

**CONTRACT CONTROL FORM**

Contact: Cara M. MacNinch  
 Phone: 244-7716

Req. Num.:  
 Acct. Num.:  
 Act. Num.:

CCN: 200701079.3  
 Orig CCN: 20070179

**PRELIMINARY**

Type of Agreement: RP Leases/Sales City -Owned

For Grants Only:  
 Indirect Costs for General Fund  
 Services

Description: 3rd Amendment Hangar Site Lease and Agreement - change in  
 rents and fees schedule

% \_\_\_\_\_

Dept/Div: AVIATION/ADMINISTRATION

\$ \_\_\_\_\_

Vendor: Tri-motor, LLC

Contract Term: 07/01/2008 to: 06/30/2009

Contract Amount: \$0.00 Receivable

FY Aggregate: \$0.00

Contract Total: \$29,660.30

Fed Tax: St Tax No.:

Date Submitted: 06/19/2008

**PROCUREMENT:**

**WAIVERS REQUIRED:**

RFP: No

Waiver Letter Attached: \_\_\_\_\_ Approved: \_\_\_\_\_

Ins:

Waiver Letter Attached: \_\_\_\_\_ Approved: \_\_\_\_\_

**DRAFT CONTRACT:**

Recd by Legal: \_\_\_\_\_ Rejected/Returned to Dept: \_\_\_\_\_ / \_\_\_\_\_

Returned to Legal: \_\_\_\_\_ / \_\_\_\_\_ Approved: \_\_\_\_\_ Initials: \_\_\_\_\_

**INSURANCE AND BONDS REQUIRED:**

Bonds Required: NONE

Attached: \_\_\_\_\_

Insurance Required: NONE

Attached: \_\_\_\_\_

\*\*\*\*\*

**FINAL CONTRACT REVIEW**

APPROVALS REQUIRED:	Date Delivered	Returned to Dept.	Approved by (Electronic Signature)	Approval Date (Electronic)	Approved by (Written Initials)	Approval Date (Written)
Purchasing:						
Asst. City Attorney:					<u>JPF</u>	<u>6/19/08</u>
CIP:						
City Attorney:						
CAO:						
Department:					<u>US</u>	<u>6/19/08</u>
Budget:						
Others:						

Council: EC/Bill: EC-07-484

Date:

**DISTRIBUTION:**

Date: 6/19/08 By: cm  
6/19/08 cm

Vendor:

User Dept:

Purchasing:

City Clerk:

Other:

**Double Eagle II Airport  
Mid-Field Development Area  
Third Amendment  
Hangar Site Lease and Agreement**

**Tri-motor, LLC**

**This Third Amendment** to the **Hangar Site Lease and Agreement** ("Third Amendment") is entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **Tri-motor, LLC**, a limited liability company organized and existing under the laws of the state of New Mexico ("Lessee").

In consideration of the rights, privileges, and mutual obligations contained in this Third Amendment, City and Lessee agree as follows:

**Section 1. Recitals.**

**1.1** This Third Amendment amends the Hangar Site Lease and Agreement entered into between City and Tri-motor, LLC dated September 10, 2007, the First Amendment to the Hangar Site Lease and Agreement dated October 24, 2007, and the Second Amendment to the Hangar Site Lease and Agreement dated March 31, 2008 (collectively "Agreement"); and

**1.2** Lessee desires to defer its payment of rents and fees for one (1) year beginning July 1, 2008, due to extenuating circumstances related to its site development approvals and building permits, and City is willing to allow such deferral of rents and fees in accordance with Section 2 below; and

**1.3** City and Lessee have the right and power to enter into this Third Amendment.

**Section 2. Rents and Fees.** Section 7. Rents and Fees of the Agreement is hereby deleted in its entirety and replaced with the following language:

**Section 7. Rents and Fees.** Beginning on October 1, 2007 ("Commencement Date"), and continuing throughout the Initial Term, and any Renewal Period, if applicable, as consideration for the rights granted to Lessee pursuant to this Agreement, Lessee shall pay to City the Hangar Site Rent, Option Area A Site Rent, Option Area B Site Rent, and all other fees provided for, and in the manner prescribed in this Section 7.

