



CITY OF LAS VEGAS

1700 N. GRAND AVE. • LAS VEGAS, NEW MEXICO 87701-4731 • 505-454-1401 • FAX 505-425-7335

ALFONSO E. ORTIZ, JR.

Mayor

**CITY OF LAS VEGAS
SPECIAL CITY COUNCIL AGENDA
August 31, 2015–Monday– 10:00 a.m.
City Council Chambers
1700 N. Grand Ave**

(The City Council shall act as the Housing Authority Board of Commissioners on any matters on the Agenda concerning the Housing Department.)

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MOMENT OF SILENCE**
- V. **APPROVAL OF AGENDA**
- VI. **MAYOR'S APPOINTMENTS/REPORTS**
- VII. **MAYOR'S RECOGNITIONS/PROCLAMATIONS**
- VIII. **PUBLIC INPUT (not to exceed 3 minutes per person)**
- IX. **BUSINESS ITEMS**

1. Approval/Disapproval of Resolution 15-44 authorizing submittal of a loan application to New Mexico Finance Authority for acquisition, construction and improvements to the Abe Montoya Recreation Center.

Ann Marie Gallegos, Finance Director The City of Las Vegas is requesting authorization of the submission of a loan application to the New Mexico Finance Authority for acquisition, construction and improvements of the Abe Montoya Recreation Center.

2. Approval/Disapproval of Airport Hangar and Property Lease Agreement.

Dave Romero, City Attorney This is a key lease in the development of the Municipal Airport. The lease is for an area of land sufficient to build an aircraft hangar approximately 80 ft. x 80 ft with an aircraft-suitable, concrete entrance area in the front and back; an estimated cost of \$250,000. Hangar will be built by NEVA, LLC (Paul Lewicki). This lease may be for a term of forty (40) years.

X. EXECUTIVE SESSION

THE COUNCIL MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER § (H) OF THE OPEN MEETINGS ACT.

- A. Personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**
- B. Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**
- C. Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1 (H) (8) of the Open Meetings Act, NMSA 1978.**

XI. ADJOURN

ATTENTION PERSONS WITH DISABILITES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING COUNCIL MEETING: By entering the City Chambers, you consent to photography, audio recording, video recording and its/their use for inclusion on the City of Las Vegas Web-site, and to be televised on Comcast.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 N. Grand Avenue, Las Vegas, N.M 87701

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 8/27/15

DEPT: Finance

MEETING DATE: 8/31/15

ITEM/TOPIC: Resolution #15-44 NMFA Loan Application

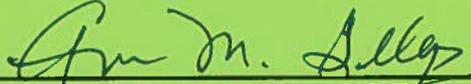
ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 15-44.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting authorization of the submission of a loan application to the New Mexico Finance Authority for acquisition, construction and improvements of the Abe Montoya Recreation Center.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


ALFONSO E. ORTIZ, JR.
MAYOR


ELMER J. MARTINEZ
CITY MANAGER

ANN MARIE GALLEGOS
FINANCE DIRECTOR
(PROCUREMENT)

PURCHASING AGENT
(FOR BID/RFP AWARD)

DAVE ROMERO
CITY ATTORNEY
(ALL CONTRACTS MUST BE
REVIEWED)

**STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION NO. 15-44
NMFA LOAN APPLICATION**

**A RESOLUTION OF THE CITY OF LAS VEGAS, NEW MEXICO, AUTHORIZING THE
SUBMISSION OF A LOAN APPLICATION TO THE NEW MEXICO FINANCE AUTHORITY**

WHEREAS, the City of Las Vegas is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 , and the City of Las Vegas is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the City of Las Vegas; and

WHEREAS, the New Mexico Finance Authority has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an application for financial assistance from the Authority for public projects; and

WHEREAS, the Governing Body intends to undertake acquisition, construction and improvements of Abe Montoya Recreation Center for the benefit of the Governmental unit and its citizens; and

WHEREAS, the application prescribed by the Authority has been completed and submitted to the Governing Body and this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS:

Section 1. That all action heretofore taken by the Governing body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body, be and the same is hereby approved and confirmed.

Section 3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Authority for its review, and are further authorized to take such other action as may be requested by the Authority in its consideration and review of the Application and to further proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled and repealed.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____, 2015.

Alfonso E. Ortiz, Jr. Mayor

ATTEST:

Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:

Dave Romero, City Attorney

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 08/26/15

DEPT: City Attorney

MEETING DATE: 08/31/15

ITEM/TOPIC: Airport Hangar & Property Lease Agreement

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Lease Agreement

BACKGROUND/RATIONALE: This is a key lease in the development of the Municipal Airport. The lease is for an area of land sufficient to build a aircraft hangar approximately 80 ft. x 80 ft with an aircraft-suitable, concrete entrance area in the front and back; an estimated cost of \$250,000.00. Hangar will be built by NEVA, LLC (Paul Lewicki). This lease may be for term of forty (40) years.

