



**SPECIAL MEETING
CITY OF ROSWELL COUNCIL
TUESDAY, NOVEMBER 18, 2025, at 5:00 p.m.
CITY HALL Large Conference Room
425 N. Richardson Ave.
Roswell, New Mexico 88201**

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution No. 25-28. Except for emergency matters, the City Council shall take action only on the specific items listed on the Agenda.

NOVEMBER 18, 2025		MAYOR - Timothy Z. Jennings			5:00 p.m.
Ward I	Ward II	Ward III	Ward IV	Ward V	
Cristina A. Arnold	Juliana Halvorson	Edward L. Heldenbrand	Robert B. Corn	Angela G. Moore	
Juan Oropesa	Will Cavin	Christopher Cortez	Darrell Johnson	Carlos Marrujo Jr.	

WELCOME! We are very glad you have joined us for the Roswell City Council meeting. If you wish to speak, please sign up at the podium. The Council is pleased to hear relevant comments; however, a 3-minute limit is set in accordance with Resolution 17-65 (Governing Body Rules of Order). Large groups are asked to name a spokesperson. Robert's Rules of Order govern the conduct of the meeting. THANK YOU for participating in your City Government.

OPENING CEREMONIES

Call to Order by Presiding Officer
Roll Call & Determination of Quorum

APPROVAL OF THE AGENDA

1. Approval of agenda - approve the agenda for the November 18, 2025, Special City Council Meeting.

PUBLIC PARTICIPATION ON AGENDA ITEMS

REGULAR ITEMS

2. Approval of RFP-26-0020 Professional Legal Services for Special PFAS Litigation Counsel to NM Local Government Law, LLC. (Heldenbrand/ Yntema) Pg. 2
3. Approval of Union Collective Bargaining Agreement. (Heldenbrand/Yntema) Pg. 4
4. Approval of City of Roswell Police Department to enter into a 5-year lease beginning December 1, 2025, ending November 30, 2030, for Building No. 500 at the Roswell Air Center. (Heldenbrand/Sanchez) Pg. 40
5. Approval of City of Roswell Museum Lease to enter into a 5-year lease beginning December 1, 2025, and ending November 30, 2030, for Building No. 1081 at the Roswell Air Center. (Heldenbrand/Sanchez) Pg. 64

ADJOURNMENT

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week before the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk at 575-637-6202 if a summary in another accessible format is needed. Printed and posted: **Friday, November 14, 2025.**

Please join my meeting from your computer, tablet, or smartphone. <https://meet.goto.com/554948949> You can also dial in using your phone. Access Code: 554-948-949 United States: +1 (224) 501-3412

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**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Special Council Meeting

2.

Meeting Date: 11/18/2025

COMMITTEE: Legal

CONTACT: Hessel Yntema

CHAIR: Ed Heldenbrand

ACTION REQUESTED:

Approval of RFP-26-0020 Professional Legal Services for Special PFAS Litigation Counsel to NM Local Government Law, LLC. (Heldenbrand/ Yntema)

BACKGROUND:

Initiated by: Hess Yntema

The City of Roswell issued RFP-26002 seeking proposals from qualified law firms to provide professional legal services as Special PFAS Litigation Counsel. The selected firm will assist the City in pursuing legal remedies and recovering costs associated with PFAS an AFFF contamination affecting the City's drinking water and wastewater systems.

Three proposals were received and evaluated by the City's Evaluation Committee in accordance with the RFP criteria.

Final scores were as follows:

- NM Local Government Law, LLC -- 87.12
- Nachawati Law Group -- 78.67
- Stag Liuzza, LLC -- 74.88

Based on qualifications, municipal experience, and understanding of PFAS litigation, the Evaluation Committee recommends award to NM Local Government Law, LLC as the most advantageous proposer for the City.

FINANCIAL CONSIDERATION

There is no upfront financial cost to the City. Legal fees will be contingent upon successful recovery of funds through litigation or settlement. The firm will be compensated only if the City receives financial recovery.

LEGAL REVIEW:

Contracts will be reviewed by legal upon award.

BOARD AND COMMITTEE ACTION:

Legal Committee referred this item at their November 18, 2025, meeting at 2:00 p.m., to the Special City Council meeting on November 18, 2025, at 5:00 p.m.

STAFF RECOMMENDATION:

Proceed as presented.

Attachments

RFP-26-002 Professional Legal Services-Special - Recommendation of Award

Award Recommendation Report

Award Recommendation for RFP-26-002 Professional Legal Services for Special PFAS Litigation Counsel

The City of Roswell issued RFP-26-002 seeking proposals from qualified law firms to provide professional legal services as Special PFAS Litigation Counsel. The selected firm will assist the City in pursuing legal remedies and recovering costs associated with PFAS and AFFF contamination affecting the City's drinking water and wastewater systems. The scope of services includes legal analysis, claim development, litigation support, mediation or arbitration assistance, and coordination with City officials.

Summary of Proposals Received:

Three (3) proposals were received from:

- Nachawati Law Group / Henninghausen Olsen & McCrea
- NM Local Government Law, LLC
- Stag Liuzza, LLC

Evaluation Summary:

All proposals were reviewed and scored by the Evaluation Committee in accordance with the evaluation criteria established in the RFP. The final scores were as follows:

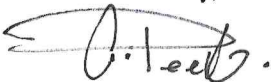
NM Local Government Law, LLC: 87.12

Nachawati Law Group: 78.67

Stag Liuzza, LLC: 74.88

After reviewing all proposals, the Evaluation Committee determined that **NM Local Government Law, LLC** submitted the most advantageous proposal. Their experience working with New Mexico municipalities, demonstrated understanding of PFAS litigation, and overall qualifications best align with the needs of the City.

Sincerely,



Arely Peek
Purchasing Agent

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Special Council Meeting

3.

Meeting Date: 11/18/2025

COMMITTEE: Legal

CONTACT: Hessel Yntema

CHAIR: Ed Heldenbrand

ACTION REQUESTED:

Approval of Union Collective Bargaining Agreement. (Heldenbrand/Yntema)

BACKGROUND:

Initiated by: Hess Yntema

Ratifying the Roswell Police Officers Association Union Contract.

FINANCIAL CONSIDERATION

As discussed in the September and October closed sessions.

LEGAL REVIEW:

Negotiated with the aid of Council.

BOARD AND COMMITTEE ACTION:

There is no board or committee review.

STAFF RECOMMENDATION:

Proceed as presented.

Attachments

CBA-RPOA

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
THE CITY OF ROSWELL
AND
THE ROSWELL POLICE OFFICERS ASSOCIATION
9/24/2024 - 6/30/2026

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ARTICLE 1 AGREEMENT

THIS AGREEMENT is entered into by and between the City of Roswell, municipal corporation of the State of New Mexico, hereinafter sometimes referred to as the "City", and the Roswell Police Officers Association, hereinafter referred to as the "Association", which is an affiliate of the Fraternal Order of Police Labor Council and the Pecos Valley Lodge #55 Fraternal Order of Police.

WHEREAS, the parties hereto have reached an agreement on all matters which have been subject to negotiation and desire to reduce such agreement in writing in order to avoid any misunderstanding on what in fact has been agreed to:

NOW THEREFORE, IT IS HEREBY AGREED:

- 1.1 The City of Roswell recognizes the Roswell Police Officers Association as the exclusive collective bargaining representative for the regular, full-time, Non-Probationary positions of Police Office Assistant, Police Officer I, Police Officer II, Police Officer III, Detective, and Police Sergeants.
- 1.2 The City of Roswell extends to the Roswell Police Officers Association representing such unit of employees the following rights:
 - (a) To represent the interest of all employees in the bargaining unit in collective bargaining, without discrimination regarding membership or non-membership in the labor organization.
 - (b) To represent employees, when requested, in the settlement of grievances, however, the exclusive representative shall not prevent employees from taking grievances, on their own, through the grievance process. This decision shall be made at the time of the filing of the grievance.
 - (c) To exclusive representation status.
- 1.3 The management of the City of Roswell Police Department, the Association, and its Officers shall not discriminate against any member of the bargaining unit with regard to race, color, sex, creed, religion, marital status, age, national origin, disability, veteran status, or membership or non-membership in the Association.
- 1.4 Those matters expressly and specifically included in the collective bargaining agreement between the City and the Association will require mutual agreement between the parties prior to implementing any changes.

- 1.5 For the purposes of this agreement and any subsequent Memorandum of Understanding, the City of Roswell shall be referred to as the "City" or "Employer", the Roswell Police Department shall be referred to as the "Department", the Police Chief shall be referred to as the "Chief", the Roswell Police Officers Association shall be referred to as the "Association" and any reference to officer or bargaining unit employee shall be referred to as "employee".

ARTICLE 2 MANAGEMENT RIGHTS
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- 2.1 It is agreed that except as expressly and specifically delegated, abridged, granted, or modified by this Agreement, all of the rights, powers, and authority the Employer had prior to the signing of this Agreement are retained by the Employer and remain the exclusive right of management without limitation. Furthermore, these retained rights are not subject to the grievance procedure.

ARTICLE 3 WORK SLOWDOWNS OR STOPPAGES
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- 3.1 The Association agrees that it will not cause, permit, or authorize its members to strike, sit-down, slowdown, or engage in any work stoppage or any interference with the efficient management of the Department.
- 3.2 Furthermore, it is understood that no Association officer or representative shall authorize, encourage, or assist in any strike, stoppage, sit-down, or slowdown at any location nor will it participate in, counsel, or induce any such actions. The Association will further take direct and concerted affirmative action to prevent and stop any such actions that may occur in violation of this commitment.

ARTICLE 4 PRODUCTIVITY/PROTECTION OF PROPERTY
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- 4.1 Consistent with the employees' welfare in regard to safety, health, and sustained effort, the Association agrees to cooperate with management in its effort to increase employee effectiveness and productivity. Further, in justice and in fairness to the City and the taxpayers, all employees shall be required to report to work on time, shall not leave work early, shall be prompt in reporting to their assigned duties, and faithfully perform all their duties.
- 4.2 It shall be the responsibility of employees' having custody of any City equipment and/or property to make sure that it is properly cared for, kept clean, assure that it is used for City use only, and it is returned to its place of storage and secured.
- 4.3 General Operation of Department Vehicle
(a) The Policy (Number 115.001) – General Operation of Department Vehicle, shall be a part of this Agreement for a period expiring on June 30, 2018 with successive two (2) year extensions unless either party files written notice to cease such inclusion of the Policy as a part of the Agreement following the completion of each two (2) year term.

ARTICLE 5 BARGAINING UNIT EMPLOYEES
--

- 5.1 A bargaining unit employee is an employee who occupies a position that has been identified in Article 1.1 of this agreement, is appropriate for inclusion in the bargaining unit, and has satisfactorily completed the required twelve (12) month probationary period.

ARTICLE 6 STAFFING

- 6.1 It is recognized by the parties that it is the sole and exclusive right of the Employer to set and determine the number of employees to be employed in each job classification.

ARTICLE 7 OUTSIDE EMPLOYMENT

- 7.1 Bargaining unit employees shall consider the City as their primary employer. An employee may engage in outside business activity or outside employment provided:
- (a) it does not present a potential conflict of interest,
 - (b) does not represent potential damage to public trust,
 - (c) as determined by the Chief, does not interfere with the proper discharge of the employee's duties and responsibilities as a member of the Department.
 - (d) the employees' job performance and attendance is satisfactory or better, and
 - (e) the outside employment is for twenty (20) hours or less per week.
- 7.2 The employee shall complete a form identifying the place of business, the type of business and work to be performed, and the number of hours to be worked. Such authorization is for a maximum of twelve (12) months from date of approval. The Chief may withdraw approval at any time for cause.

ARTICLE 8 VOLUNTARY MEMBERSHIP

- 8.1 It is recognized, by the parties to this agreement, that bargaining unit employees are free to join or not join the Association. Membership in the Association is totally and completely voluntary.

ARTICLE 9 MEMBERSHIP DUES
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- 9.1 The City will deduct union dues from bargaining unit employees' paychecks upon receipt of a voluntary dues deduction authorization form signed by each employee. Such voluntary authorization form shall be provided to the City's Human Resources Department at least fifteen (15) days prior to the desired date of deduction. The authorization of dues deduction may be revoked by an employee

by providing a thirty (30) day advance written notice to the City's Human Resources Department and the Secretary of the Association.

- 9.2 There shall only be one (1) amount identified for dues deduction for all employees and shall not include any assessments or other expenses. All dues deducted shall be forwarded to the Secretary of the Association monthly.
- 9.3 The Association shall indemnify and hold the City harmless against all claims, demands, suits, or other forms of liability and costs incurred by the City as a result of the City's actions taken for the purposes of compliance with this Article.
- 9.4 The provisions of this Article shall not be construed, interpreted, or applied as to make it compulsory that an employee must pay any dues or fees to the Association.

ARTICLE 10 ASSOCIATION REPRESENTATIVE
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- 10.1 The procedure for the discussion of issues that may arise in the application and interpretation of this Agreement shall require that the Association contact management and set up a time and place that is mutually acceptable to the parties. It is incumbent upon the Association Representative to remain within the chain of command when utilizing this procedure and not bypass proper authority in his efforts to resolve an issue. Association business is not city business and therefore City time, material, and property shall not be used for Association business.
- 10.2 At the option of the Chief, a maximum of two (2) representatives of the Association shall be granted time off with pay for the purpose of attending meetings called by the City. Such pay shall be granted only if the meeting(s) are held during the representative(s) normal scheduled work hours. This language does not apply to collective bargaining sessions.
- 10.3 If the Association President or designee is required by management to be in attendance at a meeting scheduled by the City, the President or designee will be compensated.

ARTICLE 11 HOURS OF WORK AND OVERTIME
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Rest Periods & Meal Periods:

- (a) Needs of the service permitting, employees will be allowed up to fifteen (15) minutes for a rest period during each one-half (½) shift, as scheduled by management.
- (b) A fifteen (15) minute rest period shall be scheduled by management for an employee between shifts, or as soon as possible after the beginning of the additional shift, when working a second full shift.
- (c) Subject to the needs of the department, the Employer will attempt to schedule meal periods for employees if time permits, as follows;
 - (1) Police officers working ten (10) hour shifts on the street will be scheduled a forty-five (45) minute meal period to be taken on paid time subject to call as needed;
 - (2) Non-patrol police officers will be scheduled a one (1) hour unpaid meal period;
 - (3) Non-sworn bargaining unit employees will be scheduled a sixty (60) minute unpaid meal period.

