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State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

December 1, 2017

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

Retractive

Requested Action

Authorize the Department of Safety, Division of State Police to **retroactively** enter into a new lease agreement with the City of Concord (VC #177376-B001) for the property located at 91 Airport Road in the amount of \$86,703.25 for rent during the lease period of January 1, 2018 through December 31, 2022, effective upon Governor and Council approval. Funding source: 41% Federal, 26% General, 19% Highway, 14% Turnpike.

Funds are available in the SFY2018 operating budget and are contingent upon availability and continued appropriations in SFY2019 through SFY2022 with the authority to adjust between fiscal years through the Budget Office if needed and justified.

	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>FY2022</u>
02-23-23-234015-40060000 – Dept. of Safety – Division of State Police – Aircraft Traffic Surveillance					
022-500248 – Rents Leases Other than State – Rent to Owners Non-State Space	\$9,017.14	\$9,017.14	\$9,017.14	\$9,017.14	\$9,017.14
02-23-23-234015-31060000 – Dept. of Safety – Division of State Police – MCSAP Grant					
022-500248 – Rents Leases Other than State – Rent to Owners Non-State Space	<u>\$8,323.51</u>	<u>\$8,323.51</u>	<u>\$8,323.51</u>	<u>\$8,323.51</u>	<u>\$8,323.51</u>
Subtotals	\$17,340.65	\$17,340.65	\$17,340.65	\$17,340.65	\$17,340.65
				Total Amount	\$86,703.25

Explanation

This request is **retroactive** as lease renegotiations took longer than anticipated. This lease is for land at 91 Airport Road where the State of New Hampshire owns a building that currently houses the Division of State Police aircraft as well as Troop G. The rent payments are adjusted for each five-year lease period beginning January 1st and are based on the cumulative change in the Consumer Price Index – All Urban Consumer as published by the US Department of Labor (B.L.S.C.P.I.) during the preceding 60-month period ending September 30. The rent payments for this five-year lease are \$17,340.65 annually for the term beginning January 1, 2018 through December 31, 2022.

Respectfully submitted,

John J. Barthelmes
John J. Barthelmes
Commissioner of Safety

LEASE AGREEMENT

This Lease Agreement (the "Lease") entered into as of the 12/22, 2017, by and between the City of Concord (the "Lessor"), a body politic and corporate created by the State of New Hampshire and the New Hampshire Department of Safety ("Lessee"), 33 Hazen Drive, Concord, New Hampshire 03305.

Witnesseth:

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

WHEREAS, the Lessee is desirous of leasing land located at 91 Airport Road at the Concord Municipal Airport for purposes of providing office space and aircraft hangar spaces for the Lessee; and

WHEREAS, the building 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 premises and the mutual covenants contained in this Lease, the parties hereby agree as follows:

ARTICLE I – TERM

The term of this Lease shall be for a period of five (5) years, commencing on the first day of January 2018, and continuing through the thirty-first day of December, 2022 (the "Termination Date"), unless earlier terminated under the provisions of this Lease. The Lessee will be given the opportunity to renegotiate the term of this Lease during the last one hundred twenty (120) days of this Lease for an additional term of five years. The Lessor agrees to negotiate in good faith, but if the parties are unable to come to a mutually acceptable Lease within the one hundred twenty day negotiating period, then the term shall terminate as per the Lease.

ARTICLE II – LEASED PREMISES

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

- A. LAND AREA – This space located at 91 Airport Road, Concord New Hampshire, totals an estimated twenty-five thousand three hundred fifty square feet +/- (25,350 S.F.) and is described and identified per Exhibit A-1.

ARTICLE III – CONDITIONS FOR USE OF LEASED PREMISES

Lessee agrees that it will use and occupy the leased premises in conformance with City Industrial (IN) Zoning and for the purpose of conducting activities associated with 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, which said consent shall not be unreasonably withheld.

Lessee may, upon the prior written approval of the Lessor and at Lessee's sole cost and expense, make such changes, alterations or improvements (including the construction of buildings) as may be necessary to fit the premises for such use, and all buildings, fixtures and improvements of every kind installed by Lessee shall remain the property of Lessee, who may remove them upon the termination of this Lease, provided that such removal shall be done in such a manner as not to injure or damage the demised premises and shall return premises to its original condition. In the event that the Lessee shall fail to remove the buildings, fixtures and improvements within 120 days following the termination of the Lease, the buildings, fixtures and improvements shall become the property of the Lessor. Or, alternatively, if during the renegotiation period set forth in Article I of this Lease or within 60 days following termination of the Lease, Lessor provides Notice to Lessee, declining ownership of the buildings, fixtures and improvements, and Lessee fails to remove the buildings, fixtures and improvements within 120 days after such Notice or upon the termination of the Lease, whichever is longer, Lessee's failure to remove the buildings, fixtures and improvements shall constitute a material breach of this Lease.