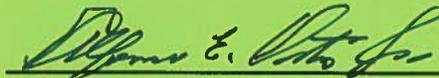
STAFF RECOMMENDATION: Approve

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE
NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE
CITY COUNCIL MEETING.


SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:


ALFONSO E. ORTIZ, JR.
MAYOR


ELMER J. MARTINEZ
CITY MANAGER

ANN MARIE GALLEGOS
FINANCE DIRECTOR
(PROCUREMENT)

PURCHASING AGENT
(FOR BID/RFP AWARD)

DAVE ROMERO
CITY ATTORNEY
(ALL CONTRACTS MUST BE
REVIEWED)

LEASE AGREEMENT

by and between

Neva LLC
(contact Paul Lewicki at (918) 513-2636
or at PPL@MyFastMail.com)

and

City of Las Vegas, NM

LEASE AGREEMENT

This Agreement is entered into between the City of Las Vegas, a city organized under the laws of the State of New Mexico ("COLV") and NEVA, LLC, an LLC organized under the laws of Delaware ("Lessee") with its principal office at 296 Woodward Blvd., Tulsa, OK 74114 (phone 918 513-2636, attn.: Chairman – Paul Lewicki).

RECITALS

1. COLV owns property commonly referred to as the Las Vegas municipal airport ("airport") pursuant to the terms
2. COLV desires to lease certain lands as hereinafter defined, being situated located at the COLV Airport property.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained to be kept and performed by the parties hereto and upon the provisions and conditions hereinafter set forth, COLV and Lessee hereby do agree as follows:

ARTICLE I Definitions

Section 1.1 **Definitions**. Throughout this Agreement, the following words shall have the following meanings, respectively, unless the context clearly shall indicate some other meaning:

- a. Agreement means this Lease Agreement between COLV and Lessee;
- b. Airport means Las Vegas Municipal Airport;
- c. Authority means the City manager;
- d. City means the City of Las Vegas New Mexico, a municipal corporation;
- e. EPA means the United States Environmental Protection Agency and any federal, state or local agency, or governmental entity, succeeding to, or being delegated with its jurisdiction, functions, or responsibilities.
- f. FAA means the Federal Aviation Administration of the United States, or any federal agency succeeding to its jurisdiction or function;
- g. FAR means Federal Aviation Regulations and shall include, but not be limited to, all regulations, policies, statements and directives promulgated or issued by the FAA.

- h. Governmental Requirements mean all federal, state and local laws, ordinances, rules, regulations, policies and procedures, security plans, standards, and rulings; including, but not limited to, all additions and amendments now in effect, or hereinafter enacted, as may be imposed by the FAA, TSA or any other governmental entity succeeding to the jurisdiction, functions, or responsibilities of either; COLV; the City of Las Vegas, the State of New Mexico, or other governmental entities authorized to enact rules, regulations, standards, or policies applicable to Lessee's use of the Airport and operation/utilization of the Leased Premises and improvements thereon.
- i. Leased Premises means the area described and illustrated on Exhibit "A" comprising of an area of land sufficient to build a hangar approximately 80 ft, x 80 ft. with an aircraft-suitable, concrete entrance area in the front and in the back, which location will be designated on the ground by COLV;
and
- j. Term means the period of time that this Agreement shall be in effect, as set forth in Section 2.1 hereof.
- k. TSA means the Transportation Security Administration of the United States, or any federal agency succeeding to its jurisdiction or function.

ARTICLE II

Term

Section 2.1 **Terms of Agreement**. The Term of this Agreement shall be for ten (10) years which shall commence on September 01, 2015, and shall expire on September 1, 2025, unless otherwise terminated or canceled. Lessee has the option of extending the lease for an additional ten (10) years. Provided, as of the effective date of termination or cancellation of this Agreement, all obligations which have been incurred by Lessee, or with respect to which Lessee shall be in default, shall survive such termination or cancellation.

Section 2.2 **Option to Extend**. During the period commencing one year prior to the expiration date of this Agreement and ending one hundred twenty (120) days prior to the expiration date of this Agreement ("option period"), Lessee shall have the option to extend the Term of this Agreement for one extended period of twenty (20) years, upon the following terms and conditions:

- a. Lessee shall not be in default of this Agreement during the option period;
- b. Lessee shall deliver to COLV during the option period written notice of its exercise of the option; and

- c. All terms and conditions including rental rates, fees and charges then applicable to this Agreement, shall remain in full force during the extended term(s).

Section 2.3 **Surrender of Possession; Holding Over.** Except as otherwise expressly provided in this Agreement, at the expiration or sooner termination of the Agreement, or any extension hereof, Lessee agrees to surrender possession of Leased Premises and all improvements and fixtures, peacefully and promptly to COLV in as good condition as existed at the effective date of this Agreement, normal wear and tear excepted and all improvements made during the course of any and all Agreement Periods.

If Lessee shall hold over after the termination of this Agreement, COLV may allow Lessee to remain on the Leased Premises as a tenant at will. During such tenancy, Lessee shall continue to pay to COLV fees and charges set forth herein, and Lessee shall be bound by all of the additional provisions of this Agreement.

ARTICLE III **Lessor's Grants; Reservations**

Section 3.1 **Lease, License.**

- a. **Lease.** COLV hereby offers and leases to Lessee, and Lessee hereby accepts and leases from COLV, the Leased Premises for the Term (or any extended Term) of this Agreement, subject to the terms, provisions and conditions herein set forth, for the purposes of storing aircraft and performing activities related to the storage. Lessee accepts the Leased Premises in the condition in which they exist at the commencement of this Agreement.

Section 3.2 **Navigation Easement, Waiver and Release.** COLV reserves the right to take such action as may be necessary to protect the aerial approaches of the Airport against obstruction in accordance with applicable Lessor standards or Governmental Requirements, together with the right to prevent Lessee or any other person from erecting or permitting to be erected any antenna, equipment, building, or other facility or structure on the Airport (other than buildings or facilities to be constructed in compliance with and pursuant to the plans and specifications approved pursuant to Section 5.3 hereof or except with the prior written approval of the Airports Director), which would conflict with such Lessor standards and/or Governmental Requirements. COLV also reserves for itself, Authority and City, and their lessees and licensees, an aviation easement in, over and across the airspace above the Leased Premises and the unrestricted right to subject the Leased Premises to such Airport noise and vibration as may result from the flight of aircraft, warm up of engines, testing of engines or motors and other aviation related activities.

LESSEE SHALL WAIVE AND RELEASE ANY RIGHT OR CAUSE OF ACTION WHICH LESSEE MAY NOW HAVE OR MAY HAVE IN THE FUTURE AGAINST COLV, AUTHORITY OR CITY ON ACCOUNT OF OR ARISING OUT OF NOISE, VIBRATIONS, FUMES, DUST, FUEL, PARTICLES AND OTHER EFFECTS THAT MAY BE CAUSED OR MAY HAVE BEEN CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT OR TAKING OFF FROM OR OPERATING AT OR ON THE AIRPORT OR IN AND NEAR THE AIRSPACE ABOVE THE LEASED PREMISES.

Lessee shall (a) not allow any tree or other vegetation to remain on the Leased Premises which encroaches upon or extends into the prohibited airspace or rights-of-way of the Airport; (b) use, permit or suffer the use of the Leased Premises in such a manner as to create electrical interferences with radio communication to or from any aircraft or between any airport installation and any aircraft, or as to make it difficult for aircraft pilots to distinguish between airport lights or as to impair visibility in the vicinity of the Airport, or to otherwise endanger the landing, taking off or maneuvering of aircraft; (c) not permit the construction of any facility or improvement which attracts or results in the concentration of birds which would interfere with the safe operation of aircraft in the airspace above the Leased Premises and at the Airport; and (d) not cause or permit any change in authorized land use hereunder that will reduce the compatibility of the noise compatibility program measures upon which Federal funds have been expended.

Airspace means for the purposes of this Section, any space above the ground level of the Leased Premises. Aircraft means for the purposes of this Section, any contrivance now known or hereafter invented, used or designed for navigation or flight in the air or space, regardless of the form of propulsion, which powers said aircraft in flight. It is understood and agreed that the covenants and agreements in this section shall run with the land.

Section 3.3 **Reservation of Mineral Rights.** COLV reserves all right, title and interest in and to all minerals in, on or under the Leased Premises. Lessee shall not engage in any mining or drilling activities in, on or under the Leased Premises during the Term of this Agreement. "Minerals" as used herein shall mean all mineral substances, including water and deposits whether solid, gaseous, or liquid.

Section 3.4 **Title to Existing Improvements.** Title to all improvements which have been made to the Leased Premises by Lessee during the term of this agreement shall be and remain in Lessee during the Term and any extended term of this Agreement.

Section 3.5 **Quiet Enjoyment.** COLV MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LEASED PREMISES OR THAT THEY WILL BE SUITABLE FOR LESSEE'S PURPOSES AND NEEDS. **BE IT FURTHER PROVIDED**, that COLV reserves the right to further develop, improve, rehabilitate, repair, reconstruct, alter and expand the Airport and all roadways, parking areas, terminal facilities, runways, taxiways and other aircraft operating areas as it may reasonably see fit, free from any and all liability to Lessee for loss of business or damages of any

nature whatsoever to Lessee occasioned during the making of such improvements, repairs, alterations, reconstructions and additions to the Airport.

Section 3.6 **No Joint Venture or Partnership.** This Agreement shall not be deemed or construed (a) to create any relationship of joint venture or partnership between COLV and Lessee, (b) to give COLV any interest in the business of Lessee, or (c) to grant to Lessee any powers as an agent or representative of COLV, the Authority, or the City for any purpose or to bind COLV, the Authority, or the City.

