

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: October 10, 2023

PUBLIC HEARING DATE:

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: 3

STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: N/A

SUBJECT:

That the City Manager be authorized to execute an Incentive Agreement by and between the City of El Paso and Hiller Measurements, Inc. a Texas Corporation, providing \$1,232,000 in support of the establishment of a Proteus Design Center at the Innovation Factory located at the El Paso International Airport; which will provide student internship opportunities and support the use of industry-leading tools to grow the industries of aeronautics, defense, telecommunications, and power storage.

BACKGROUND / DISCUSSION:

On February 7, 2023 Council approved a resolution authorizing the Director of Economic Development to create a policy to use the appropriated Coronavirus State and Local Fiscal Recovery Funds to assist small businesses with the payment of rents and related expenses at the El Paso International Airport's Innovation Factory. Hiller Measurements is a small business that applied for assistance under the policy established by Economic Development for the use of Coronavirus State and Local Fiscal Recovery Funds and space at the El Paso International Airport's Innovation Factory. Hiller Measurements is a small business that manufactures testing and measuring systems to test critical components for defense and aerospace applications. 95% of Hiller Measurements' work is in support of military defense systems. Hiller's purpose is to ensure that critical components of defense systems work so that "our soldiers come home". Hiller is working to establish at the El Paso International Airport's Innovation Factory the Proteus Design Center which will provide internship and job opportunities to students from the University of Texas at El Paso. Hiller measurements fits the City of El Paso's economic development strategy to make the City of El Paso the center for aerospace, defense, and advanced manufacturing.

PRIOR COUNCIL ACTION:

February 7, 2023 – Resolution authorizing the establishment of a policy for use of Coronavirus State and Local Fiscal Recovery Funds.

AMOUNT AND SOURCE OF FUNDING:

ARPA (\$974,000) and Impact Fund.(\$258,000)

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Sam Rodriguez, Aviation Director



RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute an Incentive Agreement by and between the City of El Paso and Hiller Measurements, Inc. a Texas Corporation, providing \$1,232,000 in support of the establishment of a Proteus Design Center at the Innovation Factory located at the El Paso International Airport; which will provide student internship opportunities and support the use of industry-leading tools to grow the industries of aeronautics, defense, telecommunications, and power storage.

APPROVED this _____ day of _____, 2023.

CITY OF EL PASO:

Oscar Leaser, Mayor

ATTEST:

Laura Prine City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez

Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth K. Triggs, Director

Economic and International Development

THE STATE OF TEXAS

§

INNOVATION FACTORY

§

CHAPTER 380 AGREEMENT

COUNTY OF EL PASO

§

This Agreement (“**Agreement**”) is made this ____ day of _____, **2023** by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**City**”, and the **HILLER MEASUREMENTS, INC.**, a Texas Corporation (“**Applicant**”).

RECITALS

WHEREAS, on May 9th 2022 the City Council appropriated American Rescue Plan Act (“**ARPA**”) funds to be used by the City in accordance with the requirements stipulated by the Coronavirus State and Local Fiscal Recovery Funds (“**CSLRF**”), ARPA and federal guidelines; and

WHEREAS, on August 1, 2022, the City Council approved a resolution for appropriation of \$3,000,000 in CSLRF funding, to assist impacted or disproportionately impacted small businesses in the manufacturing industry sector in accordance with the requirements stipulated by the ARPA and federal guidelines to cover expenses incurred to respond to and recover from the COVID-19 public health crisis; and

WHEREAS, such funding may be used to provide loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees and mortgage, rent, utility, and other operating costs; and technical assistance, counseling or other services to support business planning; and

WHEREAS, Applicant is a small business that was negatively impacted by COVID; and

WHEREAS, Applicant designs, manufactures, and supports the development of mission-critical test systems, assemblies, and instrumentation for customers in the aerospace and defense markets, and is focused on accelerating innovation and reducing time-to-market for these systems; and

WHEREAS, Applicant desires to establish a Proteus Design Center to enable the custom design of electronic test systems, allowing for iterative development and delivery at least ten times faster than the current industry norm (the “**Project**”, as further described in **Exhibit “A”**); and

WHEREAS, Applicant desires to locate the Project in El Paso to capitalize on and leverage the University of Texas at El Paso’s preeminence in applied aerospace and defense research, and its engineering talent pipeline; and

WHEREAS, the City desires to grow a regional advanced manufacturing industry cluster to supply the aerospace and defense industries, thereby creating quality job opportunities and career pathways for its residents; and

WHEREAS, the City owns a 50,000 square foot incubation and acceleration facility known as the

Innovation Factory, managed by the El Paso International Airport and built for the purpose of incubating advanced manufacturing startups and connecting them to aerospace and defense markets (the “**Innovation Factory**”); and

WHEREAS, the City desires to locate the Applicant at the Innovation Factory, facilitating Applicant’s recovery and growth, providing quality job opportunities and career pathways for residents, connecting advanced manufacturing startups with aerospace and defense markets, and contributing to the growth of a regional advanced manufacturing industry cluster; and

WHEREAS, the City intends to provide the Applicant rental and buildout assistance at the Innovation Factory to further advance the Applicant’s “**Project**”, as further described in **Exhibit “A”**.

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code (“Chapter 380”) to make loans or grants of public funds for the purpose of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City concludes and hereby finds that this Agreement promotes economic development in the City and meets the requirements of Chapter 380.

NOW, THEREFORE, for the consideration set forth in this Agreement and its exhibits, the City and Applicant agree as follows:

SECTION 1. EXHIBITS

The Exhibits listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Exhibit “A”	Project Description
Exhibit “B”	Grant Submittal Package Form
Exhibit “C”	Insurance Certificates / Certifications
Exhibit “D”	Lease

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. “**Agreement**” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.
- B. “**Effective Date**” means the date the El Paso City Council approves the Agreement.
- C. “**Full-Time Employment Position**” means a position hired by the Applicant to staff the Project at the Project site that: (i) requires a minimum of 40 hours per week, including paid time off (or filled less than 40 hours per week if such other measurement is used by Applicant to define “Full-Time Employment” in accordance with its then current personnel policies and regulations, including paid time off); (ii) paid a minimum wage set at prevailing market conditions including eligibility to the employer’s benefits program; and (iii) provides full benefits, inclusive of paid

health insurance wherein applicant pays at least 50 percent of the premium. For purposes of this agreement the minimum wage will be set at prevailing market rates which are currently estimated at \$75,000 per year for engineers and \$40,000 per year for technicians.

