

AN ORDINANCE 2015-10-01-0839

**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AS LESSEE AND THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES (“DSHS”) AS LESSOR FOR 11,985 SQUARE FEET OF LAB SPACE OUT OF BUILDING 533 TO SERVE AS THE PRIMARY LAB FOR THE CITY’S PUBLIC HEALTH OPERATIONS UNDER THE MANAGEMENT OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT, LOCATED AT 2303 SE MILITARY DRIVE IN COUNCIL DISTRICT 3 FOR THE MONTHLY RENTAL AMOUNT OF \$4,054.93 THROUGH MARCH 31, 2016, ESCALATING TO \$5,300.01 PER MONTH DURING THE LAST YEAR, FOR A TERM ENDING MARCH 31, 2034 AND PROVIDING UP TO \$400,000.00 TO REIMBURSE THE STATE OF TEXAS FOR RENOVATING THE LAB SPACE.**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the San Antonio Metropolitan Health district or his designee, is hereby authorized to execute a lease agreement for the renovation of lab space with a budget not to exceed \$400,000.00 to cover compensation expenses to the State of Texas for a term ending on March 31, 2034. A copy of the contract, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** Fund 2606536003 entitled “Bio Wat Lab Tech Sup”, Fund 2606536004 entitled “Bio Wat Lb Tech Sup 2015”, Fund 76001000 entitled “Building Maintenance”, Fund 43099000 entitled “C of O CAP PROJECTS”, and Fund 11001000 entitled “General Fund” is hereby designated for use in the accounting for the fiscal transaction of this contract.

General Ledger	Project	Cost Center	Fund Number	Internal Order
5201040			76001000	
5201040	40-00158		43099000	
5204050		3617010003	11001000	
5204050			2606536003	136000000613
5204050			2606536004	136000000644

**SECTION 3.** Funding for this ordinance will be identified when work orders are issued. If funding for any work orders is not previously appropriated, funding will be identified and appropriated through subsequent City Council action. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

**PASSED AND APPROVED** this 1<sup>st</sup> day of October, 2015.



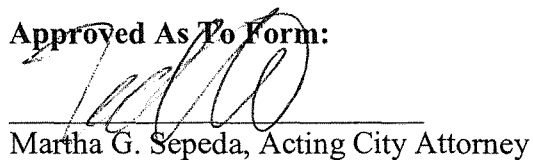
M A Y O R  
Ivy R. Taylor

Attest:



Leticia M. Vadek, City Clerk

Approved As To Form:



Martha G. Sepeda, Acting City Attorney



<b>Agenda Item:</b>	7 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 )
<b>Date:</b>	10/01/2015
<b>Time:</b>	03:32:10 PM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing the execution of a lease agreement with the Texas Department of State Health Services as lessor for 11,985 square feet of lab space out of building 533 to serve as the primary lab for the City's public health operations under the management of the San Antonio Metropolitan Health District, located at 2303 SE Military Drive in Council District 3 for the monthly rental amount of \$4,054.93 through March 31, 2016, escalating to \$5,300.01 per month during the last year, for a term ending March 31, 2034 and providing up to \$400,000.00 to reimburse the State of Texas for renovating the lab space. [Erik Walsh, Deputy City Manager; Dr. Vincent Nathan, Director, Health]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				

## ATTACHMENT 1

State of Texas

County of Bexar

### LEASE AGREEMENT

#### 1. PARTIES

This Lease Agreement is entered into on \_\_\_\_\_, 2015, by and between the **Texas Department of State Health Services ("DSHS")** and any successors to its duties and functions ("Lessor"), on behalf of its component San Antonio State Hospital ("Facility"), and City of San Antonio ("Lessee").

#### 2. PROPERTY LEASED ("Premises")

Lessor, as successor in function to the Texas Department of Mental Health and Mental Retardation, is authorized to lease real property under its control under the provisions of the Texas Health and Safety Code, Section 533.087, and agrees to lease a portion of Building 533 ("Premises") on the grounds of Facility to Lessee, who has agreed to lease Premises from Lessor as generally depicted on Exhibit A attached hereto. The leased Premises comprise 11,985 square feet.

#### 3. CONSIDERATION

1) The annual base rent of One Dollar (\$1.00) for each year of occupancy or portion thereof, due and payable during the Term of this Lease Agreement (as defined in paragraph 4 (a) herein) is Nineteen Dollars (\$19.00), ("Base Rent"). Base Rent for the full Term shall be due and payable upfront on or prior to 10 calendar days after the Effective Date. In addition to the Base Rent, Lessee shall pay operating expense rent as defined below ("Operating Expense Rent"). Operating Expense Rent will be due and payable from Lessee on or prior to the 10<sup>th</sup> day of each month.

2) Operating Expense Rent Adjustment. Operating Expense Rent for the first year of the Term is \$4.06 per square foot. Operating Expense Rent will be adjusted annually effective as of each April 1<sup>st</sup> of the Term and shall follow the schedule indicated in Exhibit B attached.

3) Lessee will pay rent in the form of check or money order payable to State of Texas, unless otherwise notified in writing by Lessor.

All payments shall be mailed to Lessor at the following address:

San Antonio State Hospital  
Attention Sophie Robles – Accounting  
6711 S. New Braunfels, Suite 100  
San Antonio, TX 78223

Notices regarding the Lease will be sent in accordance with Section 30 of this Lease.

#### **4. TERM OF LEASE AGREEMENT**

(a) The term of this Lease Agreement is from the Effective Date as the term is defined in this Section through March 31, 2034 (the "Term"), commencing on the tenth day after the date of execution by Lessor (the "Effective Date"). Operating Expense Rent shall be due and payable the next full month following the date of issuance of a Notice of Acceptance of Space letter from Lessee for the Premises (the "Commencement Date"). Lessor and Lessee agree to formalize the Commencement Date in a notice similar in format to that attached hereto as Exhibit E. Lessee shall not have the right to occupy or otherwise conduct business in the Premises prior to signature by the parties of the Notice of Acceptance of Space.

(b) Lessee may renew this Lease Agreement for an additional five (5) years upon written notice to Lessor. Lessor and Lessee agree that this Lease Agreement is renewable only by mutual consent of the Parties in writing. Lessee will give Lessor written notice of its desire to renew this Lease Agreement at least 90 calendar days prior to expiration. Renewal will be evidenced by a written extension to this Lease Agreement, signed by the Parties. Nothing herein authorizes lease renewal without City Council authorization.

(c) Any holding over by Lessee after the ending date of this Lease Agreement creates a new holdover tenancy subject to the same terms and conditions as the original tenancy, except that the holdover tenancy will be from month to month and terminable upon one month notice by either party.

#### **5. TERMINATION**

(a) It is mutually agreed between Lessee and Lessor that if Premises are, during the term of this Lease Agreement or prior to it, damaged by fire or any other cause or causes, Lessee, in its sole discretion, may either repair such damage or terminate the Lease Agreement. During the time of any such repair, if the Premises cannot be fully utilized by Lessee, the rent and reimbursements, if any, will be equitably adjusted during the period Premises remain unusable by Lessee.

(b) All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

(c) Subject to (d), any termination of this Lease Agreement will not affect the rights and obligations of the Parties relating to the period prior to the effective date of the termination and such obligations will survive and remain enforceable following the termination.

(d) All obligations of Lessor shall be subject to actions of the State of Texas Legislature. A failure to fulfill its obligations shall constitute a default under the Lease and Lessee shall be authorized to terminate this agreement with no further liability.

(e) Either party may terminate this Lease on or after the 10<sup>th</sup> anniversary of the Commencement Date by providing the other party 365 days prior written notice.

## **6. ALLOWED USE**

(a) Lessee will be allowed to use Premises for the purpose of performing, conducting and implementing work and tasks commonly associated with a public lab operation. Office space for staff involved in performing lab functions including staff required to support a lab along with other health related activities are all within the permissible scope of use. (Lessee's "Program"). Determination of eligibility of Program participants will be the sole responsibility of Lessee in accordance with Lessee's established eligibility criteria; however, Lessee shall not sublease or otherwise allow occupancy of any private industry without written consent of Lessor. At all times Lessee shall maintain use of the Premises as a public purpose. It is specifically acknowledged that Lessee shall not allow any private business use or other action that may create an Event of Taxability under the Internal Revenue Code.

(b) Lessee will not cause any nuisance or disruption that interferes with or impairs the safe, efficient, and smooth operation of Facility.

## **7. RESPONSIBLE PARTY**

(a) Lessee will be responsible for operating Program and for employing, whether in a compensated or voluntary capacity, all on-site Program staff who will not be construed in any way to be in the employment of Lessor or Facility.

(b) Lessee will be responsible for obtaining all governmental licenses and permits, if any, required for the operation of Lessee's Program on Premises. Lessor will not be required to effectuate any zoning changes to allow for Lessee's intended use of Premises.

## **8. UTILITIES, LANDSCAPE MAINTENANCE, ROUTINE BUILDING MAINTENANCE, REPAIRS, WASTE REMOVAL AND JANITORIAL SERVICES**

(a) Except as noted below, Facility will perform all repairs (or replacements) to the following Premises components at its cost as indicated in Exhibit C attached, utilizing Facility's maintenance staff or contracts. Exceptions include the following:

- i. Lessee, at its expense, will make repairs to Lessee-installed appliances, systems, structures and components.

ii. Lessee will reimburse Facility for repair expenses related to Premises damage caused by misuse or negligence, whether intentional or not, by Lessee's staff, visitors or guests. Facility will invoice Lessee for repairs as they occur. Payment is due within 30 days of invoicing.

iii. Lessee will reimburse Facility for repairs for which Lessee's insurance company is liable. Terms of **Insurance** section of this Lease Agreement will control with respect to repairs or maintenance required due to any condition for which Lessee maintains insurance.

iv. Costs associated with this Section 8 are subject to and dependent on City Council appropriation.

(b) Lessee will exercise due diligence to ensure that Premises are maintained in accordance with all applicable standards and with requirements of Lessor and Facility. Lessee is responsible for notifying Facility of routine building maintenance and repair needs.

(c) Lessee will be responsible for furnishing appropriate outside trash and refuse receptacles.

(d) Lessee is solely responsible for securing telephone and data transmission services, for establishing and installing connections, and for payment of related bills.

(e) Certain janitorial services and supplies will be provided by and paid for by Lessor according to Exhibit C.

(f) Facility's and/or Lessor's responsibilities do not apply to vehicles or vehicle-related incidents, nor to interior and exterior furnishings.

(g) Facility and/or Lessor will not be subject to administrative charges by Lessee. Facility will, at its sole discretion, determine the availability of funds and its responsibility for payment.

## **9. ALTERATIONS TO PREMISES AND CAPITAL/STRUCTURAL IMPROVEMENTS**

a) Lessor agrees to complete the alterations indicated in plans depicted in Exhibit D ("Initial Alterations") including providing a written budget inclusive of all estimated costs for the project including, but not limited to, construction charges, any charges for managing the construction, providing permits or designing the construction documents ("Budget"). In order to accomplish the Initial Alterations, Lessor will enter into construction contracts or perform other activities necessary to implement the procurement of construction services in accordance with State procedures. Lessor will fund the entire costs of the Initial Alterations for which Lessee shall reimburse those costs not to exceed

\$400,000.00. Lessee shall reimburse Lessor within 30 days after Lessee's receipt of a detailed invoice confirming the expenses incurred to complete all or part of the Initial Alterations to date and completion of those construction items. Prior to initiating any further work or entering into any additional contracts after or in parallel to the Initial Alterations (such as change orders), Lessor will provide Lessee with a Budget prior to the commencement of any work. Upon Lessee's written acceptance of the Budget, Lessor has the authority to proceed. In the event that during construction any changes to the contract occur or any other issue that will result in an increase in the Budget, Lessor must first obtain Lessee's written approval to exceed the Budget prior to proceeding with further construction. In the event that Lessor fails to implement this process, then Lessee shall not be liable for any cost in excess of the Budget. Nothing herein authorizes Lessee's authorized agents to accept changes to the contract or an increase in the Budget without City Council approval.

(b) For any alterations to the Premises after the Commencement Date, the following shall apply:

1) Lessee may not locate on Premises any fixtures without the express written consent of Facility, such consent not to be unreasonably withheld.

2) Lessee, at its sole cost, will have the right to have an exterior sign installed. The sign and its location must be approved by Facility prior to installation.

3) Lessee will have no right to encumber in any fashion Lessor's fee simple estate in Premises. Any fixed improvements made to Premises must be free of any debt or encumbrances prior to installation.

Lessee may request authorization from Facility to make alterations or capital/structural improvements to Premises. Upon receiving expressed written authorization of Facility, Lessee may commence such projects at Lessee's sole expense. **No alteration or capital/structural improvement projects will be undertaken by Lessee without the express written authorization of Facility.**

4) Lessee may request that Facility make alterations and capital/structural improvements to Premises. Lessee will reimburse Facility for the cost of all alterations and improvements that it makes at Lessee's request, unless otherwise agreed to in writing by Facility.

5) Alteration and capital/structural improvement requests by Lessee will be accompanied by proof of the availability of adequate funds to complete and/or pay for the work. Facility will review all requests and will authorize and/or perform any work in accordance with this Lease Agreement.

## 10. EMERGENCIES



An emergency is defined as an unusual or critical occurrence requiring immediate repair, action or remediation to protect the health, safety, and welfare of the occupants and to retain certification or licensure of Premises. Examples include air conditioning failure during high temperature period; furnace failure during cold weather; fire safety system malfunctions; electrical, plumbing, other primary system or essential system failure. In the case of an emergency, Lessee will take appropriate actions to secure the health, safety and welfare of people and property. Lessee will immediately inform the appropriate staff at Facility of the emergency. Lessee will provide a description of the emergency, insurance coverage (as appropriate) and any other pertinent information to Facility. Facility, after conferring with HHSC's Maintenance and Construction Division (and, if appropriate, HHSC's Enterprise Contract and Procurement Services Division), will acknowledge the emergency and respond accordingly. Financial responsibility for emergency repairs will be the same as for repairs, as noted above.

## **11. INSPECTIONS**

(a) Lessor and Facility reserve the right to conduct periodic inspections of Premises to determine Lessee's compliance with the Lease Agreement provisions. Lessee agrees to permit Facility or Lessor, and/or their representatives, to enter Premises for the purpose of inspection and/or for performing work consistent with Facility's and Lessor's inspection and maintenance programs. Except in the case of an emergency, Facility and Lessor will perform their inspections and work in a manner not to interfere with Lessee's Program.

(b) From time to time, Facility may inspect or arrange for the inspection of Premises, to determine the need for repair or maintenance due to unusual events, such as storm, fire, and/or water damage.

## **12. PARKING**

Lessee will only park in areas designated by Facility.

## **13. SECURITY**

(a) Facility will furnish Lessee four (4) master door keys and four (4) keys for each door lock.

(b) Lessee may not locate a security system on Premises without the express written consent of Facility, such consent not to be unreasonably withheld. Facility will have the right to survey and inspect the installation. Upon Lease Agreement expiration, the security system and related components will become the property of Facility.

(c) Lessee will not in any capacity rely upon the medical, security and/or emergency personnel employed at Facility. Lessee will provide sufficient building security measures.

#### 14. NON-SMOKING SITE

The Premises (inside and outside) will be designated a "non-smoking area".

#### 15. ACCEPTANCE OF LEASED PREMISES

AS SIGNIFIED BY THE INITIALS OF LESSEE'S REPRESENTATIVE HEREIN BELOW, LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING CONDITION. FACILITY AND LESSOR DISCLAIM ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY, SUBJECT HOWEVER TO LESSOR'S INITIAL ALTERATIONS OBLIGATIONS AND THIS CLAUSE DOES NOT DIMINISH LESSORS OBLIGATIONS THEREOF. LESSEE'S REPRESENTATIVE INITIAL HERE: \_\_\_\_\_ ⇐⇐

#### 16. DEFAULT

(a) Failure to comply with any provision of this Lease Agreement will constitute an event of default. Lessor will have the right to terminate this Lease Agreement if Lessee defaults. In the case of default resulting in termination, Lessee will not be relieved of sums due at the time of termination and the Operating Expense Rent shall continue to accrue until such time that Landlord can terminate the services and no longer incurs expenses to maintain the Premises.. In the case of default, Lessee will not be entitled to remove any improvements from Premises until all obligations under this Lease Agreement have been satisfied by Lessee, as evidenced in writing by Lessor. No provision of this Lease Agreement will preclude Lessor from seeking any other remedy it may have at law or equity.

(b) Neither Lessor nor Lessee will be in default in the performance of its obligations under this Lease Agreement if such performance is prevented or delayed by Force Majeure; provided, the Party claiming Force Majeure notifies the other Party of such occurrence within a reasonable time and promptly commences, diligently pursues and takes all reasonable actions to limit the effect of the Force Majeure. Force Majeure is understood to be any cause which is beyond the reasonable control of the Party affected, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind, and flood; or because of any law, or order, proclamation, regulation, or ordinance of the state or federal government or of any subdivision of such government.

(c) Neither the acceptance by one Party of any payments hereunder nor the failure by one Party to complain of any action, non-action or default concerning the other Party will constitute a waiver of any Party's rights hereunder. Failure of notice by a Party for any

act or event will not constitute a waiver of any right or obligation set forth in the Lease Agreement.

(d) The failure of Lessor or Lessee to insist on one or more instances of strict performance of any of the covenants of this Lease Agreement will not be construed as a waiver or relinquishment of such covenants in future instances, but such covenants will continue and remain in full force and effect.

(e) In the event Lessee is in default in the payment of rentals and/or reimbursements or other charges due under this Lease Agreement, or otherwise breaches its covenants or obligations, and remains in default for a period of thirty (30) calendar days after Lessee receives written notice from Lessor of such default, or if Lessee vacates or abandons Premises at any time during the term of this Lease Agreement for a period of ninety (90) continuous days, Lessor will have the right to terminate this Lease Agreement and declare it at an end, and enter upon and take possession of Premises. Lessor will have the remedies now and hereafter provided by law for recovery of rent, possession of Premises and damages occasioned by such default.

(f) If Lessor defaults in the performance of any of the covenants or conditions which Lessor is required to perform under this Lease Agreement and such default continues for thirty (30) calendar days after Lessor receives written notice from Lessee, then Lessee may, at its option, terminate this Lease Agreement and Lessee will have no further obligations under this Lease Agreement.

(g) Lessor acknowledges that Article 11, Section 9 of the Texas constitution exempts Lessee's property from forced execution.

## **17. RULES**

Lessee agrees to abide by any and all rules promulgated by Lessor and Facility for the proper operation of Premises. Lessee agrees to abide by any and all Facility rules related to Facility's campus.

## **18. RIGHT TO SELL PREMISES**

Lessor expressly retains and reserves the right to sell Premises, in whole or in part, during the term of this Lease Agreement. Lessor will provide Lessee written notice of any decision to sell all or part of Premises at least thirty (30) calendar days prior to the effective date of any such sale.

## **19. DELIVERY OF PREMISES UPON TERMINATION**

(a) So long as Lessee is not in default, upon termination of this Lease Agreement by lapse of time or otherwise, Lessee will, within a reasonable time thereafter, at its sole option and expense, remove from Premises its trade fixtures, appliances or other personal

property placed or owned by Lessee and not designated to become the property of Facility. Lessee will repair any damages of Premises caused by the removal.

(b) Facility will perform a final inspection of Premises after Lessee has vacated Premises. Lessee will be responsible for paying all costs associated with repairs and maintenance consistent with this Lease Agreement that are necessary as determined by the final inspection, reasonable use, wear and tear and damages by the elements excepted. Payment is due within 30 days of notification.

(c) Lessee will surrender all keys for Premises to Facility.

## 20. INSURANCE

Lessee will secure policies of Insurance as set forth below:

Lessee will maintain general liability insurance with limits not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) for bodily injury or death and, upon request, will provide Lessor with a copy of the insurance policy and endorsements. Lessee may cancel or change the insurance coverage at Lessee's sole discretion as long as Lessee immediately replaces or adds to the insurance coverage to meet the specifications of this paragraph. Lessee, at its sole option, may elect to self insure the required liability insurance.

Lessee will at all times during the term of this Lease Agreement maintain fire insurance and extended coverage on the building in an amount not less than 100% of the replacement value of the building and any improvements. Lessor will be named as loss payee with a waiver of subrogation in favor of Lessor under such coverage. It is expressly understood and agreed that the proceeds from such coverage will be used solely to repair or replace the building and any improvements, unless all Parties agree in writing to alternate use of the proceeds. Upon request, Lessee will provide Lessor with a copy of the insurance policy and endorsements. Lessee may cancel or change the insurance coverage at Lessee's sole discretion as long as Lessee immediately replaces or adds to the insurance coverage to meet the specifications of this paragraph.

## 21. LIABILITY

"Lessor and Lessee acknowledges they are agencies and political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties from accident, injury or death."

## 22. RELEASE

Neither Facility, Lessor nor Lessee is liable for the negligent acts or omissions of the other Party, its officers, employees, or agents, which cause the death, bodily injury or illness of any person or damage to or destruction of any property. This Lease Agreement does not create a joint venture, partnership, agency or other legal relationship between Facility, Lessor and Lessee other than the one of Facility, Lessor and Lessee.

### **23. REPORTING REQUIREMENTS**

(a) To the extent that Lessee is aware of any situation involving its employees or invitees, Lessee agrees to report to the Texas Department of Family and Protective Services / Texas Department of State Health Services Abuse and Neglect Investigator any allegation that any person has committed abuse or neglect of any clients at Facility.

(b) Such reports will be made immediately, if possible, but in no case more than one hour after any of Lessee's employees or representatives learn of the allegations.

(c) Facility agrees to include instruction as to these reporting requirements at any in-service orientation training session to be provided prior to the initiation of Lessee's tenancy.

### **24. ASSIGNMENT**

Lessee will not assign this Lease Agreement to any other Party without the express written consent of Lessor. Lessor will exercise its sole discretion regarding approval of any assignment. Premises may not be divided for the purposes of assigning a portion of Premises to another Party. Lessee agrees that it will not assign or sublet all or any part of the leased Premises to any private Parties (persons or corporations).

### **24. ENTIRE AGREEMENT**

This Lease Agreement constitutes the entire agreement between Lessee, Facility and Lessor regarding the subject matter of this Lease Agreement. No oral or written representation or promise made by any person prior to or contemporaneous with the execution of this instrument is binding on any Party. This Lease Agreement will not be amended, changed, or extended except by written document signed by duly qualified representatives of each Party.

### **25. GRAMMATICAL INTERPRETATION**

Whenever the singular number is used, it includes the plural, and the masculine gender includes the feminine and neuter gender.

### **26. ARTICLE HEADINGS**

Headings used are for the convenience of the Parties for reference and identification and will not be construed to limit or alter the meaning of the provisions of this Lease Agreement.

**27. PRIVILEGES AND IMMUNITIES**

(a) It is expressly agreed and understood between Lessor and Lessee that Lessor is an agency of the State of Texas and nothing in this Lease Agreement will be construed as a waiver or relinquishment by Lessor of its right to claim such exemptions, privileges, and immunities as may be provided by law.

