



State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

RICHARD C. BAILEY, JR.
ASSISTANT COMMISSIONER

EDDIE EDWARDS
ASSISTANT COMMISSIONER

ROBERT L. QUINN
COMMISSIONER

December 19, 2022

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Safety, Division of State Police (NHSP) to enter into a retroactive 3-year lease agreement with the City of Concord (VC #177376-B001) for an amount not to exceed \$62,498.10 for land at the Concord Municipal Airport, 91 Airport Road, Concord, NH, with an option to renew for two additional one-year periods, effective upon Governor and Council approval for the period of January 1, 2023 through December 31, 2025. 35% General, 41% Highway, 24% Turnpike.

Funds are available in the SFY2023 operating budget and contingent upon availability and continued appropriations in SFY 2024 through SFY 2026, with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

02-23-23-234015-40060000 Dept. of Safety – Division of State Police – Aircraft Traffic Surveillance
022-5020248 – Rent Leases Other than State – Rent to Owners Non-State Space

| <u>SFY 2023</u> | <u>SFY 2024</u> | <u>SFY 2025</u> | <u>SFY 2026</u> |
|-----------------|-----------------|-----------------|-----------------|
| \$5,411.70 | \$10,823.40 | \$10,823.40 | \$5,411.70 |

02-23-23-234010-20640000 Dept. of Safety – Division of State Police – Substance Abuse Enforcement
022-500248 - Rent Leases Other than State – Rent to Owners Non-State Space

| <u>SFY 2023</u> | <u>SFY 2024</u> | <u>SFY 2025</u> | <u>SFY 2026</u> |
|-----------------|-----------------|-----------------|-----------------|
| \$5,004.65 | \$10,009.30 | \$10,009.30 | \$5,004.65 |

Subtotals: \$10,416.35 \$20,832.70 \$20,832.70 \$10,416.35

Total amount: \$62,498.10

EXPLANATION

This lease is retroactive due to delays in negotiations and final contract execution with the City of Concord. This is a 3-year lease for land at 91 Airport Road in Concord, New Hampshire. The State of New Hampshire owns the hangar building at the location that currently houses the Division of State Police aircraft and the Mobile Enforcement Team (MET). Rent payments may be adjusted for each lease period beginning January 1st and are based on the cumulative change in the Consumer Price Index as published by the U.S. Department of Labor CPI Inflation Calculator during the preceding 60-month period ending September 30.

Respectfully submitted,

Robert L. Quinn
Commissioner of Safety

LEASE AGREEMENT

This Lease Agreement (the "Lease") entered into as of the January 1, 2023 ("Effective Date"), by and between the City of Concord a body politic and corporate, located at 41 Green Street, Concord, New Hampshire 03301 (the "Lessor"), and the New Hampshire Department of Safety 33 Hazen Drive, Concord, New Hampshire 03305 ("Lessee"). The Lessor and Lessee are collectively referred to as the "Parties" and may be referred to individually as "Party."

RECITALS

WHEREAS, the Lessor owns and controls the Concord Municipal Airport in the City of Concord and Merrimack County, State of New Hampshire ("Airport"); and

WHEREAS, the Lessee is desirous of leasing land located at 91 Airport Road at the Concord Municipal Airport for purposes of maintaining a hangar, which was previously constructed by the Lessee at the Premises, which features office space and aircraft storage to support the Department of Safety's aviation based public safety operations; and,

WHEREAS, the building included in this Lease, located at 91 Airport Road is referred to as Building #6 on the Ultimate Airport Layout Plan on file in the City of Concord's Engineering Division.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I – LEASED PREMISES

The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor, the following premises:

Premises. The leased premises consist of twenty-five thousand three hundred fifty square feet +/- (25,350 S.F.) of land located at 91 Airport Road, Concord, New Hampshire, 03301, as described and identified per Exhibit A-1 attached hereto ("Premises"). The Parties acknowledge that the Lessee previously constructed and maintains an eight thousand five hundred sixty square foot +/- (8,506SF) hangar at the Premises.

