

AN ORDINANCE 2017-10-05-0748

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF A SEVEN YEAR LEASE AGREEMENT WITH THE PORT AUTHORITY OF SAN ANTONIO FOR 18,367 SQUARE FEET OF OFFICE AND WAREHOUSE SPACE LOCATED AT 602 DUNTON STREET FOR USE BY THE SAN ANTONIO FIRE DEPARTMENT TECH SERVICES DIVISION, LOCATED IN COUNCIL DISTRICT 5.**

\* \* \* \* \*

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

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

**SECTION 2.** Funding for this ordinance in the amount of \$222,975.38 is contingent upon approval of the Fiscal Year 2018 Budget, for Fund 11001000, Cost Center 2015030001 and General Ledger 5206010.

**SECTION 3.** If approved by City Council, payment not to exceed the budgeted amount should be encumbered with a purchase order.

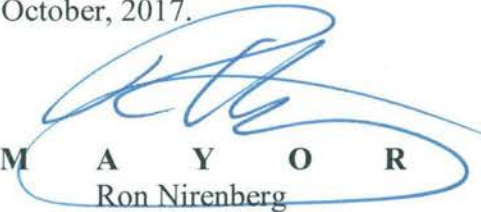
**SECTION 4.** Future funding through the term of the contract is contingent upon City Council approval of the City's operating budget and the availability of funds for subsequent Fiscal Years.

Term	Monthly Rent	Annual Rent
FY 2019/ Year 2	\$19,138.72	\$229,664.64
FY 2020/ Year 3	\$19,712.88	\$236,554.58
FY 2021/ Year 4	\$20,304.27	\$243,651.22
FY 2022/ Year 5	\$20,913.40	\$250,960.75
FY 2023/ Year 6	\$21,540.80	\$258,489.58
FY 2024/ Year 7	\$22,187.02	\$266,244.26

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 5<sup>th</sup> day of October, 2017.

  
**M A Y O R**  
Ron Nirenberg

**Attest:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**Approved As To Form:**

  
\_\_\_\_\_  
For Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>8 ( in consent vote: 5, 6A, 6B, 6C, 7, 8, 9, 10, 11A, 11B, 12, 14, 16, 17, 19, 21, 22, 23, 24A, 24B )</b>						
<b>Date:</b>	10/05/2017						
<b>Time:</b>	10:42:24 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the negotiation and execution a seven year Lease Agreement with the Port Authority of San Antonio for 18,367 square feet of office and warehouse space located at 602 Dunton Street for use by the San Antonio Fire Department Tech Services Division, located in Council District 5. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10	x					

JH  
10/05/2017  
Item No. 8

# Attachment I

**LEASE AGREEMENT**

**Between**

**PORT AUTHORITY OF SAN ANTONIO**

**Landlord**

**and**

**CITY OF SAN ANTONIO**

**Tenant**

**in**

**Building No. 3761**

**located at**

**602 Dunton  
Port San Antonio  
San Antonio, Texas**



**APPENDIX 1**

**BASIC TERMS**

**Lease Date:** October \_\_\_\_, 2017

**Tenant:** CITY OF SAN ANTONIO

**Address of Tenant:** P.O. Box 839966  
San Antonio, TX 78283-3966  
Attention: Leasing Division

**Contact:** Edgar Olivas  
Management Analyst      **Telephone:** (210) 207-2770

**Tenant's Broker:** N/A

**Landlord:** PORT AUTHORITY OF SAN ANTONIO

**Address:** 907 Billy Mitchell Blvd.  
San Antonio, Texas 78226-1802

**Contact:** Property Management      **Telephone:** (210) 362-7800

**Landlord's Broker:** Cavender & Hill Properties, Inc.

**Building:** Building No.3761, located at 602 Dunton, San Antonio, Texas 78226-1802

**Premises:** 18,367 square feet, in **Building 3761**(the "Building"), together with certain improvements located therein and the surrounding \_\_\_ acre grounds and parking areas (the "Premises"), together with non-exclusive ingress/egress thereto; the Premises being more particularly described on **APPENDIX A**.