Lessee shall be responsible for maintenance of the building(s) on the leased premises. Said maintenance shall include, but not be limited to, the following:

Exterior: Painting, striping of building, hangar doors, windows, overhead doors, roof, lighting systems; and

Unless approved in writing by the Lessor, all activities conducted on site will be limited to those permitted by the "Minimum Standards and Procedures for Concord, New Hampshire, Municipal Airport", as amended. The "Minimum Standards for Concord, New Hampshire Municipal Airport" are attached to this Lease. Lessee will comply with all standards provided therein. Notwithstanding the prior sentence, the Lessor understands that the Lessee is self-insured and therefore is exempt from any and all insurance requirements. Any future changes in use will also be in conformity with the Minimum Standards and Procedures then in effect.

Lessee shall not permit any lien, including mechanic's liens, to further encumber the leased premises, without prior written approval of the Lessor. 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 leased premises or any improvements or structures constructed thereon. In the event any lien or encumbrance is placed against the property, the Lessee shall provide notice to the Lessor of the existence of such a lien and shall within three hundred sixty five (365) days thereafter see to it that such lien or encumbrance is released from the premises.

Due to the limited space adjacent to the runways and taxiways at the Concord Municipal Airport, the Lessor reserves the right to reclaim any unused side-yard areas, subject only to abatement of any rent on such areas, if it should deem such action to be in the best interest of future Airport development.

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 and regulations relative to the storage, handling and dispensing of fuels, oils and other hazardous materials.

ARTICLE IV – LESSOR’S MAINTENANCE RESPONSIBILITIES - LEASED PREMISES

Lessor shall provide maintenance services as required including snow, sanding and ice removal, and lawn mowing and trimming inside the airport fence.

ARTICLE V – AERIAL APPROACHES

Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee erecting or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of Lessor, 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

- A. Use of Airport Facilities – Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenance to the Airport, including the use of landing areas, runway, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by Lessor.
- B. Signs – During the term of this Lease, Lessee shall have the right, at its expense to place in or on the premises a sign or signs identifying the Lessee. Said sign or signs shall be of a size, shape, and design, at a location or locations, approved by the Lessor and in conformance with the Concord Zoning Ordinance and any overall directional graphics or sign program established by the Lessor. Notwithstanding any other provision of the proposed Lease, said sign(s) shall remain the property of the Lessee. The Lessee shall remove, at its expense, all lettering, signs, and placards so erected on the premises at the expiration of the term of the Lease, and return the premises to its original condition.

Lessee shall not erect, install, operate nor cause nor permit to be erected, installed, or operated in or upon the premises, any signs or other similar devices without the prior written approval of the Lessor, such approval shall not be unreasonably withheld.

Non-Exclusive Right - 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.

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 Airport facilities 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. Failure of Lessee to provide adequate maintenance per Article III.
3. Lessor determines that it is in the best interest of the City to sell the Concord Municipal Airport.

CAUSES OF BREACH: WAIVER

1. Neither party shall be held to be in breach of this Lease because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has no control; provided, however, that the foregoing provision shall not apply to failures by Lessee to pay fees, rents, or other charges to the Lessor.
2. The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute

a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

ARTICLE VIII – 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 IX – 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 property of the Lessee or any other parties that may be located or stored on the leased 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 to be broadly construed because the leased premises are offered only in the condition they exist in on the date of the execution of this Lease. 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), such as, but not limited to, loss of revenue or anticipated profits or other damage related to the leasing of the space under this Lease.

ARTICLE X – 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 XI – 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 XII – 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 XIII – FIRE, CASUALTY AND EMINENT DOMAIN

Should a substantial portion of the Leased premises or of the property of which they are a part, be substantially damaged by fire or other causality, or be taken by eminent domain, either party may elect to terminate this Lease. The Lessor may elect to terminate the Lease if:

1. 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;
2. The Lessee fails to restore the Leased 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 XIV – PAYMENTS

Lessee agrees to pay to Lessor as rent for the premises the sum of Seventeen Thousand Three Hundred Forty Dollars and Sixty-Five Cents (\$17,340.65) per year and for the term beginning the first day of January 2018, to the thirty-first day of December, 2022.

A. 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 – All Urban Consumer as published by the U.S. Department of Labor: (B.L.S.C.P.I.) during the 60-month period ending the preceding September 30th.

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

CITY OF CONCORD

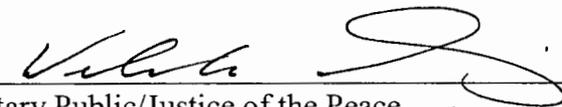
By: 
Thomas J. Aspell, Jr., City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 22nd day of December, 2017 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

VELINDA DIAZ, Notary Public
State of New Hampshire
My Commission Expires September 7, 2021
SEAL


Notary Public/Justice of the Peace
My commission expires: 9/7/2021

NEW HAMPSHIRE DEPARTMENT OF SAFETY

By: 
John J. Barthelmes, Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 21st day of December, 2017, before me the undersigned officer, personally appeared John J. Barthelmes, 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

SEAL


Notary Public/Justice of the Peace
My commission expires: NANCY L. CASSIDY, Notary Public
State of New Hampshire
My Commission Expires April 5, 2022

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

Approval date: 1/3/18

Approving Attorney: 

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 following premises (the "Premises"), identified and 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 Planning Board on June 25, 1985, recorded in the records of the City of Concord's Community Development Department as Private Plan Number 1349, 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.