

AN ORDINANCE 2013-12-19-0909

AUTHORIZING A FIVE-YEAR LEASE BETWEEN THE CITY OF SAN ANTONIO AND REYES PROPERTIES, LTD. FOR 60,000 SQUARE FEET OF OFFICE AND WAREHOUSE SPACE ON APPROXIMATELY SIX ACRES OF LAND LOCATED AT 1550 – 1554 CANTRELL IN COUNCIL DISTRICT 4 FOR USE BY THE SOLID WASTE MANAGEMENT DEPARTMENT AT THE ANNUAL RENTAL AMOUNT OF \$201,426.72.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funding in the amount of \$151,070.04 for this ordinance is available for Fund 55001000, Cost Center 5501010001 and General Ledger 5206010, as part of the Fiscal Year 2014 Budget.

SECTION 3. Future funding through the term of this lease agreement is contingent upon City Council approval of subsequent years.

SECTION 4. Payment not to exceed the budgeted amount of \$151,070.04 is authorized to Reyes Properties Ltd. and should be encumbered with a purchase order.

SECTION 5. Funding for this ordinance is available as part of the Fiscal Year 2014 budget per the table below.

<i>Amount</i>	<i>General Ledger</i>	<i>Cost Center</i>	<i>Fund</i>
\$100,000	5407060	5501010001	55001000
\$34,000	5101020	5555310002	55001000

Total Amt \$134,000

SECTION 6. The amounts will be encumbered upon issuance of a purchase order, and payment is authorized to various vendors.

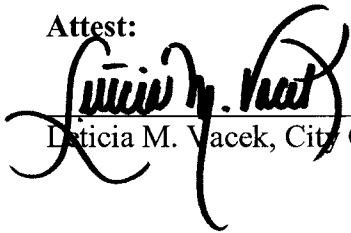
SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to

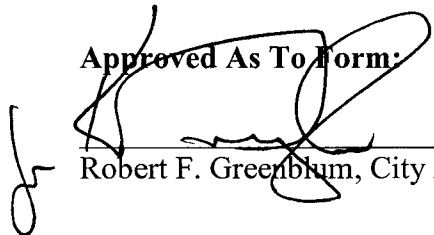
concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 8. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 19th day of December 2013.

M  O R
Julián Castro

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Robert F. Greenblum, City Attorney

Agenda Item:	18 (in consent vote: 6, 7, 8, 9, 10, 1010A, 1010B, 11, 13, 1313A, 1313B, 1313C, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37)
Date:	12/19/2013
Time:	10:01:40 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a five-year lease between the City of San Antonio and Reyes Properties, Ltd. for 60,000 square feet of office and warehouse space on approximately six acres of land located at 1550 - 1554 Cantrell in Council District 4 for use by the Solid Waste Management Department at the annual rental amount of \$201,426.72. [Ben Gorzell, Chief Financial Officer; Jorge A. Perez, Director, Building and Equipment Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

Attachment I

Lease Agreement (Reyes Properties, Ltd.)

Table of Contents

1. Basic Information, Definitions.....	3
2. Grant.....	4
3. Rent.....	5
4. Term, Renewal.....	5
5. Tenant’s Affirmative Promises.....	6
6. Tenant’s Negative Promises.....	6
7. Landlord’s Affirmative Promises.....	7
8. Landlord’s Negative Promises.....	8
9. Repair, Maintenance and Replacement Responsibilities.....	8
10. Alterations.....	8
11. Insurance.....	9
12. Release of Claims/Subrogation.....	10
13. Indemnity.....	10
14. Casualty/Total or Partial Destruction.....	11
15. Condemnation/Substantial or Partial Taking.....	12
16. Holdover.....	12
17. Default.....	12
18. Warranty Disclaimer.....	13
19. Environmental.....	13
20. Appropriations.....	14
21. Dispute Resolution.....	14
22. Prohibited Interests in Contracts.....	15
23. Miscellaneous.....	16
24. Public Information.....	17
25. Security Deposit.....	17
26. Brokerage Fees.....	17
27. Force Majeure.....	18
28. Transfer or Assignment by Landlord.....	19
Exhibit A: Description of Premises.....	20
Exhibit B: Commencement Memorandum.....	21
Exhibit C: Landlord’s Work.....	23
Exhibit D: Initial Cost Memorandum.....	26

1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: Reyes Properties, Ltd.