- D. **“Grant”** means each quarterly grant paid to the Applicant or to the El Paso International Airport, in accordance with this Agreement.
- E. **“Grant Submittal Package”** means the documentation required to be supplied to City as a condition of receipt of any Grant, with such documentation more fully described in the Grant Submittal Package, which is attached as **Exhibit “B”** to this Agreement.
- F. **“Grant Year”** means a calendar year in which the City is obligated pursuant to this Agreement to pay Applicant a Grant, with the first Grant Year beginning January 1, 2024 and ending December 31, 2024; and the final (or fifth) Grant Year beginning January 1, 2028 and ending December 31, 2028.
- G. **“Innovation Factory Incentive and Lease Policy”** means the policy adopted by the El Paso City Council on February 7, 2023, as may be amended from time-to-time, that contains guidelines on the leasing of space at the Innovation Factory and the provision of incentives to small businesses occupying the Innovation Factory.
- H. **“Median Area Hourly Wage”** means the median hourly wages as determined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics Program for all occupations within the El Paso Metropolitan Statistical Area, as adjusted on January 1st of each applicable Year; provided, however that in no event shall the applicable median hour wage used to calculate the Median Area Hourly Wage be less than the 2022 median hourly wage established for the El Paso Metropolitan Statistical Area, which is \$16.43.
- I. **“Part-Time Internship Position”** means a position requiring 620 hours per year filled by a University of Texas at El Paso graduate or undergraduate student hired by the Applicant to staff the Project at the Project Property. Each Part-Time Internship position shall, at a minimum, be paid the greater of: (i) \$18.00 per hour; or (ii) the prevailing Median Area Hourly Wage for the applicable year during the Agreement Term.

SECTION 3. TERM AND GRANT PERIOD.

- A. **Term.** This Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) the date when the aggregate amount of Grants is paid; (ii) January 1, 2029; (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein; or (iv) termination by mutual consent of the parties in writing (**“Term”**).
- B. **Grant Period.** Applicant’s eligibility for Grant payments shall be limited to **20** consecutive quarters within the Term of this Agreement (the **“Grant Period”**). The first quarter of the Grant Period shall be the first quarter of the 2024 calendar year.

SECTION 4. PROJECT

- A. **Project.** The City hereby agrees to provide Grant assistance to the Applicant and the Applicant

agrees to perform the operations contemplated in the Project. The Project shall be as described in **Exhibit “A”**.

- B. **American Rescue Plan Act Funding.** Applicant acknowledges Grant payments are contingent upon providing transparent and accurate metrics as may be requested by the City in a timely manner. Due to the fact that ARPA funds must be allocated by year end 2024 and expended by year end 2026, time is of the essence in regard to any reporting requirements required to be provided by the Applicant to the City. The City hereby agrees its obligations under this agreement are not contingent upon the eligibility of this project to the ARPA.
- C. **Innovation Factory Incentive and Lease Policy Compliance.** Applicant agrees to comply, at all times, with the Innovation Factory Incentive and Lease Policy, and provide evidence that it was eligible for the Paycheck Protection Program established by the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) and implemented by the Small Business Administration. Applicant understands that failure to comply with the Innovation Factory Incentive & Lease Policy may result in termination of this agreement per Section 7 of this Agreement. Applicant will work with the City and provide any information or documentation reasonably requested by the City necessary for ARPA compliance.

SECTION 5. OBLIGATIONS OF APPLICANT.

- A. **Project.** Applicant agrees it will establish a Proteus Design Center at the Innovation Factory, for component modeling, cable/harness design and electrical design, including an additive manufacturing line, as further described by **Exhibit “A”**, attached hereto.
- B. **Employment Positions.**
 - (1) **Part-Time Internship Program.** Applicant agrees it shall create, staff, and maintain at least **16** Part-Time Internship Positions for the Project during the first Grant Year of the Agreement. Every year thereafter, and through the Term of the Agreement, Applicant agrees that it shall use commercially reasonable efforts to create, staff, and maintain at the Project at least **10** Part-Time Internship Positions (the “**Internship Goal**”). If Applicant fails to meet the Internship Goal, such event will not constitute a default hereunder and will not cause the amount of the Grants to which Applicant is entitled under this Agreement to be reduced. The City acknowledges that Applicant’s part time employment pipeline under Section 5 are contingent on the availability of interns from the University of Texas at El Paso, therefore there is no event of default if Applicant is unable to fill any part time employment requirements due to a shortage in qualified applicants from UTEP.
 - (2) **Full-Time Employment.** The parties understand that the success of the Project is contingent on the number of qualified students. Applicant agrees, it shall create and staff at least 2 Full-Time Employment Positions for the Project. The Applicant will fill these positions no later than January 1, 2027 and will maintain these positions through grant year 5. The parties understand that the number of 2 Full Time Employment positions is the minimum staffing requirement to operate the Project. The applicant will document its efforts to hire full time employees as part of the Project. The applicant will use its best efforts to hire 7 or more Full Time employees, however, hiring 7 or more full time employees is not an Applicant requirement under this Agreement.

C. **Grant Submittal Package.** In order to receive Grant disbursements, the Applicant must submit a Grant Submittal Package on a quarterly basis which shall be in the form provided in the attached **Exhibit “B”**, together with requisite documentation, and as further specified below.

- (1) Applicant shall submit the Grant Submittal Package by the **20th** of the month following the quarter for which Grant disbursement is requested. Each Grant Submittal Package will cover the preceding quarter’s activities, with the exception that the first Grant Submittal Package submitted under this Agreement shall cover the preceding quarter’s activities in addition to the activities undertaken from the Effective Date through December 31, 2023.
- (2) There will be a total of 20 Grant Submittal Packages due during the Agreement Term. All Grant Submittal Packages shall be submitted in a form reasonably satisfactory to the City and shall provide appropriate back-up for the City to verify compliance with the terms of the Agreement, including, but not limited to, the number of Part-Time Internship Positions and Full-Time Employment Positions created and whether those positions are filled by University of Texas at El Paso students or graduates, as applicable. Documentation for positions may be in the form of quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show hours worked and positions filled; and for the purposes of quarterly reporting, positions created, staffed, and maintained shall be as of the 15th day of each applicable quarter during the Agreement Term. The City’s determination of the amount of the Grant payment due to the Applicant is final.

SECTION 6. OBLIGATIONS OF THE CITY.