ARTICLE II – TERM

The term of this Lease shall be for a period of three (3) years, commencing on the Effective Date, and continuing through the thirty-first (31st) day of December, 2025 (the "Termination Date"), unless earlier terminated, or otherwise extended under the provisions of this Lease. During the last one hundred twenty (120) days of the lease term, the Lessee may request—in writing—a one (1) year extension to the term of the Lease. If the Lessee has satisfactorily met all other terms in this Lease per the Lessor's determination, the Lessor shall grant this extension administratively. The Lessee shall

Lease Agreement - NH Dept. of Safety
Concord Municipal Airport Property
2022

have the opportunity to request a total of two (2) one-year extensions to the original Lease term. Should the Lessee wish to continue as the Lessor's tenant at the Concord Municipal Airport after the second one-year extension ("Final Term"), the Lessee shall notify the Lessor, in writing, at least 120 days prior to the termination of the second one-year extension of its desire to negotiate a new Lease and the Parties may negotiate a new lease agreement. Notwithstanding whether the Parties negotiate a new lease following the Final Term of this Lease, such term of this Lease shall end upon the Termination Date, unless otherwise extended under the provisions of this Lease.

ARTICLE III – CONDITIONS FOR USE OF LEASED PREMISES

- A. Lessor's Use of the Premises:** Lessee agrees that it will use and occupy the Premises for the purpose of maintaining a hangar, which was previously constructed at the Premises by the Lessee, which features office space and aircraft storage space to support the New Hampshire Department of Safety's aviation based public safety operations. Said use of the Premises is in accordance with the "Minimum Standards and Procedures for Concord, New Hampshire, Municipal Airport", as amended, and the City of Concord Zoning Ordinance. The Lessee and that Lessee will not permit the Premises or any part of them to be used for any other purpose except with the written consent of the Lessor.
- B. Non-Exclusive Use of Airport:** It is not the intent of this Lease to grant to Lessee the exclusive right to provide any services or facilities at the Airport at any time during the term of this Lease. Lessor reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Lessee.
- C. Lessee's Improvements, Removal and Restoration of the Premises:** Lessee may, upon the prior written approval of the Lessor, at Lessee's sole cost and expense, and in accordance with the City of Concord's Zoning Ordinance and all other applicable laws, rules and regulations, make improvements, including the construction of buildings, ("Improvements") to the Premises as may be necessary for Lessee to use the Premises in accordance with this Lease. Unless otherwise agreed by the Parties, all Improvements shall remain the property of the Lessee and Lessee shall remove the Improvements, and restore the Premises to its original condition as of the Effective Date of this Lease, at its sole expense, within one hundred twenty (120) days of the Termination Date. Failure of the Lessee to remove the Improvements within 120 days following termination of the Lease shall constitute a material breach of this lease.

Notwithstanding the preceding, the Parties may, upon termination of this Lease Agreement, agree to have all or a portion of the Lessee's Improvements remain at the Premises upon termination of this Lease Agreement. Any such agreement shall be codified in writing as an amendment to this Lease Agreement.

- D. Lessee's Maintenance of the Existing Buildings and Improvements:** Lessee shall be responsible for maintenance of all Improvements at the Premises, as well as access thereto, without limitation, as the Lessee's sole expense. Said Improvements shall be well maintained so as to be clean, safe, and aesthetically attractive.

- E. Signs:** During the term of this Lease, Lessee shall have the right, at its own expense to erect and place one exterior sign on the Premises, facing Airport Road, identifying the name of the Lessee, and one sign or set of lettering identifying the name of the Lessee on the airfield/ramp side of the Premises. All signs and lettering shall be of a size, shape, design, and location approved by the Lessor and in conformance with the Concord Zoning Ordinance and any other applicable laws, ordinances, rules, regulations, or policies. In addition, the placement of the sign shall be subject to the Lessor's approval, which shall not be unreasonably withheld. The Lessee shall remove, at its own expense, any sign erected on the Premises with ten (10) business days of the Termination Date and restore the Premises where the sign was located to its original condition as of the Effective Date.
- F. No Liens:** Lessee shall not permit any lien, including mechanic's liens, to encumber the Premises. The Lessee further agrees to not incur, create, assume or suffer to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on the Premises or any Improvements.
- G. Loss of Property:** Lessee agrees that the Lessor shall not be liable for any loss, damage, or destruction to any property owned by the Lessee located within the Premises.
- H. Lessor's Right to Reclaim Premises:** Due to the limited space adjacent to the runways and taxiways at the Airport, the Lessor reserves the right to reclaim any unimproved areas of the Premises, not including the existing parking area, subject only to abatement of any rent on such areas, if it should deem such action to be in the best interest of the Lessor and/or Airport development, as determined at Lessor's sole discretion.
- I. Storage of Fuels, Oils and Hazardous Waste:** Lessee shall be solely responsible for the storage, handling and dispensing of fuels, oils, and other hazardous materials brought upon the Premises by Lessee or any party conducting business with Lessee. Lessee shall be responsible for compliance with all applicable federal, state and local laws, ordinances, rules and regulations relative to the storage, handling and dispensing of fuels, oils and other hazardous materials.