(b) It is expressly agreed and understood between Lessor and Lessee that Lessee is a political subdivision of the State of Texas and nothing in this Lease Agreement will be construed as a waiver or relinquishment by Lessee of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**28. SEVERABILITY**

Should any term or provision of this Lease Agreement be found invalid by a court of law, the remainder of this Lease Agreement will not be affected and all other provisions in this Lease Agreement remain valid and enforceable to the fullest extent permitted by law.

**29. GOVERNING LAW**

(a) This Lease Agreement is being executed and delivered and is intended to be performed in the State of Texas. The laws of Texas will govern the validity, construction, interpretation, and enforcement of this Lease Agreement.

(b) This Lease Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in Bexar County, Texas; however, by mutual agreement of Lessor and Lessee, mandatory venue for all legal proceedings pertaining to this Lease Agreement is in Travis County, Texas.

**30. NOTICES**

Except as expressly provided herein, any notice required or permitted to be given under this Lease Agreement must be in writing and delivered in person or by registered or certified mail, return receipt requested, postage prepaid, to the individual and address below:

“Facility”	“Lessor”	“Lessee”
6711 S. New Braunfels Street, Suite 100 San Antonio, TX 78223	Texas Department of State Health Services David L. Lakey, M.D. Commissioner	City Clerk PO Box 839966 San Antonio, TX 78283 With a copy to:

c/o HHSC Real Estate Leasing Division  
Management 114 West Commerce Street,  
Mail Code 2057 2<sup>nd</sup> floor  
P.O. Box 12668 San Antonio, TX 78205  
Austin, Texas 78711

Notices will be deemed given on the date hand delivered or deposited in the U.S. Mail unless otherwise provided in this Lease Agreement. Either Party may change its address by sending written notice of such change of address to the others in the manner provided in this section.

### **31. AUTHORITY TO BIND**

(a) This Lease Agreement is not binding on the Lessor and/or its Facility, unless and until it has been executed by the Texas Department of State Health Services, and approved by the City Council of the City of San Antonio.

(b) This Lease Agreement inures to the benefit of and is binding upon the personal representatives, successors in interest and assigns of Lessee and Lessor, but these provisions do not constitute permission for Lessee to assign all or any part of this Lease Agreement. Each Party represents that the person executing this Lease Agreement on behalf of that Party has full authority to do so and to bind that Party to the terms and conditions of this Lease Agreement.

### **32. LESSEE'S AUTHORITY**

The person or persons executing this Lease Agreement on behalf of Lessee, or representing themselves as executing the Lease Agreement on behalf of Lessee, guarantee that they have been fully authorized by Lessee to execute the Lease Agreement on Lessee's behalf and to validly and legally bind Lessee to all the terms and provisions contained herein.

### **33. LESSOR'S AUTHORITY**

Lessor represents it has good and sufficient title to Premises, and full power and authority to execute this Lease Agreement and to place Lessee in possession of Premises in full satisfaction of and in compliance with the terms and conditions of this Lease Agreement. This Lease Agreement is subject to any and all outstanding rights-of-way, easements, restrictions, covenants and mineral interests affecting Premises.

**34. PROHIBITED INTERESTS IN CONTRACTS.**

(a) The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

(b) Lessor warrants and certifies as follows:

- (i) Lessor and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Lessor has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

(c) Lessor acknowledges that City's reliance on the above warranties and certifications is reasonable.

**35. ADDITIONAL GROUNDS FOR EARLY TERMINATION.**

If the Premises are damaged by casualty or made untenable and are not restored within 90 days, Lessee may terminate this Lease by delivering written notice of termination to Lessor. Lessee may also terminate this lease on 90-days prior written notice to Lessor if Lessee determines that the cost of capital repairs or replacements passed through to Lessee exceed Lessee's budgeted funds.



**36. ADMINISTRATIVE AGREEMENTS.**

The Director of East Point employed by Lessee may, without further council action, agree to, sign, and deliver on behalf of Lessee all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

**Executed in Triplicate Originals** as of the day and year written herein.

Concurrence by Facility:

Lessor:

\_\_\_\_\_

\_\_\_\_\_  
Texas Department of State Health Services

By: \_\_\_\_\_,  
Superintendent/Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Lessee:

**Attest:**

**City of San Antonio**, a Texas municipal  
corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

**Approved as to Form:**

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### EXHIBIT A FLOOR PLAN

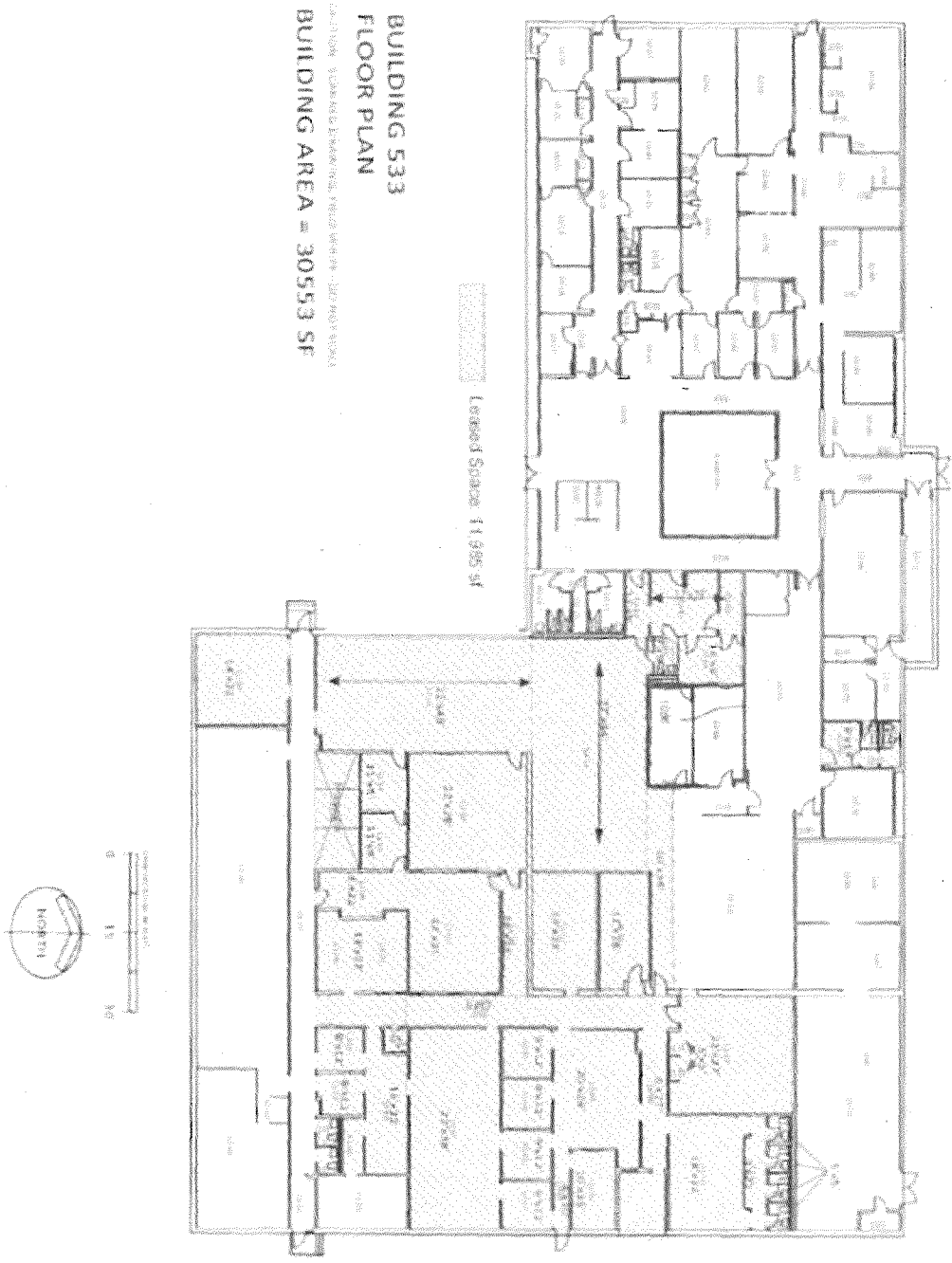


EXHIBIT B RENT SCHEDULE

Lease Term	Operating Expenses Rent (per square foot)	Monthly Rent
Commencement Date through March 31, 2016	\$4.06	\$4,054.93
April 1, 2016 - March 31, 2017	\$4.12	\$4,114.85
April 1, 2017 - March 31, 2018	\$4.18	\$4,176.57
April 1, 2018 - March 31, 2019	\$4.24	\$4,239.22
April 1, 2019 - March 31, 2020	\$4.31	\$4,302.81
April 1, 2020 - March 31, 2021	\$4.37	\$4,367.35
April 1, 2021 - March 31, 2022	\$4.44	\$4,432.86
April 1, 2022 - March 31, 2023	\$4.50	\$4,499.36
April 1, 2023 - March 31, 2024	\$4.57	\$4,566.85
April 1, 2024 - March 31, 2025	\$4.64	\$4,635.35
April 1, 2025 - March 31, 2026	\$4.71	\$4,704.88
April 1, 2026 - March 31, 2027	\$4.78	\$4,775.45
April 1, 2027 - March 31, 2028	\$4.85	\$4,847.08
April 1, 2028 - March 31, 2029	\$4.93	\$4,919.79
April 1, 2029 - March 31, 2030	\$5.00	\$4,993.59
April 1, 2030 - March 31, 2031	\$5.07	\$5,068.49
April 1, 2031 - March 31, 2032	\$5.15	\$5,144.52
April 1, 2032 - March 31, 2033	\$5.23	\$5,221.69
April 1, 2033 - March 31, 2034	\$5.31	\$5,300.01

## EXHIBIT C

- I. Lessor shall provide the following items or services at no expense to Lessee:
- A. Janitorial services (products included):
    1. Daily mopping, sweeping and trash removal.
    2. Annual floor waxing, monthly burnishing.
    3. Quarterly dusting. Areas are dusted if they need to be dusted on an as needed basis.
    4. On a Semiannual basis windows are cleaned.
    5. Air filters and light fixtures cleaned once annually. Filters replaced as needed.
    6. Clean restrooms daily.
  
  - B. General maintenance of items located in the Premises as of the effective date (does not include items installed by Lessee thereafter unless otherwise agreed, nor due to the negligence of Lessee):
    1. Customary maintenance of exposed plumbing fixtures and piping.
    2. Customary maintenance of exposed electrical wiring, outlets, switches and fixtures.
    3. Maintenance of foundation, structural systems, wall, flooring and ceilings as needed.
    4. Fire safety equipment including replacing extinguishers.
    5. General maintenance of HVAC systems.
    6. Maintenance of doors and windows.
    7. General roof maintenance.
    8. Periodic security inspections and investigation of accidents or issues outside or near the Premises.
    9. Maintenance and management of exterior services such as water lines serving other property of Lessor.
    10. Maintenance of exterior surfaces and landscaping including the parking areas.
- II. Repair or replacement subject to reimbursement by Lessee conditions:  
The following items are Lessor's obligation to maintain, however Lessor may bill Lessee for its pro-rata share of the cost for repair or replacement of these items per occurrence unless due to the negligence of Lessor and provided that the repair or replacement directly benefits the Premises. Lessee's pro-rata share of the costs shall be calculated by using either 1) the square footage of the Premises as compared with the square footage of the entire building of which the Premises are part or portion thereof that benefits from the repair or replacement, as the case may be, or 2) 100% of the costs provided the repair or replacement benefits are exclusive to the Premises:
1. Replacement of plumbing fixtures, covered piping or equipment serving the water or wastewater service to the premises.
  2. Locksmith services.
  3. Replacement of electrical lighting fixtures, covered wiring, panels or equipment serving the premises.