A. Quarterly grants in the form of subsidies or reimbursements shall be provided to the Applicant so long as Applicant is in compliance with the Agreement, on a quarterly basis under the terms of the Economic Development Agreement; the amount and form of each Grant shall be computed as follows:

- (1) **Grants during Grant Years 1 through 3.** Grant disbursements during the first, second and third Grant Years shall be provided by the City for the benefit of Applicant as follows: (i) a 100 percent subsidy of the rent and associated expenses, including utilities, for the lease of the Project site at the Innovation Factory paid by the City to the El Paso International Airport in accordance with the Lease Agreement, attached as **Exhibit “D”**(the “**Rent Subsidy**”); (ii) a 100 percent reimbursement for Part-Time Internship Position payroll costs, paid by the City to Applicant for the time-period covered by the Grant Submittal Package (the “**Intern Program Reimbursement**”); and (iii) reimbursement for Project operating expenses including but not limited to equipment, software, and training paid by the City to Applicant for the time period covered by the Grant Submittal Package (the “**Operations Reimbursement**”). In addition to the Grant components described above, the first Grant due under this Agreement shall include a 100 subsidy for tenant improvements required for the Project site at the Innovation Factory paid by the City to the El Paso International Airport in accordance with the Lease Agreement (the “**Tenant Improvement Subsidy**”). For the purposes of this Agreement, the aggregate Grant payments during the first, second and third Grant Years will not exceed \$974,000.
- (2) **Grants during Grant Years 4 and 5.** Provided the applicant meets the requirements as provided in Section 5 of this agreement above, Grant disbursements during fourth and fifth

Grant Years shall be provided by the City for the benefit of Applicant in the form of a 100 percent subsidy of the rent and associated expenses, including utilities, for the lease of the Project Property, paid by the City to the El Paso International Airport in accordance with the Lease Agreement for the purpose of applicant continuing to operate the Project as described in Section 5 and Exhibit A of this Agreement at the Project Property. For the purposes of this Agreement, the aggregate Grant payments during the fourth and fifth Grant Years will not exceed \$258,000.

- B. **Payment Priorities.** Grant disbursements during Grant Years 1 through 5 shall be applied to subsidies or reimbursements in the following order of priority: (i) Rent Subsidy; (ii) Tenant Improvement Subsidy, if applicable; (iii) Intern Program Reimbursement; and (iv) Operations Reimbursement.

SECTION 7. TERMINATION

- A. **TERMINATION.** This Agreement may be terminated as provided herein.

- (1) **TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Applicant and City that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **30** consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the City retains the right to immediately terminate this Agreement for default if the Applicant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement.
- (2) **TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement. With the exception of applicant's indemnification obligations described in Section 8(B) which are uncapped and the obligations under Section 9(B) (False Statements) and Section 10 (Recapture), the applicant's liability for breach of this agreement is limited to the prorated amount of tenant improvement allowance which is \$125,000 over 5 years.

SECTION 8. INSURANCE AND INDEMNIFICATION

- A. **INSURANCE.** The Applicant shall procure and maintain insurance coverage as required herein and attached in **Exhibit "C"**. Applicant shall not commence work under this Agreement until the Applicant has obtained the required insurance and such insurance has been approved by the City. The Applicant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

- (1) **WORKERS' COMPENSATION INSURANCE.** The Applicant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Applicant's employees to be engaged in work under this Agreement. The Applicant shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

- (2) **COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Applicant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Applicant and the Applicant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Applicant or by anyone directly or indirectly employed by the Applicant. The minimum limits of liability and coverages shall be as follows:

- a) **Commercial General Liability**
\$1,000,000.00 Per Occurrence
\$1,000,000.00 Personal Injury
- b) **AUTOMOBILE LIABILITY Combined Single Limit**
\$1,000,000.00 per accident

- (3) **OWNER AS ADDITIONAL INSURED.** The City shall be named as an Additional Insured on all of the Applicant's Insurance Policies, with the exception of Workers' Compensation required by this Agreement.
- (4) **PROOF OF INSURANCE.** The Applicant shall furnish certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement. Electronic versions of the various policies including riders and exclusions will be forwarded to City within 30 days of execution of this Agreement.
- (5) **GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Exhibit "C"**. All certificates shall also include the name of the project on the corresponding insurance certificate.

B. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, APPLICANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND CITY, AND CITY'S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES

(INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF CONSULTANTS, SUBCONSULTANTS, VENDORS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR, VENDOR, OR SUPPLIER COMMITTED BY APPLICANT OR APPLICANT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE APPLICANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY'S INDEPENDENT PROJECT MANAGERS. TO THE EXTENT ALLOWED BY STATE LAW, THE CITY WILL BE RESPONSIBLE FOR ITS OWN ACTIONS.

SECTION 9. EVENTS OF DEFAULT.

Each of the following Paragraphs A through D shall constitute an Event of Default:

- A. **FAILURE TO COMPLY.** Applicant's failure to comply with, or to perform any obligation or condition of this Agreement or in any related documents, or Applicant's failure to comply with or to perform any obligation or condition of any other agreement between the City and Applicant.
- B. **FALSE STATEMENTS.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such representation or statement within 30 days after Applicant learns of its false or misleading nature.
- C. **INSOLVENCY.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant.
- D. **PROPERTY TAXES.** If Applicant allows its personal or real property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within 30 days after written notice thereof from the City and/or El Paso Central Appraisal District.
- E. **NOTICE AND OPPORTUNITY TO CURE.** If an Event of Default occurs, the City will provide Applicant with written notice of the default and Applicant shall have 30 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion, shall determine what constitutes "a reasonable time" and what constitutes "a diligent effort" for purposes of this provision. If the City agrees to extend the Cure Period past the 30 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.

- F. **FAILURE TO CURE.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City's obligations hereunder will end and the City may exercise any other right or remedy available at law or in equity.

SECTION 10. RECAPTURE.

In the event that applicant is determined to have made false statements regarding its eligibility for the Paycheck Protection Program established by the CARES Act and implemented by the Small Business Administration, then all grants previously provided by the City pursuant to this Agreement shall be recaptured and repaid by applicant within 30 days from the date of such termination.

SECTION 11. GENERAL PROVISIONS

- A. **CONTRACT TIME.** Applicant understands and agrees to conduct the Project as expeditiously as is prudent and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Exhibit "A"**.
- B. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Applicant records subject to audit shall include records which are supporting the Applicant's eligibility to receive Grant payments under this Agreement and shall be open to inspection and subject to audit and/or reproduction by City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Applicant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Applicant's records have been generated from computerized data, Applicant agrees to provide City's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The City or its designee shall be entitled, at its expense, to audit all of the Applicant's records related to this Project, and shall be allowed to interview any of the Applicant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law or the additional Terms and Conditions referred to in Section 7.2 above. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times (limited to Applicant's office hours) and places upon reasonable notice.

- C. **CONTRACTING INFORMATION.** The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the

records retention requirements applicable to the City.

- D. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the City and the Applicant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- E. **VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- F. **GOVERNING LAW.** The Applicant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.
- G. **CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.
- H. **CONFLICTING PROVISIONS.** Any provision contained in any Exhibits to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- I. **ENTIRE AGREEMENT.** This Agreement, including Exhibits, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

SECTION 12. MISCELLANEOUS PROVISIONS

- A. **AMENDMENTS.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **APPLICABLE LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **APPLICANT'S SALE OR TRANSFER OF THE DEVELOPMENT.** Prior to any sale or other transfer of ownership rights in the Development, Applicant shall notify the City in writing of such sale or transfer 30 business days before the effective date of such sale or transfer.
- D. **ASSIGNMENT.** Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant or Grants that are subject of this Agreement without the City's consent to assignment. Any such attempt to sell, transfer, assign or convey without the City's prior written consent is void and may result in the immediate termination of this Agreement and recapture of the taxes rebated prior to the attempted transfer.