Landlord’s Address: 2 Davenport Lane, San Antonio, TX 78257

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966 (Attention: Director, Solid Waste Department)

Premises: 1550-1554 Cantrell, San Antonio, TX. 78221; approx. 60K SF of office/warehouse space on approx. 6 acres, as described in **Exhibit A.**

Permitted Use: General office and warehouse

Commencement Date: The commencement date is Tenants actual date of occupancy of the Premises, which shall not be later than 10-days after issuance of the Certificate of Occupancy. The actual date must be memorialized at the time on a Commencement Memorandum substantially in the form attached as **Exhibit B.**

Binding Date: This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

Initial Term: 5-years from the first day of the first full month after the Commencement Date, unless the Commencement Date is the first of a month.

Rent: \$16,785.56 monthly for the entire Initial Term

Address for Payment of Rent: 2 Davenport Lane, San Antonio, Texas 78257

Asbestos Survey Deadline: 30 Days after the Binding Date

The exhibits to this Lease are:

- Exhibit A: Description of Premises
- Exhibit B: Commencement Date Memorandum
- Exhibit C: Landlord's Work Letter
- Exhibit D: Initial Cost Memorandum

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Tenant's right of occupancy and obligation to pay rent begin on the Commencement Date. The Commencement Date will be memorialized on the Commencement Memorandum substantially in the form attached as Exhibit B. Move-in ready means that a Landlord-obtained certificate of occupancy has been issued for the Premises and the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

2.03. This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

3. Rent.

3.01. Rent for the Term is \$16,785.56 per month for the entire initial term.

3.02. Tenant must pay Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. Tenant further may be more than 10 days late three times in a calendar year without penalty. On the third and each later occasion in a calendar year on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 15 days from delivery of Landlord's notice, then Tenant owes a late charge of 5% of the delinquent amount as additional rent. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.03. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.04. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant must not abate Rent.

4. Term, Renewal.

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease. Tenant may terminate this lease without cause as of any time after the second year of the Initial Term and any time during the Renewal Term, by delivering 180-days prior written notice to Landlord. The notice may be delivered before the 24th month of the Initial Term for so long as the effective date is after the 24th month. If Tenant does terminate under this paragraph, it must pay to Landlord the unamortized portions of (1) the Tenant finish-out allowance and (2) brokerage fees paid by Landlord. All amortization is straight line over the initial term of this Lease. The amount of Tenant finish-out is determined by an Initial Cost Memorandum substantially in the form of **Exhibit D**. Landlord must substantiate all costs claimed by Landlord on the Initial Cost Memorandum to Tenants satisfaction.

4.02. All renewals must be approved by City Council. Tenant may renew this Lease for a 5-year term by giving Landlord six months prior written notice before expiration of the previous term. Renewal is on the same terms and conditions as the Initial Term, except for rent. The monthly rent during the renewal term is as follows:

Year	Monthly Rent
1	\$17,289.13
2	\$17,807.80
3	\$18,342.03

4	\$18,892.30
5	\$19,459.06

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building adopted by Landlord.

5.02. Obtain and pay for all utility services.

5.03. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.04. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord.

5.05. Vacate the Premises and return all keys to the Premises promptly upon expiration of the Term, subject to any holdover rights.

5.06. On request, execute an estoppel certificate that states the Commencement Date, and duration of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant will attorn to a new landlord on the condition the new landlord agrees to a non-disturbance of Tenant and to accept the obligations of landlord under this Lease. Apart from the above, Tenant need not sign anything purporting to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

5.07. Tenant shall commence business operations in the Premises on or immediately after the Commencement Date and shall operate its business in an efficient, high class, and reputable manner. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Term conduct and carry on in the Premises the type of business for which the Premises is leased.

6. Tenant's Negative Promises.

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Interfere with any other tenant's normal business operations or Landlord's management of the Building.