ARTICLE IV

Use

Section 4.1 **Use of Leased Premises.** Lessee shall be entitled to use the Leased Premises for all lawful purposes which Lessee is specifically authorized to conduct pursuant to this Agreement. Lessee, its representatives, agents and invitees, shall have the right, in common with others, of ingress and egress to and from the Leased Premises. COLV and the Authority reserve the right to close any means of ingress and egress, so long as other reasonable means of ingress and egress to the Leased Premises are available to Lessee.

Section 4.2 **General Use of the Airport.** Subject to terms, conditions and covenants of this Agreement, Lessee shall be entitled to use, on a "non-exclusive" basis, public areas of the Airport and the runways, taxiways, aprons, lighting, navigation aids, and other facilities necessary for the operation of aircraft.

Section 4.3 **Security Plan.** At its sole cost and expense, Lessee shall comply with the Airport security plan. Lessee shall require all persons entering the Leased Premises to comply with the Airport security plan and the Airport rules and regulations established by the Authority.

ARTICLE V

Premise Improvements

Section 5.1 **Title.** Lessee shall be entitled to construct new improvements to the Leased Premises and to use them in a manner consistent with the law and the applicable regulations. Title to all improvements constructed by Lessee shall be and remain in Lessee during the Term of this Agreement and any extended period. Upon termination of this Agreement, all improvements are to remain and will become the sole property of the COLV. Upon termination of this Agreement the COLV will take title to all of the improvements, free and clear of all right, title and interest of Lessee, or COLV may, at its option, cause the improvements to be removed and Leased Premises restored at the expense of Lessee.

Section 5.2 **Plans / Specifications.**

- a. All plans and specifications for new improvements on the Leased Premises shall be

prepared by Lessee in compliance with all Governmental Requirements. Lessee shall furnish to COLV copies of permits and licenses needed for construction. A construction application, in a form prepared by Authority, and plans and specifications shall be submitted by Lessee to COLV for approval. Thereafter, COLV shall have fourteen (14) days after receipt within which to approve the plans and specifications, or to notify Lessee of any objections thereto. Each objection and the grounds therefore shall be stated separately.

Lessee shall have a reasonable time thereafter within which to make any revisions to the plans and specifications to remove COLV's objections. Upon COLV's receipt of the final plans and specifications, COLV shall have thirty (30) days within which to approve or reject Lessee's revised proposal. After COLV's approval of the final plans and specifications, Lessee may proceed with construction. Construction shall be substantially in accordance with the approved plans and specifications.

Section 5.3 **Effect of New Improvements.** Construction of new improvements on the Leased Premises shall not be permitted to adversely affect existing improvements, other Airport tenants, Airport property or other property contiguous to the Airport.

Section 5.4 **Removal and Ownership of Airport Structures on Leased Premises.** Lessee may not remove or otherwise alter any improvement to the Leased Premises owned by the COLV or the City without prior written consent of COLV. Lessee may request permission, in writing, to remove or alter such improvements. Within thirty (30) days of receipt of such written request, COLV shall notify Lessee of either the rejection or approval of the request. Ownership and title to all improvements removed from or altered on the Leased Premises shall remain in COLV and the City. Removal, storage, maintenance, transportation and disposal of the improvements shall be made at Lessee's sole cost.

Section 5.5 **Fences and Gates.** If any part of the Leased Premises, or the improvements thereon, are enclosed within the secure area ("the Security Line") of the Airport, Lessee shall provide all materials and labor, at its sole cost, necessary to comply with the Airport Security Plan and TSA Section 49 CFR Part 1542 (Airport Security). Lessee shall pay for the cost of all additional gates or doors required for access by Lessee and its employees, business invitees, or others from the landside of the Airport to the airside of the Airport through the Security Line. At all security gates or doors on the Leased Premises, Lessee shall install an entry card system approved by the Authority pursuant to the Airport Security Plan submitted to and approved by the FAA. Any alteration of the communication devices or entry card system, which may be necessitated by a change in Authority or FAA requirements shall be made at the expense of Lessee.

Section 5.6 **Weight Limitations.** Lessee hereby specifically acknowledges that the roadways, taxi lanes, taxiways, ramps and aprons located on the Airport wherein the Leased Premises are located are stressed for maximum gross weights. Lessee shall be responsible for all damage or destruction caused by utilization of Airport roadways, taxi lanes, taxiways, ramps and

aprons by aircraft or vehicles operated by Lessee.

Section 5.7 **No Liens or Encumbrances**. Operator shall well, truly and promptly pay or satisfy just and equitable claims of all persons who have performed labor or furnished material by it or on its behalf for construction of any improvements required under this Agreement and all bills, costs or claims of whatever kind, which may at law or equity become a lien upon said work, or a claim against the Leased Premises; provided, however, that Operator may contest the amount or validity of any claim without being in default of this Agreement upon furnishing security satisfactory to Counsel for COLV, guaranteeing such claim will be properly discharged forthwith if such contest is finally determined against Operator.

