

STATE OF NEW MEXICO  
Department of Military Affairs  
47 Bataan Boulevard  
Santa Fe, New Mexico 87508-4695

This lease is made and entered between the City of Raton, ("Lessee") and the New Mexico State Armory Board (SAB), ("Lessor") an agency or instrumentality of the State of New Mexico, pursuant to 20-8-3(E) NMSA 1978.

Lessor and Lessee agree to the following terms:

**1. Property Leased.** In consideration of the terms and conditions in this lease, the Lessee leases the Raton Readiness Center, from the Lessor, which includes approximately 15,154 square feet. The property is situated in the City of Raton, County of Colfax, New Mexico at the following address:

Highway 64, HCR 62, Box 20, Raton, New Mexico 87740 (the Leased Premises)

**2. Term.** The term of this lease is for 1 year from 2/1/2016 to 1/31/2017. Thereafter, the terms of the lease shall be month to month.

**3. Option to Renew.** In partial consideration for rent paid under this lease, Lessor, does grant Lessee, its successors and assignees the first option to renew this lease. The renewal shall be for a term of one (1) year and shall be subject to the same terms and conditions set forth in this lease for the original term unless otherwise agreed to by the parties. Lessee may exercise this option, by giving Lessor written notice at least thirty (30) days prior to the expiration of the current term.

**4. Holding Over.** Lessee's holding over or continued use or occupancy shall be construed as a month to month tenancy at the same monthly rent and subject to the same terms and conditions set forth in this lease.

**5. Rent.** The Lessee will not be responsible for paying a monthly fee to the Lessor. The Lessee will serve as the custodial and service stewards of the New Mexico National Guard. The Lessee has the sole responsibility for all maintenance and services described in this lease in lieu of paying rent.

**6. Use of Leased Property.** Lessee shall be limited to the space described in this lease. Lessee will not occupy or use the property, or permit any portion of the property to be occupied or used for any purpose which is unlawful in part, or in whole, or extra hazardous on account of fire, munitions, or explosives. As to the use of the property by any persons or lawful constituted entity, Lessee, its agent, employees, volunteers or successor, shall not act in a discriminatory manner regarding the use of the leased property by any person or entity due to race, color, creed, or national origin. In addition the Lessee, its agents, employees, volunteers and invitees will make all reasonable efforts to conduct its activities and actions in such a manner as not to create any nuisance, interference or annoyance to Lessor. Some of the activities are, and not limited to:

- a. Lessee shall use the property for purposes of carrying on classroom activities, administrative, supply storage, and training.
- b. The 15,154 square feet is identified within Attachment "B".

The primary purpose of the facility is to support training and readiness of New Mexico Army National Guard military forces under the purview of the Lessor. Lessor agrees that the premises are suitable for this (these) purpose(s) or has revealed to Lessee any reasons Lessor knows of or reasonably should know of why the premises might not be suitable for such purpose(s). In the event situations change regarding the availability of the space assigned to the Lessee due to military training, mobilization, or emergency response requirements, the Lessor shall notify the Lessee immediately and arrangements for modifications to this agreement shall be negotiated between the parties.

**7. Prohibitions for Alcohol.** Alcohol is prohibited on the property by Lessee.

**8. Prohibited use of Rifle Range.** The City of Raton will have access to the property with the exception of the indoor rifle range. The Raton Readiness Center is scheduled for a Lead Wipe Testing by an Environmental, Health, Safety and Sustainability Consultant. The building may be occupied only if the indoor rifle range area is locked and a sign is posted to the outside of the door stating, "Caution Potential Lead Hazard Do Not Enter Unless, Authorized". The room will not be occupied until the Facility Management Officer is notified of the results and cleared by the New Mexico National Guard Occupational Health Nurse.

**9. Condition of Leased Property.** Lessor warrants that the property is in good and safe condition, structurally sound and of safe design and that they comply with all applicable building codes, ordinances, rules and regulations. All noted conditions should be rectified prior to the inception of this lease or within sixty (60) days thereafter. Failure to correct any dangerous condition constitutes substantial breach.

**10. Delivery of possession.** Lessor warrants that the property will be vacant and will put Lessee in possession on the first day of the initial twelve (12) month term or any subsequent term.