**7.1 Hangar Site Rent.** Lessee agrees to pay to City monthly Hangar Site Rent in accordance with the rent payment schedule as shown in **Exhibit D Second Revision**, attached hereto and incorporated herein. Lessee's Hangar Site Rent shall be due and payable to City on or before the first (1<sup>st</sup>) day of each month, in advance and without invoice.

**7.2 Option Area A Site Rent.** Lessee agrees to pay to City monthly Option Area A Site Rent in accordance with the rent payment schedule as shown in **Exhibit D Second Revision**, attached hereto and incorporated herein. Lessee's Option Area A Site Rent shall be due and payable to City on or before the first (1<sup>st</sup>) day of each month, in advance and without invoice.

**7.3 Option Area B Site Rent.** Lessee agrees to pay to City monthly Option Area B Site Rent in accordance with the rent payment schedule as shown in **Exhibit D Second Revision**, attached hereto and incorporated herein. Lessee's Option Area B Site Rent shall be due and payable to City on or before the first (1<sup>st</sup>) day of each month, in advance and without invoice.

**7.4 Common Area Maintenance Fee.** Lessee agrees to pay to City annually for its use of the Premises, a Common Area Maintenance Fee to be used by City for the operation and maintenance, as defined in subsection 2.23 above, of the common areas within the Mid-Field Development Area. On or about May 1<sup>st</sup> of each calendar year following the Commencement Date of the Agreement, City shall provide Lessee written notice of its annual Common Area Maintenance Fee, which shall be due and payable on or before July 1<sup>st</sup> of that calendar year. The initial annual Common Area Maintenance Fee shall be equal to one-cent (\$.01) per square foot of Lessee's Premises, and shall not increase until such time as the cost of operating and maintaining the Mid-Field Development Area exceeds the cumulative Common Area Maintenance Fee paid by all lessees within the Mid-Field Development Area.

**7.5 Extraordinary Cost Fee.** Lessee agrees to pay to City, an Extraordinary Cost Fee if Lessee fails to perform any of its obligations pursuant to this Agreement, for a period of thirty (30) days following written notice of non-performance from City, and City performs such obligation of Lessee. Extraordinary Costs include all costs of City that are allocable to the Premises, or other areas of the Airport, if applicable, including, but not limited to: a) any operation and maintenance expense that is not a part of the normal and regular Mid-Field Development Area Operation and Maintenance Expenses, as determined by City,

and b) any remediation costs or penalties incurred by City as a result of the release of any Contaminant by Lessee or its invitees, sublessees, or contractors.

Lessee further agrees that if its failure to perform any of its obligations pursuant to this Agreement endangers public safety or operations at the Airport, including the Premises, and City so states in its notice of non-performance to Lessee, City may perform such obligation of Lessee at any time following such notice and charge Lessee for all costs of such performance as an Extraordinary Cost.

City shall invoice Lessee for its Extraordinary Cost Fees on or about the tenth (10th) day of the month immediately following the month in which such fees were incurred. Lessee shall pay such fees within thirty (30) days of the date of the invoice, unless otherwise specifically provided for in this Agreement. The Extraordinary Cost Fee shall include City's cost related to City's performance of Lessee's obligations, plus twenty-five percent (25%) of such cost for administrative overhead.

**7.6 Other Airport Fees.** Lessee agrees to pay to City, Other Airport Fees, if applicable, when Lessee chooses to use any City provided service as outlined in **Revised Exhibit E**. City shall invoice Lessee for its Other Airport Fees on or about the tenth (10th) day of the month immediately following the month in which such fees were incurred. Lessee shall pay such fees within thirty (30) days of the date of the invoice, unless otherwise specified in this Agreement.