ARTICLE VI **Rentals, Charges**

Section 6.1 **Rentals, Initial Period**. During the first five years of the Term, Lessee shall pay to COLV an annual rental for the Leased Premises (Land and rentals) of eighteen hundred Dollars (\$1,800.00) Dollars, paid annually upon receiving from COLV a signed invoice consistent with the terms set in this Agreement. The Leased Premises contain an area sufficient to build a hangar approximately 80 ft. by 80 ft. with a taxiway entrance from the front and the back. The first installment shall be paid by Lessee on or before the commencement date hereof, and all subsequent installments shall be paid in advance on or before the first day of each succeeding year. Lessee shall pay a pro rata amount for any partial year possession of the Leased Premises. At the sole option of the Lessee, Lessee may pay, in advance, a sum equal to all or part of the lease amount due under the terms of this Lease.

Section 6.2. **Rentals, Subsequent Periods**. Commencing on the 1st day of September, 2020, [5 years after commencement] and thereafter on the commencement of each five (5) year period of the Term or any extended Term hereof, COLV shall have the option to increase the annual rental rate but not to exceed the most recent January Consumer Price Index or four (4) % per annum, whichever is greater. The calculations shall take place every year.

Section 6.3 **No Decrease in Land Rental Lease Rate**. The rentals for any succeeding rental period shall not be, in any event, less than the lease rate established for the preceding rental period. The rentals so determined shall be payable in the same manner as set forth in this Article.

Section 6.4 **Lease Contingent Upon Payment**. The grant of the rights, facilities, services and privileges to Lessee under this Agreement, in each case shall be subject to the full and timely payment of the rentals, fees and charges required to be paid by Lessee hereunder.

Section 6.5 **Landlord's Lien**. COLV shall have the first lien, paramount to all others, on every right and interest of Lessee in this Agreement, on all improvements, equipment and fixtures to the Leased Premises. The lien is granted for the purpose of securing the payment of rentals, fees, charges, taxes, assessments, liens, penalties and damages herein covenanted to be

paid by Lessee, and for the purpose of securing the performance, all and singular, of the covenants, conditions and obligations of this Agreement to be performed and observed by Lessee.

Section 6.6 **Utility Service**. At its own expense, Lessee shall be responsible for the installation, relocation, modification and maintenance of all utility services on the Leased Premises. This shall include any janitorial services, power, gas, telephone, electricity, heating, water, sewer and all other utility services not specifically enumerated. Lessee shall pay as the same becomes due, all utility and other charges incurred in the operation, maintenance, use, occupancy, repair and upkeep of the Leased Premises and the improvements located thereon.

Section 6.7. Hangar Related Expenses. Lessee shall pay all costs related to demolition, relocation, modifications at the taxiway entrance from the front and the back of the hangar.

**ARTICLE
VII**

Maintenance and Care of Leased Premises

Section 7.1 **Maintenance and Care of Leased Premises**. Lessee shall perform the regular maintenance, including but not limited to, all repairs relative to heating, electrical, plumbing and air conditioning systems; roofs; walls; structure; structural improvements; paving; and the ramp on the Leased Premises. Lessee, at all times, shall keep in a clean and orderly condition and appearance all the Leased Premises and all of Lessee's fixtures, equipment and personal property which are located thereon. Lessee shall not commit or suffer to be committed any nuisance on the Leased Premises. Lessee shall conduct its operations in an orderly and proper manner so as not to annoy, disturb, or be offensive to others at the Airport. Lessee shall not permit the accumulation of any rubbish, trash or other waste material. Except in tanks and in the manner approved by appropriate governmental authorities, Lessee shall not store any gasoline or other material likely to give off fumes or gases or any material likely to constitute a fire, safety or security hazard on the Leased Premises. Lessee shall not cause or permit any hazardous or flammable substance to be used, stored, generated or disposed of on the Airport or Leased Premises, except as otherwise provided herein.

ARTICLE VIII

Indemnity

Section 8.1 **Indemnity - General.** Lessee shall indemnify, protect, defend and hold completely harmless, COLV, officers, councilors, agents and employees from and against all liability, losses, suits, claims, judgments, fines or demands arising from injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of Lessee's use or occupancy of the Leased Premises, unless the incident resulted from the negligence or misconduct of COLV. COLV shall give notice to Lessee of any such liability, loss, suit, claim or demand, and Lessee shall defend the same using counsel reasonably acceptable to COLV. The provisions of this section shall survive the expiration or early termination of this Agreement. The COLV shall be named as an additional insured on the Lessee's liability insurance policy.

Section 8.2 **Regulated Substance Compliance and Indemnity.** Lessee shall not cause or permit any "Regulated Substance" as hereinafter defined, to be brought upon, generated, stored, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees, except for such Regulated Substance of the type and quantity as is necessary to Lessee's business and with prior written notice to COLV. Any Regulated Substance permitted on the Leased Premises as provided herein, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to this Regulated Substance.