- 4.Replacement of wall board, paint, flooring or ceiling grid/tiles.
- 5.Replacement of fire safety equipment excluding extinguishers.
- 6.Replacement of major components (ex: pumps, compressors, motors, coils) or entire HVAC units.
- 7.Replacement of doors or windows, other removable items such as shelving, cabinets or built in desks.
- 8.Replacement of roof to deck.
- 9.Replacement of other structural or capital items not due to negligence of Landlord.

Additionally, if the anticipated life expectancy of a particular item to be replaced exceeds the Term remaining for this Lease, Lessee shall only be responsible for the amortized cost of the item replaced proportionate to the Term remaining. (i.e. if a new roof has a twenty year life expectancy, but there is only 5 years remaining on the Term, then Lessee shall only be responsible for payment of 5/20ths of the cost, by way of this example if the proportionate cost of the roof work is \$20,000 amortized over the 20 year life of the roof, or \$1,000 per year, then Lessee shall be reasonable for five years of life expectancy or \$5,000. This example is illustrative of a wide range of possible scenarios but the intent of the outcome should always be the same) because the Lessor will get the benefit of the improvement over a period that may outlast the Term of this Lease.

To the extent possible and in recognition of the fact that Lessee must budget for extraordinary expenses, Lessor agrees to provide Lessee no later than June 1st of each lease year with an accounting of any capital expenses anticipated during the next 12 months, or longer if known to Lessor detailing the anticipated work and the expected cost. The expectation is that this budget document will be detailed and provide enough time for Lessee to identify a method for funding the anticipated work. Lessee recognizes that this budget is a planning document and is not a binding commitment upon Lessor to either do the work or commit to a specific dollar amount for the work.

## EXHIBIT D INITIAL ALTERATIONS

Lessor shall complete or contract for the completion of certain alterations to the Premises with the intent of providing ready to utilize office space for the Program of Lessee and any related services found in common laboratory and office space in San Antonio. The established budget for the Initial Alterations is \$400,000.00, the "Budget", in the event the cost to complete Lessee's scope of work exceeds the Budget, then Lessee shall reduce the scope to meet the Budget. In no event will Lessor be required to initiate the Initial Alterations if it cannot be completed within the Budget. Prior to March 1, 2016, Lessor shall utilize its best efforts to complete or contract for the completion of the following scope of work:

### **Project No – 673-14-T-11 Metro Health Lab Renovation**

**DESCRIPTION:** The work consists of constructing office/lab spaces. The following requirements are intended to describe the general scope of the project, but in no way limit, the contract with respect to the extent of work indicated in the specifications or drawings and is subject to the term and conditions of the contract. The selected contractor shall provide complete and useable office/lab areas at the end of the construction period as evidenced by contractor's application and grant of a certificate of occupancy for the premise to for office and lab purposes. Contractor shall provide remodeled offices/labs that are complete with all items and appurtenances necessary or customarily included, even though each item is not specifically mention or shown. Contractor shall maintain a qualified crew and supervisor on site throughout the duration of the work and ensure quality control. The work consists of renovating a 12,000 square foot portion of building 533 to provide a functional workspace for lab personal. Contractor will furnish all materials and paint the interior of lab section within the building.

### **Scope of Work:**

The following listing covers the major items of work but is not necessarily a complete listing of the minor and miscellaneous portions required or indicated. As part of the Budget, Lessor will retain an architect to work with Lessee to produce construction documents. The results of that effort will represent the actual scope of work.

Telephone Room in location to be determined.

- All walls except wall with entry door on it to be covered with 4' X 8' X ¾" fire rated plywood vertically installed starting at 12" AFF on all perimeter walls. "A" grade side of the plywood exposed and painted with two coats of fire retardant paint and with stamp visible for inspection.
- Provide Ground wire from the closest electrical panel to the room for equipment grounding remove current 220v receptacles from the wall in Rm 1076
- Provide 2-dedicated 208v AC 20amp circuit in J-box mounted to uni-strut above the ladder rack and provided with a 7' SO type cord with female NEMA L6-20R receptacle on the end.
- Provide 1-dedicated 120v AC 20amp circuit in J-box mounted to unistrut above the ladder rack and provided with a 7' SO type cord with female NEMA 5- 20R receptacle on the end.
- Provide 20amp circuit with quad receptacles NEMA 5-20R flush mounted to the finished wall surface 18" AFF. Outlets shall be spaced no further than 6 feet apart

Room 1081

- Demo entrance door and install 42" door
- Install 4'x4' sliding view window with lock.

- Seal existing exterior door.

Room 1082

- Demo room 1082 exterior door, seal and install new 42" door in location verified by City.

Hallway 1099

- Install secured access doors at end of hallway to separate the Premises from the common area hallway.
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Rooms 1104 and 1105

- Remove (demo) floor 220v electrical outlets in rooms repair/seal floor.
- Relocate sink/ plumbing fixtures in room relocate electrical as needed as shown on plan developed by Contractor.
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1105

- Install 42" door and seal remaining 36" door opening.

Room 1106

- Remove 36" doors and sills - widen openings to a minimum of 42" with no doors

Room 1107

- Cabinetry shall be removed and relocated within constructed workspaces; contractor shall furnish new counter tops.
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1108

- remove lockers and demo/remove furred-in wall.
- construct straight wall between 1104/1105 as shown on drawing.
- Install 36" door with viewing panel between 1108 and 1104/1105.

Room 1110

- construct one dark room 6'x 8' with 32"pocket door.
- construct one 13' wall with a 42" door and frame with a 4'x4' view panel.
- Install all required exhaust/electrical need to support Biosafety cabinets
- Cabinetry shall be removed and relocated within constructed workspaces; contractor shall furnish new counter tops.
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1111

- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1112

- Construct 4 x 4 viewing window.
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1115

- Construct wall and install 42" door. (1<sup>st</sup> Location)
- Cabinetry shall be removed and relocated within constructed workspaces; contractor shall furnish new counter tops.
- construct new wall and install 42" door and frame. (2<sup>nd</sup> Location)
- Remove existing 120 volt electrical fixtures and replace with 2'X2' light fixtures compatible with building lighting systems.