- E. **BINDING OBLIGATION.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Applicant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Applicant to the same.
- F. **CONFIDENTIALITY OBLIGATIONS.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure.
- G. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.
- H. **EMPLOYMENT OF UNDOCUMENTED WORKERS.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- I. **FORCE MAJEURE.** The parties agree that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- J. **HEADINGS.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- K. **NO JOINT VENTURE.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction, or operation of the Development, or any portion thereof.

L. **NOTICES.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered ~~or when deposited~~ in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below and sent via electronic transmission to the email addresses set forth below; or (ii) when delivered by hand-delivery. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address. Applicant shall provide all required Grant Submittal Packages and other required documentation to City electronically at the following address: EDcompliance@elpasotexas.gov.

To the City: The City of El Paso
 Attn: City Manager
 P. O. Box 1890
 El Paso, Texas 79950-1890

With a Copy to: The City of El Paso
 Attn: Economic and International Development
 P. O. Box 1890
 El Paso, Texas 79950-1890

To the Applicant: HILLER MEASUREMENTS, INC.
 Attn: Jeff Olsen
 14155 Highway 290 West Building 100
 Austin, Texas 78737
 jeff.olsen@hillermeas.com

M. **ORDINANCE APPLICABILITY.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.

N. **SEVERABILITY.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

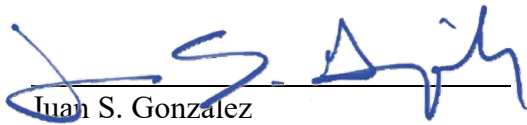
[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY:
CITY OF EL PASO:

Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth K. Triggs, Director
Economic and International Development

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

§

COUNTY OF EL PASO

§

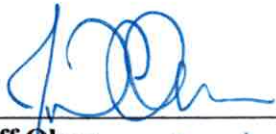
This instrument was acknowledged before me on this ____ day of _____, 20____, by
Cary Westin as Interim City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My commission expires: ____ / ____ / ____

(Signatures continue on the following page)

APPLICANT:
HILLER MEASUREMENTS, INC. a Texas Corporation

By: 
Jeff Olsen
Title: President

ACKNOWLEDGMENT

STATE OF §
COUNTY OF §
§

This instrument was acknowledged before me on the 26 day of September, 2023, by **JEFF OLSEN** as **PRESIDENT** for **HILLER MEASUREMENTS, INC., a Texas Corporation.**


Notary Public, State of Texas

My Commission Expires:

3-7-2027

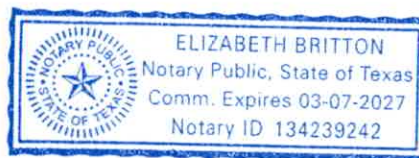


EXHIBIT “A”

PROJECT DESCRIPTION

HILLER MEASUREMENTS, INC will establish at the Innovation Factory the Proteus Design Center. The Proteus Design center will be a center for component modeling, cable/harness design and electrical design. The Proteus design center will include an additive manufacturing line substantially similar to the additive manufacturing line that Hiller currently deploys in its Austin facility.

Hiller Measurements, Inc. is focused on accelerating innovation and reducing time-to-market for mission-critical systems in the aerospace and defense industries, as well as semiconductor and wireless telecom companies. Spearheaded by Jeff D. Olsen, the President of Hiller Measurements, the project aims to achieve these goals through the development of the Proteus Model-Based System for Design and the Hiller Measurements Flow Control System for Modern Manufacturing.

The Proteus Design Center (PDC) will play a crucial role in this endeavor by designing component, instrument, software, and workflow models and processes. These innovative designs will enable the custom design of electronic test systems, allowing for iterative development and delivery at least ten times faster than the current industry norm. Furthermore, the PDC will also develop New Product Introduction (NPI) production and processes that can be applied across the entire Hiller Measurements organization.

To facilitate growth and enhance their capabilities, Hiller Measurements plans to initiate a two-step approach in El Paso. The first step involves building a dedicated design organization for Proteus within the existing facility. The second step entails moving a portion of Proteus-related manufacturing (HMFC process) to El Paso. This will be accomplished by utilizing appropriate built-out space in the Aerospace Center's future buildings, which are currently in the planning stage. Additionally, the Proteus Design Center will be moved to this new facility, allowing for an expanded range of design capabilities that include billable, client-facing work.

Through these strategic initiatives, Hiller Measurements aims to position itself at the forefront of innovation and manufacturing technology, catering to the needs of aerospace and defense prime contractors, semiconductor companies, and wireless telecom businesses alike. By enhancing their design capabilities and streamlining the manufacturing process, the company seeks to offer cutting-edge solutions that revolutionize the industry and deliver superior value to their clients.

**EXHIBIT “B”
GRANT SUBMITTAL PACKAGE FORM**

HILLER MEASUREMENTS, Inc. believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _____ day of _____ 20__ and signed by _____ of **HILLER MEASUREMENTS, LLC**. Pursuant to the Agreement, **HILLER MEASUREMENTS, LLC** submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted:

1. Electronically to Email: EDCompliance@elpasotexas.gov;
2. Completed Grant Submittal Package Form
3. [INITIAL GRANT SUBMITTAL ONLY] Certificate of Occupancy or Completion
4. [INITIAL GRANT SUBMITTAL ONLY] 1295 Form
5. Job Certification Report Spreadsheet with the following breakdown:
 - a. Employee Roster:

Last Name	First Name	Job Title	Hire Date	Termination Date	Job Category (New/retained)	Total Hours Worked in the Year	Weeks Worked in the Year	Hourly Wage	Gross Annual Salary	Employment Status (FT/PT)	Percentage employee pays for medical premium	Percentage company pays for medical premium

- b. Insurance Benefits Packet
- c. Employee Benefits Packet (pto, vacation, sick leave, etc.)
- d. 941 IRS Reports

It is understood by **HILLER MEASUREMENTS, INC.** that the City of El Paso has up to ninety (90) **days** to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

HILLER MEASUREMENTS, INC.

By: _____
Name: _____
Title: _____

EXHIBIT “C”
INSURANCE CERTIFICATES / CERTIFICATIONS

EXHIBIT “D”
LEASE

Exhibit "D"

Innovation Factory Agreement
301 George Perry Blvd., Suite E&F Room ____

El Paso International Airport
El Paso, Texas

TENANT

_____, 202
Effective Date

**INNOVATION FACTORY AGREEMENT
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ATTACHMENTS:

EXHIBIT “A” -Leased Premises

EXHIBIT “B” - Tenant Improvements

EXHIBIT “C” – Building Regulations

DRAFT

EL PASO INTERNATIONAL AIRPORT
INNOVATION FACTORY AGREEMENT

THIS INNOVATION FACTORY AGREEMENT, (“Agreement” or “Lease”), entered into effective as of the ____ day of _____, between the **CITY OF EL PASO, TEXAS** (“Landlord”) and _____, a _____ (“Tenant”).