Lessee shall not cause or permit, release, discharge, leak, or emit, nor permit to be discharged, leaked, released, or emitted, any Regulated Substance into the atmosphere, ground, storm or sewer system, or any body of water, ditch, stream, if that Regulated Substance (as is reasonably determined by COLV, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Leased Premises or elsewhere, or (b) the condition, use or enjoyment of the building, facilities or any other real or personal property. Lessee shall fully and timely comply with all applicable federal, state and local statutes, ordinances and regulations relating to protection of the environment, including, without limitation, 42 U.S.C. § 6991-6991i.

a. **Disclosure.** At the commencement of each year of the term hereof, Lessee shall disclose to COLV the names and approximate amounts of all Regulated Substance that Lessee intends to store, use, or dispose of on the Leased Premises in the first year of the Term hereof. In addition, at the commencement of each additional year of the Term hereof, beginning with the second year, Lessee shall disclose to COLV the names and amounts of all Regulated Substances that were actually used, stored, or disposed of on the Leased Premises if those materials were not previously identified to COLV at the commencement of the previous lease year.

b. Compliance Action. Lessee shall, at Lessee's sole expense, clean-up, remove, and remediate (1) any Regulated Substances in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations, and (2) all contaminants and pollutants, in, on, or under the Leased Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be moved, cleaned up, or remediated by any applicable federal, state, or local law, regulation, standard or order. This obligation does not apply to a release of Regulated Substances, pollutants, contaminants, or petroleum products that existed on the Leased Premises prior to the execution of the agreement caused solely by the act or omission of the Authority or a third party for whom the operator is not responsible (e.g. not a customer, invitee, employee, agent, or person having any lease related relationship with Lessee).

c. Definition of Regulated Substances. Regulated Substances: As used herein, the term "Regulated Substances" means and includes any and all substances, chemicals, waste, sewage or other materials, which are now or hereafter regulated, controlled or prohibited by any local, state, or federal law or regulation requiring removal, warning or restrictions on the use, generation, disposal or transportation thereof, including, without limitation (a) any substance defined as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", or "air pollutant" in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 et seq., The Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §1801 et seq., The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., Federal Water Pollution Control Act (FWPC), 33 U.S. §1251 et seq., or the Clean Air Act (CAA), 42 U.S.C. 7401 et seq., all as amended and amended hereafter; (b) any substance defined as a "hazardous substance", "hazardous waste", "toxic substance", "extremely hazardous waste", "RCRA hazardous waste", "waste", "hazardous material" or "controlled industrial waste" (c) any Regulated Substance, hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical, or compound described in any other federal, state, or local statute, ordinance, code, rule, regulation, order, decree, or other law now or at any time hereafter in effect, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous substance, chemical, material, compound or waste. As used herein, the term Regulated Substance or "hazardous substances" also means and includes, without limitation, asbestos, flammable, explosive or radioactive materials; gasoline; oil; motor oil; waste oil; petroleum (including without limitation, crude oil, or any fraction thereof); petroleum based products; paints and solvents; leads; cyanide; DDT; printing inks; acids; pesticides; ammonium compounds; polychlorobiphenyls; and other regulated chemical products.

d. Indemnity Noncompliance/Notice of Violation. Lessee hereby fully agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Regulated Substances kept on the Leased Premises by Lessee, and the Lessee shall give immediate notice to COLV of any violation or potential violation of the provisions hereof. Without limiting any provisions of this Agreement, Lessee shall defend, indemnify, and hold harmless COLV, the Authority, the City, and their trustees, councilors, officers, agents, and employees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultants' fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of

or in any way related to (a) any liabilities, damages, suits, penalties, judgments and environmental cleanup, removal, response, assessment, or remediation costs, arising from actual, threatened or alleged contamination of the Leased Premises; (b) the presence, disposal, release, or threatened release of any such Regulated Substance that is on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to that Regulated Substance; (d) any lawsuit brought or threatened, settlement reached, or government order relating to that Regulated Substance; or (e) any violation of any laws applicable thereto. The provisions hereof shall be in addition to any other obligations and liabilities Lessee may have to COLV at law or equity and shall survive the transactions contemplated herein and shall survive the termination or expiration of this Agreement.

Section 8.3 **Survival of Provisions.** The terms, conditions, provisions and requirements of this Article VIII shall survive the expiration or earlier termination of this Agreement.

ARTICLE IX **Governmental Requirements**

Section 9.1 **Governmental Requirements - General.** Lessee shall substantially comply with all Governmental Requirements applicable to Lessee's use of the Airport and operation/utilization of the Leased Premises and improvements thereon. Lessee shall also require its guests and invitees, to comply with all applicable Governmental Requirements and COLV requirements.

Section 9.2 **No Liability for Exercise of Powers.** COLV shall not be liable to Lessee for any diminution or deprivation of its rights which may result from the proper exercise of any power reserved to COLV in this Agreement. Lessee shall not be entitled to terminate this Agreement by reason thereof, unless the exercise of such power shall interfere with Lessee's rights hereunder so as to constitute a termination of this Agreement by operation of law.

Section 9.3 **Nondiscrimination.** Lessee, as a part of the consideration hereof, does covenant and agree hereby, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall remain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 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), Part 23, (Participation by Minority Business Enterprises and DOT Programs) and Part 27 (Nondiscrimination on Basis of Handicap and Programs and Activities Receiving or Benefiting from Federal Assistance) and the regulations promulgated there under or may hereafter be amended.

Lessee, and its 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) no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities on the grounds of race, color, creed, national origin, or handicap, (2) in the construction of any improvements on, over or under such land, and the furnishings of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, on the grounds of race, color, creed, national origin, or handicap, (3) Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 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), Part 23, (Participation by Minority Business Enterprises and DOT Programs) and Part 27 (Nondiscrimination on Basis of Handicap and Programs and Activities Receiving or Benefiting from Federal Assistance) and the regulations promulgated thereunder or may hereafter be amended.

Section 9.4 **Taxes, Fees, Levies, Assessments, Fines and or Governmental Charges.** Lessee shall pay, as the same become due, all taxes, fees levies, assessments, fines/or and governmental charges of any kind whatsoever that at any time lawfully may be assessed or levied against or with respect to Lessee's improvements, machinery, equipment or other property installed or used upon the Airport, including any ad valorem or personal property tax that may be assessed against any leasehold interest or estate created by this Agreement. In good faith, with due diligence, as permitted by law, Lessee may contest any such taxes, fees levies, assessments, fines or governmental charges.

Section 9.5 **Domestication.** If Lessee is a foreign corporation (out of state corporation), it shall domesticate (be qualified to do business within New Mexico) its corporate status within the State of New Mexico. Lessee shall obtain a certificate of good standing from the Secretary of the State of New Mexico and provide to COLV such evidence of good standing as COLV from time to time reasonably may require.

Section 9.6 **ADA Compliance.** Lessee shall take the necessary actions to ensure its facilities and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Any costs of such compliance shall be the sole responsibility of Lessee.

ARTICLE X

Events of Default

Section 10.1 **Events of Default Defined/Cure.** The following shall be "events of default" under this Agreement, and the terms "events of default" or "default" shall mean, whenever they are used herein, any one or more of the following:

- a. Lessee shall fail to pay when due and owing any rentals, fees or charges payable hereunder and such nonpayment shall continue for sixty (60) days after written notice thereof by COLV;

- b. Lessee shall (1) mortgage, pledge or encumber, any portion of its interest in this Agreement; (2) subject the Leased Premises to any lien of whatsoever nature, or (3) transfer, sublease or assign, either voluntarily or by operation of law, any portion of its interest in this Agreement, except in accordance with the provisions hereof;
- c. Lessee shall terminate its corporate structure, except as permitted herein;
- d. Lessee shall abandon, desert, or vacate the Leased Premises voluntarily;
- e. Lessee shall breach any term, provision, condition, obligation or covenant under this or any other agreement to which Lessee and COLV, Lessee and the Authority, or Lessee and City are parties; or

If Lessee commits an event of default as set forth in Subsections 10.1(b) through (e) hereof, and such failure shall continue un-remedied for sixty (60) days after COLV shall have given to the Lessee written notice specifying such default; then COLV may proceed without further notice in accordance with Section 10.2 of this Agreement, unless an additional time period to remedy the defaults is requested by the Lessee and approved by the COLV.

Section 10.2 **Remedies Upon Lessee's Default and Failure to Cure**. Whenever an event of default of Lessee shall occur, and upon Lessee's failure to cure, COLV may pursue any available right or remedy at law or equity, including:

- a. **Termination**. After the sixty (60) day default period expires, the COLV will terminate this Agreement with notice to Lessee. COLV shall deliver to Lessee written notice of termination, specifying the date upon which the Agreement will terminate. Lessee's rights to possession of the Leased Premises shall cease immediately. COLV may then reenter and take possession of the Leased Premises and Lessee forthwith shall surrender possession of the Leased Premises.
- b. **Non-termination**. As an alternative remedy upon Lessee's default, COLV may elect not to terminate this Agreement in which event the Lessee shall continue to perform all conditions and obligations to be performed by Lessee hereunder, notwithstanding any entry or reentry by COLV, or commencement of any suit in unlawful detainer or other action brought by COLV for the purpose of effecting such entry or reentry or obtaining possession of the Leased Premises.
- c. **Release of Liability; Waiver**. If COLV takes possession of the Leased Premises upon Lessee's default, COLV may expel Lessee and those claiming through or under Lessee and remove their property (materials, tools etc. exclusive of permanent improvements attached to the building and outside improvements such as concrete pads etc.) COLV may remove all Lessee's property in or upon the leased premises and place such property in storage for the account of and at the expense of Lessee.

Section 10.3 **Nonwaiver**. Neither the waiver by COLV of any breach by Lessee of any provision hereof nor any forbearance by COLV to seek a remedy for any such breach shall operate as a waiver of any other breach by Lessee.

