



**CITY OF SAN ANTONIO  
SHORT TERM LICENSE AGREEMENT FOR RENTAL OF  
CARVER COMMUNITY CULTURAL CENTER  
2016-2017**

NO. 00000\_ \_  
FILE #

This License Agreement (“LICENSE”), dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is made and entered into by and between the City of San Antonio (“CITY”) a municipal corporation of the State of Texas, acting by and through its Director of the Convention & Sports Facilities Department or designee (“DIRECTOR”) and \_\_\_\_\_ (“LICENSEE”), for the following express purposes and conditions, all of which the LICENSEE hereby covenants and agrees with CITY to keep and perform.

WITNESSETH:

WHEREAS, CITY is the owner and operator of a building located at 226 N. Hackberry and a building located at 226 N. Hackberry, building number 6 known as the Little Carver Civic Center (both buildings are collectively known as the “Carver Community Cultural Center”); and

WHEREAS, LICENSEE and CITY desire to enter into an agreement specifying the terms and conditions under which LICENSEE will use a specified area of the Carver Community Cultural Center for presentation of the Event, as defined below, and all related activities;

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

I. DEFINITIONS

- 1.1 Carver means the two buildings collectively known as Carver Community Cultural Center, in San Antonio, Texas, which are located at 226 N. Hackberry and building number 6 located at 226 N. Hackberry (the Little Carver Civic Center).
- 1.2 CITY means the City of San Antonio, a Texas municipal corporation.
- 1.3 DIRECTOR means the Director of the Department of Convention & Sports Facilities.
- 1.4 Egress means the exit of the Carver of people attending the Event or the moving out of the Event.
- 1.5 Event means the \_\_\_\_\_ and its related activities as specified herein and in any attachments hereto.
- 1.6 Ingress means the entry of attendees or the moving in of the Event.

## II. SCOPE

- 2.1 The Event shall be the \_\_\_\_\_ and shall include all the related activities defined herein and in any attachments hereto. LICENSEE understands that the Event shall include only the activities outlined and that LICENSEE must receive the prior written approval of the DIRECTOR, or his or her designee to make any changes to the Event activities. If changes are made to the Event activities without prior approval of the DIRECTOR, the CITY, at its option, shall have the right to terminate this LICENSE and the LICENSEE shall forfeit, as liquidated damages, the security deposit required by Section 4.4.

## III. TERM

- 3.1 That CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by LICENSEE, does hereby agree to furnish certain space located at the \_\_\_\_\_, City of San Antonio, Bexar County, Texas, ("LICENSED PREMISES") and LICENSEE agrees as consideration hereof and as payment for the right herein granted to use the LICENSED PREMISES to pay CITY the sums set forth in Section 4.1.
- 3.2 The Term shall commence on \_\_\_\_\_ (the "Commencement Date") no sooner than \_\_\_\_\_ .m. and end on \_\_\_\_\_ (the "Termination Date") no later than \_\_\_\_\_ .m.. The Term shall be the entire period of LICENSEE'S use and shall include the Event Day or Days and the days for Ingress and Egress. The Days of the Events are \_\_\_\_\_.

## IV. PAYMENT

- 4.1 In consideration for the license to use the LICENSED PREMISES as provided for in this LICENSE Agreement, LICENSEE shall pay CITY the fees set forth below.

License Fee (Rent):	\$ _____
Box Office fee:	\$ _____
Technical fees:	\$ _____
Equipment Rental:	\$ _____
Clean up:	\$ _____
Security Deposit:	\$ <u>200.00</u>
Additional Services:	\$ _____
(per Section 5.2)	
Other:	\$ _____
Total:	\$ _____

- 4.2 LICENSEE agrees to pay the total amount provided in Section 4.1 above at the time this LICENSE is executed and submitted to CITY, but by no later than 10 business days of the Commencement Date. Any fees due in connection with costs that are unforeseen at the time the LICENSE is submitted, or owed pursuant to any provision herein, including any balance owed by LICENSEE, are due to the CITY on the final day of the Event. Interest at the highest rate allowed by Texas Law will be assessed against any unpaid balance after 30 days from the due date.
- 4.3 The fees above are based on rates approved by CITY Ordinance #                     .
- 4.4 LICENSEE agrees that LICENSEE's security deposit shall be credited towards the final balance owed by the LICENSEE to the CITY. Said security deposit or portion thereof will only be refunded (unless otherwise forfeited under Section 2.1) (i) in the event that funds are available after crediting the security deposit toward the balance of unpaid rent, fees or the cost of damages caused by LICENSEE and owed by LICENSEE to the CITY, or (ii) in the event that this LICENSE terminates pursuant to Section 11.2.

#### V. PERSONNEL AND SERVICES

- 5.1 LICENSEE shall employ sufficient qualified personnel as may be required for the proper use and occupancy of the Carver including, but not limited to ticket takers, ushers, registration personnel, paramedics, spotlight operators, sound system technicians, electricians, sale of concessions (if concession rights are granted by CITY to LICENSEE) and any other personnel necessary for the handling of freight, decorations, scenery, or other property of LICENSEE. LICENSEE agrees that each person employed by LICENSEE to provide services in the Carver will at all times maintain a neat and clean appearance and conduct himself/herself in a polite and professional manner. LICENSEE agrees to replace any such employee failing to do so upon notice by DIRECTOR.
- 5.2 Should LICENSEE require additional services, accommodations or materials (collectively referred to as "Additional Services") other than those ordinarily provided for the LICENSED PREMISES, which the DIRECTOR or his/her designee agrees could be provided by CITY, such as special set-ups or special labor requests, and LICENSEE desires CITY to provide those services, LICENSEE shall make a written request for said services no later than 60 days prior to the Commencement Date. LICENSEE agrees to pay any and all sums which may be due CITY for said Additional Services in accordance with the terms of this LICENSE.
- 5.3 SECURITY PERSONNEL. As a condition of the granting of this LICENSE, LICENSEE agrees to pay for the provision of adequate security that may be necessary during the Term. LICENSEE shall make security arrangements with security personnel who have obtained a minimum Basic Peace Officer Certificate from the Texas Commission on Law Enforcement (TCOLE). CITY, in its sole and absolute discretion, shall determine the number of security personnel that may be necessary for LICENSEE's Event depending on the anticipated number of attendees and invited guests and the nature of the Event.

## VI. INSURANCE REQUIREMENTS

- 6.1 Prior to the commencement of any work under this LICENSE, LICENSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City of San Antonio, Attn: Booking and Services Coordinator, Carver Community Cultural Center, which shall be clearly labeled “insert name of project/contract” in the Description of Operations block of the Certificate. The original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and 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 LICENSE until such certificate and endorsements have been received and approved by the City’s Department of Convention & Sports Facilities. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- 6.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this LICENSE 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 LICENSE. In no instance will City allow modification whereupon City may incur increased risk.
- 6.3 A LICENSEE’s financial integrity is of interest to the City; therefore, subject to LICENSEE’s right to maintain reasonable deductibles in such amounts as are approved by the City, LICENSEE shall obtain and maintain in full force and effect for the duration of this LICENSE, and any extension hereof, at LICENSEE’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	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

2. Liquor Liability*	\$1,000,000 per occurrence
* if alcohol is sold on premises	

- 6.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LICENSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. LICENSEE shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

Carver Community Cultural Center  
ATTN: Booking and Services Coordinator  
226 North Hackberry  
San Antonio, TX 78202-2853

- 6.5 LICENSEE 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 an additional insured 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 and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 6.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend LICENSEE'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 LICENSE.

- 6.7 In addition to any other remedies City may have upon LICENSEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due, to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.
- 6.8 Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE's or its subcontractors' performance of the work covered under this LICENSE.
- 6.9 It is agreed that LICENSEE'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 LICENSE.
- 6.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this LICENSE.
- 6.11 LICENSEE and any Subcontractors are responsible for all damage to their own equipment and/or property.

## VII. INDEMNITY

### 7.1 **LICENSEE AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

**LICENSEE 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 LICENSEE'S activities under this LICENSE, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this LICENSE. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE 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 INDEMNIFICATION 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.

LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S activities under this LICENSE.

- 7.2 **Defense Counsel** - CITY shall have the right to select or to approve defense counsel to be retained by LICENSEE in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. LICENSEE shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If LICENSEE fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and LICENSEE shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 7.3 **Employee Litigation** – In any and all claims against any party indemnified hereunder by any employee of LICENSEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LICENSEE or any subcontractor under worker's compensation or other employee benefit acts.