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas (Chapter 22 of the Texas Transportation Code) authorizes municipal airports, as governmental entities, to establish the terms and fix the charges, rentals, or fees for the privileges or services. The charges, rentals, and fees must be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the local government;

WHEREAS, Landlord owns and operates the El Paso International Airport as depicted in the Airport Layout Plan _____ (“Airport”) located in the County of El Paso, Texas;

WHEREAS, Landlord has constructed an Innovation Factory and facilities located on the Airport and has space and facilities available for lease, and Tenant desires to lease space in the Innovation Factory;

WHEREAS, Tenant has indicated a willingness and ability to properly operate, keep and maintain the portion of the Innovation Factory that it leases in accordance with the standards established by Landlord; and

WHEREAS, in furtherance of its authority, Landlord further desires to lease to Tenant certain facilities located at said Airport in accordance with the terms, covenants, and conditions set forth in this Agreement;

WHEREAS, the Landlord has adopted the El Paso Makes: Innovation Factory Incentive and Lease Policy (the “Policy”) to assist small businesses negatively impacted by COVID-19 and to promote the growth and development of startups engaged in the advanced manufacturing, aerospace, and defense manufacturing sectors;

WHEREAS, this lease is granted and structured in accordance to the Policy.

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties agree as follows:

ARTICLE I
PREMISES AND PRIVILEGES

Section 1.01 Description of Premises Demised

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described Premises located in El Paso County, Texas, as follows:

- A. That certain office and warehouse space containing approximately _____ square feet, more or less, in total, as shown on Exhibit “A” attached hereto and incorporated herein by reference, and also known as Innovation Factory, 301 George Perry Blvd., Suite __, for Tenant's exclusive use:

Suite __	_____ square feet of office space _____ square feet of maker space _____ square feet of storage space _____ square feet total

(All square footage figures are approximate)

all of which will hereinafter be referred to as the “Premises” or “Leased Premises”.

Section 1.02 Right of Ingress and Egress

Landlord hereby grants to Tenant the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Tenant, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

In addition, the tenant will have the right to use up to ____ parking spaces located directly in front of the Leased premises. The right to use the parking spaces is non-exclusive and will be shared with other tenants on a first come first serve basis.

Section 1.03 Restrictions of Privileges, Uses and Rights

Tenant covenants and agrees that it shall use the Premises and common areas as provided in this Lease and the Innovation Factory Regulations (“Regulations”) posted on the City website, as updated from time to time in the discretion of the Landlord. For reference purposes the Regulations in effect as of the Effective Date of this Lease are attached to this Lease as Exhibit “C” provided that the Landlord reserves the right to update such regulations at any time, in the Landlord’s sole discretion, by posting the updated versions in the City website. No notification is required from the Landlord to the Tenant to update the Regulations. Updated Regulations become effective as of the date of the website posting. Tenant will abide by all updates to the Regulations.

Tenant shall not offer, or permit to be offered, retail services or sales. In connection with the exercise of its rights under this Agreement, Tenant:

- A. Shall not do, or permit to be done, anything at or about the Airport or the Premises that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do, or permit to be done, any act or thing upon the Airport or the Premises that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of, or permit any employee, agent, contractor, or other person to dispose of, any waste material taken from, or products used with respect to, its aircraft or operations into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the prior written approval of Landlord and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitations of the El Paso Water Utilities/Public Service Board are not exceeded.
- D. Shall not keep or store hazardous articles and materials including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport except when all of the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees (100⁰) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Tenant personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pre-transport of hazardous articles and materials; and (4) storage of hazardous materials shall comply with applicable federal, state, and local laws and regulations including, without limitation, building and fire code provisions. "Director" shall mean the Director of Aviation of the El Paso International Airport or other authorized representative of Landlord.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any vehicle at the Airport without prior written approval of Landlord, said approval to be at Landlord's sole discretion.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or

beverages to the public or to its employees; nor shall Tenant in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Tenant may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Tenant's employees in areas not accessible to the general public.

Section 1.04 Conditions of Granting Agreement

The granting of this Agreement and its acceptance by Tenant are conditioned upon the following covenants:

- A. No functional alteration of the Premises shown on Exhibit "A" or functional change in the uses of the Premises shall be made without the specific written consent of Landlord; said consent to be at Landlord's sole reasonable discretion, which shall not be unreasonably withheld, conditioned, or delayed.
- B. The right to use public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. Tenant will utilize only the roadways, taxiways, or other direction, path, route, or form of travel Landlord may designate, from time to time, for Tenant's operation and movement on or about the Airport.

ARTICLE II **OBLIGATIONS AND RIGHTS OF LANDLORD**

Section 2.01 Quiet Enjoyment

Landlord agrees that upon Tenant's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term of this Agreement.

Section 2.02 Landlord's Right of Entry

Landlord and persons authorized by Landlord may enter the Premises at all reasonable times upon reasonable advance notice (except in the case of an emergency in which case no prior notice is necessary) for the purpose of inspections, repairs, alterations to adjoining space, appraisals, or other reasonable purposes; including enforcement of Landlord's rights under this Lease. Landlord also shall have the right to enter the Premises at all reasonable times after giving prior oral notice to Tenant, to exhibit the Premises to any prospective tenants or other persons as reasonably determined by the Landlord.

Section 2.03 Condition and Maintenance of Premises.

Landlord shall bear responsibility for the repair, maintenance and replacement of the mechanical systems of the Premises, including but not limited to, electrical, the plumbing system including replacement of major lines, the life-safety systems and the HVAC systems. Landlord shall bear responsibility for the repair, maintenance and replacement of the Structural Elements of the Premises, except for any damage caused by the act or omission of the Tenant, or any agent, employee, invitee, contractor, servant, or subtenant of Tenant, for which damage Tenant shall be responsible. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, common vehicle parking areas, and the aircraft parking apron.

Section 2.04 Intentionally Deleted.

ARTICLE III
OBLIGATIONS OF THE PARTIES

Section 3.01 Condition and Maintenance of Premises

Except as otherwise provided in this Lease, TENANT ACCEPTS THE PREMISES IN "AS IS" CONDITION. The Landlord makes no representations regarding the suitability of the Premises for any uses by the Tenant.

Section 3.02 Internal Improvements.

