-1 Premises to the Lessor at the expiration of the A-1 Term in the same condition or better, less reasonable wear and tear.

C. Lessee is responsible for providing all furniture, equipment and supplies necessary for conducting its business unless provided by Lessor at its sole discretion. Any such equipment provided by Lessor remains the property of Lessor and will be returned to Lessor at termination of the A-1 Term unless otherwise agreed to in a separate purchase agreement between Lessor and Lessee.

4. **A-1 TERM.**

A. The 3002 Lease shall be for a twenty-four (24) month term beginning on June 18, 2015, and terminating on June 17, 2017 (the Initial A-1 Term), provided that Lessor may grant to Lessee, which grant shall not be unreasonably withheld, the right to extend the 3002 Lease for one (1) six (6) month period (the Extended A-1 Term) upon the same terms and conditions as those set forth in this 3002 Lease for the Initial A-1 Term, upon a showing by Lessee that the construction of the Parcel B Improvements is incomplete for reasons beyond the control of Lessee. Lessee shall notify Lessor in writing of its intention to exercise its renewal option not less than thirty (30) days before the expiration of the Initial A-1 Term.

B. Lessee may terminate this 3002 Lease at any time, by giving sixty (60) days prior written notice to the Lessor, or otherwise in accordance with Paragraph 11 of the Lease. Lessor may terminate this 3002 Lease in accordance with Paragraph 10 of the Lease. Upon termination of this 3002 Lease by either party, the Lessee's rights to use the A-1 Premises shall cease and the Lessee shall peacefully vacate the A-1 Premises, removing its personal property at its own expense within 48 hours of written notification of termination by Lessor. All permanent leasehold improvements shall, upon termination, be and become the property of the Lessor.

Termination by the Lessor shall not relieve the Lessee of liability for any damages sustained by the Lessor caused by Lessee's breach of this Lease.

**5. HOLDOVER.** In the absence of a new agreement entered into before the expiration of the Initial A-1 Term or the Extended A-1 Term under this 3002 Lease, Lessee shall be allowed to hold over for a period not to exceed sixty (60) days from the expiration date of such term. Holding over by the Lessee after the expiration of the Initial A-1 Term or the Extended A-1 Term under this 3002 Lease, whether with or without the consent of the Lessor, shall not operate to extend or renew this 3002 Lease. Any such holding over shall be construed as a tenancy from month to month at the rents reserved in this Lease under the terms herein.

**6. RENT AND FEES.** The Lessee agrees to pay to the Lessor, at the office of the Airport Manager, at the Airport, or at such place as the Lessor may designate from time to time, for the use of the A-1 Premises the following rent:

A. A-1 Rent. Lessee shall pay to Lessor [FMV based on appraisal] and 00/100 Dollars (\$ \_\_\_\_\_ .00) per month for the exclusive use of the A-1 Premises.

B. Offset of A-1 Rent. Lessee may offset A-1 Rent by the costs Lessee incurs in repairing, remodeling, or refurbishing the A-1 Premises during its tenancy (but not for the costs of routine maintenance), provided that such work has been approved in advance by the Lessor in accordance with Paragraph 18 of the Lease. Lessee may also offset A-1 Rent by the costs incurred by Lessee in providing and removing the TMB in accordance with the Property Access Agreement. For the purposes of the preceding sentence, "providing" includes the costs of set-up, including, but not limited to, providing utilities, transferring the TMB to the City-identified site and rent paid by the Lessee for the TMB. In no event shall any such offset exceed the A-1 Rent or offset any rent for the Lease Parcels under the Lease. Lessor shall have the right at all reasonable times to inspect any work approved for offset of A-1 Rent and the Lessee shall promptly provide to Lessor all records reasonably necessary to establish the cost for the purposes of offset.

C. Security and Fire Protection Fees. Lessor reserves the right to impose fair and equitable fees for security and fire protection provided by Lessor.

D. Removal of TMB. In further consideration of the promises of the Lessor hereunder and in accordance with Paragraph 1(d), the Lessee agrees to remove the TMB at the end of the A-1 Term or any holdover period, or such other time as the Parties may agree.

7. The City grants to JCSF and its representatives permission to enter upon the TMB Site from the Effective Date of this Amendment No. 1 through thirty (30) days after the termination date of the 3002 Lease for the limited purpose of removing the TMB and to use and occupy the TMB for office and terminal use for no more than sixty (60) days after the Effective Date of this Amendment No. 1, unless otherwise agreed to by the Parties. Said sixty (60) day occupancy shall not affect the A-1 Term, which shall commence on the Effective Date hereof. 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 remove the TMB or otherwise in furtherance of the Permitted Uses, provided that the City approves such extended right of access in advance.

8. All other terms and conditions of the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed as of the day and year first above written.

**CITY OF SANTA FE:**

\_\_\_\_\_  
Javier M. Gonzales, Mayor

ATTEST:

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kelley A. Brennan  
City Attorney

APPROVED

\_\_\_\_\_  
Oscar Rodriguez  
Finance Director

[REMAINING SIGNATURES ON FOLLOWING PAGE]

JET CENTER AT SANTA FE REAL ESTATE, LLC

By: \_\_\_\_\_  
Name: John Marchman  
Title: Managing Member

STATE OF NEW MEXICO }  
                                  }ss.  
COUNTY OF SANTA FE }

This instrument was acknowledged before me on \_\_\_\_\_, by John Marchman, as managing member of Jet Center at Santa Fe Real Estate, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**DRAFT**