**VIII. COPYRIGHT INDEMNIFICATION**

- 8.1 **LICENSEE AGREES TO ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FEDERAL COPYRIGHT LAW OF 1978 (17 U.S.C. 101, ET SEQ, as amended,) AND ANY REGULATIONS ISSUED THEREAFTER INCLUDING, BUT NOT LIMITED TO, THE ASSUMPTION OF ANY AND ALL RESPONSIBILITIES FOR PAYING ROYALTIES WHICH ARE DUE FOR THE USE OF COPYRIGHTED WORKS IN LICENSEE'S PERFORMANCES OR EXHIBITIONS TO THE COPYRIGHT OWNER, OR REPRESENTATIVES OF SAID COPYRIGHT OWNER, AND LICENSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES AND AGENTS, FOR ANY CLAIMS, LOSSES, EXPENSES OR DAMAGES GROWING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS.**

## IX. LICENSEE PROPERTY

- 9.1 REMOVAL OF INSTALLATIONS. In the event platform, stagings or other structures are erected by LICENSEE or any of the exhibitors in any portion of the LICENSED PREMISES, the expense of such erection and removal shall be paid for by LICENSEE. and shall be subject to the terms and conditions of Section 9.2.
- 9.2 PROPERTY OF LICENSEE. All property of LICENSEE shall be removed from the LICENSED PREMISES prior to or upon expiration of the Term hereof. In the event that the property is not removed by the expiration of the Term, CITY is hereby authorized to remove all personal property of any and all kinds and description which may then be situated at the LICENSED PREMISES and to store, or dispose of, the same at the expense of LICENSEE. CITY shall not be liable for any damages to or loss of such personal property which may be sustained due to such removal or resulting from the place to which it may be removed. CITY is hereby expressly released from any and all claims for any damages of whatever kind or nature.
- 9.3 LICENSEE assumes all risk of damage to its property and/or the loss by theft or otherwise of any property of the LICENSEE, its employees, and/or its exhibitors, and no claim shall be made upon CITY for any such loss unless same is due to (i) the sole negligence of CITY or (ii) an intentional or willful tort committed by CITY as determined by a court of law. LICENSEE understands and agrees that the security that CITY engages is for the sole purpose of maintaining peace and order at the Carver and that said security is not responsible for protecting LICENSEE from theft or loss of its property or the property of its employees and/or its exhibitors. Therefore, if the LICENSEE wishes to protect its personal property and finds it necessary, LICENSEE may arrange for added security during the term of this LICENSE to protect property brought onto the grounds of the LICENSED PREMISES by LICENSEE, its employees, and/or its purveyors.

## X. CITY PROPERTY; DAMAGES AND RESTRICTIONS

- 10.1 CONTROL OF BUILDING. In furnishing the LICENSED PREMISES, CITY reserves the right to control the management thereof, and to enforce all necessary and proper rules for the management and operation of said premises. CITY likewise reserves the right, through its DIRECTOR, his or her designee, CITY'S Police Officers or any other security personnel hired for that purpose, to eject any objectionable persons from the Carver, and upon the exercise of this authority, LICENSEE hereby waives any right and all claims for damages against CITY, or any of its agents, officials, or employees.
- 10.2 LICENSEE is responsible for the proper storage, collection and prompt return of CITY loaned devices to the CITY at the end of the Event and will be charged for any damage, loss or theft of devices, systems or associated equipment.



- 10.3 **ALTERATIONS AND DAMAGES.** LICENSEE will not cause or permit any nails or any other things to be driven into any portion of the Carver, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the LICENSED PREMISES or furnishing or the equipment thereof, nor do or permit to be done anything which will damage or change the finish or appearance of the Carver or the furnishings thereof. Tape or other adhesive materials may not be applied to walls or other surfaces of the LICENSED PREMISES without the prior approval of DIRECTOR or his/her designee. All products or balloons that could rise to the ceiling because of the product's physical properties are prohibited along with decorations or items that create a substantial risk of damage or excessive litter. If the LICENSED PREMISES, or any portion of said building, during the term of this LICENSE shall be damaged by the act, default or negligence of LICENSEE, or of LICENSEE'S agent, employees, patrons, guests, or any person admitted to the LICENSED PREMISES by LICENSEE, LICENSEE will pay CITY, upon demand, such sum as shall be necessary to restore the LICENSED PREMISES to its present condition. LICENSEE hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the LICENSED PREMISES, or to any portion of said building with the consent of LICENSEE'S employees or any person acting for or on behalf of LICENSEE. DIRECTOR or his/her designee, in his or her sole discretion shall determine whether any damage has been done, the amount of the damage, the reasonable cost of repairing it, and whether, under the terms of LICENSE, LICENSEE is to be held responsible.
- 10.4 LICENSEE hereby agrees that no activity, performance, exhibition or entertainment (attraction) shall be given or held or take place in the LICENSED PREMISES herein described which is potentially dangerous to the public or which is illegal, indecent, obscene, lewd, or immoral, and should any exhibition or performance or any part thereof be deemed by DIRECTOR to be dangerous, illegal, indecent, obscene, lewd, immoral or in any manner offensive to persons of ordinary sensibilities, then said DIRECTOR shall have the right to demand of LICENSEE that LICENSEE immediately, upon receipt of such notice, make appropriate modifications.
- 10.5 **RESERVED RIGHTS RELATED TO CONCESSIONS AND NOVELTIES.** CITY reserves the sole and exclusive right to sell or serve on, in or about the LICENSED PREMISES any alcoholic beverages, soft drinks, food, souvenirs, or other merchandise, or CITY may grant all concession rights to any party or parties designated by CITY, and NO FOOD OR BEVERAGE, WITH OR WITHOUT CHARGE, SAMPLES OR OTHERWISE, MAY BE SERVED OR DISTRIBUTED BY LICENSEE WITHOUT THE PRIOR WRITTEN CONSENT OF CITY. FURTHER, LICENSEE WILL NOT ALLOW ANY ATTENDEE TO BRING INTO THE LICENSED PREMISES ANY FOOD OR BEVERAGE.
- 10.6 **TICKETS.** The CITY has a contractual obligation to utilize Tickmaster for the sale of tickets related to Events at the Carver. If tickets are sold for the Event, then LICENSEE shall use Ticketmaster for such arrangements. LICENSEE shall not sell tickets through another professional agency, person or over the internet.

- 10.7 SEATING CAPACITY. In no event shall attendance at a meeting, dinner, concert, entertainment, exhibition or other event be in excess of the designated capacity for the LICENSED PREMISES or the Carver as determined by the City's Fire Marshall.
- 10.8 AISLES AND ALL ACCESS CLEAR. LICENSEE will permit no chairs, movable seats or other obstructions to be or remain in the entrances, exits, or passageways and will keep same clear at all times. No portion of the sidewalk, entries, passage, vestibules, halls, elevators, or access to public utilities of the Carver shall be obstructed by LICENSEE or used for any purpose other than for Ingress and Egress to and from the LICENSED PREMISES.

#### XI. CANCELLATION BY CITY; IMPOSSIBILITY OF PERFORMANCE

- 11.1 Violation by LICENSEE of any covenant, agreement or condition contained herein shall be cause for termination hereof by CITY. In such a case, LICENSEE shall, upon written notice from CITY, have ten days or until the Term of this LICENSE commences, whichever is less, to cure the violation or this LICENSE may be terminated by CITY. If the violation occurs during the term of this LICENSE, LICENSEE must cure the violation immediately or this LICENSE may be terminated by CITY. Should this LICENSE be terminated by CITY pursuant to this Section, LICENSEE forfeits any payment already made and is entitled to a refund only if the canceled space is re-booked to another party. In addition, CITY may likewise terminate this LICENSE if LICENSEE should, prior to the date of occupancy thereunder, violate any covenant, agreement, or condition in any other agreement which the LICENSEE might have for use of the Carver or should a court having jurisdiction over LICENSEE take its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act. Written notice of such cancellation will be given to LICENSEE by DIRECTOR or his/her designee. LICENSEE waives any and all claims for damages against CITY resulting from such cancellation.
- 11.2 IMPOSSIBILITY OF PERFORMANCE. If the (a) Carver or any portion thereof should be destroyed or damaged by fire or other calamity so as to prevent the use of the LICENSED PREMISES for the purposes and during the periods specified in this LICENSE, or (b) if the use of the LICENSED PREMISES by LICENSEE shall be prevented by an act of God, strike, lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of CITY, then this LICENSE shall terminate. CITY shall not be liable or responsible to LICENSEE for any damages caused thereby and LICENSEE hereby waives any claim against CITY for damages by reason of such termination, except that any unearned portion of the rent due thereunder shall abate, or, if previously paid, shall be refunded by CITY to LICENSEE.

