

AN ORDINANCE 2017-04-20-0252

AUTHORIZING THE EXECUTION OF THE FIRST RENEWAL AND FIRST AMENDMENT TO THE MASTER LEASE AND MANAGEMENT AGREEMENT WITH JEFFERSON WOODLAWN LAKE COMMUNITY DEVELOPMENT CORPORATION, FOR THE CONTINUED USE OF THE CITY-OWNED PROPERTY KNOWN AS THE TRAVIS BUILDING, LOCATED AT 1800-1814 FREDRICKSBURG ROAD, IN CITY COUNCIL DISTRICT 1, FOR A TERM OF TEN YEARS.

* * * * *

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

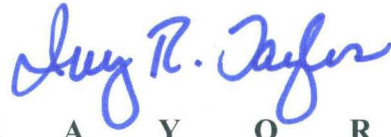
SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City an instrument substantially in the form of **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee, severally, should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

SECTION 2: The City will receive no monetary consideration so no fiscal ordinance language is required.

SECTION 3: 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 4. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 20th day of April, 2017.



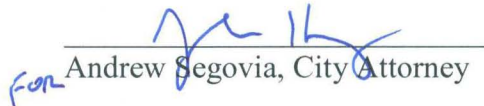
M A Y O R
Ivy R. Taylor

Attest:



Leticia M. Vacek, City Clerk

Approved As To Form:



For Andrew Segovia, City Attorney

Agenda Item:	10 (in consent vote: 4, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23)						
Date:	04/20/2017						
Time:	09:29:12 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of the 1st Renewal and 1st Amendment to Master Lease and Management Agreement with the Jefferson Woodlawn Lake Community Development Corporation for the continued use of the City-owned property known as the Travis Building, located at 1800-1814 Fredericksburg Road, in City Council District 1, for a term of ten years. [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	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				
Michael Gallagher	District 10		x				

1st Renewal and 1st Amendment to Master Lease and Management Agreement

(Travis Building)

This 1st Renewal and 1st Amendment to Lease Agreement is between Tenant and the City of San Antonio (“Landlord”), pursuant to the Ordinance Authorizing Renewal.

1. Identifying Information.

Ordinance Authorizing Renewal:

Tenant: Jefferson Woodlawn Lake Community Development Corporation, a Texas non-profit corporation

Tenant’s Address: 1800 Fredericksburg Road, Suite 116, San Antonio, Texas 78201

Lease: Lease Agreement dated January 4, 2002, for the Travis Building, located at 1800-1814 Fredericksburg Road, San Antonio, Texas, between Landlord and Tenant, and authorized by the Ordinance Authorizing Original Lease

Ordinance Authorizing Original Lease: 94958

Beginning of Renewal Term: May 1, 2017

Expiration of Renewal Term: April 30, 2027

2. Defined Terms.

All terms used in this instrument and not otherwise defined herein but defined in the Lease or any previous amendment to it have the meanings previously ascribed to them. References to “Lease” in this amendment and renewal include both the original Lease and all previous amendments to it.

3. Renewal.

The term of the lease is extended from the Beginning of Renewal Term through and including the Expiration of Renewal Term. At the Expiration of Renewal Term, the Lease, as renewed hereby, terminates. Tenant must then vacate the Premises no later than the Expiration of Renewal Term.

4. Revision to Section 4.4.

Subsections (2), (6), (7) and (9) of Section 4.4 of the Lease are revised to read as follows:

“4.4 TENANT agrees to:

- (1) actively market and sub-lease the Premises under generally accepted business practices and principles including the standards established by the Building Owners and Managers Association, International (“BOMA”) and shall require fair market rental rates of the sub-tenants, unless Landlord expressly consents in writing to a rental rate to a non-profit, as that term is recognized by the Internal Revenue Service, that is at a less than fair market rental rate
- (2) provide to CITY, on or before September 1st of each year, during the term of this Agreement, a copy of its proposed capital budget, operating budget and marketing plan for the following fiscal year, including any and all capital budgets evidencing funds to be used for the construction or assembly of improvements to the building, and provide to CITY, on or before September 1st of each year, an annual preventative maintenance plan for review and approval of CITY.
- (3) provide the CITY, on or before December 31st of each year, during the term of this Agreement annual financial statements audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards and cause to be submitted by the independent CPA to the Leasing Manager, Center City Development & Operations Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966, a duplicate original of the audited financial statements.”

