



Special Airport Advisory Commission
Wednesday, January 25, 2023 at 1:30 p.m.
Roswell Air Center – Conference Room
1 Jerry Smith Circle, Roswell, NM 88203

MEMBERS

Bud Kunkel, Chair
Mike Espiritu, Vice Chair
Jon Hitchcock, Member
Shawn Powell, Member
Matt McDonald, Member
Jennifer Brady, Staff Liaison

1. Call to Order
2. Roll Call
3. Approval of Agenda

NEW BUSINESS/REGULAR ITEMS

4. Consider recommending Alien City Dragway, LLC to enter into a lease agreement – Jenna Lanfor

Commission comments for future agenda items

Reports/Announcements – Members, Council, Staff

Public Participation

Adjourn

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 23-01. NOTICE OF POTENTIAL QUORUM – A quorum of the City Council may or may not attend, but there will not be debate by the City Council, and no action will be taken.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid of service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary or other type of accessible format is needed. Printed and Posted: **Friday, January 20, 2023**



"THE PUBLIC IS ENCOURAGED TO PARTICIPATE ELECTRONICALLY THROUGH THE GO-TO MEETING APPLICATION AND NOT PHYSICALLY ATTEND DURING THE PANDEMIC"

Airport Advisory

Tue, Wednesday January 10, 2023 1:30 PM - 2:30 PM (MDT)

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LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this ____day of February 2023 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated Landlord and ALIEN CITY DRAGWAY LLC., a New Mexico corporation, hereinafter designated as Tenant.

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

A 35 acre, more or less, area of land known as "the dragstrip" and buildings 98 and 99, located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for five (5) years, commencing on February 1, 2023 and ending January 31, 2028 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Twelve Thousand Six Hundred Dollars and No Cents (\$12,600.00), payable in 12 monthly installments of \$1,050.00 the first year of the lease. Each year thereafter, rent will be increased by 3.0% or the latest 12-month percentage change in CPI-U, (Consumer Price Index-U, U.S. City Average) whichever is greater. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$500.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning, repairs required for the Premises, and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. **CONDITION OF PREMISES.** Tenant has inspected Premises and accepts the Premises in its present condition as is. Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. **MAINTENANCE.**

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and to keep trees, shrubbery, and grass irrigated, trimmed and attractively maintained.

b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

7. **TAXES, LICENSES AND UTILITIES.** During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. **PERSONAL PROPERTY AND FIXTURES OF TENANT.** All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. **EQUIPMENT AND IMPROVEMENTS.**

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenants sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic s lien, materialman s lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. Tenant shall be responsible for obtaining, if necessary, any and all permits and inspections required by such improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

10. INSURANCE.

a. Landlord will not provide fire and extended coverage to the Premises during the term of the Lease.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

c. Tenant shall maintain in full force and effect additional policies of insurance as required by Landlord. Any required additional policies are more fully described in Exhibit B, attached hereto and incorporated by reference.

11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, and Tenant shall not be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made should Landlord elect to make such repairs. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant

such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or

taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally, and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of operating a dragstrip, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant s occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant s occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant’s employees or representatives during the term of Tenant’s occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend , indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of anything which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord s decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the ROW’s airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

19. **NONDISCRIMINATION PROVISIONS.** Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. **DOMINANT PROVISIONS.** The parties acknowledge that the Leased Premises are a part of the ROW and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. **ACCESS TO INSPECTION OF PREMISES.** Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant s regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Director
1 Jerry Smith Circle
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

ALIEN CITY DRAGWAY LLC.
PO Box 3797
Roswell, NM 88202-3797

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This Lease may be terminated by either party by giving one hundred eighty (180) days written notice.

31. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord s Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this _____ day of February, 2023.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Timothy Z Jennings, Mayor

ATTEST:

Amalia Martinez, City Clerk

TENANT:
ALIEN CITY DRAGWAY LLC.

Rob Coon, President

EXHIBIT A : PREMESIS



EXHIBIT B: INSURANCE

1. MINIMUM SCOPE OF INSURANCE

a. **Error! Reference source not found.** shall procure and maintain for the duration of the contract the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work herein and the results of the Work by **Error! Reference source not found.**, its agents, representatives, employees or subcontractors (check all that apply):

I. **Commercial General Liability** (“CGL”): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000.00** Bper occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

II. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if **Error! Reference source not found.** has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00** per accident for bodily injury and property damage.

III. **Worker’s Compensation**: as required by the State of New Mexico, with Statutory Limits and Employer’s Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.

IV. **Professional Liability (Errors and Omissions)**: Insurance appropriate to **Error! Reference source not found.**’s profession, with limit no less than **\$1,000,000.00** per occurrence or claim, **\$2,000,000.00** aggregate.

V. **Property Insurance**: against all risks of loss to any and all improvements, betterments, and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.

V. **Pollution Legal Liability and Remediation**: Insurance applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations.

b. If **Error! Reference source not found.** maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by **Error! Reference source not found.**.

2. **ADDITIONAL INSURED STATUS**

The City, its council members, officials, officers, employees, agents, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of the Work performed by or on behalf of **Error! Reference source not found.**, including materials, parts or equipment furnished in connection with the Work. General Liability coverage can be provided in the form of an endorsement to **Error! Reference source not found.**'s insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, or CG 20 38; and CG 20 37 form is later revisions used).

3. **PRIMARY COVERAGE**

For any claims related to this Agreement, **Error! Reference source not found.**'s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of **Error! Reference source not found.**'s insurance and shall not contribute to it.

4. **NOTICE OF CANCELLATION**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. **WAIVER OF SUBROGATION**

Error! Reference source not found. hereby grants to the City a waiver of any right to subrogation which any of **Error! Reference source not found.**'s insurers may acquire against the City by virtue of the payment of any loss under such insurance. **Error! Reference source not found.** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. **SELF INSURED RETENTIONS**

Self-insured retentions must be declared to and approved by the City. The City may require **Error! Reference source not found.** to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administrations, and defense expenses within the retention.

7. **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with

a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

8. **CLAIMS MADE POLICIES**

If any of the required policies provide claims-made coverage:

- i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of Work hereunder.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.
- iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, **Error! Reference source not found.** must purchase "extended reporting" coverage for a minimum of five years after completion of the Work.

9. **VERIFICATION OF COVERAGE**

Error! Reference source not found. shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. Failure to obtain the required documents prior to commencement of the Work, however, shall not waive **Error! Reference source not found.**'s obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.

10. **SPECIAL RISKS OR CIRCUMSTANCES**

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.