ARTICLE 12 NOTIFICATION OF ABSENCE

- 12.1 An employee who is unable to arrive at work on time for whatever reason shall notify the on-duty supervisor at least one (1) hour prior to the starting time of the shift, within the first day of absence, giving the reason for failure to report and estimating, whenever possible, when he will be able to report for duty.
- 12.2 An employee must request, state the reason, and receive approval from his designated supervisor prior to leaving the work site before the scheduled ending time, for whatever reason.
- 12.3 An employee who knows in advance that he will be unable to report for duty shall notify his designated supervisor prior to the day of the absence. Such notification shall be given as soon as it is known by the employee, but in no event later than forty-eight (48) hours prior to the starting time of the shift.
- 12.4 It is recognized that notification is not approval.

ARTICLE 13 HOLIDAYS

- 13.1 Holidays will be handled in accordance with the City of Roswell Personnel Rules and Regulations and Departmental Policy.
- 13.2 Employees shall receive holiday bank of eight (8) or ten (10) hours (depending on his/her normal work schedule) for the holiday at his/her base hourly rate of pay.
- 13.3 Employees will be allowed to sell back up to eighty (80) hours of holiday bank on the first pay period in December each year.

ARTICLE 14 SENIORITY

14.1 Seniority:

- (a) Seniority as defined under this Agreement shall be based upon length of continuous service as a police officer in the Roswell Police Department. For "civilian" classifications in the Roswell Police Department currently covered under this Agreement, seniority will also be based upon continuous service in the Roswell Police Department. The term continuous service shall be interpreted to mean total service from the date of last hire as a regular full time employee of the Roswell Police Department minus any leave without pay of thirty (30) days or more.
- (b) There are two (2) types of seniority that are accrued in the Roswell Police Department.

Sworn Personnel

- (1) General seniority (total length of service) as a police officer with the Roswell Police Department.
- (2) Time in rank as a police officer with the Roswell Police Department.

Non-Sworn Personnel

- (1) General seniority (total length of service) with the Roswell Police Department. This is the definition applicable to RIF.

- (2) Seniority with the Roswell Police Department applied to the current classification held.

- 14.2 Rank seniority is the dominant seniority for retaining an employee's position as a Sergeant. A Sergeant will have seniority over a Police Officer below the rank of Sergeant, regardless of the general or rank seniority of a Police Officer below the rank of Sergeant. This seniority concept will prevail during a Reduction In Force (RIF) until the displacement of a police officer below the rank of Sergeant is involved. In the RIF of a police officer below the rank of Sergeant, general seniority will prevail.
- 14.3 Upon successful completion of the probationary period as defined in Article 5, employees become bargaining unit employees and will be credited with length of service for seniority purposes retroactive to the last date of hire with the Roswell Police Department.
- 14.4 For the purposes of ascertaining seniority in the event of a tie, the first criteria to be applied will be continuous service with the Roswell Police Department. Should continuous service within the department be identical, the tie will be broken by drawing numbers with the highest number drawn being the most senior.
- 14.5 Employees covered by this Agreement shall lose their seniority status and their name shall be removed from the seniority list under the following conditions:
 - (a) Resignation
 - (b) Discharge
 - (c) Discharge for being absent from work for three (3) consecutive days without properly notifying the Chief of an acceptable reason for the absences
 - (d) Retirement
 - (e) Failure to report to work by the expiration date of a leave of absence as per Article 20.2.
 - (f) In the event of a layoff, failure to return to the service of the City by the date specified by the City offering re-instatement
 - (g) An absence from the active payroll (medical leave, leave of absence, layoff, etc.) of the City due to layoff or continuous or prolonged illness or injury for twelve (12) months or to the extent the individual has accrued sick leave

14.6 Seniority List. The City will post a seniority list on or about April 15th and on or about October 15th of each year of this agreement.

14.7 Seniority Shift Bidding

- (a) Sergeants and Patrol Officers will bid according to their seniority, and they will bid for shifts and days off. This applies only to Field Services. Specialty divisions will bid according to their date of transfer into the division.
- (b) Nothing in this section shall prevent a Commander from permitting employees to mutually exchange bidded slots for hardship reasons.
- (c) The Chief may make shift changes for the purpose of ensuring adequate experience and/or staffing levels on the different shifts. The Chief will allow the Association an opportunity to make written recommendations prior to making such changes. If an opening occurs in a shift, the shift sergeant will rebid the days off for that shift if an opening occurs at least three (3) months prior to the regular shift bid. This process and the results of this rebid are not a grievable issue. The rebid will be done according to general seniority.
- (d) The number of positions within each shift will be determined by management. Each position/slot will identify the days off assigned to that position/slot.

ARTICLE 15 FILLING VACANCIES/PROMOTION

15.1 Regular Full-Time Vacancy. A regular full-time vacancy is a position that is designated by the Chief as such and is expected to last for more than one (1) year under normal circumstances. Vacancies in specialized areas can only be filled by Police Officers with two (2) years of continuous service from the last date of hire with the Roswell Police Department.

15.2 Promotions. If the Chief decides to fill a regular full-time position within the bargaining unit through promotion, a notice will be posted on the Department bulletin board for fourteen (14) calendar days.

15.3 Sergeant Promotional Process

- (a) A qualified sworn officer desiring to be considered for the posted position of Sergeant shall submit his application in writing prior to the deadline for application as per the posted notice.
- (b) The minimum experience requirement for consideration for the position of Sergeant is three (3) years of continuous service as a Police Officer with the Roswell Police Department (since last date of hire). An applicant may not have received a disciplinary action of suspension within twelve (12) months of the written examination.
- (c) The qualified applicant for a promotion to Sergeant shall take the written test identified and administered at the direction of the Police Chief. The Chief will make potential applicants aware of material to be studied for the test at least sixty (60) days prior to testing if using a standardized test, or thirty (30) days prior if the written examination is created by Administration of the Roswell Police Department. Examples of this would include, but are not limited to, policy, rules and regulations, the collective bargaining agreement, and state statutes.
- (d) Upon completion of the written exam, applicants with a seventy percent (70%) or higher score, will advance in the process.
- (e) The Chief of Police will establish an Evaluation Team(s) consisting of at least five (5) persons to include two (2) RPO staff, one (1) of which will be a Sergeant, appointed by the Chief.
- (f) The Chief of Police will establish the requirements and make up of the oral examination. The applicant's performance on the oral exam will be determined by the Chief or his designated representative.
- (g) The Chief of Police or designee will establish a practical exercise (s) (ex: scenario, table top, etc.) which will be given and graded by an Evaluation Team to establish supervisory skills.
- (h) A Records Review will be conducted by an Evaluation Team, to include information available on the employee.
- (i) The promotional list will consist of the applicants who completed the process in rank order from the highest to the lowest composite score of at least the top three (3), but not to exceed five (5). The number of individuals placed on the list cannot exceed 50% of the total number of people who passed the written exam. The applicant who obtains the highest composite score will be offered the position first, to be followed by the second and the

third applicant and so on if applicable. Promotions to Sergeant will not occur until such time as the Chief of Police determines that such vacancies may be filled. This promotional list will remain in effect for one (1) year. An employee on the promotional list or in the promotional process who receives a disciplinary action of suspension will be removed from consideration for promotion.

- (j) The complete competitive process will be composed of the following areas and designated percentages to consist of a total possible score of one hundred percent (100%).
 - (1) Twenty-five percent (25%) on the written examination;
 - (2) Twenty-five percent (25%) on the oral examination;
 - (3) Twenty-five percent (25%) on the practical exercise(s); and
 - (4) Twenty-five percent (25%) on the records review,
 - (k) In the event of a tie at the end of the process as set forth in subsection (i), seniority will prevail.
 - (l) The promotion to Sergeant is contingent upon the employee successfully completing a six-month trial period. During the trial period, the employee will be subject to formal and informal evaluations in accordance with department policy. Should the employee fail to successfully complete the trial period the employee will return to his rank of patrolman, and the employee on the list with the second best overall score will be offered the position, subject to the six (6) month trial period.
- 15.4 If two (2) or more Sergeant vacancies are posted at the same time, employees may bid on all posted vacancies; however, the officer must state his preference as to which bid he would prefer to be awarded if he were to be selected for either vacancy.
- 15.5 It is agreed that the Employer shall set and determine the number of employees to be carried in each job classification and it is agreed that the decision to fill a vacancy is also at the sole discretion of the employer.
- 15.6 Qualification as they pertain to this section shall also mean that the employee is physically and mentally capable of performing the duties of the position, meets qualifications and requirements of the position including the necessary certifications as prescribed by law, and has qualified on the examinations or physical examinations.

ARTICLE 16 REDUCTION IN FORCE
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- 16.1 Association Input. In the event that a layoff is necessary, the City shall provide the Association an opportunity to provide recommendations on alternatives to the layoff. However, nothing herein is meant to indicate that the City must do anything other than consider such recommendations. The City at its sole discretion shall make the final determination on the actions to be taken on the reduction of force.
- 16.2 Right to Abolish Positions. When such is deemed appropriate by the City Manager, the Chief may determine that one or more positions may be discontinued or abolished. In such instances, layoffs if necessary will be conducted in accordance with the policies set forth below. The Chief reserves the right to alter the layoff procedure under special circumstances in order to assure an adequate level of service.
- (a) The Chief shall determine which positions in the Department shall be subject to layoff.
 - (b) Employees subject to a RIF may exercise their seniority within the department, utilizing their rank seniority and/or their general seniority, whichever is appropriate, to displace another less senior employee in a position within the bargaining unit for which the more senior employee is qualified.
 - (c) Laid-off employees shall be recalled in accordance with their qualifications and ability to perform the job vacancy, with the senior qualified employee being recalled first. That is, the employee with the greatest rank or general seniority whichever is appropriate according to this agreement, shall be recalled first, provided the employee has the ability and is physically able to perform the duties of the job which is open. The employee's qualifications shall be evaluated and solely determined by the Chief.
- 16.3 An employee approved for layoff by the Chief, will be given a seven (7)-calendar day advance notice. The City may substitute seven (7) days of administrative leave with pay in lieu of the seven (7)-day advance notice. The Association shall also receive notice of any layoff.
- 16.4 A layoff is considered a permanent termination unless the employee is reinstated within twelve (12) months.

- (a) Should a laid-off employee be subject to recall, the employee shall be notified of such at the last known address by certified mail.
 - (b) The employee must respond in writing within five (5) calendar days of receipt of notice of recall. The employee must return to work at the date stipulated in the recall notice, which shall not be sooner than fourteen (14) calendar days from the date of the letter. The employee and the Chief may mutually agree on an earlier date, if such is deemed beneficial.
 - (c) It shall be the laid-off employee's responsibility to notify the City of Roswell Human Resources Department of any changes in his mailing address.
 - (d) Failure to respond to a recall notice, if such is sent to the last known address of the employee, as noted in 16.4.(c), shall result in the forfeiture of any and all recall and seniority rights under this agreement and the city shall have no further employment obligations to the employee.
- 16.5 Laid-off employees, upon recall, shall have their length of service date adjusted to reflect the period of time they were on layoff (i.e. if the layoff lasted five (5) months, their new length of service date shall be their original service date decreased by five (5) months to reflect the time on layoff).
- 16.6 Employees on layoff shall be continued in the group health insurance program until the end of the month in which they were laid off. Subsequent to that date, the employee(s) may continue such insurance coverage under the provisions of COBRA.

ARTICLE 17 EMPLOYEE INITIATED TRANSFERS
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- 17.1 An employee may be transferred to a position in another division in the same pay grade provided he is physically and mentally capable of performing the duties of the position, meets the stipulated qualifications and requirements of the position, qualifies on any stipulated examination or physical examination, and the transfer is in the best interest of the City. An employee who is transferred shall serve a trial period on transfer for ninety (90) days.
- 17.2 In the event the Chief determines that the transfer of an employee is appropriate, such lateral transfer shall be made in accordance with the following provisions:

- (a) The Chief has determined that a transfer is appropriate and designates the individual to be transferred.
 - (b) In the event that more than one (1) employee submits a written request for a transfer, the position will be filled by the best qualified employee as determined by the Chief. All things being equal, as determined by the Chief, the employee with the greatest rank (as it relates to Sergeant) or general seniority (as it relates to Police Officer and non-sworn) as applicable, shall be given preference on the consideration for the transfer.
 - (c) Shift assignments upon transfer shall be determined by the Chief.
 - (d) Not more than one (1) employee initiated lateral transfer may be approved during any calendar year per employee.
- 17.3 Employees who are transferred from one (1) division to another for what is in the best interest of the City or for a stipulated time period, when returned to their former division, shall be assigned to their former job classification in accordance with their seniority.
- 17.4 Minimum experience for assignment to the Detectives Division, Traffic Division, Support Services Division, or Technical Services Division, shall be one (1) year of service in the rank of Police Officer with supporting documentation of expertise in the targeted vacancy to which the employee is applying upon approval of the Chief, or designee.

ARTICLE 18 SICK LEAVE

- 18.1 The City's Personnel Rules and Regulations number 404.0 through 404.18 including 405.0 and 405.1 will continue in full force and effect for the term of this agreement. 404.1 is excluded. The parties have agreed to specific language regarding notification and approval.

ARTICLE 19 PERSONAL LEAVE WITHOUT PAY
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- 19.1 An employee may be granted a personal leave of absence without pay for a period not to exceed thirty (30) calendar days, at the Employer's sole discretion, upon written application from the employee. The request must be for good and sufficient

reasons, the leave must not interfere with operational requirements of the Department, and such leave is subject to the approval of the Chief and Human Resources Director.

- 19.2 At the expiration of leave without pay, the employee may be reinstated in the position vacated, at the option of the Chief. If not reinstated to the same position, the employee may be offered another vacant position, provided he is qualified and physically capable of performing the work. If there are no positions available for which he is qualified to fill, normal layoff procedures shall be utilized to determine the employee's status. Approved leave without pay shall not constitute a break in service if for thirty (30) calendar days or less. However, leave in excess of thirty (30) calendar days shall constitute a break in service for purposes of seniority, benefits availability, and accruals. The employee's seniority date shall be adjusted to reflect the break in service. Failure of an employee to report for duty at the stipulated return date from leave, shall be just cause for refusal of reinstatement and termination of employment with the City.