All remaining subsections of Section 4.4 are hereby deleted.

5. Replacement of Section XII. Insurance, and Section XIII. Indemnification.

Sections XII and XIII of the Lease are hereby deleted in their entirety and replaced with the following:

XII. INSURANCE

A) Prior to the commencement of any work under this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Center City Development & Operations Department, which shall be clearly labeled “*insert name of project/contract*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Center City Development & Operations Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A Tenant's financial integrity is of interest to the City; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, Tenant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Property Insurance: For physical damage to the property of TENANT, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of TENANT's property
6. Liquor Legal Liability*	\$1,000,000
7. Plate Glass Coverage	Coverage for the replacement of windows and doors of the Leased Premises; TENANT has the option to self-insure for this coverage provided the terms and conditions of such self insurance are approved in writing by the City's Risk Manager

*May be provided as a stand alone policy, or by endorsement under the Commercial General Liability policy.

D) Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Tenant herein, and provide a certificate of insurance and endorsement that names the Tenant and the CITY as additional

insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Tenant. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Tenant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Tenant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from Tenant's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Tenant and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIII. INDEMNIFICATION

TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT' activities under this Agreement, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, tenant or subcontractor of TENANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

6. Revision to 1.) Assignment of Leases, and 2.) Assignee's Acceptance of Leases.

All references to Jefferson Woodlawn Lake Local Development Corporation are revised to read; Jefferson Woodlawn Lake Community Development Corporation.

7. Replacement of Section XXIX. NOTICES.

Sections XXIX of the Lease is hereby deleted in its entirety and replaced with the following:

XXIX. NOTICES

Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended, or by hand delivery (courier or otherwise) with signature from the receiving party, to be given at the following address:

Landlord: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966
and
Leasing Manager
Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Tenant: Jefferson Woodlawn Lake Community Development Corporation
1800 Fredericksburg Road, Suite 116
San Antonio, Texas 78201