6.04. Permit waste.

6.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

6.06. Change Landlord's lock system.

6.07. Alter the Premises.

6.08. Allow a lien to be placed on the Premises.

6.09. Assign this lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.

6.10. Mortgage, pledge or otherwise encumber its interest in this Lease or in the Premises.

7. Landlord's Affirmative Promises.

Landlord promises that it will:

7.01. Lease to Tenant the Premises for the entire Term, beginning on the Commencement Date.

7.02. Obey all applicable laws with respect to Landlord's operation of the Building.

7.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) structural soundness of the exterior walls, doors, and windows, (d) repair and replacement of HVAC system (including concealed mechanical systems), wiring, and plumbing, (e) floors (but not carpeting or similar floor covering, unless damaged by a problem with the floor), (f) damage to Tenant's improvements caused by failure or malfunctioning of building features or equipment for which Landlord is responsible, (g) parking lot and parking lot drains, (h) fire sprinkler system (I) other structures or equipment serving the Premises.

7.04. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

7.05. Pay all property taxes assessed against the property of which the Premises are part on or before the assessment of interest or penalties for late payment.

7.06. Timely complete at its own cost, all work allocated to Landlord as per the Landlord's Work Letter attached as **Exhibit C** to the satisfaction of Tenant.

7.07. Provide a Certificate of Occupancy for the Leased Premises prior to the Commencement Date.

8. Landlord's Negative Promises.

Landlord promises that it will not:

8.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

8.02. Unreasonably withhold consent to a proposed assignment or sublease.

9. Repair, Maintenance and Replacement Responsibilities.

Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component allocated to it in the table below:

<i>Item</i>	<i>Responsibility</i>
Janitorial and garbage services	Tenant
Water, sewer, electricity, and gas utility connections	Landlord
Parking Lot Maintenance (paved portions only)	Landlord
Landscaping	Tenant
Exposed Electrical Systems	Landlord
Concealed Electrical Systems	Landlord
Exposed Plumbing Systems	Landlord
Concealed Plumbing Systems including under slab drain lines	Landlord
HVAC Filter Changes	Tenant
HVAC Systems maintenance, repair and replacement	Landlord
Hot and cold water for lavatories and for drinking	Landlord
Fluorescent tubes and all other light bulbs	Landlord

10. Alterations.

Tenant shall not be permitted to make alterations to the Premises without the prior written consent of Landlord; provided, however, that (i) the installation of unattached, moveable trade fixtures which may be installed without drilling, cutting, or otherwise defacing the Premises and (ii) improvements that do not exceed \$5,000 shall not require the prior consent of Landlord. Any physical additions or improvements to the Premises made by Tenant may become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions

and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11. Insurance.

11.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

11.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 100% of replacement cost.

11.02.01. Each insurance policy of Landlord required by this Lease must contain the following clauses:

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio City Hall/2nd Floor P. O. Box 839966 San Antonio, Texas 78283-3966 Attention: Risk Manager	and	Department of Capital Improvements Management Services City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966 Attention: Director”
---	-----	--

“The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Lease must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Tenant because of Landlord’s breach of representation, warranty, declaration, or condition of this policy.”

11.02.02. Within 30 days after the Commencement Date and promptly after Tenant’s later request, Landlord must, at its own expense, deliver certificates to Tenant’s Risk Manager and to the City Clerk, reflecting all required insurance

coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and may pass through to Tenant the increased portion of the premiums. Tenant's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

11.02.03. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

12. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant each release the other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

13. Indemnity.

13.01. These definitions apply to the indemnity provisions of this Contract:

13.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

13.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

13.01.03. "Indemnitor" means Landlord.

13.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

13.03. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

13.04. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim.

13.05. In addition to the indemnity required under this Contract, each Indemnatee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

13.06. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

13.07. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

14. Casualty/Total or Partial Destruction.

14.01. If the Premises are damaged by casualty or made untenable and can be restored within 90 days, Landlord will, at its expense, restore the roof, foundation, and structural soundness of the exterior walls of the Premises and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within 90 days from the loss, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

14.02. If the Premises cannot be restored within 90 days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within 10 days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

14.03. During the period before Landlord completes restoration, the Rent will be adjusted as may be fair and reasonable.

14.04. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

15. Condemnation/Substantial or Partial Taking.

15.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Tenant, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

15.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

15.03. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

16. Holdover.

16.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may permissibly hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold over is the same as the rent for the term being held over, and all other terms of this Lease apply. In the event Tenant holds over past the expiration of the six month permissible period, then rent will increase to 125% of the monthly rent for the term being held over on a month-to-month basis. Council's authorization of this instrument is authority for the City as Tenant to enter into any hold-over period without further council action if the Director of Capital Improvements Management Services deems the holdover beneficial.