**7.7 Rents and Fees Prorated.** If the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, rents and fees shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed by Lessee.

**7.8 Place of Payment.** Lessee shall deliver payments of rents and fees to the office of Director, or at such other place as may be designated by City from time to time. Payment shall be made to the order of "City of Albuquerque."


**7.9 Late Payment Fees.** If rents and fees required by this Agreement are not received by City on or before the date specified in this Agreement, Lessee shall pay an interest charge to City of one and one-half percent (1½%) per month (18% annually) for each month or partial month that any payment due is not received. In addition, Lessee shall pay an administrative fee to City of **Fifty and 00/100 Dollars (\$50.00)** if it becomes necessary for City to send Lessee a late payment notice.

**Section 3. Effect of Third Amendment.** Except as expressly stated in this Third Amendment, the terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of a conflict in the terms and conditions of this Third Amendment and the Agreement, the terms and conditions of this Third Amendment shall control.

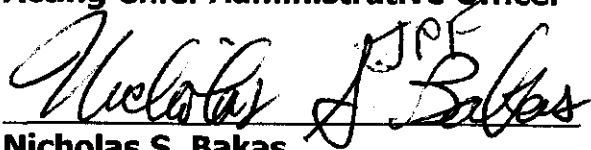
**Section 4. Approval of Third Amendment.** This Third Amendment shall not become effective or binding until signed by City's Chief Administrative Officer.

**IN WITNESS WHEREOF,** City has caused this Third Amendment to be executed by its Chief Administrative Officer, and Lessee has caused the same to be executed by its appropriate and authorized officer.

**City of Albuquerque:**


By:   
**Ed Adams, P.E.**  
**Acting Chief Administrative Officer**

Date: 6-19-08

By:   
**Nicholas S. Bakas**  
**Director of Aviation**

Date: 6-17-08

**Lessee: Tri-motor, LLC**

By:   
**John Casburn**  
**Managing Member**

Date: 6-17-2008

**Exhibit D Second Revision  
Page 1 of 3**

**Hangar Site Rent  
Schedule of Payments**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Beginning on October 1, 2007 ("Commencement Date") through June 30, 2008	\$5,561.37 (9 mo.)	\$617.93
July 1, 2008 through June 30, 2009	Deferral Period	Deferral Period
July 1, 2009 through September 30, 2009	\$2,078.49 (3 mo.)	\$692.83
October 1, 2009 through September 30, 2012	\$8,313.96	\$692.83
Next consecutive five (5) year period October 1, 2012 through September 30, 2017 (Year Six through Year Ten)	\$9,203.76	\$766.98
Next consecutive five (5) year period October 1, 2017 through September 30, 2022 (Year Eleven through Year Fifteen)	\$9,301.50	\$775.13
Next consecutive five (5) year period October 1, 2022 through September 30, 2027 (Year Sixteen through Year Twenty)	\$10,417.68	\$868.14
Next consecutive five (5) year period October 1, 2027 through September 30, 2032 (Year Twenty-One through Year Twenty-Five)	\$11,667.80	\$972.32
Next consecutive five (5) year period October 1, 2032 through September 30, 2037 (Year Twenty-Six through Year Thirty)	\$13,067.94	\$1,089.00

**First Renewal Period  
Hangar Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2037 through September 30, 2042 (Year Thirty-One through Year Thirty-Five)	\$15,028.14	\$1,252.35
Next consecutive five (5) year period October 1, 2042 through September 30, 2047 (Year Thirty-Six through Year Forty)	\$17,282.37	\$1,440.20

**Second Renewal Period  
Hangar Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2047 through September 30, 2052 (Year Forty-One through Year Forty-Five)	\$19,874.73	\$1,656.23
Next consecutive five (5) year period October 1, 2052 through September 30, 2057 (Year Forty-Six through Year Fifty)	\$22,855.94	\$1,904.67

