ITEM # \_\_\_\_\_\_\_\_\_\_

**LEASE AGREEMENT BETWEEN**

**THE CITY OF SANTA FE AND XXXXXXXXX**

This LEASE AGREEMENT (“Lease Agreement”) is made and entered into as of the date of the last signature (“Effective Date”), by and between the CITY OF SANTA FE, a municipal corporation (“City” or “Lessor”) and XXXXX, a New Mexico corporation (“Lessee”), collectively the “Parties”.

**WHEREAS**, the City desires to lease a portion of the City-owned building known as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Santa Fe, NM (Premises) for the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**WITNESSETH:**

In consideration of the Lessee’s promises herein, Lessor hereby gives Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on, make use of, (and develop) the real property of Lessor as follows:

[Purpose of the lease]

1. **PREMISES**

Lessor allows Lessee to use, occupy, (and develop), subject to the terms and conditions of this Lease Agreement, a certain parcel of land known as (enter legal description and cite recordation information of plat or survey) (the “Premises”), as shown on **Exhibit A** of this Lease Agreement. *(Attach the legal document as an exhibit)*

Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises.

1. **LEASE TERM**
2. Initial Term. The initial term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term" of XXXXX (XX) yeasrs. with XX (X) "Option Terms" of XX (X) years each.
3. Option Term. Lessee's exercise of any Option Term is contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least ninety (90) days prior to the expiration of the Initial Term and approval or denial of any Option Term shall be at Lessor's sole discretion. All terms, covenants and conditions of this Lease Agreement, excepting the amount of rent to be paid, shall remain in full force and effect during any extension of the term.
4. Hold Over. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and the terms and conditions of the Lease Agreement shall be otherwise applicable.
5. **RENT**
   1. Base Rent. Lessee shall pay first year **Monthly rent** of **$XXXX** which is due on the Effective Date and thereafter due in full on the first day of each month during the Term without notice or demand and without deduction or offset for any cause whatsoever; the total first year annual rent is $XXXXXX. Lessee shall make payments to; City of Santa Fe, Treasury Division, 200 Lincoln Ave., Room 114, Santa Fe, NM, 87504.
   2. Optional Terms Rent. The amount of rent to be paid during each exercised Option Term shall be the then-prevailing fair market rental value of the Premises (less the value of Lessee’s improvements and inventory on the Premises), as determined by Lessor, and in no event shall the amount of annual rent be less than the amount of annual rent paid during the previous year.
   3. Penalty for Late Rent Payment. If money payable to Lessor as a condition of this Lease Agreement is not paid in full when due, a penalty of 10% of the amount due and unpaid shall be added to the amount due, and the total sum of the then-due rental payment plus penalty shall become immediately due and payable to Lessor. A further penalty of 10% of the amount due and unpaid, including previously assessed penalties, shall be added for each additional month that said amount remains unpaid. The assessment and collection of the 10% penalty is in addition to any other rights of Lessor, if Lessee does not faithfully perform the terms, covenants and conditions of this Lease Agreement.
   4. Increase in Rent. Rent shall be increased annually, effective on the first anniversary of the Rent Commencement Date and annually thereafter. Annual increases in Rent shall be based on the Rent Schedule below.
   5. Rent Schedule. In consideration of this Lease Agreement, City and Lessee agree to the Rent Schedule attached as Exhibit B.
6. **USE OF PREMISES**
   1. Conditions of Use. Lessee shall use the Premises solely for the purpose of operating the "----- subject to the following conditions:
7. *(Insert conditions and/or requirements)*
8. 1. Improvement of the Premises. Lessee may, with the prior written consent of Lessor and at no cost to Lessor, make improvements to the Premises which are required to comply with the City of Santa Fe Land Use Code, which includes the Historic District Development Rules, the State of New Mexico Construction Industries Code and all other applicable local, state and federal regulations. Lessee shall upon Lessor's request, remove all such improvements made to the Premises at the termination of this Lease Agreement.
   2. Trade Fixtures. All trade fixtures installed by Lessee after the Effective Date of this Lease Agreement shall remain the property of Lessee, who may remove the same upon termination of this Lease Agreement, provided that removal shall be done in such a manner as not to injure or damage the Premises. In the event that Lessee fails to remove said trade fixtures after receipt of notice from Lessor to do so, Lessor may remove and dispose of the same as it sees fit and Lessee agrees to sell, assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to said trade fixtures and any personal property not removed by Lessee. Lessee further agrees that should Lessor remove said trade fixtures pursuant to this paragraph. that Lessee shall pay Lessor upon demand the cost of such removal, plus the cost of transportation and disposal thereof.
   3. Compliance with Laws. Lessee's use of the Premises shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§ l 0-7 SFCC 1987) (the Pest Management Policy).
9. **REPAIRS & MAINTENANCE**
10. During the term of this Lease and any extension or renewal thereof, Lessee shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises.
11. During the term of this Lease and any extension or renewal thereof, Lessee shall, at its sole expense, keep and maintain the Premises in good and clean condition at all times and shall be responsible for the costs of any and all required repairs, replacements, and capital improvements that arise during the Term of this Lease Agreement.
12. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises.
13. During the term of this Lease and any extension or renewal thereof, Lessee shall maintain the landscaping and plants between the building and the sidewalk along the entire perimeter of the building.
14. Lessee shall at all times During the term of this Lease and any extension or renewal thereof, and in a timely manner, provide a safe Premises by eliminating conditions caused by, including and not limited to, snow, ice, debris, mold and standing water.
15. Lessor reserves the right to inspect the Premises at any time during the Term of this Lease Agreement to verify Lessee's compliance with this Section 5. In the event Lessee fails to maintain the Premises at a standard acceptable to the Lessor, as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement in accordance with Section 13 herein.
16. Repair and maintenance shall be to the sole satisfaction of Lessor, and if Lessee fails to fulfill any duty imposed under this Section 5 within a reasonable period of time, City may, and is not required to, perform those duties at Lessee’s sole cost. Lessee shall promptly cooperate with Lessor if Lessor undertakes to perform such duties. No action by Lessor taken pursuant to this Section 5 shall constitute a waiver of Lessee’s obligations. Lessee’s obligations under this Section 5 shall survive the expiration or termination of this Lease Agreement.
17. **UTILITIES & SERVICES**