**Permitted Use:** Office, Warehouse and Storage Yard

**Initial Term:** 84 Months and any partial month occurring prior to the Commencement Date

**Commencement Date:** The first day of the first full month following the Rent Commencement Date.

**Rent Commencement Date:** The date that is the later of (i) completion of Landlord's Work and Tenant Improvements, or (ii) issuance of a Certificate of Occupancy; to be codified in a Commencement Date Letter in a document similar in format to that attached hereto as Appendix E.

**Termination Date:** The Termination Date will be codified in the Commencement Date Letter, subject to Tenant's option to terminate this Lease any time after the end of 36 months and on every anniversary of the Commencement Date thereafter by providing Landlord with 120 days prior written notice. Termination is subject to Tenant's payment of the unamortized balance remaining for the Tenant Improvement Allowance and the Additional Tenant Improvement Allowance amortized on a straight-line basis plus 3 months' rent at time of termination.

**Extended Term:** One 5-year option to renew at a rate that is 3% greater than the rental rate at the expiration of the initial term, upon 180 day prior written notice from Tenant  
(See Paragraph 6.1)

**Landlord's Work/Tenant Improvements:** Landlord (i) will do Landlord's Work at its cost as set out on **APPENDIX B** and (ii) will make certain initial Tenant Improvements set out on **APPENDIX B**, with a TI Allowance of \$50,000. Any Tenant Improvements that exceed the \$50,000 allowance ("Additional Allowance") will be amortized on a straight-line basis and added to the Gross Rental over the Initial Term of this Lease; provided, however, in no event will Landlord be required to expend more than \$125,000 in total for the Tenant Improvements.

**Gross Rental:** The Gross Rent includes Base Rental and Additional Rental and will be adjusted upward by 3% on each 12 month anniversary of the Commencement Date (first full month) during the term of this Lease. (See Paragraph 5.1)

<u>Term</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Per S.F. Annually</u>
Year 1	18,581.28	222,975.38	12.14
Year 2	19,138.72	229,664.64	12.50
Year 3	19,712.88	236,554.58	12.88
Year 4	20,304.27	243,651.22	13.27
Year 5	20,913.40	250,960.75	13.66
Year 6	21,540.80	258,489.58	14.07
Year 7	22,187.02	266,244.26	14.50

Gross Rental for the Extended Term will be:

<u>Term</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Per S.F. Annually</u>
Year 8	22,852.63	274,231.59	14.93
Year 9	23,538.21	282,458.54	15.38
Year 10	24,244.36	290,932.30	15.84
Year 11	24,971.69	299,660.27	16.32
Year 12	25,720.84	308,650.07	16.80

ii.

**Security Deposit:** None

**Permitted Use:** Tenant will occupy the Premises for office, warehouse operations and storage yard for no other use or purpose without the prior written consent of Landlord, which may be withheld for any reason. (See Section 18.)

**Parking Ratio:** Tenant will have the parking area within the fenced area of the Premises  
(See Paragraph 11)

This **APPENDIX 1** containing the Basic Terms is incorporated into and made a part of the lease attached hereto (the "Lease").



## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between **Port Authority of San Antonio**, a Defense Base Development Authority, a political subdivision of the state of Texas ("Landlord") as lessor, and the **City of San Antonio, Texas** ("Tenant"), as lessee.

1. **RECITALS.** Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord certain land, buildings, or portions thereof, as more particularly described in **APPENDIX 1** (the "Premises"), located on Port San Antonio, at the rental and subject to the terms, covenants and conditions set forth in this Lease.

2. **GRANT OF LEASE.** In consideration of the mutual obligations of Landlord and Tenant set forth in this Lease, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises to have and to hold, subject to the terms, covenants and conditions in this Lease.

3. **U.S. GOVERNMENT RIGHT OF ACCESS.** All of the real property now known as Port San Antonio was previously owned by the United States of America ("Government") being the former Kelly Air Force Base. The Government has conveyed title to the real property identified as the Land herein to Landlord. In the conveyance document, the Government placed some restrictive covenants on the use of the Premises and retained liability for certain environmental contamination which predated Landlord's possession of the Premises. As a result, some of the terms and conditions of this Lease relate to ongoing responsibilities the Government has for the environmental condition of Port San Antonio, which may affect the Premises.