**Exhibit D Second Revision  
Page 2 of 3**

**Option Area A Site Rent  
Schedule of Payments**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Beginning on October 1, 2007 ("Commencement Date") through June 30, 2008	\$5,561.37 (9 mo.)	\$617.93
July 1, 2008 through June 30, 2009	Deferral Period	Deferral Period
July 1, 2009 through September 30, 2009	\$2,078.49 (3 mo.)	\$692.83
October 1, 2009 through September 30, 2012	\$8,313.96	\$692.83
Next consecutive five (5) year period October 1, 2012 through September 30, 2017 (Year Six through Year Ten)	\$9,203.76	\$766.98
Next consecutive five (5) year period October 1, 2017 through September 30, 2022 (Year Eleven through Year Fifteen)	\$9,301.50	\$775.13
Next consecutive five (5) year period October 1, 2022 through September 30, 2027 (Year Sixteen through Year Twenty)	\$10,417.68	\$868.14
Next consecutive five (5) year period October 1, 2027 through September 30, 2032 (Year Twenty-One through Year Twenty-Five)	\$11,667.80	\$972.32
Next consecutive five (5) year period October 1, 2032 through September 30, 2037 (Year Twenty-Six through Year Thirty)	\$13,067.94	\$1,089.00

**First Renewal Period  
Option Area A Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2037 through September 30, 2042 (Year Thirty-One through Year Thirty-Five)	\$15,028.14	\$1,252.35
Next consecutive five (5) year period October 1, 2042 through September 30, 2047 (Year Thirty-Six through Year Forty)	\$17,282.37	\$1,440.20

**Second Renewal Period  
Option Area A Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2047 through September 30, 2052 (Year Forty-One through Year Forty-Five)	\$19,874.73	\$1,656.23
Next consecutive five (5) year period October 1, 2052 through September 30, 2057 (Year Forty-Six through Year Fifty)	\$22,855.94	\$1,904.67

**Exhibit D Second Revision  
Page 3 of 3**

**Option Area B Site Rent  
Schedule of Payments**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Beginning on October 1, 2007 ("Commencement Date") through June 30, 2008	\$5,561.37 (9 mo.)	\$617.93
July 1, 2008 through June 30, 2009	Deferral Period	Deferral Period
July 1, 2009 through September 30, 2009	\$2,078.49 (3 mo.)	\$692.83
October 1, 2009 through September 30, 2012	\$8,313.96	\$692.83
Next consecutive five (5) year period October 1, 2012 through September 30, 2017 (Year Six through Year Ten)	\$9,203.76	\$766.98
Next consecutive five (5) year period October 1, 2017 through September 30, 2022 (Year Eleven through Year Fifteen)	\$9,301.50	\$775.13
Next consecutive five (5) year period October 1, 2022 through September 30, 2027 (Year Sixteen through Year Twenty)	\$10,417.68	\$868.14
Next consecutive five (5) year period October 1, 2027 through September 30, 2032 (Year Twenty-One through Year Twenty-Five)	\$11,667.80	\$972.32
Next consecutive five (5) year period October 1, 2032 through September 30, 2037 (Year Twenty-Six through Year Thirty)	\$13,067.94	\$1,089.00

**First Renewal Period  
Option Area B Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2037 through September 30, 2042 (Year Thirty-One through Year Thirty-Five)	\$15,028.14	\$1,252.35
Next consecutive five (5) year period October 1, 2042 through September 30, 2047 (Year Thirty-Six through Year Forty)	\$17,282.37	\$1,440.20

**Second Renewal Period  
Option Area B Site Rent**

<b>Payment Period</b>	<b>Annual Amount</b>	<b>Monthly Amount</b>
Next consecutive five (5) year period October 1, 2047 through September 30, 2052 (Year Forty-One through Year Forty-Five)	\$19,874.73	\$1,656.23
Next consecutive five (5) year period October 1, 2052 through September 30, 2057 (Year Forty-Six through Year Fifty)	\$22,855.94	\$1,904.67