Section 10.4 **Event of Default by COLV, Lessee's Remedies**. COLV shall not be in default in the performance of any of its obligations hereunder until COLV shall have failed to perform such obligations for sixty (60) days or such additional time as is reasonably required to correct any such non-performance, after notice by Lessee to COLV specifying wherein COLV has failed to perform any such obligations.

ARTICLE XI
Transfer of Interests

Section 11.1 **Assignments by COLV and the City**. COLV shall transfer or assign this Agreement in its entirety to any successor in interest to whom the Airport may be sold or assigned; however, the successor in interest shall execute and deliver to COLV, with a copy to Lessee, an instrument assuming the obligations of COLV under this Agreement.

Section 11.2 **Assigning, Subletting and Encumbering**

a. Lessee shall not assign, sublet or encumber the Leased Premises or any part thereof, including improvements thereon, without COLV's prior written consent.

ARTICLE XII
Miscellaneous

Section 12.1 **Notices**. All notices, certificates, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations or other communication which may be or are required to be given by either party thereto to the other shall be deemed to have been sufficiently given on the third day following the day on which the same are mailed by registered or certified mail, postage prepaid as follows, if to COLV:

Office of the Mayor of the City of Las Vegas, NM
1700 North Grand Avenue, Las Vegas, New Mexico 87701
Phone 505 454 1401

and if to Lessee:

Neva LLC _____
296 Woodward Blvd. _____
Tulsa, OK 71114 _____

COLV, or the Lessee may designate, by notice given hereunder, any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.2 **Severability**. In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless such holding shall materially affect the rights of either party as set forth herein.

Section 12.3 **Entire Agreement; Modification**. This Agreement expresses the entire understanding of COLV and Lessee concerning the Leased Premises and all agreements of COLV and Lessee with each other concerning the subject matter hereof and supersedes all prior agreements of the parties as to the Leased Premises. Neither COLV nor Lessee has made or shall be bound by any agreement or any representation to the other concerning the Leased Premises or the subject matter hereof which is not set forth expressly in this Agreement. This Agreement may be modified only by a written agreement of subsequent date hereto signed by COLV and Lessee.

Section 12.4 **Execution of Counterparts**. This Agreement simultaneously may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.5 **Effect of Saturdays, Sundays and Legal Holidays**. Whenever this Agreement requires any action to be taken on a Saturday, Sunday or a legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Agreement, the time within which any action is required to be taken, or within which any right will lapse or expire, shall terminate on Saturday, Sunday or a legal holiday, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

Section 12.6 **Descriptive Headings; Table of Contents**. The descriptive headings of the Sections of this Agreement and any Table of Contents annexed hereto are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning, construction, interpretation or effect of this Agreement.

Section 12.7 **Choice of Law; Enforcement**. This Agreement shall be construed and enforced in accordance with the laws of the State of New Mexico. Whenever in this Agreement it is provided that either party shall make any payment or perform, or refrain from performing, any act or obligation, each such provision, even though not so expressed, shall be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

Section 12.8 **Force Majeure**. Neither COLV nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of embargoes, shortages or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or which are not within its control, and the time for performance automatically shall be extended by the period the party is prevented from performing its obligations hereunder; however, these provisions shall not apply to the failure of Lessee to pay the rentals and other charges required hereunder.

Section 12.09 **Waiver of Depreciation and Tax Credit.** Neither Lessee nor any successor in interest hereunder may claim depreciation or an investment tax credit with respect to property leased by COLV to Lessee under this Agreement.

Section 12.10 **Recovery of Attorney's Fees and Costs.** If COLV shall bring any legal or equitable action against Lessee, and COLV shall be adjudged the prevailing party, Lessee shall pay the reasonable attorney's fee and costs incurred by COLV in such action and any appeal therefrom. For purposes of this section, "costs" shall include expert witness fees, court reporter fees, and court costs. The above same shall apply to Lessee in the event that an action is brought against COLV by the Lessee.

Section 12.11 **Nonwaiver of Rights.** No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

Section 12.12 **Time of the Essence.** Time is expressed and acknowledged to be of the essence of the Agreement.

Section 12.13 **Nonliability of Individuals/Public Officials.** Neither the Trustees of COLV, Authority and City, nor any agent, representative, officer, or employee thereof, shall be charged personally by the Lessee with any liability, or be held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, attempted or alleged, thereof, it being understood that in such matters they act only as agents or representative of COLV, Authority or City.

Section 12.14 **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon COLV, Lessee and their respective successors and assigns, if such assignment shall have been made in conformity with the provisions of this Agreement.

IN WITNESS WHEREOF, COLV and Lessee have entered into this Agreement at _____ on the __ day of _____, to commence on the _____ day of _____.

City of Las Vegas New Mexico
By: _____
Alfonso E. Ortiz, Jr., Mayor

Elmer J. Martinez, City Manager

Neva, LLC
By: _____
Paul Lewicki, Chairman

Approved As To Legal Sufficiency Only:

Dave Romero, Jr., City Attorney

Exhibit A