## XII. MISCELLANEOUS

- 12.1 LICENSEE'S REPRESENTATIVE. A representative of LICENSEE approved by Director or his or her designee shall remain on the LICENSED PREMISES during the term hereof and until performers and the public have left the premises.
- 12.2 RELEASE OF SPACE. Should LICENSEE release all or any portion of the LICENSED PREMISES described herein, LICENSEE will forfeit all payment made on the released space, unless the released space is re-booked to another party. LICENSEE understands that CITY is under no obligation to re-book the LICENSED PREMISES for the account of LICENSEE.
- 12.3 RELOCATION. CITY reserves the right to relocate LICENSEE to an alternate space within the Carver which is suitable for the use of LICENSEE should such relocation become necessary. In the event of such relocation, this LICENSE shall continue in full force and effect with the new location substituted for the old location. CITY shall use its best efforts to avoid any unnecessary inconvenience to LICENSEE.
- 12.4 COMPLIANCE WITH LAW. LICENSEE shall not do, nor suffer to be done, anything on the LICENSED PREMISES, during the term of this LICENSE, in violation of the laws of the United States, the State of Texas, or any of the ordinances of CITY applicable to persons operating a temporary or transient business for selling and delivering goods, wares or merchandise in CITY, and issued through the office of the City Treasurer. Further, LICENSEE shall obey all rules and regulations of CITY for the government and management of the Carver, together with all rules and requirements of the police and fire departments of CITY, including but not limited to the Facilities Use Policies and Fees for the Carver which are attached hereto and incorporated herein for all purposes as Exhibit I. LICENSEE agrees that every employee, agent or invitee connected with the purpose for which the premises are licensed shall abide by, conform to and comply with all and any such rules, laws, and ordinances. If the attention of said LICENSEE is called to such violations, LICENSEE will immediately desist from and correct such violations.
- 12.5 TAX. If actual sales are made on the LICENSED PREMISES, LICENSEE must inform each seller of the applicable sales tax. This rate is subject to change and LICENSEE must check with the Local State Comptroller's Office (1(800) 252-8880) prior to the term of this LICENSE to ascertain the current rate. Additionally, LICENSEE is responsible for ensuring that each seller possesses a sales permit number prior to the start of the term of this LICENSE.
- 12.6 VENUE. This LICENSE will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this LICENSE shall be in Bexar County, Texas. This LICENSE is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

- 12.7 ATTORNEY'S FEES. If CITY is required to file suit to collect any amount owed it under this LICENSE for LICENSEE'S use of the LICENSED PREMISES, CITY shall be entitled to collect reasonable attorney's fees.
- 12.8 NON-DISCRIMINATION. LICENSEE agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 12.9 CITY shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition, or entertainment given or held on the LICENSED PREMISES. LICENSEE agrees to hold CITY harmless for dispensing of said articles not claimed within 24 hours after the end of the Event.
- 12.10 NON-WAIVER. No waiver by CITY of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.
- 12.11 SEVERABILITY. In case any one or more of the provisions contained in this LICENSE shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this LICENSE shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 12.12 NOTICES. Any notices required or appropriate under this LICENSE shall be given in writing to LICENSEE at the address shown below, and to City, c/o Carver Community Cultural Center, 226 N. Hackberry, San Antonio, TX 78202-2853.
- 12.13 HEADINGS. The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this LICENSE.
- 12.14 PERSONAL LICENSE. This LICENSE is personal to LICENSEE. It is nonassignable and any attempt to assign this LICENSE will terminate all rights and privileges herein granted.
- 12.15 ENTIRE AGREEMENT. This LICENSE contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this LICENSE, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written or contained in The Carver Community Cultural Center Facilities Use Policies and Fees, which are attached hereto and incorporated herein as Attachment I for all purposes.

12.16 RECYCLING. The CITY encourages recycling and promotes a program towards that effort. LICENSEE is therefore encouraged to utilize the CITY's recycling services and receptacles to recycle office paper, aluminum cans, plastic, glass, cardboard, polyurethane foam, scrap metal, and pallets.

12.17 AUTHORITY. The signer of this LICENSE for LICENSEE hereby represents that he or she has full authority to execute this LICENSE on behalf of LICENSEE.

CITY OF SAN ANTONIO

BY: \_\_\_\_\_

Director, \_\_\_\_\_

Or Designee

LICENSEE

BY: \_\_\_\_\_

Authorized Agent

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXECUTED THIS DAY: \_\_\_\_\_

EXECUTED THIS DAY: \_\_\_\_\_

Attachment I – Facilities Use Policies and Fees



Client: \_\_\_\_\_

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

**CARVER COMMUNITY CULTURAL CENTER****FEE TABLE - FY 2016-2017**

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
<b>LICENSE (IN ACCORDANCE WITH BUSINESS CLASSIFICATIONS BELOW)</b>			
<u><i>Class I - Non-Profit Organization</i></u> (Non-Profit Organization is defined as an organization that is not intending to make a financial or monetary gain from the use of capital in a transaction or series of transactions. Examples: Includes IRS 501(c) 3 organization, Social, Civic, Neighborhood Association, government or Church sponsored events.)	Jo Long - \$200 for the 1 <sup>st</sup> 4 hrs., \$100 for subsequent 4 hrs.  Little Carver - \$100 for the 1 <sup>st</sup> 4 hrs., \$50 for subsequent 4 hrs.		
<u><i>Class II - Non-Profit Organization</i></u> that is charging for admission, collecting donations, or conducting other fundraising as part of the event.	Jo Long - \$350 for the 1 <sup>st</sup> 4 hrs., \$200 for subsequent 4 hrs.  Little Carver \$200 for the 1 <sup>st</sup> 4 hrs., \$100 for subsequent 4 hrs.		
<u><i>Class III - For Profit Organization or Individual (For Profit) Organization</i></u> is defined as benefiting, advancing, making a financial or monetary gain from the use of capital in a transaction or series of transaction)	Jo Long - \$350 for the 1 <sup>st</sup> 4 hrs., \$200 for subsequent 4 hrs.  Little Carver-\$200 for the 1 <sup>st</sup> 4 hrs., \$100 for subsequent 4 hrs.		
<u><i>Class IV - City of San Antonio Depts. Sponsored Events</i></u> Mon. through Fri. – 7:45 a.m. to 4:30 p.m. excluding Holidays (Requires the signature of the Director of the Convention Sports Facilities Department.)	No Charge		
<b>LICENSE FEE FOR HOLDOVER OR LATE BOOKING</b>			
Fee for events beyond 12:00 midnight (must be approved by the Director of the Convention Sports Facilities Department or Carver representative.)	\$50 per half hour		
Fee for events vacating venue after their contract agreement time frame (1-60 minutes and every hour thereafter)	\$100		
<b>REHEARSAL</b>			



Client: \_\_\_\_\_

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

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
1 <sup>st</sup> rehearsal day Mon – Fri during the hours of 7:45 a.m. to 4:30 p.m. (Limited to 4 hours)	No rental charge- limited to 1-4hour block of the contractual period; tech fees apply		
After 4:30 p.m. Mon – Fri or anytime on a weekend day	\$100 per 4 hour period- limited to 1-4hour block of the contractual period; tech fees apply		
Additional rehearsals	License rates will apply for any additional rehearsal dates.		

SECURITY DEPOSIT			
For use of the Jo Long Theatre or the Little Carver Civic Center	\$200		
BOX OFFICE			
Fee for staffing the Box Office	\$50 per performance		
SECURITY PERSONNEL			
Required – Number of security personnel determined by Carver staff	Will vary Fees Payable to Security Officers Security must arrive 1 hr. prior to event; remain at event & depart 1 hr. after event		
TECHNICAL FEES			
(All technical fees are subject to change in accordance with the International Alliance Theatrical Stage Employee regulations.)			
Weekday (Monday – Friday, 8:00 a.m. to 500 p.m.)	Technicians - \$20 per hr. up to 8 hrs., with a minimum charge for 4 hrs.		
Weekends and Holidays	\$26 per hr. up to 8 hrs., with a minimum charge for 4 hrs.		
Weekends, Holidays and Weekdays after 5:00 p.m.	After 5:00 p.m. on the same day and up to 12 hrs. - \$26 per hr.  Over 12 hrs. on the same day - \$35 per hr.  Between the hrs. of midnight and 7 a.m. - \$35 per hr.		
EQUIPMENT (NON-TECHNICAL)			
Marley Dance Floor	\$60 per day – off premises rental  \$60 per Event – use at Carver		
Drum Kit	\$100 per day		
Risers	\$10 each per day		



Client: \_\_\_\_\_

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

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
Piano (9 ft. K. Kawai) (available only at the Jo Long Theatre)	\$100 per day; tuning costs not included		
Upright piano	\$75 per day; tuning costs not included		
Tables (8 ft. long, 6 ft. long, 8 ft. round)	\$0 - up to 3 tables; \$10 each – exceeding 3		
LCD Projector	\$125 per event - large –Jo Long Theatre \$50 per event – small – Little Carver		
Microphones	\$10 each per event / rehearsal		
Follow Spot (does not include spot light operator)	\$50 each per day		

CUSTODIAL / CLEAN UP			
Jo Long Theatre	\$150.00 – dressing rooms \$100.00 – no dressing rooms		
Little Carver Civic Center	\$100.00 – dressing rooms \$50.00 – no dressing rooms		
If Licensee serves food / concessions	Additional \$100.00		
INSURANCE			
Tenant User Liability Insurance	Required by contract; obtain coverage at <a href="http://www.ebi-ins.com/e/tulip/">www.ebi-ins.com/e/tulip/</a> ID Code:3848-011		
TOTAL FEE \$ _____			

APPROVED:

\_\_\_\_\_  
LICENSEE'S SIGNATURE\_\_\_\_\_  
DATE





## CARVER COMMUNITY CULTURAL CENTER FACILITIES USE POLICIES AND FEES 2016-2017

For purposes of these Facilities Use Policies and Fees, the terms “Carver Community Cultural Center” and “Carver” mean one or both of the buildings located at 226 N. Hackberry and a building located at 226 N. Hackberry, Building No. 6, known as the Little Carver Civic Center.