**11. Damage to Property.** If at the inception of this lease or at any time thereafter (including any renewal) all or any part of the leased property shall be damaged through any cause, other than, fault of Lessee, or ordinary wear and tear or repair subject to routine maintenance, as to be rendered unfit for Lessee's occupancy, Lessor shall repair the property with all reasonable promptness, at their expense. However, if Lessor fails to promptly commence or to expeditiously complete repairs necessary to restore the property to its former condition, Lessee may declare this lease terminated and rent, including any fair abatement thereof, shall be payable only to the date of termination. Alternatively, if Lessor fails to promptly commence or to expeditiously complete repairs, Lessee, may perform or cause to be performed such repairs, and may deduct the costs from the rent due to Lessor, any fair abatement due to damages that render the property unfit for occupancy. Lessee's decision as to whether all or any part of the property is fit or unfit for occupancy shall be final, but Lessee's decision shall be reasonable in the circumstances.

**12. Alterations.** Lessee shall obtain the Lessor's written permission before making any alterations or improvements of a permanent nature. Alterations will be removed or preserved at the Construction Facilities Management Officer's (CFMO) discretion, whose determination shall not be unreasonably withheld.

**13. Ownership of Improvements.** All alterations and improvements made to or placed in the property by Lessee are and shall remain the Lessor's property except as the parties mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the property and are, in fact, removed by Lessee prior to termination of this lease or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the property shall become Lessor's property except as the parties mutually agree otherwise in writing.

**14. Condition of Property upon Surrender.** At the termination of this lease, Lessee shall surrender the property in the condition in which they were at the inception of this lease, accepting:

- a. Deterioration caused through reasonable use and ordinary wear and tear;
- b. Alterations, improvements or conditions made with Lessor's written approval; and
- c. Any change, damage or destruction not resulting from Lessee's act.

**15. Utilities.** Lessee will pay all utilities; water, sewer, refuse disposal, gas, electric, at the leasehold property, inclusive of separate hook-ups, metering or other expenses or costs incurred by lawful use or construction of buildings on the property (indicated by an "X").

	Lessor	Lessee
a. <b>Water</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. <b>Sewer</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. <b>Refuse disposal</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. <b>Gas</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. <b>Electricity</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. <b>Other (specify)</b>	N/A	

**16. Right of Entry.** Lessor or their agent has a right to enter upon the property to inspect, to make repairs and for other reasonable purposes, upon at least twenty-four (24) hours' notice and consent from Lessee, which shall not be unreasonably withheld. In an emergency, such as fire, or other danger to human safety or property. Lessor or his agent may enter the property without securing Lessee's prior permission, but shall give Lessee notice of entry as soon thereafter as practicable.

**17. Duty to Maintain the Property.**

a. Lessor has the duty to reveal to Lessee all structural defects of which he knows or reasonably should know, and to repair all structural defects in the property.

b. Lessor has the duty to repair and maintain the exterior of the property, including but not limited to: roof, windows, grounds, parking lots, sidewalks, doors and lighting in safe condition and in good repair and condition. Lessee has the duty to notify Lessor of damage other than normal wear and tear.

c. Lessor has the duty to repair and maintain major structural and mechanical conditions within the interior of the property, including but not limited to: cooling system, heating system, plumbing, electrical, doors, flooring, wall finishes, except as otherwise provided in this lease.

d. If, after written notification, the Lessor fails to perform required maintenance and in the event Lessor's failure to maintain results in the property to be determined by Lessee unfit for Lessee's occupancy, in Lessee's judgment, Lessee may declare this Lease terminated and rent shall be payable only to the date of the damage. Lessee's decision as to whether all or any part of the property is fit or unfit for occupancy shall be final, but Lessee's decision shall be reasonable in the circumstances.

e. Repair and maintenance needs as a result of normal wear and tear not directly caused by activity or neglect by the Lessee and estimated to cost in excess of \$25,000 shall not be the responsibility of Lessee under this lease.

**18. Right to Assign or Sublease.** Lessee is able to sublease, pledge, or in any manner encumber or obligate the leasehold or any interest therein without the Lessor's prior signed and written consent thereto.