ARTICLE 20 ANNUAL MILITARY TRAINING AND MILITARY LEAVE

- 20.1 A bargaining unit employee who is a member of a reserve component of the United States Armed Forces or the National Guard will be granted leave in accordance with appropriate City rules and regulations, State law, and Federal law.

ARTICLE 21 INTERNAL AFFAIRS
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- 21.1 The Internal Affairs Unit is established as a staff investigative body, responsible to the Chief for the purpose of conducting administrative investigations.
- (a) It is recognized by the parties that it is the right and obligation of the Chief to investigate any complaint of misconduct of a Department employee.
 - (b) When the Internal Affairs Investigator receives a complaint of a non-criminal nature, he shall conduct a preliminary investigation to determine the validity of the complaint. Once reasonable suspicion is developed that a complaint may be valid, the employee under investigation will be issued a target letter advising him that a formal complaint is being investigated.

- (c) Exception: When any complaint is or may be criminal in nature, no target letter is required until the criminal investigation is complete.

21.2 This section establishes the guideline for conduct of Internal Affairs interviews and interrogations. The existence of the Internal Affairs Unit does not lessen a commanding officer's authority or responsibility. The following guidelines shall apply to Internal Affairs investigations:

- (a) The interrogation of a bargaining unit employee will normally be conducted when the employee is on duty or during the bargaining unit employee's working hours, unless the urgency of the investigation requires otherwise.
- (b) Interrogations will take place normally at the Department, unless the urgency of the investigation requires otherwise.
- (c) If a bargaining unit employee is directed to leave his post and report for an interview, the employee shall immediately notify his supervisor.
- (d) The bargaining unit employee will be afforded the opportunity to consult with counsel before being questioned provided the interrogation is not delayed more than two (2) hours. Counsel or another person of the bargaining unit employee's choice may be present during the interview.
- (e) The bargaining unit employee under investigation will be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation.
- (f) The bargaining unit employee will be informed of the nature of the investigation. The names of all known complainants shall be disclosed to the member unless the Chief Administrator of the member's employer determines that the identification of the complainant shall not be disclosed because disclosure would jeopardize or compromise the integrity or security of the investigation. In the event that disciplinary action is taken against the employee and the employee files a grievance, the complainant/charging party will be made known to the employee along with a copy of the official complaint.
- (g) Each interrogation session shall not exceed two (2) hours unless the parties mutually consent to continuation of the session and there shall not be more than two (2) interrogation sessions within a twenty-four (24) hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least one (1) hour rest period between the sessions. A bargaining unit employee shall be allowed to attend to physical necessities

as they occur in the course of an interrogation session. The combined duration of a bargaining unit employee's work shift and any interrogation session shall not exceed fourteen (14) hours within a twenty-four (24) hour period, unless the urgency of the investigation requires otherwise.

- (h) A bargaining unit employee shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session.
- (i) Any interrogation of a bargaining unit employee shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript. Any recesses called during the interrogation shall be noted in the transcript.
- (j) An accurate copy of the transcript or tape shall be provided to the bargaining unit employee, upon request, no later than fifteen (15) working days after the investigation has been completed.
- (k) After reviewing all the information collected in the course of an investigation of a bargaining unit employee, the Chief Administrator of the bargaining unit employees' employer may order the bargaining unit employee to submit to a polygraph examination administered by a licensed polygraph examiner, provided that all other reasonable investigative means have been exhausted and the bargaining unit employee has been advised of the Chief Administrator's reasons for ordering the polygraph examination. If warranted, the Chief Administrator may require the complainant to submit to a polygraph examination at any time during the investigation.
- (l) A bargaining unit employee may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the employer within thirty (30) working days after the document was entered into the employee's personnel file. A bargaining unit employee's written response shall be attached to the document.
- (m) When any bargaining unit employee is under administrative investigation and a determination is made to commence a criminal investigation, he shall be immediately notified of the investigation and shall be afforded all the applicable protections set forth in the Bill of Rights of the United States and New Mexico constitutions.
- (n) In the event it is determined that the complainant falsified his statements, the Department may take whatever action it deems appropriate and the employee, at his discretion, may pursue remedies against the complainant.

- (o) Any bargaining unit employee who knowingly withholds evidence or information pertaining to an investigation will have provided just cause for disciplinary action including dismissal.
- (p) All files and reports of investigations by the Internal Affairs Unit are confidential and are intended for the exclusive use of the Chief, the City Manager and the City's legal representative. A bargaining unit employee shall have the right to review his own files, along with a personal representative, if requested in writing. It is recognized that ongoing investigations are not placed in the file until the investigation is complete. If the investigation results in departmental charges being filed against the employee, that employee shall be provided access to all reports of the investigation which will contain all known material facts of the matter including tape recordings.

ARTICLE 22 DISCIPLINARY ACTION

- 22.1 The sole and exclusive right to discipline and discharge employees for cause is retained by the City.
- 22.2 In the event that an investigation results in the implementation of disciplinary action and if the investigated employee so requests, the Association may designate a representative to participate at all stages of the Grievance Procedure (Article 24) contained herein.
- 22.3 Prior to the implementation of disciplinary action, the employee will be presented with the charges and allowed to respond to the charges. This will take place at a meeting with the Police Chief or his designee. When a suspension without pay or demotion is being considered, the employee shall be afforded the opportunity to a pre-determination hearing before the Chief or his designee. The pre-determination hearing on dismissals shall be heard by the City Manager or designee.
- 22.4 Progressive discipline will be utilized, if appropriate, as determined by the Chief or his designee. The degree of discipline will depend upon the severity and frequency of the infraction and the employee's total work record. However, it is agreed and understood that, due to the serious nature of some infractions, the first disciplinary action may be dismissal.

22.5 Disciplinary actions or measures shall include, but shall not be limited to the following:

- (a) Written Reprimand
- (b) Suspension without pay
- (c) Demotion
- (d) Dismissal

The actions to be taken as outlined above are solely at the discretion of the City and the City reserves the right to exercise judgment and impose disciplinary action including dismissal as the City determines appropriate based upon the circumstances of each case.

22.6 Any disciplinary action, as defined in Article 22.5, imposed on the employee may be processed through the Grievance Procedure (Article 23) in this Agreement.

22.7 When a suspension without pay or demotion is being considered, the employee shall be afforded the opportunity to a pre-determination hearing before the Chief or his designee. The pre-determination hearing on dismissals shall be heard by the City Manager or designee.

ARTICLE 23 GRIEVANCE PROCEDURE

23.1 This grievance procedure is the only procedure that will be used for the settlement of disputes between the parties, including the bargaining unit employees, on issues pertaining to employment terms and conditions.

23.2 This procedure is not intended to preclude attempts to resolve complaints or problems with the employee's supervisors. A complaint will be considered a formal grievance when it has been reduced to writing and filed with the Chief. The following procedure will be followed for the presentation and resolution of grievances that may arise.

23.3 Written grievances must be filed within ten (10) working days after cause-giving rise to the grievance occurs. Under no circumstances will claims be valid or collectable for any time periods prior to ten (10) days from the date the grievance was filed. Grievances regarding suspensions of more than forty (40) hours or

involuntary termination/discharge shall be filed directly to step 2, with the City Manager, within ten (10) days of the notice of suspension or termination/discharge.

- 23.4 In the event that a grievance cannot be settled informally as provided for in Article 23.2, the employee may submit the issue through the formal grievance procedure. Any grievance entered into the formal grievance procedure must be in written form and the employee must clearly and concisely state all facts that are the basis of the grievance, the sections and Articles of this Agreement, which are alleged to have been violated, and the specific remedy requested. The statement "that the employee be made whole" is not acceptable as a requested remedy. The grievance shall be dated and signed by the aggrieved employee(s). It is agreed that during the formal grievance procedure, it shall be the employee's option as to whether or not he wishes to have Association representation.
- 23.5 Failure to submit any grievance within the identified time limits stipulated in this Article shall result in the forfeiture of the grievance by the charging party, the Association, or the Employer. Failure by the responding party to respond to a grievance within the time limits shall result in the grievance being automatically advanced to the next step of the grievance procedure.
- 23.6 Extensions of time limits under this Article are accomplished by written mutual agreement of the parties.
- 23.7 Formal Grievance Procedure
- (a) Step 1. Should a grievance arise and Article 23.2 been satisfied and the issue has not been resolved, an employee(s) having the complaint or grievance may present such in writing to the Chief. The grievant and the Chief or his designee shall meet, as soon as a mutually satisfactory time is scheduled, to attempt to resolve the issue. The Chief or his designee shall render a decision on the matter within ten (10) working days of the date they met to attempt to resolve the grievance.
 - (b) Step 2. If the employee(s) is not satisfied with the decision, the employee(s) may appeal the grievance to the City Manager within ten (10) working days of the date the decision was rendered by the Chief or designee. The City Manager or his designee shall meet with the grievant within ten (10) working days in an attempt to resolve the grievance. Within ten (10) working days following the meeting, the City Manager or his designee shall render a decision.
 - (c) Step 3. If the employee(s) is still dissatisfied following the decision of the City Manager, the grievant and/or the Association shall provide written

notification to the City Manager of their intent to submit the issue to Arbitration. The notification must be submitted in writing within ten (10) working days after the date the City Manager's decision is rendered. The request to the FMCS shall be submitted by the party requesting arbitration within ten (10) working days of the date of the notice to the City Manager identifying the intent to submit the issue to arbitration.

- (d) Working days is defined as days that the City administrative offices are open for business.

- 23.8 **ARBITRATION.** The Arbitrator shall be chosen from a list of seven (7) names from the region including New Mexico requested from the Federal Mediation and Conciliation Service. Each party shall strike a name from the list in rotation until one (1) name only remains on the list and the remaining name shall be the name of the Arbitrator. This process must be completed within ten (10) working days of the receipt of the list of arbitrators. The question as to which party shall strike first shall be determined by the toss of a coin.
- 23.9 Each party shall bear the expense and compensation of his representatives and respective witnesses. The expense of the arbitration, including those of the Arbitrator, meeting room, or other expenses common to both parties, shall be equally shared between the City and the Association. Except that a party cancelling or postponing a scheduled arbitration will assume the arbitrator's fees for cancellation/postponement unless a cancellation or postponement is due to a qualified emergency, defined as a natural disaster, or death or hospitalization of a necessary witness/representative or the immediate family member thereof, or as otherwise agreed to by the parties.
- 23.10 Evidence may be presented orally, or in writing, or both. All witnesses testifying orally or by deposition shall do so under oath, unless otherwise mutually agreed to by the parties. Either party, or both, if mutually agreed, may request that a transcript of the hearing be provided. In the event both parties request such, the cost of the transcript shall be borne equally by the parties. If such transcript is requested by one party, the requesting party shall pay for the transcript but shall not be required to supply a copy to the party that did not request it.
- 23.11 The Arbitrator shall hear and make a decision on the dispute and controversy as per the Federal Mediation and Conciliation Service expedited process. The decision of the Arbitrator shall be final and binding upon both parties. The Arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he substitute his discretion for that of the City or the Association where such discretion has been retained by the City or the

Association. The arbitrator shall not render a decision that requires the governing body to re-appropriate funds.

ARTICLE 24 EMPLOYEE SAFETY AND HEALTH
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24.1 The City and the Association agree that in all phases of police operations the safety and health of employees covered under this Agreement are a primary consideration in recognition of the potential hazards inherent in the nature of the work. Therefore, the parties will continue to strive to maintain a safe work environment. Towards this end, the City and Association will work together to:

- (a) Instill in the employees an awareness of safety and will promote safe and healthy working habits and attitudes on an on-going basis,
- (b) Make available to employees, required safety equipment and proper safety procedures to aid in a safer work environment for such employees; and
- (c) The parties and the employees shall comply with all applicable safety rules, regulations, and laws.

ARTICLE 25 PHYSICAL EXAMINATIONS

25.1 Employees may be required to take and pass a medical examination at any time with reasons for the exam stated, to determine their mental or physical capabilities to perform their assignments satisfactorily. Such examinations will be done at no cost to the employee and will be performed by certified medical personnel selected by the City. Employees may have such medical examination performed by a certified physician of their choice; however, the expense of such exam must be borne by the employee. The City may require the employee who utilized his own physician to take another examination with a City physician at City expense. If there is disagreement between the two (2) physicians, a third disinterested certified physician shall be utilized and his diagnosis shall be final and binding on the parties. If it is determined by the City that an employee cannot perform his assigned duties due to a medical or mental condition, the employee may exercise his rights under the Americans with Disabilities Act.

25.2 In the event a third disinterested physician is utilized, the cost shall be borne equally between the City and the employee.

ARTICLE 26 WORKERS COMPENSATION
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- 26.1 All employees under this Agreement are covered under the provisions of the New Mexico Worker's Compensation Act.

ARTICLE 27 LOST, DAMAGED OR STOLEN PROPERTY
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- 27.1 Officers who have lost, damaged, or have had City property stolen, and such loss, damage, or theft is directly attributable to an action taken in the line of duty will not be required to reimburse the City if the officer can demonstrate, to the satisfaction of the Chief, that the loss, damage, or theft did not occur as a result of negligence, malfeasance, or malicious intent on the part of the officer.
- 27.2 The City will reimburse an officer (eligible under paragraph 27.1 for eyeglasses, hearing aids, or dental bridges and Department required equipment if such equipment or items are damaged in the line of duty as a result of a direct delivery of service that has been officially documented and approved by the Chief. If an item must be replaced, the City shall only be required to provide a similar functional item. Should the officer not be satisfied with the quality of the item the City offers as a replacement, he may, at his option, request the City credit him with the amount it would have spent for the replacement and the employee may purchase whatever quality item he desires, providing he assumes the additional costs. This language is not intended to be used to replace old worn out items or equipment referred to herein.

ARTICLE 28 COMPENSATION
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- 28.1 Effective the first pay period following ratification and signature of the Agreement by both parties, or the first full pay period following resolution of impasse, whichever is later, bargaining unit employees will receive a four percent (4%) increase to their regular rate of pay.