- A. General. Tenant will not make any alterations or improvements to the Premises without prior written approval of the Director or designee. Approval for improvements remains at the sole discretion of the Director or designee and may be conditioned or denied for any or no reason.
- B. Unapproved Improvement Default. In the event of such alteration, erection, placement, or maintenance without approval, Tenant will be considered in default of this Agreement and Landlord may terminate this Agreement in accordance with the provisions set forth in this Lease. In addition to termination, Tenant will be responsible for the costs incurred by the Landlord for removing any unauthorized improvements and/or the costs of restoring the Premises to its prior condition.
- C. Title to Improvements. All Leasehold Improvements made to the Premises by Tenant, shall be and remain the property of Tenant until the termination of this Agreement whether by expiration of the term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, or otherwise, title to such Leasehold Improvements shall vest in accordance with the Paragraph below.
- D. Permanent Improvements. All permanent Leasehold Improvements, if any, made by Tenant to the Air Cargo Center, of which the Premises are a part, shall become the property of Landlord upon the expiration, cancellation or early termination of this Agreement; provided, however, that at Landlord's sole discretion, Tenant shall remove all permanent improvements and restore the Premises to the condition existing as of the effective date of this Lease provided that Landlord informs Tenant, in writing, at the time of granting approval that Landlord wants those improvements removed. All improvements other than

permanent improvements and all fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Tenant may be removed from the Premises at any time by Tenant, subject to Landlord's lawful exercise of its landlord's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Landlord's Air Cargo Center and facilities.

- E. Tenant Improvements. The Tenant acknowledges that the Tenant needs certain tenant improvements to be performed to the Leased Premises in order for the Tenant to be able to move in and operate at the Leased Premises. The Landlord will construct the improvements described in Exhibit B at the request of the Tenant and at the tenant's sole expense. The Tenant will be responsible for the costs of the tenant improvements which costs are estimated at \$ _____ ("Estimated Improvement Costs"). The Tenant will pay the Estimated Improvement Costs within 30 calendar days of the Effective Date of this Lease. If the Estimated Improvement Costs are less than the actual improvement costs, then the Tenant will be responsible for paying the difference. In the event that a refund is warranted, the Tenant will not be entitled to the refund but rather the Landlord will refund the funds directly to the Landlord's Economic Development Department ("ED Department") where the funds will be reallocated to other tenants or applicants in accordance with the Policy and at the ED Department's sole discretion.

Section 3.03 Compliance with Laws

Tenant, at Tenant's expense, agrees that in the event it constructs, operates and/or maintains improvements on the Premises, such activities shall be done in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Landlord or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon. By way of example and not in limitation of the foregoing, the execution of this Lease and approval of Tenant's plans by the Airport shall not preclude the requirement that Tenant obtain all other approvals necessary for development of Tenant's project such as, but not limited to, building permits and certificates of occupancy.

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

- A. Definitions.

1. “Environmental Laws” means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
2. “Hazardous Material” shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
3. “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

1. 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, or a third party in violation of any Environmental Law; provided, further, that with respect to demolition of Existing Improvements, Tenant shall comply fully with all regulatory requirements, including, but not limited to, those governing asbestos abatement. **Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and 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 person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related**

to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon.

This indemnification of Landlord 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 any improvements thereon, or present in the soil or ground water on, under or about the Premises.

2. The parties agree that Landlord'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 Section. Landlord shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.
3. Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant results in any contamination of the Premises or any improvements thereon, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Landlord'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 long-term effect on the Premises or on any improvements thereon.
4. Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord 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 contamination.
5. Tenant shall immediately notify Landlord of any of the following: (a) any correspondence or communication from any governmental entity regarding

the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.

6. Intentionally omitted.
7. Nothing in Section 3.03 will make Tenant liable or responsible for, and Tenant shall have no obligations related to any hazardous materials which (i) existed on, under or about the Premises prior Tenant's occupation under this Agreement or any previous lease Agreement with Landlord for the Premises, (ii) which migrate to the Premises from off-site, or (iii) are introduced to the Premises during Landlord or its employees, agents or contractors, or any other person or entity except to the extent caused by Tenant or its employees, agents, contractors or Air carriers.
8. Landlord shall use commercially reasonable efforts to cause its other tenants in the Air Cargo Center to comply with all Environmental Laws.

C. Reporting.

1. At any time that Tenant submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), Tenant shall provide duplicate copies of the filing(s) and all related documents to Landlord.
2. Within ninety (90) days after expiration, termination or cessation of this Lease for any reason, Tenant shall provide a current Phase I environmental site assessment of the Premises prepared in accordance with recognized industry standards; and if, in the opinion of Landlord and based on report findings, the Premises shall require environmental remediation, Tenant shall perform same to return the Premises into a condition equal or better to that as of the effective date of the Lease. Landlord shall provide Tenant access to the Premises as needed in order for Tenant to comply with its obligations pursuant to this Section 3.05(C)(2).

Section 3.04 Utilities

Landlord will provide: Internet access, water, sewer gas, electricity used by the Tenant on the Premises during the term of this Lease.

Section 3.05 Trash, Garbage, and Other Refuse

Landlord shall provide proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all non-hazardous trash, garbage and other refuse. Tenant will not dispose of hazardous materials in the receptacles provided. Tenant will be responsible for the disposal of any hazardous materials in accordance to applicable laws.

Section 3.06 Permitted Uses

Tenant covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in the Regulations.

Section 3.07 Approval of Plans

Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Department of Aviation is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Tenant shall be required to obtain the approval of other departments as well.

Section 3.08 Authorization to Enter Restricted Area

Tenant understands that all of its agents, employees, servants or independent contractors must be authorized by Landlord to enter restricted areas as defined in Title 14 of the El Paso City Code as amended. Tenant understands that no person authorized to enter a restricted area by virtue of this Agreement may permit any person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person.

Section 3.09 Security

Tenant is familiar with the restrictions imposed on Landlord by 49 CFR Part 1540 and 1542 as amended and agrees to assume responsibility for compliance with said regulations as they relate to access and identification procedures on the Premises. Tenant recognizes that all persons in or on the Premises must comply with federal safety and security requirements.

Section 3.10 Penalties Assessed by Federal Government

Tenant understands and agrees that in the event any federal agency assesses a civil penalty against Landlord for any violation of a federal rule or regulation as a result of any act on part of Tenant, its agents, servants, employees, invitees, or independent contractors, Tenant will, upon invoice, promptly reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within thirty (30) days of receipt of written notice shall be an event of default hereunder.

ARTICLE IV TERM OF LEASEHOLD

Section 4.01 Term

The "Term" of this Lease will be the Initial Term and any properly exercised Option Period, as provided below. This Lease shall be for an initial term of ____ (__) years ("Initial Term"), commencing on _____, 20__ ("Effective Date").

Section 4.02 Option to Extend

In the event that Tenant is not in default of any terms of this Lease beyond any applicable notice and cure period, Tenant shall have the option to extend this Lease for ____ (__) additional term of ____ (__) years each. Tenant may exercise the option ("Option Period") by notifying Landlord in writing in not more than one hundred twenty (120) days and not less than ninety (90) days prior to the expiration of the Initial Term. In the event Tenant exercises its option, the Lease shall be extended on the same terms and conditions, except that Rental shall be readjusted as noted in Article V below.