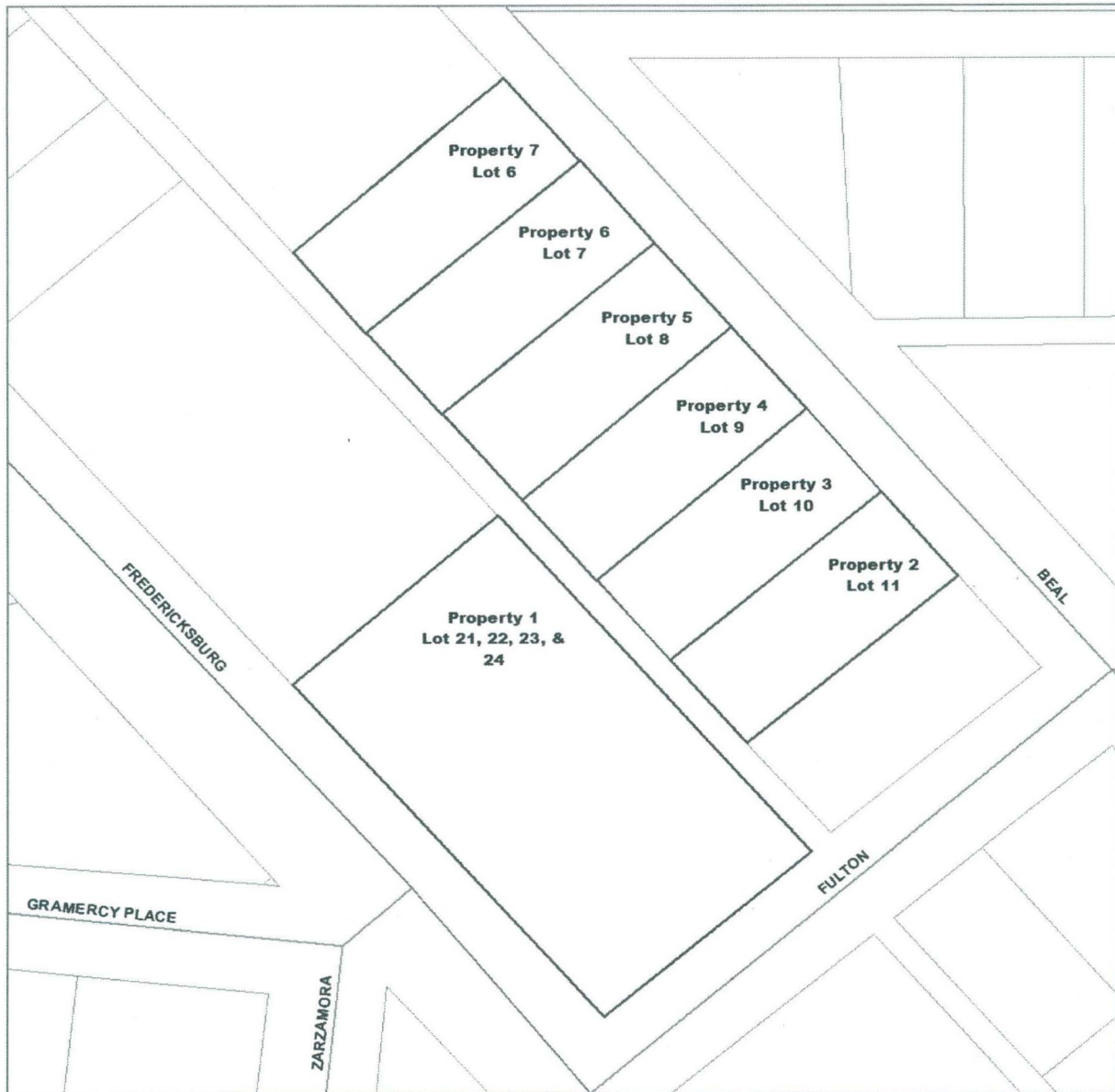
8. Replacement of Exhibit A.

Exhibit A. of the Lease is hereby deleted in its entirety and replaced by the following:

EXHIBIT A: Description of Leased Premises

The Leased Premises is comprised of seven properties depicted below and described as follows:

Property	Address	Legal Description	Size
1	1800 -1814 Fredericksburg Rd.	NCB 2745, Block 51, Lots 21-24	0.551 acres
2	207 Beal Street	NCB 2745, Block 51, Lot 11	0.1377 acres
3	211 Beal Street	NCB 2745, Block 51, Lot 10	0.1377 acres
4	215 Beal Street	NCB 2745, Block 51, Lot 9	0.1377 acres
5	219 Beal Street	NCB 2745, Block 51, Lot 8	0.1377 acres
6	223 Beal Street	NCB 2745, Block 51, Lot 7	0.1377 acres
7	227 Beal Street	NCB 2745, Block 51, Lot 6	0.1377 acres
Total Acreage			1.377 acres



9. Deletion of Exhibit C.

Exhibit C. of the Lease is hereby deleted in its entirety.

10. No Default.

Neither Landlord nor Tenant is in default under the Lease, and neither party is aware of a cause of action against the other arising out of or relating to the period before this renewal.

11. Same Terms and Conditions.

This renewal instrument is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this renewal, the Lease remains a comprehensive statement of the rights and

obligations of Landlord and Tenant. Landlord and Tenant reaffirm the Lease as modified by this agreement. Landlord and Tenant reaffirm the Lease as modified by this agreement and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

12. Public Information.

Tenant 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.

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

Landlord

Tenant

City of San Antonio, a Texas municipal corporation

Jefferson Woodlawn Lake Community Development Corporation, a Texas non-profit corporation

By: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

City Attorney

Attest:

City Clerk