16.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

16.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice and (ii) failing, within 10 days of notice, to water, sewer, gas, and electricity to the Premises after loss thereof.

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages. Further, Tenant may terminate the Lease if Landlord's default persists for 30 days.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, (c) failing to commence operations in the Premises within 30 days after the Commencement Date,

(d) declaration by Tenant of bankruptcy or insolvency, or (e) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) through (d) above.

17.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, Tenant to reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

17.05. *Waiver of Liens.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

18. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

19. Environmental.

19.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

19.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

19.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

19.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

19.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground

or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

19.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

19.07. Landlord represents and warrants that, (i) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

19.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

19.09. Landlord must indemnify Tenant and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Landlord's environmental representations, warranties, and covenants.

20. Appropriations.

All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council whether to appropriate funding. 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.

21. Dispute Resolution.

21.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

21.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

21.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

21.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

21.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

21.06. Mediator fees must be borne equally.

21.07. The parties need not mediate before going to court (i) for either party to seek emergency injunctive relief or (ii) for Landlord to seek forcible entry and detainer relief against Tenant.

22. Prohibited Interests in Contracts.

22.01. 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.

22.02. Landlord warrants and certifies as follows:

(i) Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

22.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

23. Miscellaneous.

23.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

23.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

23.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

23.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

23.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

23.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

23.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

23.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

23.09. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

23.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

23.11. *Administrative Agreements.* The Director of Building and Equipment Services may, without further council action, agree to, sign, and deliver on behalf of the City 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.

23.12. *Conflicts Between Numbers Stated Two Ways.* Whenever there is a conflict between numbers stated more than one way, either by using both words and numerals or by stating a fixed amount and a calculation, the highest number controls.

23.13. *Quiet Enjoyment.* As long as Tenant pays the rent and other charges under this lease and observes the covenants and terms of this lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the lease term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

23.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

24. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

25. Security Deposit.

Tenant will not be required to pay a Security Deposit.

26. Brokerage Fees.

Landlord represents to Tenant that Landlord has not dealt with any broker regarding this Lease other than United Commercial Realty. Tenant represents to Landlord that Tenant has not dealt with any broker regarding this Lease other than Providence Commercial

Real Estate Services, Inc. Landlord pays the commission due to United Commercial Realty. The parties expect that United Commercial Realty will share its commission with Providence Commercial Real Estate Services, Inc. Neither party believes any other commission is due arising out of this agreement.

27. Force Majeure.

For so long as utility services are restored within the times limits contained in this Lease, Landlord is not liable for any interruption whatsoever in utility services not caused by Landlord, nor for interruptions in utility services furnished by Landlord that are due to fire, accident, strike, acts of God, or other causes beyond the control of Landlord.

Remainder of Page Intentionally Left Blank

28. Transfer or Assignment by Landlord.

If Landlord transfers and assigns its interest in this Lease and in the building containing the Premises to a person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant will look solely to such successor in interest of the Landlord for performance of Landlord's obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

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

Tenant

Landlord

City of San Antonio, a Texas municipal corporation

Reyes Properties Ltd., a Texas limited partnership, by and through its sole general partner

By: _____

Reyes Management, LLC, a Texas limited liability company

Printed Name: _____

By: _____

Title: _____

Printed Name: _____

Date: _____

Title: _____

Attest:

Date: _____

City Clerk

Approved as to Form:

City Attorney

Exhibit A: Description of Premises

Lots 2 and 3, Block 3, New City Block 13982, Pan Am Industrial Park Subdivision,
According to Plat Recorded in Volume 5580, Page 168, Plat Records of Bexar County,
Texas also known as 1550-1554 Cantrell, San Antonio, TX. 78221

Exhibit B: Commencement Memorandum

Landlord: Reyes Properties, Ltd.

Tenant: City of San Antonio

Lease: 1550-1554 Cantrell, San Antonio, TX. 78221; approx. 60K SF
of office/warehouse space on approx. 6 acres, as described in
Exhibit A to the Lease Agreement.