ARTICLE IV – LESSOR'S GENERAL SAFETY ACCESS AND LANDSCAPING MAINTENANCE OF THE PREMISES

Lessor shall maintain those areas of the Airport, which are separate and autonomous from the Premises or any other lease agreements, in accordance with applicable City maintenance plans, policies, procedures and standards, as well as applicable Federal Aviation Administration standards.

ARTICLE V – AERIAL APPROACHES

Lessor reserves the right to prohibit Lessee from erecting, or permitting to be erected, any building or other structure on, or adjacent to, the Airport which, in the opinion of the New Hampshire Bureau of Aeronautics or the Federal Aviation Administration, would limit the usefulness of the Airport or constitute a hazard to aircraft, including interference with electronic communications and directional equipment.

ARTICLE VI – APPURTENANCE PRIVILEGES

Lessee is entitled, in common with others so authorized by Lessor, to the use the Airport, including the use of landing areas, runway, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by Lessor. Lessee's use of such Airport facilities shall be in accordance with applicable laws, ordinances, rules and regulations, as well as the Minimum Standards and Procedures for Concord, New Hampshire, Municipal Airport, or as otherwise directed by Lessor.

ARTICLE VII – DEFAULT AND TERMINATION

A. Termination by Lessee: This Lease shall be subject to termination of Lessee in the event of any one or more of the following events:

1. The abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.
2. Default in the observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Lessor's part to be observed or performed, and such default shall continue for thirty (30) days after the Lessee has given the Lessor written notice specifying the default or such longer period as shall be reasonably required to cure the default; provided that: (i) the Lessor has commenced the cure within the 30-day period, and (ii) the Lessor diligently prosecutes the cure to completion.
3. Damage to or destruction of all or a material part of the Premises or the Airport necessary to the operation of Lessee's business.
4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially Lessee from conducting business operations for a period in excess of ninety (90) days.

B. Termination by Lessor: This Lease shall be subject to termination by Lessor in the event of any one or more of the following events:

1. Default in the observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Lessee's part to be observed or performed, and such default shall continue for thirty (30) days after the Lessor has given the Lessee written notice specifying the default or such longer period as shall be reasonably required to cure the default; provided that: (i) the Lessee has commenced the cure within the 30-day period, and (ii) the Lessee diligently prosecutes the cure to completion.
2. Lessor determines, in its sole discretion, that it is in the best interest of the Lessor to sell the Airport.

ARTICLE VIII – WAIVER

The provisions of this Lease may be waived or modified only by instruments in writing executed by each of the parties hereto. No waiver by any Party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or consent to any subsequent breach of the same or any other provision.

ARTICLE IX – ASSIGNMENT

This Lease, or any part hereof, shall not be assigned, transferred or subleased by Lessee, by process or operation of law or in any other manner whatsoever, without the prior written consent of the Lessor.

ARTICLE X – DISCLAIMER OF LIABILITY

The Lessor disclaims, and Lessee releases the Lessor from any and all liability, whether in contract or tort (including strict liability and negligence), for any loss, damage or injury to Premises, unless such loss, damage or injury is directly caused by the negligent acts or omissions of the Lessor or its agents or employees. For the purpose of this Lease, this disclaimer is broadly construed because the Premises are offered in “as is” condition on the date of the Effective Date. The Parties further agree that under no circumstances shall the Lessor be liable for indirect, consequential, special or exemplary damages, whether in contract or tort (including strict liability and negligence), including, but not limited to, loss of revenue or anticipated profits or other damage related to the leasing of the space under this Lease.

ARTICLE XI – INDEMNIFICATION

The Lessee shall be responsible for any suit or claim for damages resulting from any and all negligent acts, omissions, or conduct of the Lessee’s employees or agents. It is understood and agreed between the Parties that the Lessee is self-insured and the Lessee’s liability may be limited by State law.