### *I. GENERAL*

1. The Director of the Managing City Department or his/her representative shall have the option to refuse to enter into a License with anyone who, under prior license agreements, had not fulfilled the terms and provisions of such agreements or with anyone for a production that is inconsistent with or counter to the mission of the Carver. The mission statement is to “celebrate the diverse cultures of our world, nation and community, with emphasis on its African American heritage, by providing challenging artistic presentations, community outreach activities and educational programs.” The determination as to whether an activity is consistent with the mission of the Carver is at the sole discretion of the City.
2. An individual or organization that rents the Carver (“Licensee”) shall comply with all City of San Antonio Ordinances and all other local, state, and federal laws.
3. Smoking is prohibited in all Carver facilities.
4. The Carver Facilities Use Policies is subject to change with the approval of the Director of the Convention & Sports Facilities (CSF).
5. The Director of CSF or his or her designee may establish fees and charges for production rentals and services not specifically covered in this document when it is determined to be in the best interest of the City.
6. The Director of, CSF, or designee may lower or waive fees and charges for production rentals when it is determined to be in the best interest of the community.
7. Licensee agrees that the presence of Carver staff is mandatory at all times, including, but not limited to, move-ins and move-outs, rehearsals, technical set ups, rigging and the operations of in-house equipment, under the terms of the Short Term License Agreement (“License”) and these policies.

\_\_\_\_\_ **INITIAL**

### *II. RESERVATIONS and BOOKING*

1. The Carver is available for rent daily beginning at 7:45 a.m. and ending 12:00 midnight when space is not being used for City-sponsored programs at the Carver.
2. The Carver’s Booking and Services Coordinator is responsible for all reservations and contracting of events. Reservations must be made through the Carver at 226 North Hackberry, or by calling 207-7215 Monday through Friday, during regular office hours (7:45

a.m. to 4:30 p.m.), excluding holidays.

3. Reservations are taken on a first-come, first-served basis, provided an application form has been filed with the Booking and Services Coordinator. However, priority consideration will be given to activities most consistent with the mission statement of the Carver.
4. The Carver will hold a reservation / booking for up to five (5) business days (the “hold period”). All reservations / bookings will be considered “Tentative” until the individual or organization submits an executed License (i.e., the Short Term License Agreement), a copy of Licensee’s Certificate of Insurance and any other permits or licenses (e.g., food, beverage, alcohol) and pays applicable fees to the Booking and Services Coordinator. Upon submission of all necessary documents and associated fees, the booking will be considered “Confirmed.” If, within the five (5) day hold period, another individual or organization submits all necessary documents and associated fees during those five (5) days for the date being held, the hold will terminate.
5. Additionally, individuals and organizations that wish to book the Carver for events or activities (hereinafter collectively referred to as an “Activity” and “Activities,” as applicable) shall be subject to the Tier System rules as set forth below.
  - a. A proposed Activity shall be classified as a Tier 1\* or Tier 2\*\* Activity for the purposes of determining the length of a single booking and the number of bookings that may be made in a six month period.\*\*\* The classification of a proposed Activity as either Tier 1 or Tier 2 shall be within the sole discretion of the Carver’s Booking and Services Coordinator. The Carver reserves the right to re-classify an Activity following commencement or completion of the Activity if it is later determined that the purpose of the Activity was other than that which was contemplated or represented at the time of the booking.
  - b. An individual or organization shall book one or more Tier 1 Activities in accordance with the following rules:
    - i. A single booking may not exceed fourteen (14) consecutive days.
    - ii. The total number of days booked by an individual or organization shall not exceed twenty-eight (28) days per six month period.\*\*\*
  - c. An individual or organization shall book one or more Tier 2 Activities in accordance with the following rules:
    - i. A single booking may not exceed six (6) consecutive days.
    - ii. The total number of days booked by an individual or organization shall not exceed six (6) days per six-month period.\*\*\*

\* Tier 1 Activities: “Tier 1 Activities” are defined as those Activities that are most consistent with the Carver’s mission as set forth herein. They include, but are not limited to: (i) artistic performances, such as dance, vocal, musical presentations and visual arts; (ii) art instruction; (iii) recitals; (iv) talent shows; and (v) theatrical performances.

\*\* Tier 2 Activities: “Tier 2 Activities” are defined as all Activities other than those that may be classified as Tier 1 Activities. They include, but are not limited to: (i) dinners; (ii) award ceremonies; (iii) lectures; (iv) trainings; (v) meetings; (vi) fundraisers; and (vii) other community activities.

\*\*\* A six-month period is that period beginning on October 1<sup>st</sup> and ending on March 31<sup>st</sup> or that six-month period beginning on April 1<sup>st</sup> and ending on September 30<sup>th</sup> during the City of San Antonio's Fiscal Year.

6. If Licensee cancels an Event date within one week of the Event, the City will consider Licensee's request for an alternate date; however, the City reserves the right to deny Licensee's request based upon the availability of the specific Carver venue, the necessary equipment and Carver staff. If the parties are unable to agree upon an alternate date, Licensee shall forfeit any pre-paid rental fees.
7. No changes will be made to the Short Term License Agreement within 10 business days of the event commencement date.

\_\_\_\_\_ **INITIAL**

### *III. LICENSE FEES AND SECURITY DEPOSIT*

1. The license fee is a fee for the use of the Carver. The license fee is non-refundable. Licensee agrees to pay the daily license rates as applicable to its respective **BUSINESS CLASSIFICATION** for use of space at the Carver. See "License" fees category in attached Fee Table for specific fees.
2. The license fee and all other fees associated with Licensee's use of the Carver are due upon execution and submission of the Short Term License Agreement to the City, but by no later than 10 business days of the event commencement date set forth in the license agreement. Any fees due in connection with costs that are unforeseen at the time the license agreement is submitted, or owed pursuant to any provision herein, including any balance owed by Licensee, are due to the City on the first day of Licensee's Event, payable by cash, money order, cashier's check, credit card payments are also available; service fees apply.
3. License fees do not include the cost of special requirements such as House Manager, lighting, sound, ushers, ticket seller, ticket takers, box office, stagehands, spotlight operators, permit fees, etc. See "Technician Fees" category in attached Fee Table for specific fees.
4. Rehearsals must be scheduled in advance with the Booking and Services Coordinator. Licensee will receive one free rehearsal day Mon – Fri during the hours of 7:45 a.m. to 4:30 p.m. (limited to 4 hours). After 4:30 p.m. Mon – Fri or anytime on a weekend day, one rehearsal will be charged at a rate of \$100 per 4 hour period. License rates will apply for any additional rehearsal dates. If Licensee requires a technician for rehearsal days, Licensee agrees to pay Technician Fees.
5. A fee of \$100 will be charged for exceeding the rental time indicated in the Short Term License Agreement to include load-in and load-out of all materials associated with the event.
6. A standard \$200 security deposit is required for the Jo Long Theatre and the Little Carver Civic Center for each use. This deposit is designed to protect both facilities in the event there is any damage to the equipment and/or facility. This deposit will be returned to the Licensee under certain circumstances as described in the License.

\_\_\_\_\_ **INITIAL**

#### IV. TICKETS AND FUNDRAISING

1. Licensee may sell tickets on the day of the event at the Carver. Tickets cannot be sold in excess of posted seating capacity (650 for Jo Long Theatre and 150 for the Little Carver). In no instance shall attendance to a meeting, dinner, concert, entertainment, exhibition or other event be in excess of the designated area capacity as determined by the City's Fire Marshall. Licensee agrees to pay any fee that might be assessed by the Fire Department as a result of violating this provision.
2. Licensee is responsible for the charge of an additional \$1 theatre preservation fee on every ticket sold, admission paid or donation given to an Event.
3. In order for Carver staff to sell tickets on behalf of Licensee days prior or on the day of the performance, a box office fee of \$50 for each performance is required.
4. Licensee is required to provide at least two of its own ushers to monitor admittance. Licensee is encouraged to use reserved seating when tickets are sold to the public.
5. If Licensee plans to approach local businesses, corporations or foundations to obtain support for its event, Licensee agrees to comply with the following guidelines in connection with advertising, ticket selling and fundraising:
  - Clearly state that Licensee is holding a community event at the Carver.
  - State that this event is not part of the Carver's regular season and is not sponsored by the Carver, Carver Development Board or the City of San Antonio.
  - Specify that support for the event will underwrite Licensee's production, not the Carver.
  - Licensee agrees that any and all advertising for Licensee's event, both in print and in electronic media, shall contain the following disclaimer: ***"This production is not a presentation of the Carver Community Cultural Center or the Carver Development Board."***
  - Licensee agrees that any and all advertising for Licensee's event, both in print and in electronic media, shall contain the following notice: ***"Tickets are available through Ticketmaster, Ticketmaster.com, the Alamodome and at the Carver Community Cultural Center Box Office."***
6. Licensee agrees that the City may terminate the License and cancel Licensee's Event if Licensee fails to comply with the guidelines related advertising, ticket selling and fundraising.

\_\_\_\_\_ **INITIAL**

#### V. USE OF FOOD AND CONCESSIONS

1. The City \_\_\_\_\_ will / \_\_\_\_\_ will not provide concessions. \_\_\_\_\_ **INITIAL**
2. Licensee \_\_\_\_\_ is / \_\_\_\_\_ is not authorized to provide food or beverages available to the public. \_\_\_\_\_ **INITIAL**
3. If Licensee is providing food or beverages to the public, Licensee agrees to secure a temporary food permit by calling the City's Food Sanitation Division at 207-8853 at least one week prior to event date. If Licensee is providing alcoholic beverages to the public,

Licensee agrees to secure a license from the Texas Alcoholic Beverage Commission (TABC) at least one week prior to event date. Licensee agrees to provide a copy of said permit or license to the Booking and Services Coordinator at least one week prior to the event. Licensee agrees to utilize only sellers/server who are certified by the TABC. The City reserves the right to prohibit the provision of food, non-alcoholic or alcoholic beverages if Licensee fails to provide evidence that Licensee has secured the necessary permit or license to the City prior to the event.

4. If Licensee provides food or beverages, Licensee agrees to provide its own ushers to monitor use of food or beverages in the theatre and agrees only to set up food service in the lobby or approved areas of theatre.
5. The Licensee agrees to rent the number of tables necessary for concessions or other use at a fee of \$10.00 per table per event. Licensee must provide coverings for all tables used. See "Equipment" fees category in attached Fee Table for specific fees.
6. Licensee will be assessed an additional cleaning fee when Licensee provides food in the building. See "Custodial / Cleanup" fees category in attached Fee Table for specific fees. Notwithstanding the assessment of custodial / cleanup fees, Licensee agrees to remove trash, including, but not limited to, disposable paper products and food from the premises, lawn and adjacent areas, including neighbor's yards before leaving the Carver and parking lot.

\_\_\_\_\_ **INITIAL**

#### *VI. SECURITY AND ADULT SUPERVISION*

1. In accordance with Section 5.3 of the Short Term License Agreement, the City requires that adequate security be present as required per Licensee's Event. Licensee shall make security arrangements and pay for the provision of adequate security that may be necessary during the Term. Security payments should not be made payable to the City of San Antonio or the Carver Community Cultural Center. All payments must be made directly to the security company hired to work the event.. The City shall determine, within its sole and absolute discretion, the number of security personnel that may be necessary for Licensee's Event depending on the anticipated number of attendees and invited guests and the nature of the Event.
2. Licensee agrees to provide adequate adult supervision for all activities involving minors. Adequate adult supervision is defined as a ratio of at least one adult for every 25 minors.

\_\_\_\_\_ **INITIAL**

3. Please note that on January 1, 2016 new legislation in the State of Texas allowing for the open carry of handguns on public property by licensed handgun owners became effective. The Carver Community Cultural Center is a public facility and the City of San Antonio complies with State law. To discuss security options regarding your licensed space, contact our booking or event management staff.

\_\_\_\_\_ **INITIAL**

#### *VII. STORAGE OF PROPERTY*

1. Equipment and accessories owned by the Licensee may be kept at the Carver from the time that Licensee loads it in (i.e., time of Ingress) to the expiration of the Term. The City of San Antonio is not liable and the Licensee releases the City from liability for theft, loss or destruction associated with such items.

2. Licensee's property left at the Carver beyond the expiration of the term of the License will be disposed of in accordance with the terms of the License unless special arrangements are made with Carver management for temporary storage pending pick up.

\_\_\_\_\_ **INITIAL**

#### **VIII. INSURANCE**

Licensee agrees that within (30) days prior to the event, Licensee will provide evidence of General Commercial Liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. If using an existing Commercial General Liability policy, the certificate must list City of San Antonio as the certificate holder, and the City must be named as an additional insured, by endorsement. Coverage may also be obtained online by using the City's Tenant/User Liability Insurance Program (TULIP) to purchase the required coverage [www.ebi-ins/e/tulip](http://www.ebi-ins/e/tulip), and used I.D. Venue code 3848-011. Other online sources are [www.theeventhelper.com](http://www.theeventhelper.com) & [www.wedsafe.com](http://www.wedsafe.com). Licensee must provide copies of the insurance certificate and endorsement to their facility contact.

\_\_\_\_\_ **INITIAL**

#### **IX. TECHNICIAN FEES**

1. Licensee's use of technical equipment is subject to availability. Technical equipment shall be operated by Carver staff and includes light control board, follow spots, sound control and effects boards, the fly systems, moving curtains and replay system equipment. Licensee agrees to pay a maintenance fee of \$10 for the use of microphones and \$50 per follow spot utilized per event/day.
2. Licensee agrees to pay for the services of technicians in accordance with the "Technician Fees" category in the attached Fee Table which includes labor required to set-up, operate and strike depending on the number of technicians needed and the time during which they are needed.
3. Licensee is responsible for arranging the services of a Carver technician during working hours, nights, weekends, and holidays by contacting the Carver staff at (210) 207-2250.

\_\_\_\_\_ **INITIAL**

#### **X. EQUIPMENT**

1. Licensee may request the use of available (non-technical) equipment for its Event upon payment of applicable fees. See "Equipment" fee category in attached Fee Table for specific fees. The Carver staff shall demonstrate that the equipment is operable before releasing to Licensee and will require LICENSEE to demonstrate that it is operable after Licensee's use. Licensee shall comply with the policy and checkout procedures regarding use of any especially sensitive or exceptional items of equipment as set by Carver personnel.
2. Licensee agrees that equipment shall not be removed from the premises, unless Licensee is renting the Marley Dance Floor for use off premises.

\_\_\_\_\_ **INITIAL**

#### **XI. CUSTODIAL / CLEAN UP**

Custodial services are available during normal business hours, Monday – Friday, 7:45 a.m. to 4:30 p.m. at no charge to LICENSEE. In the event that custodial services are required due to the serving of food or beverages or after business hours, Licensee agrees to pay applicable custodial / clean up fees. See "Custodial / Clean Up" category in attached Fee Table for specific fees.

\_\_\_\_\_ **INITIAL**

## CARVER ORGANIZATIONAL SUPPORT 2017

October 1, 2016 - September 30, 2017

**Revenues****Internal Order 280000000005**

4502220 Contr Priv Restrict	51,000
6101100 Interfund Transfers In - Hotel/Motel Tax	327,627
6101100 Interfund Transfers In Trust Fund	88,407

**Total Revenues****Budget****467,034****Appropriations****Organizational Support 2015**

5101010 Regular Salaries	279,303
5101020 Overtime Salaries	4,317
5101040 Shift Differential	0
5101050 Language Skill Pay	0
5101090 Holiday Hourly Sal	0
5103005 FICA & Medicare Expense	21,292
5103010 Life Insurance	260
5105010 Retirement Exp	29,191
5170040 Civln Actv Healthcr	48,834
5170100 Retiree Health Asses	6,270
5181020 Reserve Perf Pay	2,629
5181025 Reserve COLA	3,280
5201040 Fees to Prof Contr.	63,503
5207010 Travel- Official	6,808
5405020 Workers Comp Assess	71
5501001 PC Replacement	1,296

**467,054**

CARVER CULTURAL CENTER  
 ORGANIZATIONAL SUPPORT 2017  
 October 1, 2016 - September 30, 2017  
 Personnel Complement

**Organizational Support 2017**

<b>Positions</b>	<b>Current No. of Positions</b>	<b>Add/Delete</b>	<b>Revised No. of Positions</b>
80-0040-ADMINISTRATIVE ASSISTANT I	1	0	1
80-0041-ADMINISTRATIVE ASSISTANT II	1	0	1
80-0078-BOOKING & SERVICES COORDINATOR	1	0	1
80-0655-AUDIO/VIDEO PRODUCTION COORDINATOR	1	0	1
80-0844-GRANTS MANAGEMENT OFFICER	1	0	1
80-2092-EDUCATION COORDINATOR	1	0	1
80-0077-EVENT SVCS COORDINATOR (part-time)	1	0	1
<b>Organizational Support 2016</b>	<b>7</b>	<b>0</b>	<b>7</b>



# Office Lease and Funding Agreement

(Avenida Guadalupe Association)

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## 1. Basic Information, Definitions.

**Effective Date:** The effective date of the Authorizing Ordinance

**Authorizing Ordinance:** 2009-09-10-0712

**Landlord:** City of San Antonio

**Landlord's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Assistant Director, CIMS Real Estate Division)

**Tenant:** Avenida Guadalupe Association, Inc. a Texas non-profit

corporation

**Tenant's Address:** 1313 Guadalupe Street, Suite 100, San Antonio, TX 78207  
c/o President/CEO

**Premises:** Office, retail and residential buildings on the North and South Sides of Guadalupe Avenue and the South side of El Paso Avenue, West of Brazos and East of San Jacinto, as more particularly described on **Exhibit A**, which is incorporated by reference for all purposes

**Permitted Use:** Sublease, maintain, and manage the Premises consistently with the Public Purpose

**Public Purpose:** Maintaining the structures in the Premises, and acting with organizations and businesses promoting and celebrating Hispanic culture to generate and maintain vitality and development in the neighborhood in which the Premises are located.