- 28.2 When a Police Recruit completes the necessary training and qualifies to enter the bargaining unit, he/she will be placed into the Police Officer I position.
- 28.3 A bargaining unit employee assigned to SID will be paid at the Detective grade.
- 28.4 A Police Officer I will not qualify for promotion to Police Officer II until any five (5) of the following fifteen (15) objectives are met:
- a. Associate's or Bachelor's Degree from an accredited institution or at least 60 hours of course credit
 - b. Physical Requirement as determined by the Department
 - c. Bilingual Ability as approved by the Department
 - d. Intermediate professional skills test as approved by the Department and the RPOA
 - e. Length of service of two (2) years in a Police Officer I position
 - f. Intermediate skills training certification as issued by the State of New Mexico
 - g. Qualification completion for all assigned weapons systems at 90% or above for the previous two (2) years. This option is not available to SWAT-qualified individuals. (Counts as three (3) Objectives)
 - h. Intermediate specialty training in any of the following areas: (Each area of training counts as a separate objective and can count as three (3) objectives towards the total five (5) required. Training must also be Department recognized with a minimum of 40 hours per specialty.)
 - i. SWAT
 - ii. Field Training Officer who has completed the Department approved Field Training Officer course and successfully trained officers in three phases of field training
 - iii. School Resource Officer (Twelve (12) months of service in this position would qualify as the hour requirement.)
 - iv. SID/Narcotics
 - v. Administrative/Support Services (Twelve (12) months of service in this position would qualify as the hour requirement.)
 - vi. Traffic
 - vii. Field Investigator/TSU

- viii. Instructor who has taught a Department approved class or developed a Department recognized class which was accredited by DPS within the previous 12 months

28.5 A Police Officer II will not qualify for promotion to Police Officer III until any five (5) of the following fourteen (14) objectives are met:

- a. Advanced professional skills test as approved by the Department and the RPOA which must be taken as one of the requirements to advance even if the other objectives below have been met
- b. Bachelor's Degree from an accredited institution or at least 120 hours of course credit
- c. Physical Requirement as determined by the Department including that an annual physical has been taken and passed for each of the preceding two years
- d. Length of service of two (2) years in a Police Officer II position
- e. Advanced skills training certification as issued by the State of New Mexico
- f. Qualification completion for all assigned weapons systems at 90% or above for the previous two (2) years. This option is not available to SWAT-qualified individuals. (Counts as three (3) Objectives)
- g. Advanced specialty training in any of the following areas: (Each area of training counts as a separate objective and can count as three (3) objectives towards the total five (5) required. However, the same training that was used to advance to Police Officer II cannot be used to count towards Police Officer III. Training must also be Department recognized with a minimum of 40 hours per specialty.)
 - i. SWAT
 - ii. Field Training Officer who has completed the Department approved Field Training Officer course and successfully trained at least two officers in three phases of field training
 - iii. School Resource Officer (Twelve (12) months of service in this position would qualify as the hour requirement.)
 - iv. SID/Narcotics
 - v. Administrative/Support Services (Twelve (12) months of service in this position would qualify as the hour requirement.)
 - vi. Traffic
 - vii. Field Investigator/TSU
 - viii. Instructor who has taught a Department approved class or developed a Department recognized class which was accredited by DPS within the previous 12 months

- 28.6 Employees who are to perform detective duties shall be evaluated by the Department and qualify to be assigned to the Detective position.
- 28.7 The promotional review process for each bargaining unit position will be outlined separately as determined by the Department, if not already included in the Collective Bargaining Agreement.
- 28.8 Shift bargaining unit employees will receive shift differential as follows:
- | | |
|-----------------|-----------------|
| Swing shift: | \$0.75 per hour |
| Midnight shift: | \$1.00 per hour |
- 28.9 Testing will occur twice a year to occur in January and July unless otherwise agreed upon by both the RPOA and Department. Applicants must currently be classified as Police Officer II and submit their intent to take the test, in writing, no later than 48 hours prior to testing. Testing dates will be posted for a minimum of 14 days. If, for whatever reason, an otherwise qualified applicant is unable to make the date of testing due to conflicts which are outside of their control, an alternate day may be scheduled for them if the request is made in writing and submitted no later than 48 hours prior to the testing. In no cases will an alternate test be allowed to be more than 14 days after the scheduled date and approval is at the discretion of the designated coordinator for that testing process.
- 28.10 Bargaining unit employees will be eligible to receive On Call Pay, Call Back Pay, Communications Pay, and Emergency Call Back Pay, in accordance with the City's Classification and Compensation Plan.

ARTICLE 29 COURT ALLOWANCE

- 29.1 Court Allowance will be handled in accordance with the City of Roswell's Personnel Rules and Regulations and Departmental Policy.

ARTICLE 30 JURY DUTY AND WITNESS PAY

- 30.1 When required to perform jury service, an employee shall be paid the difference between any jury duty compensation (other than meal and travel allowances) he receives and his regular wages for each day of jury service. If jury duty is required for less than a full work day, the employee shall return to work.

- 30.2 Time off with pay will be granted to an employee who appears before a court, public body, or commission when requested by the City to testify as a witness on behalf of the City.
- 30.3 Whenever officers are required to appear in court by other than the City (or the District Attorney's Office if such appearance is in the performance of the officer's official authorized duties), the City and the officer will require that the party requiring the officer to appear pay the appropriate witness fee.

ARTICLE 31 DEFERRED COMPENSATION PROGRAM

- 31.1 The City, in conjunction with the United States Conference of Mayors, currently offers a deferred compensation program. However, nothing herein, requires the City to continue this program or remain with the United States Conference of Mayors. Such decisions are at the sole discretion of the City and the program may be discontinued or changed at any time by the City Manager.

ARTICLE 32 UNIFORMS
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- 32.1 Sworn Police Officers will receive an annual clothing allowance of \$850.00. This allowance is for the purchase, repair, and maintenance of uniforms, boots, and equipment. This allowance will be paid in two (2) equal installments of \$425.00. The first installment will be made on the first pay period in January and the second installment will be made in the last pay period of June of each year for the term of this Agreement.
- 32.2 It is recognized that the City furnishes the initial baton, handcuffs, ballistics vest, and raincoat.
- 32.3 It is incumbent upon all officers who receive a uniform allowance to maintain such uniforms in good repair and clean condition. Further, they must have three (3) required full sets of such uniforms. Uniforms shall be subject to inspection at any time and their care and maintenance are subject to the provisions of the Department's Maintenance and Uniform Policy. If a non-uniformed officer returns to a uniformed officer position, he shall be required to purchase the uniforms and other non-City supplied items necessary to assure compliance with the uniform requirements of the Department.

- 32.4 Should a uniform for non-sworn employees become mandatory, the City will furnish the uniforms and will meet with the Association in an effort to describe the details of such uniforms in a Memorandum of Understanding that will be in effect through the duration of this Agreement. Such Memorandum of Understanding shall require the signature of the Association President and the City Manager.

ARTICLE 33 VOTING

- 33.1 Requests for voting time will be handled in accordance with State law.

ARTICLE 34 HEALTH BENEFITS

- 34.1 Bargaining unit employees will receive the same health benefits as all other City employees for the term of the Agreement.

ARTICLE 35 VACATION

- 35.1 Vacation leave provides an employee with a paid vacation each year, although it may be approved for other needs which may require absence during working hours. An employee shall use at least one (1) continuous week of vacation leave per calendar year, provided the employee has enough accrued vacation leave. An eligible employee shall not use vacation leave until the leave time has been accrued.
- 35.2 At the end of the calendar year an employee may carry over unused vacation hours not to exceed two hundred forty (240) hours. Employees with greater than two hundred forty (240) hours will be allowed to sell back up to eighty (80) hours of accrued unused vacation hours over 240 on the first pay period in December each year. Any excess annual leave over two hundred forty (240) hours and that amount sold back shall not be carried over and shall be forfeited.
- 35.3 Vacation Leave — Accrual Rate. A regular full-time employee shall accrue vacation leave on the last day of the month as outlined below. Vacation leave accrual shall begin on the date of appointment. To be eligible to accrue vacation

on any calendar month an employee must be on pay status for a minimum of sixteen (16) full work days during that month.

<u>Years in Police Department</u>	<u>Accrual</u>
0 - 60 months of service	6.66 hours per month or 80 hours per year
61 - 180 months of service	10 hours per month or 120 hours per year
181 months and over of service	13.33 hours per month or 160 hours per year

- 35.4 Vacation Approval. Vacation requests shall be submitted in writing to the employee's supervisor at least thirty (30) calendar days in advance for vacation durations of five (5) days or more. The thirty (30) calendar day requirement may be waived by the Chief in the event he determines requirements of the service will permit such vacation requests. All vacation requests require the final approval of the Chief or his designee. Approval of leave requests shall be based primarily upon the operational requirements of the Department, the secondary consideration is the chronological date of the request, and thirdly on a seniority basis, and finally based on the personal desires and reasons identified by the employee. In all disputes, the Chief will make the final determination as to who will receive which vacation periods.
- 35.5 Should a holiday fall within an employee's scheduled vacation period, that day shall be charged to holiday rather than vacation.
- 35.6 Vacation accrual rates pertaining to employees returning from duty disability leave, leave without pay, long term leave with pay, military leave, layoff and termination will be in accordance with the provisions of City's Personnel Rules and Regulations.

ARTICLE 36 CREDIT UNION
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- 36.1 Credit Union membership is totally voluntary and subject to the conditions and requirements set by the different Credit Unions. The City has no authority over nor any obligation to any Credit Union. Membership in any Credit Union is strictly the decision and the responsibility of the employee and the Credit Union. If the Credit Union is officially recognized by the City, an employee may utilize the benefit of payroll deduction if a payroll deduction card is properly executed.

**ARTICLE 37
TRAINING AND EDUCATION**

- 37.1 The Department will post training advertisements on the Field Training Office window. These advertisements are posted for the benefit of the employees however the currency, availability, and accuracy of the postings are the responsibility of the interested employee and such information must be verified through the Field Training Office for the best available data.
- 37.2 The City will provide the necessary training and/or time to allow bargaining unit employees to maintain their NMLEA requirements. It is the employee's responsibility to utilize the training opportunities provided by the department to maintain their certification.

**ARTICLE 38
LOSS OF DRIVER'S LICENSE — POSITION ASSIGNMENT**

- 38.1 Employees covered hereunder whose position may require the operation of a City vehicle must report to the Chief immediately upon becoming aware of revocation or suspension of their driver's license. An employee shall not operate a City vehicle without a valid driver's license. Revocation or suspension of the license of an employee who is required to have a valid driver's license as a condition of the position the employee holds will have provided just cause for demotion, termination employment, or layoff.
- 38.2 A regular employee who has had his license revoked or suspended for up to thirty (30) days may be considered, within the department, for a demotion to a vacant position which does not require a driver's license if such employee is fully qualified to fill such vacancy both physically and mentally. Such decision shall be at the sole discretion of the Chief. Such position must not entail the operation of any City vehicle.
- 38.3 If the revocation or suspension of the license is for thirty (30) calendar days or less and no vacancy is available or the Chief in his discretion decides that the demotion option is not appropriate, the employee will be placed on lay off status for a maximum of thirty (30) calendar days. If an employee's driver's license is later reissued within thirty (30) calendar days of the revocation or suspension the employee may be returned to active service in his former position, if available, and if not, in the first available vacancy for which he is qualified, as determined by the Chief. Should the employee's license not be reissued within the thirty (30) day lay

off period the employee shall forfeit any reinstatement rights and the City shall have no further employment obligations to the employee.

An employee who has his driver's license revoked or suspended for a period of more than thirty (30) days and such license is required as a condition of employment, the employee shall have provided just cause for termination from employment.

- 38.4 Any employee covered hereunder who has knowledge of or who has been notified that the employee's driver's license has been revoked and does not notify the Chief of the loss of his license at the beginning of the first shift following having acquired such knowledge or having received such notification shall have provided just cause for termination of employment, regardless of the period of time involved in the revocation or suspension of his license. Any employee who operates a City vehicle with a revoked or suspended driver's license shall have also provided just cause for termination of employment.

ARTICLE 39 OFFICERS LIABILITY PROTECTION

- 39.1 The City shall provide protection to officers from liability arising out of acts committed while in the performance of their duties and responsibilities within the scope of their position as identified by the City, pursuant to the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA (1978), as amended.

ARTICLE 40 CONTRACT INCLUDES ENTIRE AGREEMENT
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- 40.1 It is understood and agreed by and between the parties hereto that this Agreement is the only agreement between the parties. The City and the Association may, upon mutual agreement and signature, agree to a Memorandum of Understanding (MOU) that may change provisions of this collective bargaining agreement. MOUs are effective only during the term of agreement that is in effect when the parties signed the MOU. To continue the conditions of an MOU into a new agreement, the MOU language must be incorporated into an Article of the new agreement.
- 40.2 Each party will be provided a master copy of the signed Agreement. The Association is responsible for reproducing, distributing, and explaining the agreement to the bargaining unit employees. Management is responsible for reproducing, distributing, and explaining the agreement to the management

employees. Each employee is responsible for becoming familiar with the Agreement.

ARTICLE 41 SAVINGS CLAUSE

- 41.1 If any portion of this Agreement is invalidated by the passage of legislation or by a decision of a court of competent jurisdiction, such invalidation shall apply only to those portions thus invalidated and all remaining portions of this Agreement not invalidated shall remain in full force and effect. If either party wishes to negotiate a replacement for the invalidated language, a written request for such negotiations shall be submitted to the other party within ten (10) working days of the notice of invalidation.

ARTICLE 42 RETIREMENT

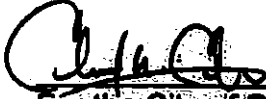
- 42.1 Current PERA plans in effect for sworn and non-sworn bargaining unit employees will continue in effect for the term of this Agreement.

ARTICLE 43 TERM OF AGREEMENT

- 43.1 This Agreement will be effective following ratification by the bargaining unit employees and approval by the City Council, or resolution of impasse, whichever is later. This agreement will remain in full force and effect through June 30, 2026.
- 43.2 Either party may reopen negotiations by filing written notice with the other party no earlier than the month of February, 2024 and 2025. Each party may open economic items and two (2) non-economic issues for renegotiation on this reopener provision.
- 43.3 Either party may request to negotiate a successor agreement by filing written notice with the other party no earlier than March 1 and no later than April 1, 2026.