The Lessor shall be responsible for any suit or claim for damages resulting from any and all negligent acts, omissions, or conduct of the Lessor’s employees or agents. It is understood and agreed by the Parties that Lessor participates in pooled self-insurance through a RSA 5-B risk pool and that the Lessor’s liability may be limited by State law. Furthermore, and without waiving any statutory and common law immunities and liability limitations, the Parties agree that Lessor’s liability hereunder for any suits and claims for damages shall be limited to the terms, scope and limits of its risk pool liability coverage, if applicable, and if such coverage is not applicable, Lessor shall have no liability hereunder.

ARTICLE XII – INSURANCE

The Lessee is “self-insured” and shall insure, at its sole cost and expense, any and all Liabilities arising out of this Lease for so long as Lease is in effect and shall continue following expiration of the Lease to cover any and all Liabilities arising out of such Lease.

ARTICLE XIII – REQUIREMENTS OF THE UNITED STATES

This Lease shall be subject and subordinate to the provisions of any existing or future Lease between Lessor and the United States, or any agency thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport; provided, however, that Lessor shall, to the extent permitted by law, use its best efforts to cause any such leases to include provisions protecting and preserving the rights of Lessee and to the premises, and to compensation for the taking thereof, interference therewith, and damage thereto, caused by such lease or by actions of Lessor or the United States pursuant thereto.

ARTICLE XIV – FIRE, CASUALTY AND EMINENT DOMAIN

Should a substantial portion of the Premises or of the Airport, be substantially damaged by fire or other causality (“Causal Event”), or be taken by eminent domain, either party may elect to terminate this Lease. The Lessor may elect to terminate this Lease Agreement if:

- A. The Lessee fails to provide written notice within thirty (30) days of the Causal Event of his or her intention to restore the Leased Premises, or;
- B. The Lessee fails to restore the Premises to a condition that is substantially suitable for the intended use within ninety (90) days of said fire, causality, or taking. The Lessor reserves, and the Lessee grants to the Lessor, all rights which the Lessor may have for damages or injury to the Premises, or for any taking by eminent domain, except for damage to the Lessee’s fixtures, property, buildings, improvements, or equipment, or any award for the Lessee’s moving expenses.

ARTICLE XV – LEASE RATE (RENT) AND PAYMENTS

- A. **Lease Rate for Term of Agreement:** The Lessee agrees to pay to Lessor as rent for the premises the sum of Twenty Thousand Eight Hundred Thirty-Two Dollars and Seventy Cents (\$20,832.70) per lease year and for the three-year term, as well as potential two one-year extensions thereto. Each lease year shall commence on January 1st and end on December 31st. Rent expressly excludes any utility fees or other fees associated with the Lessee’s use or occupancy of the Premises.
- B. **Payment of Rent:** Lessor shall submit an invoice for the full annual amount of rent to the Lessee on or before the first business day of each Lease Year, which will be payable in full by the Lessee upon receipt.
- C. **Rental Payment Adjustments:** Payments shall be adjusted on January 1st of each successive five-year period of this Lease. The payments shall be increased based upon the cumulative change in the Consumer Price Index calculator as published by the U.S. Department of Labor during the 60-month period ending the preceding September 30th.

ARTICLE XVI – CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding the provisions of Article XIV or anything contained in this lease to the contrary, it is hereby expressly understood and agreed by the Lessor that the existence and continuance of this Lease and the obligations of the Lessee hereunder are contingent upon the availability of State funds appropriated by the General Court of New Hampshire (and if applicable, the availability of Federal funds) that are made available for this purpose, and that neither the State nor the Lessee shall be liable for payments under this Lease except from such funds. In the event that any portion of such funds are terminated, the Lessee may, at its option, serve thirty (30) days written notice to the Lessor of its intention to cancel the Lease in whole or in part. It is further expressly understood and agreed by the Lessor that in the event the State of New Hampshire makes available State-owned facilities for the Lessee the Lessee may, at its option, serve thirty (30) days written notice to the Lessor of its intention to cancel the Lease in whole or in part. Whenever the Lessee decides to cancel the Lease in whole or in part under this section and has served the required notice to the Lessor, the Lessee shall vacate all or part of the leased premises with thirty (30) days. The Lease to the portion of the Leased Premises vacated shall henceforth be canceled and void, while the Lease to the portion of the Premises still occupied shall remain in effect, with a pro rata abatement of the rent made by the parties hereto.

ARTICLE XVII – MISCELLANEOUS PROVISIONS

- A. **Entire Lease:** This Lease constitutes the entire understanding between the Parties, and as of its effective date, supersedes all prior or independent Leases between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.

- B. **Severability:** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Lease shall not be void, but the remaining provision shall continue in effect as nearly as possible in accordance with the original intent of the parties.

- C. **Notice:** Any notice given by one Party to the other in connection with this Lease shall be in writing and shall be sent by registered mail, return receipt requested, with postage and registration fees prepaid.

- 1. If to Lessor, addressed to:

City Manager
City of Concord
41 Green Street
Concord, New Hampshire 03301

- 2. If to Lessee, addressed to:

Commissioner
NH Department of Safety
33 Hazen Drive
Concord, New Hampshire 03305

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt.

- D. **Heading:** The headings used in this Lease are intended for convenience of reference only and do not define or limit the scope of meaning of any provisions of this Lease.
- E. **Governing Law:** This Lease is to be construed in accordance with the laws of the State of New Hampshire. Any disputes under this Lease shall be resolved within a court located in Merrimack County, State of New Hampshire.

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ARTICLE XVIII- EXECUTION

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

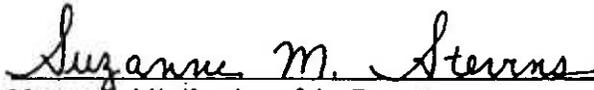
CITY OF CONCORD

By: 
Thomas J. Aspell, Jr., City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 14th day of December, 2022 before me the undersigned officer, personally appeared Thomas J. Aspell, Jr., City Manager, of the City of Concord, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal


Notary Public/Justice of the Peace
My commission expires: _____

SEAL

SUZANNE M. STEVENS
NOTARY PUBLIC - State of New Hampshire
My Commission Expires
January 12, 2027

NEW HAMPSHIRE DEPARTMENT OF SAFETY

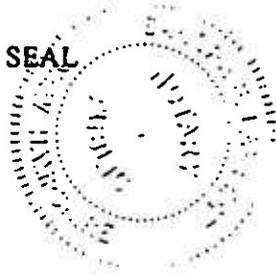
By: *Robert L. Quinn*
Robert L. Quinn, Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 19th day of December, 2022, before me the undersigned officer, personally appeared Robert L. Quinn, Commissioner, NH Department of Safety, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal

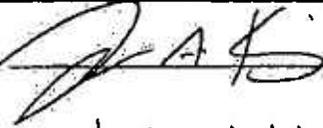
Sandra S. Lambert
Notary Public/Justice of the Peace
My commission expires: 2/7/23



SANDRA S. LAMBERT, Notary Public
State of New Hampshire
My Commission Expires Feb. 07, 2023

Approved by the Department of Justice as to form, substance and execution:

Approval date:

 _____

Approving Attorney: Jessica A. King, Asst. Attorney General

Approved by the Governor and Executive Council:

Approval date: _____

Signature of the Deputy Secretary of State: _____

EXHIBIT A - 1

LEASED PREMISES LEGAL DESCRIPTION

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises shown on Exhibit A-2 hereto, being a plan entitled "Site Plan for Paul Mack Inc. at Concord Municipal Airport, Location: Airport Road, Concord, NH, Municipal Airport," dated January 21, 1985, approved by the City of Concord Planning Board on June 25, 1985, recorded in the records of the City of Concord's Community Development Department as Private Plan Number 1349 identified, together with the right of ingress and egress for both vehicles and aircraft, and being more particularly described as follows:

Beginning on the easterly sideline of Airport Road at the northwest corner of the property now or formerly owned by Northeast Electronics Corp., said point being the southwest corner of the herein described premises; thence

N 11° 42' 30" W along the easterly sideline of Airport Road, a distance of 130.00 feet to a point; thence

N 79° 47' 00" E across land of the City of Concord, a distance of 195.00 feet to a point; thence

S 11° 42' 30" E across land of the City of Concord, a distance of 130.00 feet to a point; thence

S 79° 47' 00" W across land of the City of Concord and partially along the northerly line of the property now or formerly owned by Northeast Electronics Corp., a distance of 195.00 feet to point of beginning.

Meaning and intending to describe a lease area across a portion of the land owned by the City of Concord and known as the Concord Municipal Airport (shown as Map 110, Block 1, Lot 6 on the City of Concord Assessors Sheets), and containing approximately 25,350 square feet, or 0.58 acre ("Premises").