**Commencement Date:** October 1, 2009

**Initial Term:** 20 years

**Base Rent:** Tenant need pay no money-denominated Base Rent, but it must further the Public Purpose

**Address for Payment of Rent:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Assistant Director, CIMS Real Estate Division)  
(Bexar County, Texas)

**Tenant's FYE:** September 30<sup>th</sup>

## 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 has previously been in possession of the Premises under different leases for different parts of the Premises ("Prior Leases"). This Lease consolidates all parts of the Premises under this Lease and restates the parties' rights and obligations regarding the Premises. This Lease is a novation of the Prior Leases between Landlord and Tenant regarding the Premises or any part of them. A schedule of the Prior Leases is attached hereto and incorporated herein as Exhibit C.

### 3. Rent.

Rent includes all sums due to Landlord under this Lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

### 4. Revenue Waterfall, Budgeting.

4.01. Tenant must pay or retain gross rental revenue according to the following waterfall ("Waterfall"):

- A. Payment of expenses for non-routine emergency repairs prudently required to keep the Premises from deteriorating
- B. Payment of utility expenses for utility service to the Premises, to the extent not paid for by subtenants.
- C. Payment of expenses for routine maintenance of the Premises, determined according to generally accepted accounting principles, consistently applied, but without any component for overhead.
- D. Retention by Tenant of 15% of all revenue generated by the Premises as compensation for Tenant's overhead in fulfilling its obligations under this Lease.
- E. Payment of up to \$150,000 in the first year of the Initial Term and subject to increase over the course of the Initial Term, the exact amount to be set annually by Tenant, subject to Landlord's approval, to support community based programs on the Premises consistent with the Public Purpose.
- F. Payment of all premiums related to insurance required to be maintained for the Premises pursuant to Paragraph 10 of this Lease.
- G. Payment of all remaining funds into a reserve for replacements to maintain, repair, refurbish, and make capital improvements to the Premises according to a schedule set annually by Tenant and approved by Landlord. Tenant shall determine the most appropriate financial instrument for deposit of any sums attributable to the reserves for replacement. If Tenant and Landlord disagree, Landlord's determination controls.

4.02. No item in the Waterfall being eligible for money until all items above it have been satisfied entirely, unless Landlord otherwise consents in writing.

4.03. During a fiscal year, Tenant may tentatively comply with the Waterfall by paying or retaining gross rental revenue according to the budget called for in the next paragraph. But Tenant must adjust payments and retentions quarterly to bring what has been paid or retained into conformity with actual revenues both (A) as to payments and retentions for the remainder of the year and (B) as to payments and retentions earlier in the year incorrectly distributed in light of actual experience. If actual experience shows that revenues were misdistributed during a fiscal year, Landlord may require Tenant to adjust distributions in the following year or years to bring distributions in line with revenues according to the Waterfall.

4.04. On or before September 1, 2009 and not less than 60 days before each succeeding anniversary of the Commencement Date, Tenant must deliver to Landlord the following:

A. Detailed budgets similar in format to that attached hereto and incorporated herein as **Exhibit B**, documenting all sources of revenue, all expenses broken down by program activity and identification of any other relevant financial details related to the operation of Avenida Guadalupe Association.

B. A preventive maintenance plan identifying all building components and their service intervals, including copies of all professional service agreements for vendors retained by Tenant for Premises maintenance. If Tenant uses its employees for these tasks, then as part of the preventive maintenance plan, Tenant must identify what will be maintained by Tenant's employees and document that Tenant's employees are qualified and, if necessary, properly licensed, to do the required preventive maintenance.

C. A 12-month leasing plan (i) identifying portions of the Premises that are currently vacant or scheduled to become vacant during the fiscal year, (ii) identifying time lines and management practices to ensure that all sub-leases are timely renewed, and (iii) setting out a marketing plan to minimize vacancies. Tenant must also develop and deliver to Landlord a standard form lease to be used for all sub-leases of the Premises.

D. A capital improvement investment plan identifying any budgeted capital investment in the Premises over the 12-month fiscal year and also including projections for capital improvements over the next three years.

E. A public use program cataloguing all activities that occurred in the prior 12 months in the public areas of the Premises and a schedule indicating potential program functions that will be occurring in those areas over the course of the



course of the subsequent 12 months. The schedule must include all revenues derived from fees collected as a result of these events, including costs incurred by the Tenant to administer these events. Included in this task is a detailed fee schedule outlining all charges to use the public areas, a marketing plan adequate in scope so that the surrounding neighborhood recognizes the ability to use the public areas for functions, written policies establishing rules for using the public areas, and a standard form license agreement that Tenant will use for all organizations or individuals that will rent or otherwise use the public areas.

## **5. Term, Renewal.**

5.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

5.02. If Tenant is not in default under the Lease, Tenant may renew this Lease for two 5-year terms by giving Landlord six months prior written notice before expiration of the previous term, whether initial or renewal. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew and agreement between Landlord and Tenant on rent for the renewal term.

5.03. Renewal Terms are governed by this Lease just as the Initial Term, including rent.

## **6. Tenant's Affirmative Promises.**

Tenant promises that it will:

6.01. Accept the Premises in their present condition, "AS IS."

6.02. Manage the Premises in a professional manner including maintenance of all facilities so as to maximize the revenue generated from Tenant's subleasing activities.

6.03. Semi-annually, Tenant must deliver to Landlord a tenant-aging report, identifying all tenant's currently subletting portions of the Premises, the amount of rent paid monthly by each subtenant, and any rent past due more than 30 days. The report will be cumulative for Tenant's fiscal year. The report must identify vacant space.

6.04. Within 120 days of the close of Tenant's fiscal year, which currently closes effective September 30<sup>th</sup>, Tenant shall provide Landlord with a detailed financial report in a compilation format as prepared by a Certified Public Accountant confirming the Tenant's complete financial situation for the 12-month period comprising that particular fiscal year. The first such detailed financial report must be delivered to Landlord no later than January 1, 2010. Landlord at its choosing may at any time audit Tenant's complete financial documentation. Tenant must provide staff and any other assistance reasonably required by Landlord in the course of any audit. Landlord shall provide Tenant 30 days prior written notice of its intent to commence an audit.

6.05. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.

6.06. Obtain and pay for all utility services used by the Premises with the exception of specific electrical meters serving the public access portions of the Premises identified as meter numbers:

- |          |   |
|----------|---|
| 4027-857 | serving the Plaza Guadalupe, all associated improvements and the 1313 Guadalupe Street office building. |
| 834-674  | Decorative street lights on El Paso and North side of Guadalupe Street.                                 |
| 733-788  | Decorative street lights on South side of Guadalupe Street.   |

6.07. Allow Landlord to enter the Premises to inspect the Premises and Tenant's operations. Except in case of an emergency situation, Landlord shall first provide Tenant with a written notice not less than 10 days prior to the date of inspection of its intent to inspect the Premises.

6.08. Repair, replace, and maintain all interior and exterior building components including, but not limited to (a) roof, (b) foundation, (c) walls, doors, corridors, and windows, (d) plumbing (including the entire length of the buried sewer lines) (e) HVAC, (f) wiring, and (g) other features, structures, or equipment serving the Premises. Landlord need not repair, replace, or maintain, any portion of the Premises. Tenant is specifically responsible for maintaining and assuring structural soundness of all Buildings in the Premises,

6.09. Maintain all landscaped areas, including maintenance and repair of any sprinkler systems, and keep the Premises is neat and free of debris.

6.10. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.



6.11. Submit in writing to Landlord any request for permission for Tenant to make structural modifications in excess of \$50,000 to any portion of the Premises . In the event Landlord does not approve Tenant's request or indicate in writing a specific objection to Tenant's request, within 30 days of the date of Landlord's receipt of Tenant's request, then the request shall be deemed approved.

6.12. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

6.13. On request, execute an estoppel certificate that states the Commencement Date and Termination Date 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 need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

## **7. Indemnity.**

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

7.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of (A) the condition of the Premises or (B) 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.

7.01.02. "Indemnites" 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.

7.01.03. "Indemnitor" means Tenant.

### **7.02. Indemnitor must indemnify Indemnites, individually and collectively, from all Indemnified Claims.**

7.03. If Indemnitor and one or more Indemnites are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnites from liability arising from the Indemnites' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnites until final adjudication.

**Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnatee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

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

7.05. 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. Whether or not the City of San Antonio is an Indemnatee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

7.06. 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.

7.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnatee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnatee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnatee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnatee must first be approved by City Council.

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

7.09. 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.



## **8. Tenant's Negative Promises.**

Tenant promises that it will not:

- 8.01. Use the Premises for any purpose other than the Permitted Use.
- 8.02. Create a nuisance.
- 8.03. Permit waste.
- 8.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.
- 8.05. Alter the Premises without Landlord's written consent as provided in Paragraph 6.11 herein.
- 8.06. Allow a lien to be placed on the Premises.

## **9. Alterations.**

Physical additions or improvements to the Premises made by Tenant will 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. Provided however, if Tenant obtained Landlord's prior written permission to make the alteration or improvement, then Tenant shall not be obligated to remove the alteration or improvement upon termination of the Lease.

