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 March 1, 2026, for 5 years and shall terminate on February 28, 2031, 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 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 Lessor will maintain the facility as required at a maintenance fee of $80,000.00 per year. Including without limitation the 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. Lessor will maintain the improvements in a condition of safe occupancy during the term of this Lease to a standard as the current condition. City is additionally responsible for all structural items, including foundation, roof, and exterior walls.

b. Further, the Lessor 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.

c. 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.

6.04 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 <u>Ownership Of Improvements, Improvement Removal And Reclamation</u>. 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.

[SIGNATURES TO FOLLOW]

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 BUBROGATION**

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.