### 4. TERM AND PREMISES

4.1 Lease Term. The Term of this Lease is set out on **APPENDIX 1**. If the Extended Term (defined in Paragraph 6.1) is exercised as permitted, then all references to the "Term" in this Lease will also include the period of time covered by the Extended Term.

4.2 Premises. The Premises are set out on **APPENDIX 1**.

4.2.1 Building Size. Is confirmed to be 18,367 square feet, any subsequent alteration in the size of the building due to change in standards for measuring or any other reasons, except as provided in Sections 4.03.04 (Mold Abatement); 16.1 (Damage and Destruction) and ; 22 (Condemnation) shall have no bearing on the Gross Rental amounts as provided in Appendix 1.

4.3 Acceptance of the Premises. *At Landlord's sole cost and expense, Landlord will tender the Premises in clean condition with all mechanical systems in working order and all improvements completed in accordance with Appendix B Landlord's Work and Tenant Improvements.* Except as expressly provided in this Lease, Landlord makes no warranty or representation, express or implied or arising by operation of law, with respect to the Premises including, but in no way limited to, any warranty of condition, suitability or fitness for a particular purpose. Tenant will pay for the cost of the Certificate of Occupancy, a copy of which will be provided to Landlord, and any required inspection related to Tenant's occupancy of the Premises.

4.3.1 Environmental Condition of Premises. Upon written request, Landlord will provide Tenant with the environmental reports related to the Premises (if any), prepared by the Air Force.

**4.3.2. Mold Process of Assessment.** If Tenant suspects or identifies the presence of mold within the Premises after taking possession, Landlord shall engage a licensed mold assessor ("assessor") to make an inspection not later than the third business day from the date Tenant notifies Landlord in writing of the issue (Tenant's Mold Notice). Landlord's assessor shall, within 10 business days from the date of the Tenant's Mold Notice, provide Landlord and Tenant a report of the findings of the inspection (Assessor's Report). If the Assessor's Report concludes that mold is present, Landlord shall notify Tenant, in writing (Landlord's Mold Notice), not later than the third business day from the date Landlord and Tenant receive the report, of its intention to remediate the mold. The Landlord's Mold Notice must also include a schedule outlining the period of time it will take for a licensed remediation contractor to complete the work. Failure to make this date is an event of default. If Landlord elects to remediate the mold, Landlord must retain a licensed abatement contractor to ensure the abatement is conducted in compliance with current state mold assessment and remediation legal requirements including the promulgated Mold Assessment and Remediation Rules, last amended on May 20, 2007. Upon completion of the mold remediation, licensed abatement contractor must provide both Landlord and Tenant a report from a licensed environmental testing firm confirming that mold is not present at the Premises.

**4.3.3. No Landlord Remediation or Landlord Remediation Taking Longer than 30 days.** If Landlord 1.) fails to timely provide Tenant the Landlord's Mold Notice 2.) elects not to remediate, or 3.) conveys that the remediation is scheduled to take longer than 30 calendar days to be completed, as evidenced by a remediation schedule provided by a licensed remediation contractor, then Tenant may terminate this Lease effective with 3 business days' written notice to Landlord (Tenant's Election to Terminate Notice). If Tenant exercises this option, Tenant's obligation to pay rent will cease effective 3 business days after Landlord's receipt of Tenant's Mold Notice or the date of Landlord's report, whichever occurs later. In such circumstance, Tenant shall have 30 days from the date of this Notice to fully vacate the Premises, or remediate the mold itself and deduct the remediation cost plus 10% for the management of the project from the rent next due until such time that the costs incurred by Tenant including the 10% fee are fully recovered.

**4.3.04. Rental Abatement.** During any mold assessment and remediation period, whether the work is done by Landlord or by Tenant, the rent will be abated for any portion of the Premises deemed by Tenant unusable due to the presence of mold or the remediation activity related to it.

**4.4 Fire Protection System.** The existing fire protection system will be certified ("green-tagged") by Landlord for compliance with applicable fire regulation codes. Tenant hereby accepts such fire protection system as sufficient for Tenant's purposes and agrees to maintain same within the Premises in good working order at all times. Any modification to the fire protection system within the Premises required by governmental authorities as a result of Tenant's particular use will be at Tenant's cost and expense. *Landlord will provide evidence of passing inspection prior to Tenant move-in.*

**4.5 Landlord's Easement.** Landlord retains an easement to itself and its successors and assigns, on, over, under and across the Premises for rail, utilities, storm water drainage and any other similar land use or infrastructure feature, whether to the benefit of the Premises or not.

**4.6 Tenant's right of occupancy begins at the Rent Commencement Date.** Rent is due beginning on that date as described in Appendix 1 above and the first of the month of each month following for the term of the



Lease. Tenant may cancel this Lease and be free of all its obligations if the Term Commencement Date has not occurred as a result of Premises not being *Move-in ready* by January 1, 2018. *Move-in ready* means that Tenant has been granted a Certificate of Occupancy identifying City of San Antonio as Tenant for the Premises and the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

## 5. RENT.

5.1 Gross Rental. Tenant agrees to pay to Landlord the Gross Rental as set out on **APPENDIX 1**. The Gross Rental will be prepaid monthly, on the first day of every month thereafter until the end of the Term. All payments due for any fractional month will be pro-rated. The amount set for Gross Rental is fixed and will not be adjusted in the event a discrepancy is found in the actual square footage of the Premises. During the Extended Term, the Gross Rental will increase as provided in Appendix A. Landlord will not send an invoice to Tenant for the Base Rental or Additional Rent, which Tenant is expected to timely pay as set out in this Lease.

5.2 Security Deposit. Intentionally Omitted

## 6. EXTENDED TERM AND TENANT IMPROVEMENTS.

6.1 Extended Term. If authorized on **APPENDIX 1**, and as long as Tenant is not in default, Tenant may extend the Term as set out on **APPENDIX 1**, provided, however, Tenant may extend only if Tenant gives written notice of such extension to Landlord no later than 180 days prior to the date on which the Term would otherwise expire.

6.2 Initial Tenant Improvements. Landlord has agreed to make the Tenant Improvements set forth on the attached **APPENDIX B**.

6.3 Future Tenant Improvements. Tenant may, during the Term, construct improvements to the Premises in accordance with plans and specifications approved in advance by Landlord to be completed at the sole cost of Tenant and made in accordance with all the conditions set out in Section 12. Any improvements paid by Tenant will be subject to Texas state sales taxes. **Contact Landlord's Property Manager at (210) 362-7800 before conducting any work on the Premises.**

## 7. INFRASTRUCTURE CHARGE AND COMMON AREA MAINTENANCE

7.1 Tenant's Share of Infrastructure Charge. Intentionally Omitted

7.2 Tenant's Share of Common Area Maintenance Charges. Intentionally Omitted

7.2.1. Common Area. Intentionally Omitted

7.2.2 Audit of CAM. Intentionally Omitted

3.

## **8. REAL PROPERTY TAXES AND PERSONAL PROPERTY TAXES**

8.1 Reduction or Elimination of Infrastructure Charge. At the Commencement Date hereof, no real property taxes are being assessed against the Premises due to Landlord's status as a local government. Included in the Year 1 Gross Rental amount is an Infrastructure Charge of \$2,954.03 (increasing 3% annually during the term) per month which is needed to provide those services that would ordinarily be provided by public agencies with the collection of taxes. In the event that the Premises become subject to Ad Valorem taxes and those services are provided at no charge by public agencies then, the Infrastructure Charge will be reduced or eliminated accordingly. Additionally, in the event that Tenant pays a leasehold tax pursuant to Paragraph 8.3 below, such amount will be credited against Tenant's Infrastructure Charge.

### **8.2 Landlord's Ad Valorem Taxes.**

(A) In the event that Landlord's Ad Valorem Taxes accrue against the Premises, Tenant will be liable for and pay: 100% of the Landlord's Ad Valorem Taxes for each and every Building (land and improvements valuation) fully occupied by Tenant or Tenant's "Proportionate Share" of partially leased Building, the Proportionate Share being a fraction, the numerator of which will be the number of gross rentable square feet of Premises leased by Tenant and the denominator of which is the total gross rentable square feet of the whole Building, multiplied by the tax due on the whole Building (land and improvements valuation); and 100% of Landlord's Ad Valorem Taxes against the Tenant's Designated Parking Areas (if any); and 100% of Landlord's Ad Valorem Taxes that accrue, if ever, against the Premises to the extent due to improvements constructed thereon by Tenant.