## 10. Insurance.

10.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of all improvements on the Premises
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to	Coverage for replacement cost of

to the property of the Tenant, including Tenant's improvements, improvements and betterments

10.02. Each insurance policy 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 Tenant 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, excepting policies for Workers' Compensation and Employer's Liability, 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 Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

10.03. If Tenant makes leasehold improvements, Tenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide

provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

10.04. Within 30 days before the Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver certificates to Landlord'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 Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

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

10.06. Nothing in this Lease limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

10.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

10.08. Landlord need not insure any portion of the Premises. All risk of loss is allocated to Tenant.

## **11. Release of Claims/Subrogation.**

**The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Tenant releases Landlord from claims arising from injury or loss to Tenant or to third parties to which Tenant is liable, if the injury or loss is covered by insurance Tenant is required by this Lease to maintain, whether or**

not Tenant actually has the insurance (“Covered Claims”). This release is additional to and does not limit any other release contained in this lease. Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require its insurers to waive subrogation for Covered Claims.

## **12. Environmental Matters.**

12.01. “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.

12.02. “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.

12.03. “Release” means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

12.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

12.05. 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.

12.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the



about the Premises.

12.07. Landlord may conduct, at Landlord's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants.

12.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

12.09. Tenant must indemnify Landlord and hold Landlord 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 Tenant's environmental representations, warranties, and covenants..

### **13. Landlord's Municipal Powers.**

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

#### **14. Prohibited Interests in Contracts.**

14.01. 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.

14.02. Tenant warrants and certifies as follows:

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

14.03. Tenant acknowledges that City’s reliance on the above warranties and certifications is reasonable.

#### **15. Casualty/Total or Partial Destruction.**

15.01. If the Premises are damaged by casualty and can be restored within 90 days, Tenant will, at its expense, restore the Premises in their entirety. Restoration must be to substantially the same condition existing before the casualty. If Tenant fails to complete the restoration within 90 days from the date of written notification by Landlord to Tenant of the casualty, Landlord may terminate this Lease by written notice delivered to Tenant before Tenant completes restoration obligations, complete the restoration, and recover the cost of completion from Tenant.

15.02. If the Premises cannot be restored within 90 days, Tenant has an option

option to restore the Premises. If Tenant chooses not to restore, this Lease will terminate and all insurance proceeds to be paid by Tenant's insurance carrier will be paid directly to Landlord.

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

15.04. If part of the Premises amounting to less than two of the buildings within the Premises are destroyed, and if Tenant chooses not to repair the destroyed buildings, the parties may amend this Lease to exclude the destroyed buildings from the Premises (though Tenant may be responsible for maintaining the grounds upon which the destroyed buildings previously existed) and the Lease can otherwise continue. Neither party is obligated to make such agreement.

## **16. Condemnation/Substantial or Partial Taking.**

16.01. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

16.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

16.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

## **17. Holdover.**

If Tenant holds over after termination or expiration of this Lease, it is a Tenant at sufferance under the terms of this Lease.

## **18. Contractual Lien.**

18.01. To secure the payment of any sums due to Landlord under this Lease and the full performance of this Lease by Tenant, specifically including retentions of sub-lease revenue by Tenant greater than that allowed by the Waterfall, Tenant grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds



proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

18.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale, provided, Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (b) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

18.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the

so that the document is in proper form to be filed.

## **19. Default, Remedies for Default.**

19.01. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

19.01.01. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

19.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord, specifically including retentions of sub-lease revenue by Tenant greater than that allowed by the Waterfall, and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

19.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof which date may be extended provided Tenant is diligently pursuing cure of the attachment.

19.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

19.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

19.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

19.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

19.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

19.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

19.02. Remedies Upon Default. Upon the occurrence of any Tenant event of default, provided Landlord has provided timely written notice to Tenant in accordance with Paragraph 25.07 herein, Landlord has the option to pursue anyone or more of the following:

19.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. In that event, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

19.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

19.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

19.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

- (i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,
- (ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord,
- (iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and
- (iv) Tenant must obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

19.03. Repossession and Alteration of Locks. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.



19.04. Effect of Termination. If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination.

19.05. Effect if No Termination. If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

19.06. Liability for Costs Incurred. If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

19.08. **Obligation to Reimburse.** If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

19.09. **Default by Landlord.** If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

19.10. **Payments After Termination.** Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

19.11. **Rights Respecting Personal Property.** If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to

property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

19.12. Delinquent Rents and Other Sums. Any amounts owing hereunder not paid within five days after they are due bear interest at the lesser rate of (i) the maximum nonusurious rate allowed by law or (ii) 18% per annum, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. In addition to the interest due on delinquent rents and other sums hereunder, if Tenant fails to make any payment when due, and such failure to pay continues for a period of five days (without any notice), then Tenant must pay, in addition to the amount due and owing, a late charge of 10% of such amount due and owing. The late payment charge is liquidated damages for Landlord's administrative inconvenience in dealing with late payments. The damages suffered by Landlord in case of a late payment are not capable of being ascertained precisely, but the foregoing charge is a reasonable and good faith estimate by the parties of the extent of the damage, which is reasonably certain to occur. Receipt of the late payment charge does not void the occurrence of an event of default or eliminate any of Landlord's remedies therefor.

19.13. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

## **20. Warranty Disclaimer.**

**20.01.** 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. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

**20.01.** Tenant has been in possession of the Premises for several years under previous leases from Landlord, and Tenant's knowledge of the character and condition of the Premises is superior to the knowledge of Landlord as to such matter. Tenant accepts the Premises in their present condition, as-is.

## **21. Abandoned Property.**

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

## **22. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

## **23. Sublease, Assignment.**

Notwithstanding Tenant's right to sublease portions of the Premises for purposes related to Tenant's ongoing operation of the Premises, Tenant cannot assign or sublease this Lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

## **24. Dispute Resolution.**

**24.01.** 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.

**24.02.** Filing suit on a claim that should be mediated waives the filer's right to



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.

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

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

24.05. 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.

24.06. Mediator fees must be borne equally.

24.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

## **25. Miscellaneous.**

25.01. *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.

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

25.03. *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.

25.04. *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.**

25.05. *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.

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

25.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

25.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

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

25.10. *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.

25.11. *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.

25.12. *Administrative Agreements.* All certificates, memoranda, and modifications of nonmaterial rights and obligations arising under this Lease, including annual Waterfall allocations, may be signed on behalf of Landlord and delivered to Tenant by the Director of Capital Improvements Management Services, without further council action.

25.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states the same number both as a lump sum and as a calculated number (as, e.g., rent per month or costs per square foot), if the lump sum conflicts with the calculated number, the calculated number controls.

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

25.15. *Subordination.* Tenant represents that there are currently no liens or other forms of financial encumbrance against the Premises. Tenant further agrees that this Lease shall not be subject and subordinate to any mortgage, deed of trust, or other lien hereafter placed on any portion of the Premise unless Landlord has previously executed a subordination agreement by and between lender, Tenant and Landlord, which provides, among other things lender's requirement that prior to enforcement of any rights and remedies to collect against Tenant, Landlord shall be notified in writing at least 60 days prior to the date any enforcement action is to take effect and be allowed to cure Tenant's default. Tenant agrees that in the event Landlord chooses to cure Tenant's default to lender, then this Lease shall automatically terminate upon Landlord's payment to lender.

## **26. 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.

## **27. Tenant Funding by Landlord.**

27.01. From time to time, Landlord may give money to Tenant to further the purposes of this Lease ("Program Fund"). Program Funds are strictly for reimbursement of money previously spent by Tenant. All requests for Program Funds must be submitted in writing to the Capital Improvement Management Services Real Estate Division and are subject to the Director or the Director's designees approval before payment.

27.02. Landlord will approve, and Tenant must use, Program Funds only for activities managed by Tenant that, in Landlord's sole discretion, promote the Public Purpose.

27.03. Before asking for Program Funds, Tenant must deliver to Landlord a detailed accounting of the reimbursements requested, specifically identifying any portion of the funds used for salaries or other compensation of Tenant's employees. Tenant must not ask for Program Funds more frequently than quarterly. Except in the first year of this Lease, no specific request for Program Funds may exceed 40% of the entire allocation for a specific year.

27.04. Landlord will give Tenant \$95,000 in Program Funds for the period from the Commencement Date through September 30, 2010. Tenant should not request additional Program Funds during this period. Landlord reserves the right to increase, decrease, or eliminate annual funding as Landlord deems appropriate.

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

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

**Avenida Guadalupe Association, Inc.** a Texas non-profit corporation

Signature: *Peter Zanoni*

Signature: *J. Oscar Ramirez*

Printed Name: Peter Zanoni

Printed Name: J. Oscar Ramirez

Title: Assistant City Manager

Title: Pres/CEO

Date: 10-4-2010

Date: 10/11/10

ATTEST: *Lucia M. [Signature]*

Approved as to Form: *[Signature]*

City Attorney





## **Exhibit A: Legal Description**

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### **1408 El Paso Street**

Being Lot 50, New City Block 2437, Plaza Guadalupe, Unit 4, situated in San Antonio, Bexar County, Texas as recorded in Volume 9516 Page 82 of Bexar County Plat Records.

### **1412 El Paso Street**

Being Lot 49, New City Block 2437, Plaza Guadalupe, Unit 4, situated in San Antonio, Bexar County, Texas as recorded in Volume 9516 Page 82 of Bexar County Plat Records.