**ARTICLE 44
SIGNATURES**

44.1 In Witness Whereof, the parties to this Agreement have set their hand and seal
this 25 day of Sept., 2024.

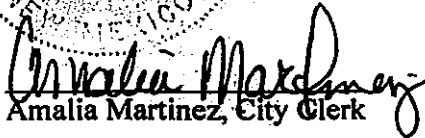

For the City of Roswell
Chad Cole, City Manager

9/20/24
Date


Roswell Police Officers
Gino Basile, President RPOA

9/25/24
Date




Amalia Martinez, City Clerk 9-20-24

Approved as to Form:


Hessel Yntema, City Attorney

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Special Council Meeting

4.

Meeting Date: 11/18/2025

COMMITTEE: Legal

CONTACT: Hessel Yntema

CHAIR: Ed Heldenbrand

ACTION REQUESTED:

Approval of City of Roswell Police Department to enter into a 5-year lease beginning December 1, 2025, ending November 30, 2030, for Building No. 500 at the Roswell Air Center. (Heldenbrand/Sanchez)

BACKGROUND:

Initiated by: Michelle Sanchez

City of Roswell Police Department requests to enter into a 5-year lease for Building No. 500, consisting of 23,000 square feet and adjacent area of land consisting of 5 acres, more or less, located at the Roswell Air Center, commencing on December 1, 2025, and ending November 30, 2030.

FINANCIAL CONSIDERATION

Tenant agrees to pay Landlord as rent the sum of three hundred sixty-eight thousand dollars and zero cents (\$368,000.00), payable in 12 monthly installments of \$30,666.67.

LEGAL REVIEW:

City Attorney has reviewed this lease.

BOARD AND COMMITTEE ACTION:

Legal Committee meeting on November 18, 2025, at 2:00 p.m., referred the item to the Special City Council Meeting on November 18, 2025, at 5:00 p.m.

STAFF RECOMMENDATION:

Proceed as presented.

Attachments

City of Roswell Police Department Lease

MUNICIPAL PROPERTY USE AND LEASE AGREEMENT

THIS PROPERTY USE AND LEASE AGREEMENT (the "Lease"), is made and entered into as of the date of the last signature below, by and between the City of Roswell, a New Mexico municipal corporation existing under the laws of the State of New Mexico (together with its successors and assigns) ("City"), and Roswell Police Department ("Lessee"). The City and Lessee are collectively referred to herein as "The Parties."

WHEREAS, City has agreed to lease to Lessee the real property described below, together with the improvements thereon, in Chaves County, New Mexico, and Lessee has agreed to lease said real property and improvements from City.

WHEREAS, the Parties desire to enter into this Lease to set out the terms and conditions for such lease and use of the Leased Premises.

NOW THEREFORE, for and in consideration of the mutual obligations, covenants and agreements hereinafter set forth, City and Lessee agree as follows, to wit:

ARTICLE 1 – GRANTING CLAUSE AND LEASED PREMISES.

For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, City hereby leases to Lessee, and Lessee does hereby accept and lease from City in its current condition, as more specifically described on Exhibit "A" attached hereto and made a part hereof ("Leased Premises"), to include the surface only to the following real property, together with and other ancillary improvements located thereon:

Building No. 500, consisting of 23,000 square feet, more or less, and adjacent area of land consisting of 5 acres more or less located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

The address of the Leased Premises is commonly known as 47 Gail Harris Avenue, Roswell, NM 88203. The Leased Premises include existing infrastructure and buildings currently used for storing ammunition, explosives, and paperwork. As further set forth in Article 5, the Leased Premises are being leased "AS IS," including the environmental condition of the land, and City has made no representations or warranties of any kind or nature with regard to the existing or ongoing condition of the Leased Premises or its fitness or suitability for any particular use.

The rights granted herein are subject to all valid and existing rights in the Leased Premises.

ARTICLE 2 – TERM

2.01 Lessee shall commence leasing of the Leased Premises effective on December 1, 2025, for 5 years and shall terminate on November 30, 2030, collectively known as the

"Lease Period," unless terminated or canceled earlier as herein provided. City hereby approves, and shall not contest, relinquishment of this Lease by Lessee at any time following the Termination Date, provided that Lessee is not in default of the Lease at the time of said relinquishment, and also that Lessee surrenders the Leased Premises in compliance with this Lease.

ARTICLE 3 – RENT

3.01 Lessee agrees to pay to City as rent the sum of Three Hundred Sixty-Eight thousand dollars and Zero cents (\$368,000.00), payable in 12 monthly installments of \$30,666.67. Thereafter, the rent will be adjusted annually by 3 % or the latest 12-month percentage change in CPI-U (Consumer Price Index-U, U.S. city Average), whichever is greater. Rent and other fees are due on the first day of each month. Time is of the essence with regard to the payment of rent.

3.02 If Lessee fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Lessee shall pay to City an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting City in the exercise of any other right or remedy to which it may be entitled by reason of Lessee's failure to pay rent when due. All rent shall be paid to City without abatement, reduction or setoff of any kind except as herein specifically provided.

ARTICLE 4 – SECURITY DEPOSIT OR BOND

4.01 SECURITY DEPOSIT. Lessee has paid the amount of \$0.00 as a security deposit as security for Lessee's full and faithful performance of all terms of this Lease. This amount shall be used by City at the termination of this Lease toward a. payment for rent or penalties due City, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Leased Premises and c. the cost of removal of any hazardous material not properly disposed of by Lessee. City shall be the sole and reasonable judge of all cleaning and repairs required for the Leased Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to City. Any refund of the security deposit due Lessee will be delivered or mailed within 60 days after the termination of this Lease.

ARTICLE 5 – CONDITION OF LEASED PREMISES

Lessee has inspected the Leased Premises and accepts Leased Premises in its present condition "as is". Lessee acknowledges that any requirements for accessibility and/or public accommodation(s) are Lessee's responsibility. Lessee agrees that the Leased Premises are in good repair and condition except as noted herein. Lessee agrees that, at

the expiration of the term hereof, it shall yield up and deliver the Leased Premises to City in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

ARTICLE 6 – PURPOSE AND USE OF THE LEASED PREMISES

6.01 PERMITTED USE. Lessee shall use the Leased Premises for the sole and exclusive purpose of all related operations and activities required for the normal operations of the Roswell Police Department mission. No other uses shall be permitted.

6.02. SPECIAL EVENTS. City may, at its discretion, conduct or host special activities or events near or about the Premises or elsewhere at or about Airport. The City shall not be liable to Lessee or any Sublessee for any actual or alleged cost or loss, including, but not limited to, any actual or alleged loss of revenue or goodwill, caused by, resulting from, arising out of, relating to or in connection or conjunction with such special events.

6.03 MAINTENANCE.

a. While this Lease is in effect, the Lessee agrees to maintain, at its sole cost and expense, in good condition and repair, all structural and mechanical components of any improvements maintained or constructed on the Leased Premises, including without limitation the foundation, roof, interior and exterior walls, any heating, ventilating and air conditioning systems, heating systems, any plumbing, electrical, and mechanical systems, ceilings, floors, wiring and any non-public utilities. Lessee will maintain the improvements in a condition of safe occupancy during the term of this Lease to a non-lesser standard than the current condition. City will not be under any obligation to operate or maintain the Leased Premises during the Lease Period.

b. Further, the Lessee shall maintain throughout the term of this Lease in good condition and repair, all nonstructural components of any improvements placed on the Leased Premises, including without limitation, the exterior, windows, glass, landscaping, driveways, parking areas, fences, doors, signage, and lighting, ordinary wear and tear excepted, and all personal property of the Lessee situated in or on the Leased Premises. Lessee will keep the Leased Premises and any improvements thereon clean and free from debris.

c. City shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by City to Lessee, Lessee shall be required to perform whatever maintenance City deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Lessees in comparable facilities. If said maintenance is not undertaken by Lessee within ten (10) days after the date City gives Lessee written notice of corrections needed, City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Lessee.

d. Lessee shall not make any alterations to the Lease Premises or improvements placed thereon without prior written approval by City. City's approval to make alterations shall not be unreasonably withheld. City hereby pre-approves any alterations or improvements necessary to ensure the safe occupancy of any structures placed on the Leased Premises.

6.03 HAZARDOUS MATERIALS. Lessee shall conduct all of its activities: (a) in compliance with all applicable environmental laws, rules and regulations and any other applicable laws and regulations applicable to the Lessee's use of the Leased Premises.

a. Without limiting the foregoing, if Lessee or its agents, employees, invitees, or contractors should in any manner, leak, discharge, spill or release hazardous materials, including but not limited to fuel, oil, petroleum products, cleaning solvents, degreasers, deicing chemicals, or other fluids upon the Leased Premises, Lessee and its agents, or contractors shall be strictly liable to City, jointly legally and financially responsible and will incur direct liability pursuant to all applicable environmental laws.

b. In addition to all other indemnities provided in this Lease, Lessee agrees to defend, indemnify, and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the generation, manufacture, processing, use, release or other spills or leaks of chemicals and products that are or may become hazardous materials, the existence or discovery of any hazardous materials in excess of the levels allowed by all applicable environmental laws or violations of applicable environmental laws on the Leased Premises, the subsurface or the migration of any hazardous material from the Leased Premises to other properties or into the surrounding environment, in each case caused by the Lessee or its operations whether: (a) made, commenced or incurred during the Lease Period; or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the Lease Period; provided, however, Lessee's obligation to indemnify the City pursuant to this paragraph shall not apply with respect to either: (a) any hazardous material released by the City; or (b) any hazardous material (for which Lessee is not otherwise responsible) clearly demonstrated to have existed prior to this Lease or be migrating onto the Leased Premises from some other location through no fault of Lessee.

c. If there is a violation of any environmental laws concerning the presence, use, generation, storage or other management of hazardous materials, Lessee shall at its cost promptly take such action as is necessary to mitigate and correct the violation.

d. The foregoing indemnity shall survive the expiration or earlier termination of this Lease and will not be affected in any way by the amount of or the absence in any case of

covering insurance or the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Leased Premises. In addition, Lessee shall be responsible for any environmental cost associated with negligence or willful acts or omission by Lessee, and notifications to appropriate regulatory agencies arising there from.

ARTICLE 7 – UTILITY AND OTHER CHARGES

In addition to all rent payable by the Lessee under Article 3, above, during the term hereof, Lessee shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Lessee upon the Leased Premises, and insurance, of whatsoever kind or nature, incident to or arising out of the conduct of Lessee's business. Failure to have an appropriate current license or permit for Lessee's conduct of business shall be a breach of this Lease. Lessee will promptly pay all utilities and other charges used on the Leased Premises, including electric, gas, water, garbage, sewage, telephone, internet, all maintenance and operating costs and other services which may be incurred in connection with Lessee's use of the Leased Premises, and save harmless City therefrom. The City is not responsible for any payments that may be associated with any demolition or construction of any improvements or infrastructure.

ARTICLE 8 – LIEN

To secure the payment of any rent amount that becomes due, and to satisfy all reasonable costs incurred by City in recovering said rent amount, City shall have a first and prior lien on any and all improvements, fixtures, and equipment placed on the Leased Premises, owned by Lessee.

ARTICLE 9 – PERSONAL PROPERTY

All personal property and fixtures of Lessee in or on the Leased Premises shall be kept at the sole risk of Lessee, and City shall not be liable for any damage thereto or to Leased Premises or to Lessee for interruption of business or otherwise. Lessee hereby waives all causes or rights of recovery against City, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Leased Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

ARTICLE 10 – IMPROVEMENTS

10.01 The Leased Premises include improvements, including but not limited to existing infrastructure and building currently used as storage. Lessee may use the existing improvements or remove existing improvements, subject to prior written approval by City. In addition, Lessee may, place the following improvements on the Leased Premises:

Specific improvements to the Leased Premises are subject to City's prior written approval.

10.02 No other improvements shall be placed on or alterations made to the Leased Premises without the prior amendment of this Lease pursuant to Article 22 hereof to permit such improvement placement. Lessee shall maintain and protect from waste and trespass all improvements placed on the Leased Premises.

10.03 Ownership Of Improvements, Improvement Removal And Reclamation Before relinquishment or termination of this Lease without re-lease to Lessee, or upon City's cancellation of this Lease as provided herein, City may either declare title to the improvements without payment or compensation to the Lessee or City may order the removal of such improvements. City may declare title to certain improvements and may order the removal other improvements. City will inventory the improvements and provide notice to the Lessee of its intent to declare title to the improvements or its order to remove the improvements one (1) year before relinquishment or termination of the Lease. If City determines certain improvements must be removed, Lessee shall remove those improvements and shall restore the Leased Premises to their condition existing prior to the placement of said improvements; provided, however, if any rent amount is due and unpaid at the time of Lease cancellation or termination, Lessee shall remove improvements and restore the Leased Premises as herein provided only at such time, in such manner and under such conditions as City may in writing demand. So long as improvements are maintained to the standards contained in paragraph 6.02 above, City shall not order the removal of those improvements. Lessee hereby waives, and shall not assert, any right to compensation for improvements on the Leased Premises. This paragraph shall survive termination of this Lease. The foregoing rights of City shall be cumulative to City's right to cancel this Lease as herein provided.

10.04 Equipment. Except as otherwise provided herein, Lessee shall have the right to install such equipment as may be necessary to conduct of its business on the Leased Premises; and at the expiration or termination of the Lease, Lessee shall have the right to remove all of such equipment installed by Lessee that is removable without damage to the Leased Premises.

10.05 Signs And Advertising. Lessee shall not erect, maintain, or display any signs or other advertising at or on the Leased Premises without first obtaining the written approval of City, such approval not to be unreasonably withheld.

ARTICLE 11 – RELINQUISHMENT

Lessee, if not in default under this Lease, may at any time apply to relinquish the Lease to City and be relieved of further obligations under the lease, provided, however, such relinquishment shall not be valid or effective until approved in writing by City. Lessee must file an application to relinquish the Lease at least thirty (30) days prior to the date on which the Lessee requests the relinquishment to go into effect. City may condition

relinquishment on any terms it deems reasonable. Upon relinquishment Lessee shall not be entitled to the refund of any rent previously paid.

ARTICLE 12 – ASSIGNMENT

Lessee shall not assign this Lease, any part thereof, or assign any improvements located on the Leased Premises without the prior written amendment of this Lease pursuant to Paragraph 22 hereof to permit such assignment. Any lease assignment without lease amendment shall be null and void. City may condition such lease amendment upon an increase in the rent amount and the modification or addition of other Lease provisions.