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The Initial Term is to begin on the Commencement Date as defined in the lease.

For their mutual benefit, the parties now wish to memorialize the actual Commencement date of the Lease's Term.

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 lease commences _____.

3. No Default.

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.
- c. 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.

City of San Antonio, a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Reyes Properties Ltd., a Texas limited partnership, by and through its sole general partner

Reyes Management, LLC, a Texas limited liability company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit C: Landlord's Work

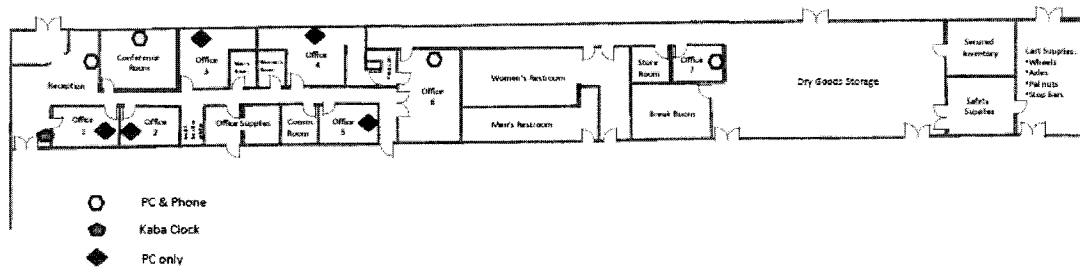
Landlord, at Landlord's sole cost and expense agrees to complete Landlord's Work to the satisfaction of Tenant no later than forty-five (45) days after the Binding Date. In the event that Landlord's Work is not completed timely, then Tenant will have the right to terminate this Lease Agreement with no further action by Tenant required.

Landlord's Work consists of finishing out the office, warehouse, and other space adjacent to 1554 Cantrell to look as presented in diagrams and to conform to the requirements below:



Solid Waste Management Department

Proposed Office Space for Warehouse Facility 1554 Cantrell



General Note: Clean, replace damaged/missing ceiling tiles

Reception: No change, fix ceiling tiles

Conference Room: Remove carpet

Office 1: No change

Office 2: No change

Office 3: No change

Office Men's Restroom: No change

Office Women's Restroom: Upgrade to ADA compliant unisex restroom

Office 4: Extend wall enclosing SE corner of office

Office Supply Room: No change

Comm. Room: Remove Shelving, add (2) L620W female plugs, (1) 110-20amp with Ground bar, HVAC with dedicated thermostat

Office 5: No change, fill hole from missing J box

Office 6: Remove carpet and electrical outlet in floor, finish walls and floor in restroom

Warehouse Women's Restroom: Construct wall between two east doors separating main room from smaller restroom. Refurbish smaller restroom with new fixtures and partitions to create new warehouse men's restroom.

Warehouse Men's Restroom: Abandon and secure

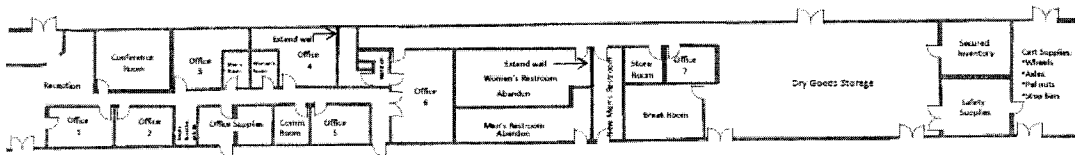
Storeroom: Clean and extend south wall to ceiling, repair electrical outlets, paint

Office 7: Clean, strip floor and polish or install floor tile, remove former IT panel, replace ceiling tiles, paint

Dry Goods Storage: Repair ceiling tiles, replace single bulb fluorescent fixtures with drop-in 2x2 or 2x4 energy efficient fluorescent fixtures providing the same illumination

Break Room: Install counter top and sink on north wall, install electrical outlet above counter for microwave. Install electrical outlet for refrigerator to be installed in either east or west corner of north wall

Secured Inventory, Safety Supplies, Cart Supplies: No change



General Note: Clean, replace damaged/missing ceiling tiles throughout entire leased premises even when "No change" is indicated below.