### **1426 El Paso Street**

The remaining 43 feet of Arbitrary Lot 1 and the west 43 feet of the North 22.9 feet of Arbitrary Lot 2, Block "D", New City Block 2437.

### **1306/1310 Guadalupe Street:**

Being Lot 43, Block 1, new City Block 2444, Plaza Guadalupe, Unit 7, situated within the Corporate Limits of the City of San Antonio, Bexar County, Texas according to plat thereof recorded in Volume 9522, Page 77, of the Deed and Plat Records of Bexar County, Texas. Subject to Avenida Guadalupe Association, Inc., provision of 10 parking spaces for use by Guadalupe Cultural Art Center as provided in the jointly executed Parking Agreement dated September 23, 1999.

### **1313 Guadalupe Street**

#### **Tract I:**

A 0.515 acre (22,413.2 square feet) tract of land, being a portion of Lot 45, Block "D", New City Block 2437, Guadalupe Plaza, Unit 1, as recorded in Volume 9505, Page 168 of the Bexar County Plat Records, all of Lots 32, 33 and the remaining portion of Elvira Street and the south sixty (60) feet of lots 21 and 22 situated in San Antonio, Bexar County, Texas.

#### **Tract II:**

Being Lot 37 and remainder of lot 38, New City Block 2437, situated in San Antonio, Texas, saved and except the southerly 10.9 feet of Lot 38, New City Block 2437 which is included in a Ground Lease executed on September, 1999 between the City of San Antonio as Landlord and Guadalupe Cultural Arts Center as Tenant, and is also subject to a Parking Agreement dated September 23, 1999 between Guadalupe Cultural Arts Center and Avenida Guadalupe Association, Inc. pce

#### **Tract III:**

A 0.515 acre (6,548.4 square feet) tract of land being a portion of Lot 45, Block "D", New City Block 2437, Guadalupe Unit A, situated in San Antonio, Texas as recorded in Volume 9506 Page 168 of Bexar County Plat Records.

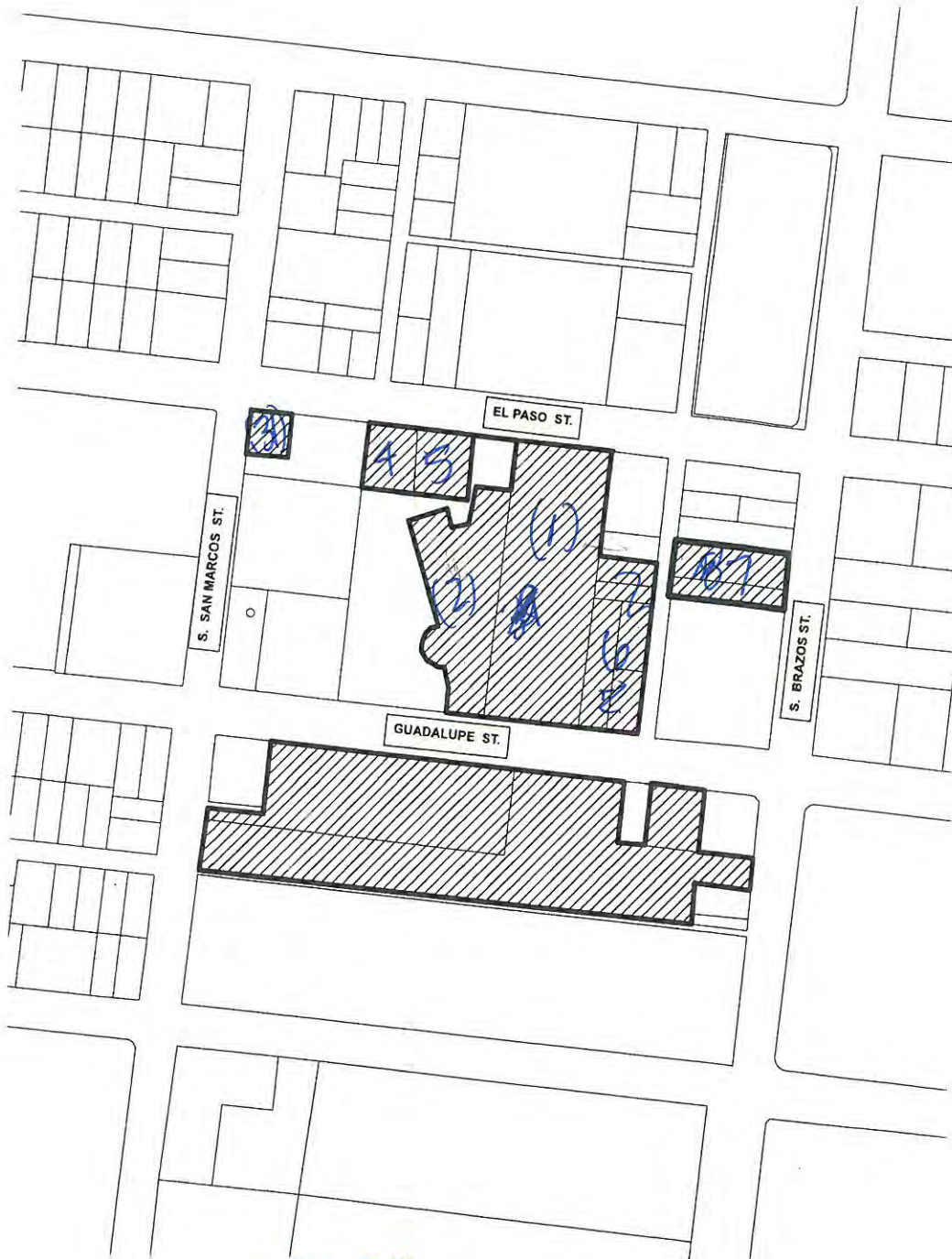
**1320 Guadalupe Street (White Star Rest.)**

A 0.0306 acre (1,333 square feet) tract of Land in Lot 41, Block 1, New City Block 2444, Plaza Guadalupe Unit 6, as recorded in Volume 9518, Page 111 of the Plat Records of Bexar County, Texas.

**1410 Guadalupe Street**

A 2.0101 acre (87,559 square feet) tract of land in New City Block 2444, being a portion of Lot 41, Block 1, New City block 2444, Plaza Guadalupe Unit 6, as recorded in Volume 9518, Page 111 of the Plat records of Bexar

Map of the above described area follows:



(7) 6,300

(1) 39,900

(2) 20,000

(3) 2,365

(4) 5,070

(5) 4,680

(6) 11,701

Page 31 of 34 Pages

90,016 \* 2.06  
83,716 = 1.92 Acres

## Exhibit B: Form of Annual Budget

The following is a general outline for recapping revenue and expenses related to Tenant's operation of the Premises. This breakdown is provided as an example though the actual submitted budget should provide sufficient detail so that the reviewer can reasonably determine where revenue is derived and where it is spent.

### Revenue:

- |    |  |        |
|----|--|--------|
| 1. | Break Down by Individual Building          |        |
| 2. | Other Revenue Sources by Individual Source |        |
|    | Total Revenue                              | \$0.00 |

### Expenses

- |    |   |        |
|----|---|--------|
| 1. | Capital Expenses detailed by individual building  |        |
| 2. | Repairs/ Maintenance detailed by individual building  |        |
| 3. | Other costs related to operations of the Premises including but not limited to utilities, insurance and other obligations |        |
| 4. | Salaries broken down by category attributable to the operation of the Premise   |        |
| 5. | Management Fee  |        |
| 6. | Any other operational expense   |        |
|    | Total Expenses  | \$0.00 |
|    | Net Profit or (Loss)  | \$0.00 |

Amount deposited into a Reserve for Replacement Account	\$0.00
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### Exhibit C: Schedule of Prior Leases

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1408 El Paso Street	Ordinance 8559 adopted February 6, 1997 authorizing the lease for a 15 year term commencing February 1, 1997 the property commonly known as the Artist Studio House.1412 El Paso Street
1412 El Paso Street	Ordinance 8559 adopted February 6, 1997 authorizing the lease for a 15 year term commencing February 1, 1997 the property commonly known as the Artist Studio House.
1426 El Paso Street	Ordinance 8559 adopted February 6, 1997 authorizing the lease for a 15 year term commencing February 1, 1997 the property commonly known as the Artist Studio House.
1306 Guadalupe Street	Ordinance 8559 adopted February 6, 1997 authorizing the lease for a 15 year term commencing February 1, 1997 the property commonly known as the El Progreso Theater Building.
1313 Guadalupe Street	Ordinance 93948 adopted May 17, 2001 authorizing a ground lease agreement for a period of 25 years commencing May 30, 2001 for property that was developed as the Las Oficinas office building
1410 Guadalupe Street	Ordinance 71343 adopted April 5, 1990 authorizing a lease for a period of 55 years commencing April 6, 1990 for a lease agreement for the property commonly known as the El Parian retail building
1320 Guadalupe Street	Ordinance 72542 adopted November 1, 1990 authorizing the lease for a five year term commencing November 1, 1990 for the property commonly known as the White Star Building.

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Plaza Guadalupe

Ordinance 62174 adopted January 16, 1986 authorizing a management and maintenance agreement for a term that expired September 30, 1986 for the funding of management and maintenance of the plaza area on behalf of the City.