ARTICLE 13 – SUBLEASE

Lessee shall not sublease the rights granted hereunder, any part thereof, any portion of the Leased Premises or any improvements located on the Leased Premises without the prior written approval of City to permit such sublease. Any sublease without City's approval shall be null and void. City may condition such approval upon an increase in the rent amount and the modification or addition of other Lease provisions, however any such modification or addition to the Lease shall not be unreasonable. The City's approval of a sublease shall not be unreasonably withheld.

ARTICLE 14 – COLLATERAL ASSIGNMENT

Any attempt to collaterally assign or leasehold mortgage Lessee's interest in this Lease, or in any Improvements, is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to this Lease or Improvements absent prior approval in writing by City.

ARTICLE 15 – WAIVER

No employee or agent of City has the power, right, or authority to orally waive any of the terms, conditions, or covenants hereof and no waiver by City of any of the terms, conditions, or covenants hereof shall be effective unless in writing and executed by City. City's waiver of Lessee's breach or default of any of the terms, conditions or covenants hereof shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of City to enforce at any time any of the terms, conditions or covenants hereof or to exercise any option herein provided, or to require at any time performance by Lessee of any of the terms, conditions, or covenants hereof shall not constitute or be construed to be a waiver of such terms, conditions, or covenants, nor shall it affect the validity of this Lease or any part thereof, or City's right to thereafter enforce each and every such term, condition, and covenant.

ARTICLE 16 – WAIVER, RELEASE AND PROTECTION OF THE LEASED PREMISES

Lessee is leasing the Leased Premises based on Lessee's own inspection and investigation of and judgment regarding the Leased Premises. City makes no warranties or representations of any kind or nature with regard to the Leased Premises or with regard to this transaction.

If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Lessee agrees to provide notice to City at the same time and in the same manner as Lessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Lessee agrees that, upon request by City, City shall have access to all reports, documents, test data, and all other materials provided by City to or received by Lessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

In the event City is required to incur any cost or expense to enforce the provisions of this lease, including but not limited to consultants, engineers, soil, air or water sampling and attorneys' fees and costs, Lessee shall be liable for and reimburse City for said costs and expenses.

ARTICLE 17 – LIABILITY; INDEMNIFICATION; INSURANCE.

17.01 LIABILITY. City shall not be liable to Lessee or to Lessee's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Leased Premises in connection with or arising out of Lessee's operations and use of the Leased Premises.

17.02 INDEMNIFICATION. Lessee shall hold harmless, indemnify and defend City, and City's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, or expenses, including but not limited to reasonable attorneys' fees, loss of land value, third party claims, penalties or removal, remedial or restoration costs arising out of, alleged to arise out of or indirectly connected with a) the operations hereunder of Lessee or Lessee's employees, agents, contractors, or invitees, b) the activities of third parties on the Leased Premises, whether with or without Lessee's knowledge or consent. In the event that any action, suit or proceeding is brought against Lessee, Lessee shall, as soon as practicable but no later than three (3) days after it receives notice thereof, notify the legal counsel of City. This Paragraph shall survive the termination, cancellation or relinquishment of this Lease, and any cause of action of City to enforce this provision shall not be deemed to accrue until City's actual discovery of said liability, claim, loss, damage, or expense.

Lessee further agrees that its obligation to indemnify, defend and hold harmless City shall not be limited to the limits or terms of the liability insurance, required pursuant to this Lease.

17.03 INSURANCE. Lessee shall purchase, or cause to be purchased, and maintain in effect during the Term of this Lease with insurance carriers or risk retention groups authorized to do business in the State of New Mexico and approved by the City, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Lease are considered minimum coverage amounts and Lessee may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent three (3) years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Lease.

A. General Liability Insurance

Lessee shall carry and maintain, at Lessee's cost and expense, a policy of commercial general liability insurance (in the broadest form then available in New Mexico) that names the City as an insured party or additional insured party protecting the City against claims for bodily injury, personal injury, death and property damage. Such insurance must include coverage for all exposures arising from Lessee's operations, and contractual liability, to protect the Lessee and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Lessee under the Lease, whether such activities, omissions, and operations be by the Lessee, subcontractor, or by anyone employed by or acting for the benefit of the Lessee in conjunction with this Lease. Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

Such an insurance policy must specifically provide coverage for the City and its employees and agents in minimum amounts of \$2 million dollars (\$2,000,000.00) for damage to or destruction of each legally described real property arising out of a single occurrence; 2 million dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury or death; and \$2 million dollars (\$2,000,000.00) with respect to any one occurrence. Higher coverage for the City may be reasonably required by the City from time to time, including but not limited to increases needed to provide complete coverage for City's maximum liability under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-1 et seq. and New Mexico Civil Rights Act, NMSA 1978 § 41-4A-1 et seq. City shall have no liability for premiums charged for such coverage, and inclusion of City as an insured party is not intended to, and shall not make City a partner or joint venturer with Lessee in its operations.

B. Property Coverage

In addition, the Lessee must obtain at its own expense, insurance coverage adequate to protect its operations, property, employees and agents in amounts Lessee finds sufficient but in no case shall such property insurance coverage be for less than one hundred percent (100%) Replacement Cost of Improvements on an Agreed Value Basis. Lessee shall be solely responsible for obtaining insurance policies that provide coverage for losses of Lessee-owned property, including improvements, and City shall be named as an additional insured on the policy. City shall not be required to provide such insurance coverage or be responsible for payment of Lessee's costs for such insurance.

22.5. Within ten (10) days after the execution of this Lease by City and delivery to Lessee, Lessee shall deliver to City original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. A certificate, policy, endorsement or rider which states that failure to give City notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. The following specific extensions of coverage must be indicated on the Certificate of Insurance:

- (1) Contractual liability
- (2) Bodily Injury and Property Damage liability
- (3) Premises operations
- (4) Personal injury
- (5) Advertising injury
- (6) Fire legal liability
- (7) Medical expense
- (8) Independent contractor/consultants/subcontractor/consultants
- (9) Products – completed operations
- (10) Pollution Liability
- (11) Additional insured endorsement (primary& non-contributing in favor of City)
- (12) Waiver of subrogation in favor of City

The above required Liability limits can be a combination of Primary Limits and Excess Liability/Umbrella limits. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the

insurer are unacceptable to City. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

In the event of any cancellation of any insurance coverage required by or on behalf of Lessee pursuant to this Lease, whether it be for non-payment of premium or for other than non-payment of premium, or in the event of any adverse, material change of any insurance required by this Lease effected by the insurance carrier providing such coverage, Lessee must email a copy of the cancellation notice or notice of adverse, material change to City's legal counsel and mail a copy to the address below no later than three (3) business days after the receipt of a cancellation notice or a notice of adverse material change.

Air Center Manager
1 Jerry Smith Circle
Roswell, New Mexico 88203

City agrees to waive its rights of subrogation that it may have against Lessee in the event Lessee's insurance providers pay insurance proceeds to City based on any act or failure to act by Lessee.

ARTICLE 18- USE OF THE PREMISES. Security Responsibilities

Of Tenant, Tenant

1. USE OF THE PREMISES. Security Responsibilities of Tenant, Tenant Employees and Other Persons.

No person may:

i. Tamper, interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper, interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.

ii. Enter, or be present within, a Secured Area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

iii. Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or Vehicles in Secured Areas, AOAs, or SIDAs in any other manner than that for which it was issued by the Airport Authority.

b. Security Badges

i. Airport ID Badge

1. Persons who work or do business on Airport property on a permanent or long-term (longer than 30 days) basis must have an airport-issued identification in the form of an Airport ID badge. An individual holding an Airport ID badge may also be referred to as "badged personnel."

ii. Airport ID Badge Holder and Tenant Security Responsibilities / Access Control Procedures

1. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security, these Rules and Regulations.

c. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security, these Rules and Regulations.

d. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security, these Rules and Regulations.

e. Tenants and tenant employees are responsible for controlling access to doors, gates and other passageways between the AOA and the landside of the airport through their lease areas.

f. A breach in security caused by a tenant or tenant employee that results in a TSA, Airport Security Coordinator, or Airport Director finding of negligence will be cause to review, suspend, or withdrawal access privileges, impose additional training requirements and/or impose other penalties as provided by these Rules and Regulations and the Airport Security Program.

g. Tenant shall use the Leased Premises solely for the purpose of providing all related operations and activities required for the normal operations of the Roswell Police Department mission, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. The Roswell City Code shall bind tenant or as may be

amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).

- h. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminate the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including:
 - I. Environmental claims.
 - ii. Environmental expenses, including, without limitation, the handling, investigation, treatment, storage, decontamination, remediation, removal, transport or disposal of such hazardous materials.
 - iii. Liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.
- i. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of anything which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.
- j. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the ROW's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

ARTICLE 19 – DEFAULT AND CANCELLATION

Upon Lessee's violation of any of the terms, conditions, or covenants contained herein, including the failure to pay the rent when due, City may cancel this Lease after providing Lessee thirty (30) days' notice of the default by registered mail. The mailing of such notice as herein provided shall constitute notice of City's intention to cancel the Lease and no proof of receipt of such notice shall be necessary in order for City to enforce the lease cancellation thirty (30) days after the mailing of the notice if Lessee has not cured the default to City's satisfaction within said thirty (30) day period. Lessee agrees that if a court of competent jurisdiction determines that Lessee has breached any of the terms, conditions or covenants of this Lease, Lessee shall pay the costs incurred by City in litigating the default, including reasonable attorney fees. In the event of a breach of the terms of this Lease by the Lessee, the City also shall have all remedies available at law or equity.

ARTICLE 20 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

In the event the Leased Premises are damaged by fire or other perils, City may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. City shall in its sole discretion have the option to: (1) to repair, reconstruct or restore the Leased Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above during the period of such repair, reconstruction or restoration, or (2) to give notice to Lessee at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Lessee such notice of termination, this Lease shall terminate and all interests of Lessee in the Leased Premises shall cease on the date so specified in such notice and Lessee shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Lessee in the Leased Premises, up to the date of such termination. If the damage is due to the fault or neglect of Lessee or its employees, as determined by City in its sole discretion, there shall be no reduction of rent.

City shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Lessee.

ARTICLE 21 – COMPLIANCE WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAW OR REGULATION

Lessee shall fully comply with all federal and state laws, regulations, rules, ordinances and requirements, applicable to the Leased Premises or to Lessee's operations thereon, including but not limited to all applicable federal and state laws governing water, endangered or threatened species, hazardous materials, environmental protection, land use, health and safety, cultural, historic or archeological/paleontological properties, waste, trespass, including all applicable federal, state, or local law or regulations that may be promulgated after the effective date of this Lease. Lessee agrees to protect the Leased Premises from waste or trespass. Lessee's compliance with all laws, regulations, and policy shall be at its own expense.

ARTICLE 22 – SCOPE OF AGREEMENT

This Lease incorporates all the agreements, covenants and understandings between City and Lessee concerning the subject matter hereof and all such agreements, covenants and understandings are merged into this Lease. No prior agreement or understanding between City and Lessee shall be valid or enforceable unless expressly embodied in this lease.

ARTICLE 23 – AMENDMENT

This Lease shall not be altered, changed, or amended except by an instrument executed by both City and Lessee.

ARTICLE 24 – APPLICABLE LAW

This Lease shall be governed by the laws of the State of New Mexico.

ARTICLE 25 – SUCCESSORS IN INTEREST; THIRD PARTIES

All terms, conditions, and covenants of this Lease and all amendments thereto shall extend to and bind the heirs, successors, and assigns of Lessee and City. There are no third-party beneficiaries of this Lease.

ARTICLE 26 – BANKRUPTCY

If Lessee should be adjudged bankrupt, either voluntarily or involuntarily, City shall have the option to pursue with the Court having jurisdiction all remedies to which City may be entitled in law or equity. In no event shall Lessee's interests in this Lease be deemed to be an asset of Lessee.

ARTICLE 27 -- HOLDOVER

If Lessee enters upon the Leased Premises after the termination or cancellation of this lease for any purpose, or leaves any equipment, buildings, materials, property or debris on the Leases Premises after the termination or cancellation of this lease, the rent due City for such entry or presence shall be prorated as provided in Article 3 plus 15% administrative for each day or any part of the day. Nothing contained herein shall be construed as the grant to Lessee of the right to enter the Leased Premises for any purpose after the termination or cancellation of this Lease without the prior written consent of City.

ARTICLE 28 – NOTICES

The addresses for notice are:

For Notice to City:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

For Notice to Lessee:

City of Roswell Police Department
47 Gail Harris Avenue
Roswell, NM 88203

ARTICLE 29 – RULES OF CONSTRUCTION

(a) The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

(b) All references in this Lease to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Lease unless some other reference is established.

ARTICLE 30 – CALCULATION OF TIME

Any time period calculated by reference to "days" means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 31 – STATUS OF CITY

Lessee acknowledges that City is a governmental entity which manages the Leased Premises pursuant to state law.

ARTICLE 32 – ENTIRE AGREEMENT AND AMENDMENT

This Lease is intended by the Parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the Parties having been incorporated herein. No course of prior dealings between the Parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein.

IN WITNESS WHEREOF, this Lease is executed the __ day of _____, 20__.

For City

By: Timothy Z. Jennings, Mayor

By: Hessel Yntema, City Attorney

For Lessee:

By: Lance Bateman, Chief of Police

Attest:

Amalia Martinez, City Clerk

EXHIBIT A PREMISES



EXHIBIT C: INSURANCE

1. MINIMUM SCOPE OF INSURANCE

a. City of Roswell Police Department, shall procure and maintain for the duration of the contracts the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work herein and the results of the Work by City of Roswell Police Department, representatives, employees or subcontractors (check all that apply):

☒ I. **Commercial General Liability (“CGL”)**: Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence.

☒ II. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if City of Roswell Police Department has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00** per accident for bodily injury and property damage.

☐ III. **Worker’s Compensation**: as required by the State of New Mexico, with Statutory Limits and Employer’s Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.

☒ IV. **Professional Liability (Errors and Omissions)**: Insurance appropriate to City of Roswell Police Department profession, with limit no less than **\$1,000,000.00** per occurrence or claim, **\$2,000,000.00** aggregate.

☒ V. **Property Insurance**: against all risks of loss to any and all improvements, betterments and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.

b. If City of Roswell Police Department maintains broader coverage and/or higher limits than the minimum shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by City of Roswell Police Department.