Lessee, at Lessee’s sole cost and expense, agrees to provide the following:

1. All gas, electricity, water, sanitary sewer service and refuse deposal services; and
2. Janitorial supplies and services; and
3. Pest control services; and
4. Snow removal services.
5. **TAXES**

Lessee shall pay all taxes levied and assessed, if any, upon any personal property, fixtures and improvements belonging to Lessee and located upon the demised Premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

1. **SUBLEASE, ASSIGNMENT OR TRANSFER**

Lessee shall not sublet, assign or otherwise transfer this Lease Agreement, without the prior written consent of Lessor, which Lessor may withhold for any or no reason. Any such actions taken by Lessee without Lessor’s consent shall result in the immediate termination of this Lease Agreement.

1. **INSURANCE**

Lessee shall at all times maintain and provide adequate insurance coverage which includes, without limitation, each of the following:

* 1. Property Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement casualty insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

Commercial General Liability Insurance which shall be written on an occurrence basis and be at least as broad as the latest version of ISO form CG 00 01 with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Such policy shall include Broad Form Contractual Liability coverage and shall be endorsed to include the City, its, directors, officials, officers, employees, agents, and volunteers as additional insureds on all primary and excess policies for ongoing and completed operations performed by, or behalf of Contractor. Such additional insured coverage shall be as broad as that provided by ISO form CG 2010 (ongoing operations) and CG 20 37 (completed operations).

Workers’ Compensation Insurance with statutory limits, and **Employer’s Liability insurance** with limits of not less than $1,000,000 per accident or disease. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City, its directors, officials, officers, employees, agents, and volunteers.

* 1. Certificates of Insurance. Prior to the Effective Date of this Lease Agreement, and thereafter at any time during the Term of this Lease Agreement that Lessor requests, Lessee shall provide Lessor with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the Lessor. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

1. **INDEMNIFICATION**

Lessee shall indemnify, hold harmless and defend Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from damages occurring on the Premises and Lessee's use of the Premises hereunder, including use of the Premises by Lessee's employees, agents, representatives, contractors, agents, guests, invitees or permitted assigns.

Lessee shall cause any and all agreements that Lessee enters into with any of the above parties to contain language indemnifying Lessor as provided in this Section.

1. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by Lessor in connection with the Lease Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq. NMSA 1978, as amended. The City and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision of this License modifies or waives any provision of the New Mexico Tort Claims Act.

1. **EASEMENTS**

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises. Lessor shall notify Lessee in writing prior to Lessor's grant of any easement through the Premises.

1. **TERMINATION**
   1. Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:
2. the breach;
3. the action required to cure the breach;
4. a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and
5. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease Agreement.
   1. Lessee may terminate this Lease Agreement with written notice to Lessor at least thirty (30) days prior to the termination date.
   2. At the termination of this Lease Agreement Lessee shall surrender the Premises in the condition in which they were at the inception of this Lease Agreement, excepting:
      1. Deterioration caused through reasonable use and ordinary wear and tear;
      2. Alterations, improvements or conditions made with Lessor’s written approval.
6. **NOTICE**

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor: City of Santa Fe To Lessee: Name

Attn. City Manager Attn.