**19. Duty to Insure.**

a. During the term of this lease and any extension thereof, Lessee shall provide coverage for liability of Lessee and its "public employees," as defined in the New Mexico Tort Claims Act, and for its personal property and tenant's improvements and betterments, as required by New Mexico law.

b. During the term of this lease and any extension thereof, Lessee shall maintain in force a policy or policies of insurance providing:

1. Comprehensive general liability coverage of not less than \$1,000,000 limit per occurrence, including coverage for property damage, bodily injury and wrongful death. Such insurance policy or policies shall name the "State of New Mexico, its branches, agencies, instrumentalities and public employees" as additional insured, and;

2. Fire, lightning and extended coverage, or "all risk" coverage, for at least 80% of the actual cash value of the property.

c. Lessor releases and discharges the other and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the leased property where such damage or destruction was not caused by the act of Lessee or any of its "public employees".

d. Lessee shall provide certificates of coverage or proof of self-insurance evidencing compliance with this section which shall be attached to this lease at the time of execution. Lessee shall notify Lessor within ten (10) days after cancellation or expiration of any required coverage.

e. During the term of this lease and any extension thereof, Lessor shall provide coverage for liability of Lessor and its "public employees," as defined in the New Mexico Tort Claims Act, and for its personal property and tenant's improvements and betterments, as required by New Mexico law.

f. During the term of this lease and any extension thereof, Lessor shall maintain in force a policy or policies or certificates of insurance providing:

g. Each party releases and discharges the other and its "public employees" as defined in the New Mexico Tort Claims Act from any and all claims, damages and causes of action arising out

of any damage to or destruction of the Leased Premises where such damage or destruction was not caused by the act of the other party or any of its "public employees".

h. Lessor shall provide certificates of coverage or proof of self-insurance or certificates evidencing compliance with this section which shall be attached to this lease at the time of execution. Lessor shall notify Lessee within ten days after cancellation or expiration of any required coverage.

**20. Right to Terminate upon Breach of Condition or Agreement.** Either party may terminate this lease upon the other party's substantial breach of any term or condition contained in this lease, provided that the breaching party shall be given thirty (30) days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non-breaching party shall give the breaching party written notice that describes the nature of the breach and notifies the breaching party that, unless the breach is cured within the time limits contained herein, the lease shall terminate without further notice at the end of the cure period. Upon termination of the lease, the Lessee shall surrender the property to the Lessor and shall be obligated to pay rent only to the date of surrender. Lessee shall be entitled to a pro rate refund of any advanced rental payments made by lessee.

**21. Amendments to be in Writing.** This lease shall not be altered or amended except by instrument in writing executed by the parties.

**22. Address for Notices, Payment of Rent, etc.** Notices required under this lease and rental payments shall be made at the following addresses, except as changed by written notice to the opposite party:

a. Lessee: Scott Berry  
City Manager  
City of Raton  
PO Box 910  
Raton, New Mexico 87740

Telephone No: (575) 445-9551  
Fax: (575) 445-3398  
E-mail: sberry@cityofraton.com

b. Lessor: Department of Military Affairs  
NM State Armory Board  
P.O. Box 5118  
Santa Fe, NM 87502

Telephone No: (505) 474-1887  
E-mail: Theresa.v.martinez.nfg@mail.mil

**23. Merger of Prior Agreement.** This lease incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this lease, and all such conditions, agreements and understandings have been merged into this written lease. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written lease.

**24. Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of this lease shall be attached to the lease at the time of execution, and are hereby

incorporated in this written lease to the extent they are consistent with its terms and conditions. The following documents shall be attached hereto and incorporated herein:

- a. The Certificates of Insurance. ATTACHMENT "A"
- b. Floorplan Identifying the Leased Premises. ATTACHMENT "B"

**25. Environmental Safety.** The Lessor warrants that the property comply with any and all federal, state and local environmental regulations including, but not limited to, the US Clean Water Act. During the term of lease the Lessee agrees to maintain the property consistent with these regulations. Should an environmental hazard which threatens the life, health or safety of Lessee's employees and/or the public be discovered, the Lessee may terminate this lease in accordance with the provisions herein.

**26. Procurement Code.** Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**27. Patriot Act. (Anti-Terrorism Force Protection)**

Compliance with Executive Order and USA PATRIOT Act: Neither Lessee, nor to Lessor's knowledge, any of Lessor's respective officers, directors, shareholders, partners, members or associates, and no other direct or indirect holder of any equity interest in Lessee is an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("**Executive Order**"); (ii) whose name appears on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("**OFAC**") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, [www.treas.gov/ofac/](http://www.treas.gov/ofac/); (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in the Executive Order; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "**Prohibited Person**"). Lessee covenants and agrees to use commercially reasonable efforts to ensure that neither Lessee, nor any of its respective officers, directors, shareholders, partners, members or associates, and no other direct or indirect holder of any equity interest in Lessee will: (a) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (b) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. On request by Lessor from time to time, Lessee further covenants and agrees promptly to deliver to Lessor any such certification or other evidence as may be requested by Lessor in its sole and absolute discretion, confirming that, to the Lessor's knowledge, no violation of this Section shall have occurred. In addition, Lessor shall take all reasonable precautions to secure the leased facility and prevent any breach of security by any entity both within and without the Lessor's organization.

**LESSOR: The New Mexico State Armory Board**

By: \_\_\_\_\_ (Signature)

**Name:** Andrew E. Salas

**Title:** Brigadier General, NMNG

## The Adjutant General

Chairman of the NMSAB

STATE OF NEW MEXICO)

)ss.

COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_, an officer or employee of the State of New Mexico, on behalf of the State of New Mexico.

**My commission expires:**

**Notary Public**

**LESSEE:** City of Raton, Scott Berry, City Manager

Scott Berry: \_\_\_\_\_ (Signature)

STATE OF NEW MEXICO)

)SS.

COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires:

**Notary Public**

**APPROVED:**

**Additions to the standard Lease of Real Property have been reviewed and approved as to legal sufficiency by:**

\_\_\_\_\_(Signature)  
Attorney's Name: Joseph Dworak, Assistant Attorney General  
Title: General Counsel for the New Mexico State Armory Board



## EVIDENCE OF COVERAGE

**MEMORANDUM NUMBER: RMD-EOC-FY16 (0112)**

This Evidence of Coverage is used as a matter of information only and confers no rights upon the Certificate Holder. This Evidence of Coverage does not amend, extend, or alter the coverage afforded by the Tort Claims Act or the referenced insurance policy(ies) for the type(s) of coverage listed below

### CERTIFICATE HOLDER INFORMATION

**INSURED: STATE OF NEW MEXICO**      **LOSS PAYEE: TO WHOM IT MAY CONCERN**  
and  
**DEPARTMENT OF MILITARY AFFAIRS**  
(AGENCY CODE 705)

#### Coverage Period:

12:01 AM 7/1/2015 to 12:01 AM 6/30/2016

This is to certify that the Insured has the coverage's listed below for the period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this Evidence of Coverage may be used or may pertain, the coverage's indicated in this Evidence of Coverage are subject to all terms, exclusions, and conditions of the Certificates of Coverage and other insurance policy(s) to which this Evidence of Coverage pertains. Property and Liability Certificates of Coverage may be obtained at: <http://www.generalservices.state.nm.us/riskmanagement/certificatessuretybonds.aspx>

Type of Coverage	Limit of Liability/Coverage
A) Liability i. General Liability ii. Automobile Liability iii. Civil Rights	\$15,000,000.00      Aggregate Limit
B) Workers Compensation.....	Statutory Limit
C) Property..... i. Auto Physical Damage .....	\$550,000,000.00      Limit Actual Cash Value (ACV)
E) Fine Arts.....	\$300,000,000.00

Per 66-5-207, NMSA 1978, - A motor vehicle owned by the United States Government, any state, or political subdivision of the state, is exempt from the Mandatory Financial Responsibility Act.

Per 66-6-15(E), NMSA 1978, - A vehicle or trailer owned by and used in the service of the State of New Mexico or any county or municipality thereof need not be registered but must continually display plates furnished by the Transportation Services Division of the General Services Department.

Should any of the above coverage's for the Covered Party be changed or withdrawn prior to the expiration date issued above, the State of New Mexico will notify the Certificate Holder, but failure of such notification shall impose no obligation or liability of any kind upon the State of New Mexico, its agents, or representatives. If you have any questions, contact:

Authorized Representative:



Date Issued:

6-30-2015

A.J. Forte, Director, Risk Management Division, GSD