Section 4.03 Holding Over

It is agreed and understood that any holding over by Tenant of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the then current monthly rental, unless the hold over is caused by the City staff not placing a new agreement with Tenant regarding the Premises at the end of the term of the present Lease on the City Council Agenda on a timely basis in which case the current monthly rental rate shall continue until the new agreement is executed. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 4.04 National Emergency

In the event that the rights and privileges hereunder are suspended by reason of war or other national emergency, the parties will negotiate in good faith a reasonable resolution of this lease under the circumstances.

ARTICLE V RENTALS

Section 5.01 Rental

For the purpose of computing the rental payments of this Lease, Landlord and Tenant agree that the Premises comprise the following:

Maker Space: _____	_____ square feet total at \$ _____ per square foot per annum \$ _____ per annum
Office Space: _____	_____ square feet total at \$ _____ per square foot per annum \$ _____ per annum
Storage Space: _____	_____ square feet total at \$ _____ per square foot per annum \$ _____ per annum
Parking Space	_____ square feet total at \$ _____ per square foot per annum \$ _____ per annum

The annual rental for the Initial Term shall be \$ _____ per year payable in advanced starting on the Effective Date and subsequent payments due at the beginning of each anniversary date of the Effective Date.

Section 5.02 Expenses

In addition to the Rental, the Tenant will be responsible for operation and maintenance expenses of the Leased Premises, which may include those listed in Section 2.03 as necessary (the “Expense Amount”). The Expense Amount for the First year of this Lease is \$ _____. The Tenant will pay the Expense Amount per year payable in advanced starting on the Effective Date and subsequent payments due at the beginning of each anniversary date of the Effective Date. The Landlord will perform a reconciliation report of the expenses at the end of every calendar year. The Tenant will be responsible for any expenses that exceed the Expense Amount. If the expenses are less than the Expense Amount, then the Landlord will credit to the Tenant any over payments. The Tenant will not receive any actual refund of overpayments of expenses. All overpayments will be credited against amounts owed to the Landlord under this Lease. Following the reconciliation every calendar year, the Landlord will establish a new Expense Amount and will notify the Tenant of the new Expense Amount. The Tenant will pay the new Expense Amount within 30 calendar days of notification by the Landlord. In the event that a refund is warranted, the Tenant will not be entitled to the refund but rather the Landlord will refund the funds directly to the Landlord’s Economic Development Department (“ED Department) where the funds will be reallocated to other tenants or applicants in accordance with the Policy and at the ED Department’s sole discretion.

Section 5.03 Unpaid Rent, Fees and Charges

Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 30th day of the month in which payment is due, shall bear interest at the rate of 12% per annum.

Section 5.04 Time of Payment

All rental due hereunder shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Agreement, except as otherwise provided in Section 5.02 above.

Section 5.05 Place of Payment

All payments provided herein shall be paid to Landlord at the following address:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278.

ARTICLE VI **DAMAGE OR DESTRUCTION OF PREMISES**

Section 6.01 Damage or Destruction

If the Premises or any portions thereof, or structures of which such space may be a part, be damaged by fire or other casualty not caused by Tenant, Director shall notify Tenant within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by Landlord, and the rental allocable to the Premises rendered untenantable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that Landlord will exert its best effort to provide Tenant with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Tenant of its decision to repair any untenantable Premises within sixty (60) days after the destruction, Landlord will be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

Section 6.02 Damage Caused by Tenant

Notwithstanding the provisions of this Article 6, in the event that due to the negligence or willful act or omission of Tenant, its employees, its agents, or licensees, Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to Landlord by reason of such damage or destruction, Tenant shall pay the amount of such additional costs to Landlord.

ARTICLE VII
INSURANCE AND INDEMNIFICATION

Section 7.01 Liability Insurance

Tenant shall obtain and maintain for the term of this Lease, Commercial General Liability Insurance, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, property damage and personal liability,

Landlord shall be named as an Additional Insured on all insurance policies, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the Landlord or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

Section 7.02 Commercial Renter's Insurance

Tenant will maintain, throughout the term of the Lease Commercial Renter's Insurance.

Section 7.03 Environmental Insurance

Tenant agrees that, at all times throughout the term of this Agreement, it will keep Three Million Dollars (\$3,000,000.00) for Pollution Liability insurance arising out of each occurrence, which insurance shall cover, at a minimum, bodily injury, property damage, including natural resource damage, loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, removal, storage, disposal, and or use of the pollutant, and defense costs, including costs and expenses incurred in the investigation, defense, or settlement of claims covering the Premises and surrounding Landlord property or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 7.04 Indemnification

WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING

CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LANDLORD. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON RECEIPT OF WRITTEN NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD. THE OBLIGATIONS OF TENANT UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE LEASE.

Section 7.05 Additional Expenses

The Tenant acknowledges that the expenses under this Section are not included as expenses covered by the Expense Amount and that the Tenant is responsible for these expenses under this Section in addition to the Rental Amount and Expense Amount.

ARTICLE VIII
CONDEMNATION

Section 8.01 Definition

The following definitions apply in construing the provisions of this Agreement relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending.
- B. “Total taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant;
 - 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired; or
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after

performance of all covenants and conditions required of Tenant under this Agreement.

- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of taking" means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 8.02 Notice of Condemnation

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 8.03 Rights of Parties during Condemnation Proceeding

Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Agreement relating to the condemnation.

Section 8.04 Taking of Leasehold

Upon a total taking, Tenant's obligation to pay rent and other charges hereunder together with Tenant's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If Tenant does not so notify Landlord, the taking shall be deemed a partial taking. Upon a partial taking, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 8.05 Total Taking

All of Tenant's obligations under the Agreement shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by the Tenant-owned improvements, but subject to the Agreement, shall be disbursed to Landlord.

Section 8.06 Partial Taking

Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. Landlord shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

Section 8.07 Obligations of Tenant under Partial Taking

Promptly after any such partial taking, Tenant, at its expense and in accordance with any awards disbursed in accordance with Section 706, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect.

Section 8.08 Taking of Temporary Use of Premises and Improvements

Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the

Premises and improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE IX **ENCUMBRANCES**

INTENTIONALLY DELETED

ARTICLE X **EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

Section 10.01 Expiration

This Agreement shall expire at the end of the term or any extension thereof.

Section 10.02 Cancellation

Subject to the provisions of Article IX above, this Agreement shall be subject to cancellation by Landlord in the event Tenant shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises while rent is in arrears;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Tenant, and such default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings;
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within sixty (60) days after the appointment of such receiver; or

In any of the aforesaid events, Landlord may take immediate possession of the Premises including any and all improvements thereon and remove Tenant's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Landlord to declare this Agreement canceled upon the default of Tenant for any of the reasons set out shall not operate to bar or destroy the right of Landlord to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the term of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 10.03 Repossessing and Reletting

In the event of default by Tenant hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Landlord may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), using such force as may be necessary; and
- B. Either cancel this Agreement by notice or without canceling this Agreement, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Landlord. If Landlord shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Tenant during such month or part thereof under the terms of this Agreement, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, providing Landlord has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within thirty (30) days after receipt of notice of deficiency.

Section 10.04 Assignment and Transfer

Tenant is not permitted to assign this Agreement without first obtaining Landlord's written consent; said consent shall not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, any person or entity to which this Agreement is assigned to, pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

Section 10.05 Subleasing

(a) Tenant shall not sublease all or any part of the Premises.

Section 10.06 Cancellation at Landlord's discretion

The Landlord may cancel this Lease following a 30 calendar day written notice, if the Landlord determines, in its sole discretion, that this lease must be canceled for any of the following reasons: (1) to allow the Landlord to comply with any Federal Aviation Administration or other federal or state agency requirements, (2) the Landlord requires the Premises for aeronautical purposes, (3) the Landlord requires the Premises for any other municipal or airport purposes in the sole discretion of the Landlord, or (4) termination of the Policy and the incentive program established under the Policy.

10.07 Cancellation for failure to comply with requirements

If the tenant fails to comply with the requirements of the policy, this lease agreement, or the grant agreement following notice and a 30 calendar day opportunity to cure, then the City may cancel any or all agreements with the tenant, at the landlord's sole discretion, and the tenant will be responsible for repaying any funds granted under the grant agreement and responsible for any amounts under the lease agreement.

10.08 Cancellation by Tenant

Tenant may cancel the lease agreement and grant agreement upon 90 calendar day written notice if the tenant is unable to continue its business operations in accordance to the application approved for grant funds. The notice provided by the tenant must explain the reasons the tenant is unable to continue to operate its business as provided in the application approved for the grant funds. Upon receipt of notification the City may immediately reallocate any funds approved for the tenant.

10.09 Liquidated damages in event of cancellation

In the event that either party cancels the lease agreement, the pre-paid Rent and Expenses shall be used as liquidated damages by landlord.

ARTICLE XI GENERAL PROVISIONS

Section 11.01 Right of Flight

Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Landlord reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at El Paso International Airport which would constitute an obstruction to air

navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Landlord reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

Section 11.02 Time Is of the Essence

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 11.03 Notices

All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD: Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091

TENANT:

With copy to: The City of El Paso
Attn: Economic and International Development Department
P.O. Box 1890
El Paso, Texas 79950-1890

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

Section 11.04 Attorney's Fees

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 11.05 Agreement Made in Texas

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 11.06 General Civil Rights Provision

Lessee 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 Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee 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.

Section 11.07 Compliance with Nondiscrimination Requirements

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 11.08 hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 11.08 hereinafter referred to as the “sponsor”) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where

any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 11.08 Affirmative Action

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

Section 11.09 FAA Order 1400.11

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Tenant for itself, 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 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, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (Federal Aviation Administration Order 1400.11, Appendix 4) as same may be amended from time to time (the “Acts and Regulations”) 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.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Tenant for itself, 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 on the ground 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) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the listed acts and authorities appearing in the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Tenant for itself, its assignees, and successors in interest, as a part of the consideration hereof, 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 Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination 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 discrimination 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). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).

B. In the event of breach of any of the covenants in this section 3, Landlord shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

Section 11.10 Cumulative Rights and Remedies

All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.11 Interpretation

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 11.12 Agreement Made in Writing

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 11.13 Paragraph Headings

The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 11.14 Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.15 Successors and Assigns

All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 11.16 Taxes and Other Charges

Tenant shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto. Tenant in good faith may contest any tax or governmental charge; provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom. The Tenant acknowledges that taxes under this Section are not included as expenses covered by the Expense Amount and that the Tenant is responsible for these expenses under this Section in addition to the Rental Amount and Expense Amount. The Tenant will provide the Landlord written proof of payment of all taxes owed no later than March 30 of each calendar year. In the event that the Central Appraisal District issues a single property/improvement tax bill

for the Innovation Factory, the Landlord will prorate such taxes and send an invoice to the Tenant for the Tenant's share of the taxes. The Tenant will pay the Landlord the amount in the invoice within 30 calendar days of receipt of the invoice. The tenant remains responsible for any other taxes on equipment, personal property and/or inventory and will provide proof of payment to the Landlord as provided in this Section.

Section 11.17 Waiver of Warranty of Suitability

LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. Except as otherwise provided in this Lease, TENANT LEASES THE PREMISES AS-IS AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 11.18 Waiver of Reliance and Assumption of Risk

TENANT AGREES THAT IT HAS NOT RELIED UPON ANY STATEMENTS MADE BY LANDLORD WHETHER ORAL AND/OR WRITTEN, EXPRESS OR IMPLICIT, NOR ANY OTHER REPRESENTATIONS OF LANDLORD, ITS EMPLOYEES, AGENTS, REPRESENTATIVE, AND CONTRACTORS SIGNING THIS AGREEMENT. TENANT HAS RELIED SOLELY ON ITS OWN INDEPENDENT INVESTIGATIONS AND ANALYSIS AND ON THE OPINIONS OF ITS ATTORNEYS, AGENTS, AND CONTRACTORS IN ENTERING INTO THE LEASE. TENANT HEREBY WAIVES ANY AND ALL RIGHT, WHICH TENANT MAY HAVE TO CLAIM ANY NATURE OF A LIEN OR TO WITHHOLD, ABATE, DEDUCT FROM OR OFFSET AGAINST RENT UNDER THE TEXAS PROPERTY CODE. LANDLORD HEREBY ACKNOWLEDGES THAT WITHOUT SUCH WAIVER, LANDLORD WOULD NOT ENTER INTO THIS LEASE.

Section 11.19 Survival of Certain Provisions

All Provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Section 3.05.

Section 11.20 Authorization to Enter Agreement

If Tenant signs this Agreement as a corporation, Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

Section 11.21 Complete Agreement

This agreement, together with the attachment(s) attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this agreement confers no rights on any person or business entity that is not a party hereto. This

agreement shall not be construed against or unfavorably to any part because of such party's involvement in the preparation or drafting of this agreement.

[Signatures begin on the following page]

DRAFT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 202 .

Samuel Rodriguez, P.E.
Director of Aviation

APPROVED AS TO CONTENT:

Assistant City Attorney

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 202__ by Tomás González as City Manager for the City of El Paso, Texas (Landlord).

Notary Public, State of Texas

My Commission Expires:

21-1003-1193/PL#1225244.5/Innovation Factory Template– Air Cargo Agreement/IRT

TENANT'S SIGNATURE AND ACKNOWLEDGMENT

ATTEST:

TENANT:

Name: _____

Name:

Title: _____

ACKNOWLEDGMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 202_ by _____, as _____ of (Tenant).

Notary Public, State of

My Commission Expires:

Exhibit “A”
Leased Premises

DRAFT

Exhibit “B”
Tenant Improvements

DRAFT

Exhibit “C”
Building Regulations

DRAFT