P.O. Box 909 Address

Santa Fe, NM 87504 City, St Zip

With a copy to: City of Santa Fe

Attn. Asset Development Manager

P.O. Box 909

Santa Fe, New Mexico 87504

1. **NO WAIVER**

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

1. **SEVERABILITY**

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

1. **ENTIRE AGREEMENT**

The foregoing constitutes the entire Lease Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title, and interests as well as all of their duties, responsibilities and obligations. Any and all prior lease agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the Parties.

1. **BINDING EFFECT**

This Lease Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective successors and permitted assigns.

1. **LITIGATION EXPENSE**

In the event of litigation between the Parties, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which Lessor shall incur in enforcing this Lease Agreement or in recovering any and all damages caused to the Premises by Lessee, or Lessee's contractors, agents, employees or permitted assigns.

1. **HEADINGS**

The section headings contained in this Lease Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Lease Agreement.

1. **APPLICABLE LAW; VENUE**

In any action, suit or legal dispute arising from this Lease Agreement, Lessee agrees that the laws of the State of New Mexico shall govern. The Parties agree that any action or suit arising from this Lease Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

1. **AMENDMENT**

This Lease Agreement shall not be altered, changed or modified except by an amendment in writing executed by the Parties hereto.

1. **SECURITY DEPOSIT**

Lessee shall deposit with City, upon execution hereof, the Security Deposit of one month’s rent as security for Lessee’s faithful performance of its obligations under this Lease Agreement. If Lessee fails to pay Rent, or otherwise defaults under this Lease Agreement, City may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due City or to reimburse or compensate City for any liability, expense, loss or damage which City may suffer or incur by reason thereof. If City uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with City sufficient to restore said Security Deposit to the full amount required by this Lease Agreement. If the Base Rent increases during the term of this Lease Agreement, Lessee shall, upon written request from City, deposit additional monies with City so that the total amount of the Security Deposit shall always bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, City shall have the right to increase the Security Deposit to the extent necessary, in City’s reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease Agreement and following such change the financial condition of Lessee is, in City’s reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with City as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. City shall not be required to keep the Security Deposit separate from its general accounts. Within 30 days after the expiration or termination of this Lease Agreement, if City elects to apply the Security Deposit only to unpaid Rent, and otherwise within 60 days after the Premises have been vacated, City shall return that portion of the Security Deposit not used or applied by City. No part of the Security Deposit shall be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease Agreement.

1. *(for leases where lessee will construct substantial improvements***) CONSTRUCTION OF IMPROVEMENTS**
2. Construction Assurance. Prior to the commencement of any construction or work of improvement on the Premises (“Improvements”), Lessee shall furnish to Lessor evidence that sufficient monies will be available to complete the Improvements. Such evidence shall represent at least the total estimated cost of construction and such evidence may take on of the following forms:
   1. Performance Bond - To be supplied by Lessee’s contractor(s) and issued jointly to Lessee and Lessor as Obligee; or
   2. Irrevocable Letter of Credit – or other form of banker’s assurance issued to Lessor from a financial institution licensed to do business in the State of New Mexico and covered by Federal Depository Insurance which shall remain in effect until Lessor acknowledges satisfactory completion of construction of Improvements.
3. Turnover or Removal of Improvements.
   1. Turnover of Improvements – If Lessor directs that the Improvements be turned over to Lessor at the expiration of this Lease Agreement, they shall be turned over in a state of good condition and repair.
   2. Removal of Improvements – If Lessor directs that the Improvements be removed, all or in part, prior to the expiration or termination of this Lease Agreement, Lessee shall remove all Improvements from the Premises, at Lessee’s sole cost. Lessee shall restore the portions of the Premises from which it removes any Improvements, as nearly as reasonably possible, to a level graded condition at Lessee’s sole cost. If Lessee has not removed the Improvements in a reasonable amount of time after the expiration or termination of this Lease Agreement, then Lessor may, at its option, declare the Improvements to be Lessor-owned real property, use or dispose of the remaining personal property pursuant to applicable law, and otherwise restore the Premises at Lessee’s sole cost.
   3. Removal of Hazardous Materials – All hazardous on the Premises used or stored by Lessee must be removed prior to the expiration or termination of this Lease Agreement, whether or not the Improvements remain on the Premises.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement as of this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

LESSOR: **CITY OF SANTA FE** LESSEE: **LESSEE NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ALAN M. WEBBER, MAYOR LESSEE NAME, TITLE

DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GERALYN CARDENAS, INTERIM CITY CLERK

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED AS TO FINANCE:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EMILY K. OSTER, FINANCE DIRECTOR

Business Unit/Line Item 2122800.460350

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**Exhibit A *Add Premises Exhibit***

**Exhibit B *Add Rent Schedule***