2. ADDITIONAL INSURED STATUS

The City, its council members, officials, officers, employees, agents, and volunteers are to be coverage as additional insured on the CGL policy with respect to liability arising out of the Work performed by or on behalf of City of Roswell Police Department, including materials, parts or equipment furnished in connection with

the Work. General Liability coverage can be provided in the form of an endorsement to insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10,0CG 20 26, CG 20 33, CG 20 38, CG 20 37 form is later revisions used)

3. PRIMARY COVERAGE

For any claims related to this Agreement, City of Roswell Police Department insurance shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of City of Roswell Police Department insurance and shall no contribute to it.

4. NOTICE OF CANCELLATION

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. WAIVER OF SUBROGATION

City of Roswell Police Department hereby grants to the City a waiver of any rights to subrogation which any of City of Roswell Police Department insurers may acquire against the City by virtue of the payment of any loss under such insurance. City of Roswell Police Department agrees to obtain any endorsement that may be necessary to affect this waiver of

subrogation, but this provision applies regardless of whether or not the city has received a waiver of subrogation endorsement for the insurer.

6. SELF INSURED RETENTIONS

Self-insured retentions must be declared to and approved by the City. The City may require City of Roswell Police Department to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses with the retention.

7. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with Current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

8. CLAIMS MADE POLICIES

If any of the required policies provide claims-made coverage:

- i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of the Work hereunder.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.
- iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, City of Roswell Police Department
- iv. Must purchase "extended reporting" coverage for a minimum of five years after completion of the Work.

9. VERIFICATION OF COVERAGE

City of Roswell Police Department shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. Failure to obtain the required documents prior to

commencement of the Work, however, shall not waive City of Roswell Police Department obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this specification at any time.

10. **SPECIAL RISKS OR CIRCUMSTANCES**

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT**

Special Council Meeting

5.

Meeting Date: 11/18/2025

COMMITTEE: Legal

CONTACT: Hessel Yntema

CHAIR: Ed Heldenbrand

ACTION REQUESTED:

Approval of City of Roswell Museum Lease to enter into a 5-year lease beginning December 1, 2025, and ending November 30, 2030, for Building No. 1081 at the Roswell Air Center. (Heldenbrand/Sanchez)

BACKGROUND:

Initiated by: Michelle Sanchez

City of Roswell Museum requests to enter into a 5-year lease of Building No. 1081, consisting of 8,152 feet, more or less, located at the Roswell Air Center, commencing on December 1, 2025, and ending November 30, 2030.

FINANCIAL CONSIDERATION

Tenant agrees to pay sixty-one thousand one hundred fourteen dollars and zero cents (\$61,114.00), payable in 12 monthly installments of \$5,095.00.

LEGAL REVIEW:

City Attorney has reviewed this lease.

BOARD AND COMMITTEE ACTION:

Legal Committee referred this item on their November 18, 2025, meeting at 2:00 p.m., to the Special City Council Meeting on November 18, 2025, at 5:00 p.m.

STAFF RECOMMENDATION:

Staff recommends to proceed as presented.

Attachments

City of Roswell Museum Lease

MUNICIPAL PROPERTY USE AND LEASE AGREEMENT

THIS PROPERTY USE AND LEASE AGREEMENT (the “Lease”), is made and entered into as of the date of the last signature below, by and between the City of Roswell, a New Mexico municipal corporation existing under the laws of the State of New Mexico (together with its successors and assigns) (“City”), and City of Roswell Museum (“Lessee”). The City and Lessee are collectively referred to herein as “The Parties.”

WHEREAS, City has agreed to lease to Lessee the real property described below, together with the improvements thereon, in Chaves County, New Mexico, and Lessee has agreed to lease said real property and improvements from City.

WHEREAS, the Parties desire to enter into this Lease to set out the terms and conditions for such lease and use of the Leased Premises.

NOW THEREFORE, for and in consideration of the mutual obligations, covenants and agreements hereinafter set forth, City and Lessee agree as follows, to wit:

ARTICLE 1 – GRANTING CLAUSE AND LEASED PREMISES.

For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, City hereby leases to Lessee, and Lessee does hereby accept and lease from City in its current condition, as more specifically described on Exhibit “A” attached hereto and made a part hereof (“Leased Premises”), to include the surface only to the following real property, together with and other ancillary improvements located thereon:

Building No. 1081, consisting of 8,152 square feet, more or less, located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit “A” (Premises).

The address of the Leased Premises is commonly known as 72 Earl Cummings Loop West, Roswell, NM 88203. The Leased Premises include existing infrastructure and buildings currently used for storing ammunition, explosives, and paperwork. As further set forth in Article 5, the Leased Premises are being leased "AS IS," including the environmental condition of the land, and City has made no representations or warranties of any kind or nature with regard to the existing or ongoing condition of the Leased Premises or its fitness or suitability for any particular use.

The rights granted herein are subject to all valid and existing rights in the Leased Premises.

ARTICLE 2 – TERM

2.01 Lessee shall commence leasing of the Leased Premises effective on December 1, 2025, for 5 years and shall terminate on November 30, 2030, collectively known as the “Lease Period,” unless terminated or canceled earlier as herein provided. City hereby

approves, and shall not contest, relinquishment of this Lease by Lessee at any time following the Termination Date, provided that Lessee is not in default of the Lease at the time of said relinquishment, and also that Lessee surrenders the Leased Premises in compliance with this Lease.

ARTICLE 3 – RENT

3.01 Lessee agrees to pay to City as rent the sum of Sixty-One Thousand One Hundred Fourteen dollars and zero cents (\$61,114.00), payable in 12 monthly installments of \$5,095.00. Thereafter, the rent will be adjusted annually by 3 % or the latest 12-month percentage change in CPI-U (Consumer Price Index-U, U.S. City Average), whichever is greater. Rent and other fees are due on the first day of each month. Time is of the essence with regard to the payment of rent.

3.02 If Lessee fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Lessee shall pay to City an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting City in the exercise of any other right or remedy to which it may be entitled by reason of Lessee's failure to pay rent when due. All rent shall be paid to City without abatement, reduction or setoff of any kind except as herein specifically provided.

ARTICLE 4 – SECURITY DEPOSIT OR BOND

4.01 SECURITY DEPOSIT. Lessee has paid the amount of \$0.00 as a security deposit as security for Lessee's full and faithful performance of all terms of this Lease. This amount shall be used by City at the termination of this Lease toward a. payment for rent or penalties due City, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Leased Premises and c. the cost of removal of any hazardous material not properly disposed of by Lessee. City shall be the sole and reasonable judge of all cleaning and repairs required for the Leased Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to City. Any refund of the security deposit due Lessee will be delivered or mailed within 60 days after the termination of this Lease.

ARTICLE 5 – CONDITION OF LEASED PREMISES

Lessee has inspected the Leased Premises and accepts Leased Premises in its present condition "as is". Lessee acknowledges that any requirements for accessibility and/or public accommodation(s) are Lessee's responsibility. Lessee agrees that the Leased Premises are in good repair and condition except as noted herein. Lessee agrees that, at the expiration of the term hereof, it shall yield up and deliver the Leased Premises to City in

as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

ARTICLE 6 – PURPOSE AND USE OF THE LEASED PREMISES

6.01 PERMITTED USE. Lessee shall use the Leased Premises for the sole and exclusive purpose of storage, office space, and paperwork. No other uses shall be permitted.

6.02. SPECIAL EVENTS. City may, at its discretion, conduct or host special activities or events near or about the Premises or elsewhere at or about Airport. The City shall not be liable to Lessee or any Sublessee for any actual or alleged cost or loss, including, but not limited to, any actual or alleged loss of revenue or goodwill, caused by, resulting from, arising out of, relating to or in connection or conjunction with such special events.

6.03 MAINTENANCE.

a. While this Lease is in effect, the Lessee agrees to maintain, at its sole cost and expense, in good condition and repair, all structural and mechanical components of any improvements maintained or constructed on the Leased Premises, including without limitation the foundation, roof, interior and exterior walls, any heating, ventilating and air conditioning systems, heating systems, any plumbing, electrical, and mechanical systems, ceilings, floors, wiring and any non-public utilities. Lessee will maintain the improvements in a condition of safe occupancy during the term of this Lease to a non-lesser standard than the current condition. City will not be under any obligation to operate or maintain the Leased Premises during the Lease Period.

b. Further, the Lessee shall maintain throughout the term of this Lease in good condition and repair, all nonstructural components of any improvements placed on the Leased Premises, including without limitation, the exterior, windows, glass, landscaping, driveways, parking areas, fences, doors, signage, and lighting, ordinary wear and tear excepted, and all personal property of the Lessee situated in or on the Leased Premises. Lessee will keep the Leased Premises and any improvements thereon clean and free from debris.

c. City shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by City to Lessee, Lessee shall be required to perform whatever maintenance City deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Lessees in comparable facilities. If said maintenance is not undertaken by Lessee within ten (10) days after the date City gives Lessee written notice of corrections needed, City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Lessee.

d. Lessee shall not make any alterations to the Lease Premises or improvements placed thereon without prior written approval by City. City's approval to make alterations shall not be unreasonably withheld. City hereby pre-approves any alterations or improvements necessary to ensure the safe occupancy of any structures placed on the Leased Premises.

6.03 HAZARDOUS MATERIALS. Lessee shall conduct all of its activities: (a) in compliance with all applicable environmental laws, rules and regulations and any other applicable laws and regulations applicable to the Lessee's use of the Leased Premises.

a. Without limiting the foregoing, if Lessee or its agents, employees, invitees, or contractors should in any manner, leak, discharge, spill or release hazardous materials, including but not limited to fuel, oil, petroleum products, cleaning solvents, degreasers, deicing chemicals, or other fluids upon the Leased Premises, Lessee and its agents, or contractors shall be strictly liable to City, jointly legally and financially responsible and will incur direct liability pursuant to all applicable environmental laws.

b. In addition to all other indemnities provided in this Lease, Lessee agrees to defend, indemnify, and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the generation, manufacture, processing, use, release or other spills or leaks of chemicals and products that are or may become hazardous materials, the existence or discovery of any hazardous materials in excess of the levels allowed by all applicable environmental laws or violations of applicable environmental laws on the Leased Premises, the subsurface or the migration of any hazardous material from the Leased Premises to other properties or into the surrounding environment, in each case caused by the Lessee or its operations whether: (a) made, commenced or incurred during the Lease Period; or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the Lease Period; provided, however, Lessee's obligation to indemnify the City pursuant to this paragraph shall not apply with respect to either: (a) any hazardous material released by the City; or (b) any hazardous material (for which Lessee is not otherwise responsible) clearly demonstrated to have existed prior to this Lease or be migrating onto the Leased Premises from some other location through no fault of Lessee.

c. If there is a violation of any environmental laws concerning the presence, use, generation, storage or other management of hazardous materials, Lessee shall at its cost promptly take such action as is necessary to mitigate and correct the violation.

d. The foregoing indemnity shall survive the expiration or earlier termination of this Lease and will not be affected in any way by the amount of or the absence in any case of

covering insurance or the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Leased Premises. In addition, Lessee shall be responsible for any environmental cost associated with negligence or willful acts or omission by Lessee, and notifications to appropriate regulatory agencies arising there from.

ARTICLE 7 – UTILITY AND OTHER CHARGES

In addition to all rent payable by the Lessee under Article 3, above, during the term hereof, Lessee shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Lessee upon the Leased Premises, and insurance, of whatsoever kind or nature, incident to or arising out of the conduct of Lessee's business. Failure to have an appropriate current license or permit for Lessee's conduct of business shall be a breach of this Lease. Lessee will promptly pay all utilities and other charges used on the Leased Premises, including electric, gas, water, garbage, sewage, telephone, internet, all maintenance and operating costs and other services which may be incurred in connection with Lessee's use of the Leased Premises, and save harmless City therefrom. The City is not responsible for any payments that may be associated with any demolition or construction of any improvements or infrastructure.

ARTICLE 8 – LIEN

To secure the payment of any rent amount that becomes due, and to satisfy all reasonable costs incurred by City in recovering said rent amount, City shall have a first and prior lien on any and all improvements, fixtures, and equipment placed on the Leased Premises, owned by Lessee.

ARTICLE 9 – PERSONAL PROPERTY

All personal property and fixtures of Lessee in or on the Leased Premises shall be kept at the sole risk of Lessee, and City shall not be liable for any damage thereto or to Leased Premises or to Lessee for interruption of business or otherwise. Lessee hereby waives all causes or rights of recovery against City, its agents, employees, invitees, and tenants for any loss to such personal property and fixtures on the Leased Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

ARTICLE 10 – IMPROVEMENTS

10.01 The Leased Premises include improvements, including but not limited to existing infrastructure and building currently used as storage. Lessee may use the existing improvements or remove existing improvements, subject to prior written approval by City. In addition, Lessee may, place the following improvements on the Leased Premises:

Specific improvements to the Leased Premises are subject to City's prior written approval.

10.02 No other improvements shall be placed on or alterations made to the Leased Premises without the prior amendment of this Lease pursuant to Article 22 hereof to permit such improvement placement. Lessee shall maintain and protect from waste and trespass all improvements placed on the Leased Premises.

10.03 Ownership Of Improvements, Improvement Removal And Reclamation Before relinquishment or termination of this Lease without re-lease to Lessee, or upon City's cancellation of this Lease as provided herein, City may either declare title to the improvements without payment or compensation to the Lessee or City may order the removal of such improvements. City may declare title to certain improvements and may order the removal other improvements. City will inventory the improvements and provide notice to the Lessee of its intent to declare title to the improvements or its order to remove the improvements one (1) year before relinquishment or termination of the Lease. If City determines certain improvements must be removed, Lessee shall remove those improvements and shall restore the Leased Premises to their condition existing prior to the placement of said improvements; provided, however, if any rent amount is due and unpaid at the time of Lease cancellation or termination, Lessee shall remove improvements and restore the Leased Premises as herein provided only at such time, in such manner and under such conditions as City may in writing demand. So long as improvements are maintained to the standards contained in paragraph 6.02 above, City shall not order the removal of those improvements. Lessee hereby waives, and shall not assert, any right to compensation for improvements on the Leased Premises. This paragraph shall survive termination of this Lease. The foregoing rights of City shall be cumulative to City's right to cancel this Lease as herein provided.

10.04 Equipment. Except as otherwise provided herein, Lessee shall have the right to install such equipment as may be necessary to conduct its business on the Leased Premises; and at the expiration or termination of the Lease, Lessee shall have the right to remove all of such equipment installed by Lessee that is removable without damage to the Leased Premises.

10.05 Signs And Advertising. Lessee shall not erect, maintain, or display any signs or other advertising at or on the Leased Premises without first obtaining the written approval of City, such approval not to be unreasonably withheld.

ARTICLE 11 – RELINQUISHMENT

Lessee, if not in default under this Lease, may at any time apply to relinquish the Lease to City and be relieved of further obligations under the lease, provided, however, such relinquishment shall not be valid or effective until approved in writing by City. Lessee must file an application to relinquish the Lease at least ninety (90) days prior to the date on which the Lessee requests the relinquishment to go into effect. City may condition

relinquishment on any terms it deems reasonable. Upon relinquishment, Lessee shall not be entitled to the refund of any rent previously paid.

ARTICLE 12 – ASSIGNMENT

Lessee shall not assign this Lease, any part thereof, or assign any improvements located on the Leased Premises without the prior written amendment of this Lease pursuant to Paragraph 22 hereof to permit such assignment. Any lease assignment without lease amendment shall be null and void. City may condition such lease amendment upon an increase in the rent amount and the modification or addition of other Lease provisions.

ARTICLE 13 – SUBLEASE

Lessee shall not sublease the rights granted hereunder, any part thereof, any portion of the Leased Premises or any improvements located on the Leased Premises without the prior written approval of City to permit such sublease. Any sublease without City's approval shall be null and void. City may condition such approval upon an increase in the rent amount and the modification or addition of other Lease provisions, however any such modification or addition to the Lease shall not be unreasonable. The City's approval of a sublease shall not be unreasonably withheld.

ARTICLE 14 – COLLATERAL ASSIGNMENT

Any attempt to collaterally assign or leasehold mortgage Lessee's interest in this Lease, or in any Improvements, is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to this Lease or Improvements absent prior approval in writing by City.

ARTICLE 15 – WAIVER

No employee or agent of City has the power, right, or authority to orally waive any of the terms, conditions, or covenants hereof and no waiver by City of any of the terms, conditions, or covenants hereof shall be effective unless in writing and executed by City. City's waiver of Lessee's breach or default of any of the terms, conditions or covenants hereof shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of City to enforce at any time any of the terms, conditions or covenants hereof or to exercise any option herein provided, or to require at any time performance by Lessee of any of the terms, conditions, or covenants hereof shall not constitute or be construed to be a waiver of such terms, conditions, or covenants, nor shall it affect the validity of this Lease or any part thereof, or City's right to thereafter enforce each and every such term, condition, and covenant.

ARTICLE 16 – WAIVER, RELEASE AND PROTECTION OF THE LEASED PREMISES

Lessee is leasing the Leased Premises based on Lessee's own inspection and investigation of and judgment regarding the Leased Premises. City makes no warranties or representations of any kind or nature with regard to the Leased Premises or with regard to this transaction.

If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Lessee agrees to provide notice to City at the same time and in the same manner as Lessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Lessee agrees that, upon request by City, City shall have access to all reports, documents, test data, and all other materials provided by City to or received by Lessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

In the event City is required to incur any cost or expense to enforce the provisions of this lease, including but not limited to consultants, engineers, soil, air or water sampling and attorneys' fees and costs, Lessee shall be liable for and reimburse City for said costs and expenses.

ARTICLE 17 – LIABILITY; INDEMNIFICATION; INSURANCE.

17.01 LIABILITY. City shall not be liable to Lessee or to Lessee's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Leased Premises in connection with or arising out of Lessee's operations and use of the Leased Premises.

17.02 INDEMNIFICATION. Lessee shall hold harmless, indemnify and defend City, and City's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, or expenses, including but not limited to reasonable attorneys' fees, loss of land value, third party claims, penalties or removal, remedial or restoration costs arising out of, alleged to arise out of or indirectly connected with a) the operations hereunder of Lessee or Lessee's employees, agents, contractors, or invitees, b) the activities of third parties on the Leased Premises, whether with or without Lessee's knowledge or consent. In the event that any action, suit or proceeding is brought against Lessee, Lessee shall, as soon as practicable but no later than three (3) days after it receives notice thereof, notify the legal counsel of City. This Paragraph shall survive the termination, cancellation or relinquishment of this Lease, and any cause of action of City to enforce this provision shall not be deemed to accrue until City's actual discovery of said liability, claim, loss, damage, or expense.

Lessee further agrees that its obligation to indemnify, defend and hold harmless City shall not be limited to the limits or terms of the liability insurance, required pursuant to this Lease.

17.03 INSURANCE. Lessee shall purchase, or cause to be purchased, and maintain in effect during the Term of this Lease with insurance carriers or risk retention groups authorized to do business in the State of New Mexico and approved by the City, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Lease are considered minimum coverage amounts and Lessee may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent three (3) years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Lease.

A. General Liability Insurance

Lessee shall carry and maintain, at Lessee's cost and expense, a policy of commercial general liability insurance (in the broadest form then available in New Mexico) that names the City as an insured party or additional insured party protecting the City against claims for bodily injury, personal injury, death and property damage. Such insurance must include coverage for all exposures arising from Lessee's operations, and contractual liability, to protect the Lessee and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Lessee under the Lease, whether such activities, omissions, and operations be by the Lessee, subcontractor, or by anyone employed by or acting for the benefit of the Lessee in conjunction with this Lease. Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

Such an insurance policy must specifically provide coverage for the City and its employees and agents in minimum amounts of \$2 million dollars (\$2,000,000.00) for damage to or destruction of each legally described real property arising out of a single occurrence; 2 million dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury or death; and \$2 million dollars (\$2,000,000.00) with respect to any one occurrence. Higher coverage for the City may be reasonably required by the City from time to time, including but not limited to increases needed to provide complete coverage for City's maximum liability under the New Mexico Tort Claims Act, NMSA 1978 § 41-4-1 et seq. and New Mexico Civil Rights Act, NMSA 1978 § 41-4A-1 et seq. City shall have no liability for premiums charged for such coverage, and inclusion of City as an insured party is not intended to, and shall not make City a partner or joint venturer with Lessee in its operations.

B. Property Coverage

In addition, the Lessee must obtain at its own expense, insurance coverage adequate to protect its operations, property, employees and agents in amounts Lessee finds sufficient but in no case shall such property insurance coverage be for less than one hundred percent (100%) Replacement Cost of Improvements on an Agreed Value Basis. Lessee shall be solely responsible for obtaining insurance policies that provide coverage for losses of Lessee-owned property, including improvements, and City shall be named as an additional insured on the policy. City shall not be required to provide such insurance coverage or be responsible for payment of Lessee's costs for such insurance.

22.5. Within ten (10) days after the execution of this Lease by City and delivery to Lessee, Lessee shall deliver to City original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. A certificate, policy, endorsement or rider which states that failure to give City notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. The following specific extensions of coverage must be indicated on the Certificate of Insurance:

- (1) Contractual liability
- (2) Bodily Injury and Property Damage liability
- (3) Premises operations
- (4) Personal injury
- (5) Advertising injury
- (6) Fire legal liability
- (7) Medical expense
- (8) Independent contractor/consultants/subcontractor/consultants
- (9) Products – completed operations
- (10) Pollution Liability
- (11) Additional insured endorsement (primary& non-contributing in favor of City)
- (12) Waiver of subrogation in favor of City

The above required Liability limits can be a combination of Primary Limits and Excess Liability/Umbrella limits. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the

insurer are unacceptable to City. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

In the event of any cancellation of any insurance coverage required by or on behalf of Lessee pursuant to this Lease, whether it be for non-payment of premium or for other than non-payment of premium, or in the event of any adverse, material change of any insurance required by this Lease effected by the insurance carrier providing such coverage, Lessee must email a copy of the cancellation notice or notice of adverse, material change to City's legal counsel and mail a copy to the address below no later than three (3) business days after the receipt of a cancellation notice or a notice of adverse material change.

Air Center Manager
1 Jerry Smith Circle
Roswell, New Mexico 88203

City agrees to waive its rights of subrogation that it may have against Lessee in the event Lessee's insurance providers pay insurance proceeds to City based on any act or failure to act by Lessee.

1. USE OF THE PREMISES. Security Responsibilities of Tenant, Tenant Employees and Other Persons.
 - a. No person may:
 - i. Tamper, interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper, interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.
 - ii. Enter, or be present within, a Secured Area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.
 - iii. Use, allow to be used, or cause to be used, any airport-issued or airport- approved access medium or identification medium that
 - b. Security Badges
 - i. Airport ID Badge
 1. Persons who work or do business on Airport property on a permanent or long-term (longer than 30 days) basis must have an

ii. Airport ID Badge Holder and Tenant Security Responsibilities / Access Control Procedures

1. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.
- c. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.
 - d. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.
 - e. Tenants and tenant employees are responsible for controlling access to doors, gates and other passageways between the AOA and the landside of the airport through their lease areas.
 - f. A breach in security caused by a tenant or tenant employee that results in a TSA, Airport Security Coordinator, or Airport Director finding of negligence will be cause to review, suspend, or withdraw access privileges, impose additional training requirements and/or impose other penalties as provided by these Rules and Regulations and the Airport Security Program.
 - g. Tenant shall use the Leased Premises solely for the purpose of storage, office space, and paperwork, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. The Roswell City Code shall bind tenant or as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).
 - h. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations,

laws, and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including:

- i. Environmental claims.
 - ii. Environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials.
 - iii. Liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.
- i. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of anything which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or

Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the ROW's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

ARTICLE 19 – DEFAULT AND CANCELLATION

Upon Lessee's violation of any of the terms, conditions, or covenants contained herein, including the failure to pay the rent when due, City may cancel this Lease after providing Lessee sixty (60) days' notice of the default by registered mail. The mailing of such notice

as herein provided shall constitute notice of City's intention to cancel the Lease and no proof of receipt of such notice shall be necessary in order for City to enforce the lease cancellation sixty (60) days after the mailing of the notice if Lessee has not cured the default to City's satisfaction within said sixty (60) day period. Lessee agrees that if a court of competent jurisdiction determines that Lessee has breached any of the terms, conditions or covenants of this Lease, Lessee shall pay the costs incurred by City in litigating the default, including reasonable attorney fees. In the event of a breach of the terms of this Lease by the Lessee, the City also shall have all remedies available at law or equity.

ARTICLE 20 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

In the event the Leased Premises are damaged by fire or other perils, City may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. City shall in its sole discretion have the option to: (1) to repair, reconstruct or restore the Leased Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above during the period of such repair, reconstruction or restoration, or (2) to give notice to Lessee at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Lessee such notice of termination, this Lease shall terminate and all interests of Lessee in the Leased Premises shall cease on the date so specified in such notice and Lessee shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Lessee in the Leased Premises, up to the date of such termination. If the damage is due to the fault or neglect of Lessee or its employees, as determined by City in its sole discretion, there shall be no reduction of rent.

City shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Lessee.

ARTICLE 21– COMPLIANCE WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAW OR REGULATION

Lessee shall fully comply with all federal and state laws, regulations, rules, ordinances and requirements, applicable to the Leased Premises or to Lessee's operations thereon, including but not limited to all applicable federal and state laws governing water, endangered or threatened species, hazardous materials, environmental protection, land use, health and safety, cultural, historic or archeological/paleontological properties, waste, trespass, including all applicable federal, state, or local law or regulations that may

be promulgated after the effective date of this Lease. Lessee agrees to protect the Leased Premises from waste or trespass. Lessee's compliance with all laws, regulations, and policy shall be at its own expense.

ARTICLE 22 – SCOPE OF AGREEMENT

This Lease incorporates all the agreements, covenants and understandings between City and Lessee concerning the subject matter hereof and all such agreements, covenants and understandings are merged into this Lease. No prior agreement or understanding between City and Lessee shall be valid or enforceable unless expressly embodied in this lease.

ARTICLE 23 – AMENDMENT

This Lease shall not be altered, changed, or amended except by an instrument executed by both City and Lessee.

ARTICLE 24 – APPLICABLE LAW

This Lease shall be governed by the laws of the State of New Mexico.

ARTICLE 25 – SUCCESSORS IN INTEREST; THIRD PARTIES

All terms, conditions and covenants of this Lease and all amendments thereto shall extend to and bind the heirs, successors and assigns of Lessee and City. There are no third-party beneficiaries of this Lease.

ARTICLE 26 – BANKRUPTCY

If Lessee should be adjudged bankrupt, either voluntarily or involuntarily, City shall have the option to pursue with the Court having jurisdiction all remedies to which City may be entitled in law or equity. In no event shall Lessee's interests in this Lease be deemed to be an asset of Lessee.

ARTICLE 27 -- HOLDOVER

If Lessee enters upon the Leased Premises after the termination or cancellation of this lease for any purpose, or leaves any equipment, buildings, materials, property or debris on the Leased Premises after the termination or cancellation of this lease, the rent due City for such entry or presence shall be prorated as provided in Article 3 plus 15% administrative for each day or any part of a day. Nothing contained herein shall be construed as the grant to Lessee of the right to enter the Leased Premises for any purpose after the termination or cancellation of this Lease without the prior written consent of City.

ARTICLE 28 – NOTICES

The addresses for notice are:

For Notice to City:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

For Notice to Lessee:

Roswell Museum
PO Box 1838
Roswell, NM 88202

ARTICLE 29 – RULES OF CONSTRUCTION

(a) The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

(b) All references in this Lease to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Lease unless some other reference is established.

ARTICLE 30 – CALCULATION OF TIME

Any time period calculated by reference to "days" means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 31 – STATUS OF CITY

Lessee acknowledges that City is a governmental entity which manages the Leased Premises pursuant to state law.

ARTICLE 32 – ENTIRE AGREEMENT AND AMENDMENT

This Lease is intended by the Parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the Parties having been incorporated herein. No course of prior dealings between the Parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein.

IN WITNESS WHEREOF, this Lease is executed the ____ day of _____, 20__.

For City

By: Timothy Z. Jennings, Mayor

By: Hessel Yntema, City Attorney

For Lessee:

By: Caroline Brooks, Museum Director

Attest:

Amalia Martinez, City Clerk

The following items will be taken care of by the Roswell Air Center.

1. HVAC
2. Plumbing
3. Fire system
4. Doors and locks
5. Pre-occupancy initial cleaning