Room 1116

- construct two workspaces 12'x14' with 42" door and frame with 4'x4' view panels.
- construct one workspace 18'x14' with 42" door and frame with two 4'x4' view panels with two 220v emergency power electrical outlet as shown on plan provided by Contractor.
- Cabinetry shall be removed and relocated within constructed workspaces; contractor shall furnish new counter tops.

Room 1117

- Remove (demo) 36" door seal wall and install 42" Dutch door.

Room 1129

- construct two-wall cabinet for autoclave, specification to be provided prior to award of contract.

General

1. Plumbing fixtures shall be relocated as required and or new fixtures shall be installed if required.
2. Paint all wall surfaces in rooms and corridors 2 coats interior eggshell and all door/window trim and any door being reused that is presently painted 2 coats interior semi-gloss in colors to be selected by City.
3. All interior walls must extend 24" above the existing ceiling grid.
4. Millwork: shall consist of removing and relocating various countertops, cabinets, and special units throughout the lab areas.
5. All new Interior doors are to be solid core oak veneered with natural finish with door closures.
6. **Flooring:** Azrock standard vinyl composition tile, color selection as designated by Tenant, cost of any asbestos abatement resulting from the removal of any existing flooring. Wherever new flooring is installed, all walls to receive new 4" rubber resilient base and wherever there is a transition from new to existing flooring or carpet to VCT, install new rubber resilient transitions.
7. **Plumbing:** consists of water supply piping is to be copper. There will be selective demolition of existing piping and rerouting and tying-in of plumbing, drain systems throughout existing areas in the building.
8. **Lighting:** shall be mainly fluorescent fixtures. Selected areas, may have recessed down light all lighting within the workspaces to be control by switches, disturbed ceiling and



ceiling grid to be replaced as needed. There will be selective demolition of existing electrical systems and rerouting of electrical systems throughout existing areas in the building.

9. **Electrical:** Electrical outlets 120v & 220v shall be relocated as required and new ones will be added as needed throughout.
10. **Painting:** Contractor will paint the entire interior of the premises including walls, doors, door frames, window mullion and any other surfaces that will remain within the premises that are wood or other paintable material. Included within this scope is the requirement that contractor shall perform all necessary prep, including but not limited to: cleaning surfaces, caulking joints, putting of defects and nail holes, and masking and protecting of non-painted surfaces/materials. Contractor shall prime all wall surfaces and materials. Contractor shall paint all walls, doors and jambs, window jambs and trim, door casing, base board, and other architectural trim elements. Contractor shall paint the interior faces of exterior doors, including jambs and casing. Contractor shall clean-up all overspray, remove all waste and rubbish created by the work, and leave the job site in a manner acceptable to the project manager.
11. **Material handling:** Contractor is responsible for onsite handling of materials and equipment to job site.
12. **Asbestos:** remediate and remove asbestos present in flooring in rooms 1081, 1082 and 1083
13. **Fire Life Safety:** to be provided by Simplex Grinnell based on their proposal P32146-000023, telephone (210) 402-6195

**JOB CONDITIONS:**

1. The Contractor shall notify the Project Manager of repairs not covered in the Scope of Work that is necessary for satisfactory completion of the Project. Defects that become evident as work progresses shall be reported not concealed.
2. Ensure safe passage of all patients and staff during the course of the project or other persons as necessary by erecting barriers, bracing, or other temporary supports as required.
3. General Contractor and its Subcontractors will be limited to construction work between the hours of 8:00 am and 5:00 pm on weekdays. Work at any other times will be allowed only with the Owner's and Project Manager's consent.

**SAFETY AND CLEAN UP:**

1. The Contractor must keep the site clean at all times during construction. In no event can debris be stored outside overnight unless it is inside a dumpster provided by the contractor.
2. All floors are to be picked up and kept broom clean at the end of the work day.
3. No combustible debris shall be thrown, stored, or burned on the property, adjacent parcels, sidewalks, streets, or alleys.
4. Debris created from work at the property must be disposed of immediately.
5. Any debris caused by the General Contractor or its Subcontractor shall be removed from the work area in the General Contractor's containers and disposed of off-site by the General Contractor.

**Damage:**

Protect all material, equipment and unfinished work to prevent damage and furnish protection of all surrounding areas where necessary. Contractor to repair any and all damage to the facility at no additional cost to the Lessor and Lessee.

**Warranty:**

The Contractor shall warranty all workmanship for a period of one-year beginning with the date of substantial completion as established by the Lessor. The Contractor shall be responsible for any

TM [10/1/15]  
Item No. 7.

damages to the building or site and repairs shall be performed at the contractor's expense and approved by the owner.

**EXHIBIT E**  
Notice of Acceptance of Space

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**Lessor:** Texas Department of State Health Services

**Lessee:** City of San Antonio

**Lease:** Effective \_\_\_\_\_ for Premises located on the Lessor campus at 2303 Southeast Military Drive, San Antonio, Texas.

**Authorizing Ordinance:**

*Predicate Facts:*

Lessor and Lessee are parties to the Lease, which was authorized by the Authorizing Ordinance listed above.

The term of this Lease Agreement is the period of months occurring prior to March 31, 2034, commencing on the tenth day after the date of execution by Lessor (the "Effective Date").

For their mutual benefit, the parties now wish to memorialize the Commencement Date of the Lease.

*Rights and Obligations:*

Now therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Defined Terms.**

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

**2. Commencement Date.**

The Initial Alterations were substantially completed by Lessor and are hereby accepted by Lessee as of \_\_\_\_\_. The month following is \_\_\_\_\_, therefore the Commencement Date shall be \_\_\_\_\_.

**3. No Default.**

The Lease is in full force and effect according to its terms and neither party is in default under the Lease. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

**4. Conflict of Terms.**

This instrument controls over anything to the contrary in the Lease.

**In Witness Whereof**, the parties have caused their representatives to set their hands.

**Lessee: City of San Antonio**, a  
Texas municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

PrintedName: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**Lessor: Texas Department of State Health Services**

\_\_\_\_\_  
Commissioner