1. **Reception:** No change, fix ceiling tiles
2. **Conference Room:** Remove carpet
3. **Office 1:** No change
4. **Office 2:** No change
5. **Office 3:** No change
6. **Office Men's Restroom:** No change
7. **Office Women's Restroom:** Upgrade to ADA compliant unisex restroom
8. **Office 4:** Extend wall enclosing SE corner of office
9. **Office Supply Room:** No change
10. **Comm. Room:** Remove Shelving, add (2) L620W female plugs, (1) 110-20amp with Ground bar, Install 2-L6-20R on 7' SO cord, along with one 5-20R on 7' SO cord for the cabinet to be installed in the MDF room. This power is to be installed above the cabinet and not on the cable tray. Provide mini split A/C system with a hard wired thermostat for the MDF room.
11. **Office 5:** No change, fill hole from missing J box
12. **Office 6:** Remove carpet and electrical outlet in floor, finish walls and floor in restroom
13. **Warehouse Women's Restroom:** Construct wall between two east doors separating main room from smaller restroom. Refurbish smaller restroom with new fixtures and partitions to create new warehouse men's restroom.
14. **Warehouse Men's Restroom:** Abandon and secure
15. **Storeroom:** Clean and extend south wall to ceiling, repair electrical outlets, paint
16. **Office 7:** Clean, strip floor and polish or install floor tile, remove former IT panel, replace ceiling tiles, paint
17. **Dry Goods Storage:** Repair ceiling tiles, replace single bulb fluorescent fixtures with drop-in 2x2 or 2x4 energy efficient fluorescent fixtures providing the same illumination

18. **Break Room:** Install counter top and sink on north wall, install electrical outlet above counter for microwave. Install electrical outlet for refrigerator to be installed in either east or west corner of north wall
19. **Secured Inventory, Safety Supplies, Cart Supplies:** No change
20. **Space Adjacent to 1554 Cantrell:** Install 3-phase, 60-amp breaker in panel to power new circuit
21. **Space Adjacent to 1554 Cantrell:** Connect circuit to power washer
22. **Space Adjacent to 1554 Cantrell:** Install exhaust fan and switch to control exhaust fan
23. **Space Adjacent to 1554 Cantrell:** Install 1" Natural Gas Line
24. **Space Adjacent to 1554 Cantrell:** Install 1" Water Line

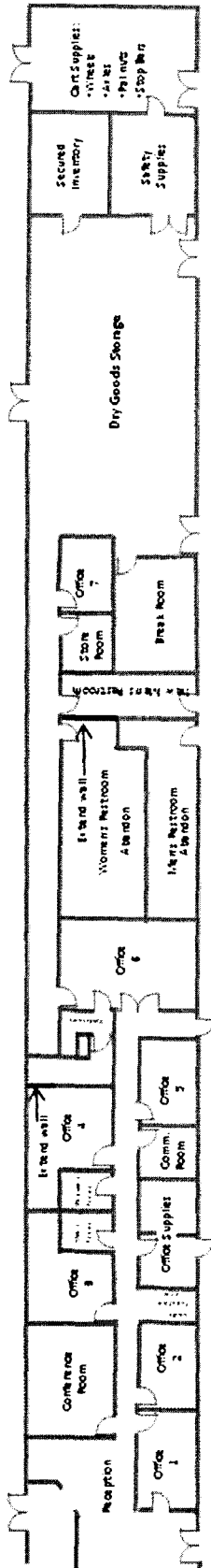


Exhibit D: Initial Cost Memorandum

Initial Cost Memorandum

Landlord: Reyes Properties, Ltd.

Tenant: City of San Antonio

Lease: 1550-1554 Cantrell, San Antonio, TX. 78221; approx. 60K SF
of office/warehouse space on approx. 6 acres, as described in
Exhibit A to the Lease Agreement.

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The leasing commission and tenant improvement costs are relevant to the parties' rights and obligations under the Lease.

For their mutual benefit, the parties now wish to memorialize the actual costs.

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. Lease Commission.

The total lease commission paid or to be paid by Landlord regarding the Lease is \$_____.

3. Tenant Improvements.

Landlord's total cost for tenant improvements under the Lease is \$_____.

4. No Default.

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

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

5. 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.

City of San Antonio, a Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Reyes Properties Ltd., a Texas limited partnership, by and through its sole general partner

Reyes Management, LLC, a Texas limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney