LEASE TO

DEPARTMENT OF THE AIR FORCE

FROM

SCHOOL BOARD OF BREvard COUNTY

TITUSVILLE, FLORIDA

FOR

MESONET #1012 WEATHER SITE, MSRN
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THIS LEASE is made as of the ______ day of _______________ 2020, by and between Brevard County school Board, a government entity, existing under the laws of the state of Florida (the “Lessor”) and The United States of America, acting by its Secretary of the Air Force (the “Government” or the “Air Force”). The Lessor and the Government may sometimes be referred to jointly as the “Parties,” and each separately as a “Party.” The term “Lessor” includes its successors and assigns, if any. Lessee includes its assigns, if any.

The Government is entering into the Lease under the authority contained in 10 U.S.C. § 2663.

NOW, THEREFORE, the Lessor, for the consideration set forth below, hereby leases to the Government the Leased Premises (identified below), subject to the following conditions:

Leased Premises includes the real property described on Exhibit A and depicted on Exhibit B together with the right of the Government and its officers, employees, invitees, licensees, agents and contractors to use the streets, common driving areas, sidewalks, and walkways around the real property for access to and from public streets and highways (the “Leased Premises”), and certain personal property, if any, identified in Exhibit A (the “Personal Property”). The Personal Property is an integral part of the Leased Premises and may be used by the Government in connection with its use of the real property included in the Leased Premises.

BASIC TERMS

1. TERM

1.0. Term. One (1) year, beginning on 26 May 2020 (Term Beginning Date) and ending on 25 May 2021 and continuing from year to year thereafter, but in no event later than 25 May 2025 unless terminated as specified elsewhere in this Lease.

2. RENT

2.1. The consideration for this lease will be at no cost to the Government other than the protection, care, and maintenance of the leased area.

3. CORRESPONDENCE

3.0. Whenever the Government or the Lessor shall desire to give or serve upon the other a notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication with respect to this Lease or with respect to the Leased Premises and any improvements located thereon, each such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served by personal delivery to the Party or Parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication is directed or by mailing the same, in
duplicate, to such Party or Parties through a nationally recognized and reputable overnight delivery service at the regular delivery address for the parties specified below. In the latter case, delivery shall be effective on the date confirmed by the records of such service. All correspondence that must be sent, and all notices required or desired to be given under this Lease, must be addressed, if to the Air Force, to:

Real Property Officer  
45 CES /CEIAP  
Building 534, 2nd floor  
1224 Jupiter Street  
Patrick Air Force Base, Florida 32925

with a copy to:

Department of the Air Force  
AFCEC/CIT  
2261 Hughes Ave., Ste. 155  
JBSA Lackland, TX 78236-9853

and, if to the Lessor, to:

David G. Lindemann, AICP  
Director Planning & Project Services  
Facilities Services  
Brevard County School Board  
2700 Judge Fran Jamieson Way  
Viera, FL 32940

or to another address that the Parties may from time to time otherwise direct. Notice shall be given in writing and enclosed in a sealed envelope to the address of the receiving Party, and either hand-delivered, or sent by United States Postal Service, or by recognized overnight courier. The communication will be deemed delivered when received by the addressee.

4. ACCESS AND INSPECTION

4.0. Lessor shall have the right to access the Leased Premises for purposes of inspection at any reasonable time with reasonable prior notice to the Government.
5. DEFAULT AND TERMINATION

5.1. The failure of the Lessor or the Government to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice, shall constitute a default or breach of this Lease. If, however, the time required to return to compliance exceeds the thirty (30) day period, the defaulting Party shall not be deemed to be in default if within such period the actions necessary to bring the Lease into compliance have begun and are diligently and continuously pursued to until the default has been cured.

5.1.1. In the event of any default and breach of this Lease, the non-defaulting Party may terminate this Lease at any time after expiration of the cure period provided for in Condition 5.1 upon written notice of the termination. The termination notice shall be effective as of a date to be specified in the notice, which shall be at least seven (7) but not more than thirty (30) days after receipt of the notice.

5.2. The Government may terminate this Lease at any time by giving the Lessor at least thirty (30) days’ prior written notice.

5.2.1. Lessor may terminate this lease by giving the Government at Least ninety (90) days’ prior written notice.

5.3. The Government shall vacate and surrender the Leased Premises to the Lessor on or before the date of expiration of the Lease, or its earlier termination. The Government will remove all of its property from the Leased Premises and restore them to as good order and condition, reasonable wear and tear and damage beyond the control of the Government excepted, as that existing on the Term Beginning Date, subject to Condition 7 below. In the alternative and at the Government’s discretion, the Government may convey any remaining improvements to lessor and/or compensate the Lessor for the diminution in value of the promises in lieu of removal and/or restoration.

OPERATION OF THE PREMISES

6. CONDITION OF LEASED PREMISES

6.0. Prior to the Term Beginning Date, an Environmental Baseline Survey (EBS) waiver for the Leased Premises dated 24 February 2020 has been delivered to the Lessor and is attached as Exhibit C hereto. The EBS waiver sets forth those environmental conditions and matters on and affecting the Leased Premises on the Lease Effective Date as determined from the records and analyses reflected therein. Any failure on the part of the Lessor to fully disclose any known latent defect on the Leased Premises shall be grounds for termination of this Lease by the Government. A separate EBS waiver for the Leased Premises shall be prepared by the Government, after the expiration or earlier termination of this Lease (“Final EBS waiver”). Such Final EBS waiver shall document the environmental conditions and matters on and affecting the Leased Premises on the Term Expiration Date as determined from the records and analyses reflected therein. The Final EBS waiver will be used by the Government to determine any obligations to maintain and restore the Leased Premises under this Lease.
7. CONSTRUCTION AND ALTERATIONS

7.0. The Government may place, construct, or make substantial improvements, structures, alterations, or additions to, or installations upon, and otherwise modify or alter the Leased Premises (“Alterations”) without the prior written consent of the Lessor. Unless otherwise agreed in writing, all Alterations shall remain the property of the Government when annexed to the Leased Premises.

8. MAINTENANCE OF LEASED PREMISES

8.0. The Government shall keep the Leased Premises in good order and repair during the term of this Lease.

9. UTILITIES AND SERVICES

9.0. The Government shall be responsible for all utilities, janitorial services, building maintenance, and grounds maintenance for the Leased Premises.

10. USE OF LEASED PREMISES

10.0. Use. Land use for weather instrumentation network & advanced lightning detection system subject, however, to all applicable provisions of this Lease. The Government may use the Leased Premises for any use not otherwise prohibited by this Lease.

ENVIRONMENT

11. ENVIRONMENTAL PROTECTION

11.1. Compliance with Law. The Government shall comply, at its sole cost and expense, with the Federal, state, and local laws, regulations, and standards that are or may become applicable to its activities on the Leased Premises, including, without limitation, obtaining any environmental permits required for its operations under this Lease. The Government, however, shall not be responsible for any act or omission of the Lessor that contaminates the Leased Premises, and the Lessor agrees to comply with all applicable environmental laws and regulations as a result of any such act or omission, and to the extent permitted by law, the Lessor agrees to hold the Government harmless from, and indemnify and defend the Government against, any action arising from contamination on, and migrating upon, the Leased Premises by the Lessor.

11.2. Wetlands. The Government shall protect any wetlands found or identified on the Leased Premises from destruction, loss, or degradation, consistent with the requirements of applicable law.
12. HISTORIC PROPERTY

12.0. The Government will comply with all laws applicable to historical property located on the Leased Premises, if any.

CHANGES IN OWNERSHIP OR CONTROL

13. ASSIGNMENTS, SUBLEASES, AND LICENSES

13.1. The Government may not assign this Lease or sublet the Leased Premises for any purpose not provided in this agreement without the prior written consent of the Lessor, which shall not be unreasonably withheld, delayed, or qualified.

13.1.1. Any assignment or sublease granted by the Government shall be consistent with all of the terms and Conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of the Government under this Lease.

13.1.2. The Government shall deliver to the Lessor, for its prior written consent, a copy of each agreement of sublease or assignment it proposes to execute. Consent or rejection by the Lessor shall be given within ten (10) business days of receipt of the proposed agreement.

13.1.3. Any agreement of sublease or assignment must expressly provide that: (a) the sublease or assignment, as the case may be, is subject to all of the terms and Conditions of the Lease; (b) the sublease shall terminate on the expiration or earlier termination of this Lease; (c) the sublessee or assignee, as the case may be, shall assume all of the obligations of the Government; and (d) in case of any conflict between any provisions of this Lease and any provisions of the agreement of sublease or assignment, this Lease will control. A copy of this Lease must be attached to the agreement of sublease or assignment.

13.2. The Lessor shall not engage in any financing or other transactions creating any mortgage lien upon the Leased Premises; place or suffer to be placed upon the Leased Premises any other lien or other encumbrances; or suffer any levy or attachment to be made on the Lessee’s interest in the Leased Premises. Any mortgage, encumbrance, or lien shall be deemed to be a violation of this condition and constitute a failure to comply with the terms of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

14. EASEMENTS AND RIGHTS OF WAY

14.1. This Lease is subject to all existing easements, rights-of-way, and rights in the nature of an easement or right-of-way (collectively “Outgrants”) related to the Leased Premises.

14.2. The Lessor has identified all Outgrants in the attached Exhibit D.
14.3. The holders of such Outgrants shall have reasonable rights of ingress and egress over the Leased Premises in order to carry out the purpose of the Outgrants.

GENERAL PROVISIONS

15. HEADINGS OR TITLES

15.0. The brief headings or titles preceding each condition are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Lease.

16. COUNTERPARTS

16.0. This Lease is executed in two (2) counterparts each of which is deemed an original of equal dignity with the other, and which is deemed one and the same instrument as the other.

17. ENTIRE AGREEMENT

17.0. It is expressly agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Leased Premises by the Government, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth in this Lease. This instrument may only be modified or amended by mutual agreement of the Parties in one writing signed by each Party.

18. TIME OF THE ESSENCE

18.0. Time shall be of the essence with this Lease.

19. TAXES

19.0. The Lessor shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges that, at any time during the term of this Lease, may be imposed upon the Lessor with respect to the Leased Premises.

20. GENERAL INDEMNIFICATION BY LESSEE

20.0. The Government cannot indemnify the Lessor for any purpose.

21. INSURANCE

22. DISPUTES

22.0. The Parties shall at all times try to resolve disputes in an amicable manner. However, the Parties reserve all rights afforded them under law to resolve any such dispute by any lawful means.

23. AMENDMENTS

23.0. This Lease may be amended at any time by mutual agreement of the Parties in one writing and signed by a duly authorized representative of each Party.

24. REPORT TO CONGRESS

24.0. This Lease is not reportable under 10 U.S.C. § 2662.

25. DAMAGE TO GOVERNMENT PROPERTY

25.0. The Lessor shall not be responsible for damage to government property pursuant to any grants provided under this agreement, except those of gross negligence or willful misconduct on the part of lessor, lessor’s agents, and lessor’s assigns.

26. COMPLIANCE WITH APPLICABLE LAWS

26.0. The Government will comply with all applicable laws in its use and occupancy of the Leased Premises. Nothing in this Lease shall be construed to constitute a waiver of Federal Supremacy or Federal sovereign immunity.

27. RESTRICTIONS ON USE OF LEASED PREMISES

27.0. RESERVED

28. EXHIBITS

28.0. Four (4) exhibits are attached to and made a part of this Lease, as follows:

Exhibit A – Description of Leased Premises
Exhibit B – Map and Photos of Leased Premises
Exhibit C – EBS Waiver
Exhibit D – List of Outgrants
IN WITNESS WHEREOF, the Parties have caused this Lease to be executed by their duly authorized representatives on the dates shown below.

LESSOR
BREVARD COUNTY SCHOOL BOARD

Date: ______________  By:____________________________________
MISTY BELFORD
School Board Chair
IN WITNESS whereof, I have hereunto set my hand by authority of the Secretary of the Air Force, this _____ day of __________, 2020.

THE UNITED STATES OF AMERICA,
by the Secretary of the Air Force

______________________________
ROBERT E. MORIARTY, P.E., SES, DAF
Deputy Director, Installations Directorate
EXHIBIT A—DESCRIPTION OF PREMISES
A 13 foot radius circular parcel of approximately 0.02 acres of land at latitude 28.6056138 North and Longitude -80.8248055 West (28°36’20.21N and -80°49’29.30” W) located on former Whispering Hills School Titusville, Florida.
EXHIBIT B— MAPS AND PHOTOS OF PREMISES

MRSN Site at Former Whispering Hills School Titusville, Florida
Exhibit C— EBS Waiver

The EBS Waiver dated 24 February 2020 is hereby incorporated by this reference.

MEMORANDUM FOR 45 CES/CC

FROM: 45 CES/CEI

SUBJECT: Statement of Waiver for Environmental Baseline Survey (EBS) in Support of Lease Renewal with Brevard County School Board for Weather Instrumentation Located in Brevard County, Florida

1. The 45th Space Wing proposes to renew a lease with the Brevard County School Board for an area approximately 13 feet in radius at the Whispering Hills Elementary School in Titusville, Florida. Mounted on this land is a concrete pole that supports meteorological instrumentation and is used by the 45 SW Weather Squadron to collect weather data. There are no potential sources of contamination on the property, and the condition of the property will not create health and safety risks when the property is used as intended.

2. An EBS waiver was granted for the original lease. In consideration of interviews, records search, and an onsite inspection, the EBS waiver concluded that the site was free of hazardous materials and that no release or disposal of hazardous substances or petroleum products or derivatives had occurred on the property.

3. The 45th Civil Engineer Squadron, Installation Management Flight, has performed environmental due diligence (reference the attachment) and notes that the condition of the property will not create health or safety risks. Renewal of the lease will not necessitate additional construction activities, site modifications, changes in land use, or alterations to the physical condition of the property. The continued use of the site will not introduce any new hazardous materials or petroleum products on the property.

4. Air Force Instruction (AFI) 32-7066, *Environmental Baseline Surveys in Real Estate Transactions*, paragraph 1.5.2, provides for a waiver to the EBS requirement if the subject real estate is free of potential sources of contamination, as determined by an initial records review, interviews, site inspection, and when the following criteria are met:
   a. The condition of the property will not create unacceptable human health and safety risks from usage of the property allowed under the real property transaction documents.
   b. The allowable use of the property will not introduce any hazardous substances or petroleum products in quantities greater than the minimum levels.
   c. The allowable use of the property is consistent with environmental compliance requirements (such as those pertaining to wetlands, historic preservation, etc.).

5. The point of contact for this matter is Mr. Wm. Mark Jennings. He may be reached at (321) 494-9272, or e-mail william.jennings.15@us.af.mil.

PATRICK S. GINIEWSKI, GS-14
Chief, Installation Management

Attachment: 45 CES/CEIE, Environmental Due Diligence Memorandum, 20 February 2020
1st Ind, 45 CES/CC, 24 February 2020, Statement of Waiver for Environmental Baseline Survey (EBS) in Support of Lease Renewal with Brevard County School Board for Weather Instrumentation Located in Brevard County, Florida

45 CES/CC

MEMORANDUM FOR 45 CES/CEI

This EBS waiver has been declared legally sufficient by the 45 SW/IA per requirements outlined in AFI 32-7066. In review of the enclosed documentation, the 45 AMDS/SGPB and 45 SW/SEAT units have concluded that renewing this will not create or exhibit a health or safety risk.

JOSHUA D. CONNELL, Lt Col, USAF
Commander
ENVIRONMENTAL DUE DILIGENCE REPORT
IN SUPPORT OF REAL PROPERTY AGREEMENT WITH
BREVARD COUNTY SCHOOL BOARD FOR THE
WEATHER INSTRUMENTATION SITE LOCATED
WHISPERING HILLS SCHOOL, TITUSVILLE, FLORIDA

20 FEB 2020
Report Documentation Page

1. REPORT DATE  
20 FEB 20

2. REPORT TYPE  
Environmental Due Diligence

3. DATES COVERED  
-

4. TITLE AND SUBTITLE  
Environmental due diligence report in support of real property agreement with Brevard County School Board for the weather instrumentation site located whispering hills school, Titusville, Florida

5a. CONTRACT NUMBER  
-

5b. GRANT NUMBER  
-

5c. PROGRAM ELEMENT NUMBER  
-

6. AUTHOR(S)  
Wm. Mark Jennings, GS-12  
45 CES/CEIE-C  
NEPA Program Specialist

5d. PROJECT NUMBER  
-

5e. TASK NUMBER  
-

5f. WORK UNIT NUMBER  
-

7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)  
45 SW CES/CEIE  
1224 Jupiter Street, PAFB, FL, 32925

8. PERFORMING ORGANIZATION REPORT NUMBER  
CE119067

9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)  
-

10. SPONSOR/MONITOR'S ACRONYM(S)  
-

11. SPONSOR/MONITOR'S REPORT NUMBER(S)  
-

12. DISTRIBUTION/AVAILABILITY STATEMENT  
Approved for public release, distribution unlimited

13. SUPPLEMENTARY NOTES  
The original document contains color images.

14. ABSTRACT  
-

15. SUBJECT TERMS  
-

16. SECURITY CLASSIFICATION OF:  
a. REPORT  
unclassified  
b. ABSTRACT  
unclassified  
c. THIS PAGE  
unclassified

17. LIMITATION OF ABSTRACT  
UU

18. NUMBER OF PAGES  
8

19. NAME OF RESPONSIBLE PERSON  
-

Standard Form 298 (Rev. 8-08)  
Prescribed by: ASD/SE 723-16

Form approved by  
SAF/GCN 3 Mar 15  
Previous versions are obsolete
Location Map

Source: Google Maps 2020
Site Map

Whispering Hills Complex

Weather Instrumentation
Photographs from February 2020 Inspection
Investigation and Interviews:

Mr. John Langett (45 AFCEC/CZOE Installation Restoration Program), Ms. Karla Guerrero (45 CES/CEIE) and Mr. Donald Gisi (RGNext) were interviewed during February 2020. These interviews did not reveal any environmental issues associated with this site. Mr. Mark Jennings performed a site visit 6 January 2020. The inspection confirmed that no processes, activities, or materials at the site could potentially result in contamination.

Certification of the Environmental Due Diligence Report:

The 45 CES/CEIE has conducted this Environmental Due Diligence Report on behalf of the Air Force. Mr. Wm. Mark Jennings has reviewed all appropriate records made available, and conducted visual site inspections of the selected facilities following an analysis of information during the record search. The information contained within the survey report is based on records made available and, to the best of the 45 CES/CEIE knowledge, is correct and current as of 20 February 2020. As such, the proposed Real Property transaction is in compliance with 40 CFR 761.

Certified By:  
Wm. Mark Jennings, GS-12  
NEPA Program Specialist

Approved By:  
Patrick S. Geniewski, GS-14  
Chief, Installation Management Flight
EXHIBIT D—LIST OF OUTGRANTS

None. No outgranted interests have been found related to the premises.