(B) If, at any time during the Term of this Lease, there is levied, assessed or imposed on Landlord a tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon rents from the Premises, in lieu of ad valorem taxes (collectively, the "Other Taxes"), then Other Taxes will be paid by Tenant to the appropriate authority in a timely manner or to Landlord upon demand.

8.3 Tenant's Leasehold Taxes. Tenant will promptly pay when due any taxes assessed by local, state or federal governments on Tenant's real property leasehold interest.

8.4 Personal Property Taxes. Tenant will be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises by Tenant. If any taxes are levied or assessed against the Premises and (i) Landlord pays them or (ii) the assessed value of the Premises are increased by inclusion of personal property and fixtures installed by or on behalf of Tenant, and Landlord pays the increased taxes, then Tenant will reimburse Landlord, upon demand.

**9. LANDLORD'S REPAIRS AND MAINTENANCE.** Landlord, at its own cost and expense, will maintain the structural soundness of the: (i) roof structure; (ii) foundation; (iii) concrete floors; (iv) interior structural columns; (v) parking area paving and lighting (vi) landscaping including lawn irrigation sprinkler systems; (vii) repairs and replacement, but not preventative maintenance of HVAC systems; and (viii) exterior walls of the Building, in good repair, REASONABLE WEAR AND TEAR AND DAMAGE CAUSED BY TENANT, ITS EMPLOYEES, CONTRACTORS OR AGENTS EXCLUDED. The term "walls" will not include windows, glass or plate glass, any doors, special store fronts or office entries, and the term "foundation" will not include loading docks and the term "concrete floors" will not include floor



coverings, such as vinyl or carpeting. Tenant will promptly give Landlord written notice of any known defect or need for repairs, after which Landlord will have reasonable opportunity to make the repairs or cure the defect. Landlord's obligation to repair or replace HVAC systems is subject to the following:

(1) Landlord shall be responsible for procuring the contracts; hiring the vendor and taking any other means necessary to affect the commencement of the repair of the HVAC system in a timely manner after being notified by Tenant of the issue. If the repair is significant enough that in Tenant's opinion, the lack of adequate HVAC adversely impairs Tenant's use of the Premises or any portion thereof in excess of 10% of the Premises, then timely manner represents within 1 business day.

(2) In the event that any repair or replacement exceeds \$7,500.00 (HVAC Repair Allowance) during any particular lease year, then Tenant shall be responsible for reimbursing Landlord any cost in excess of the HVAC Repair Allowance. In the event that Landlord incurs costs of less than \$7,500.00 during a lease year then any unexpended portion of the HVAC Repair Allowance shall be carried over to future calendar years. By way of example, if during lease year 1 Landlord incurs three HVAC repairs including \$1,000 in January, \$4,500 in March and \$3,500 in June, then upon the completion of the 3<sup>rd</sup> repair, Tenant will pay to Landlord \$1,500. If in lease year 2 Landlord only incurs one HVAC repair in the amount of \$2,500.00 then the remaining balance of the HVAC Repair Allowance in the amount of \$5,000.00 will be carried over to lease year 3 providing for an adjusted HVAC Repair Allowance of \$12,500.00 in lease year 3.

(3) In the event of replacement of any HVAC systems or repair of any HVAC system that would be considered a capital expense as that term is commonly used for income tax purposes requiring that the repair or replacement be amortized over a period of years, then for purpose of calculating the assessment of cost against the HVAC Repair Allowance, only the annual amortized amount shall be assessed. For example, if an entire HVAC unit needs to be replaced and Landlord incurs a cost of \$50,000 to replace the equipment which for capital purposes has a life expectancy of 10 years, then only the annual amortized portion of the expense, in this case \$5,000, shall be assessed against the HVAC Repair Allowance during each remaining lease year in the term occurring after the completion of the replacement.

## **10. TENANT'S REPAIRS AND MAINTENANCE**

10.1 Maintenance of Premises and Appurtenances. Tenant, at its own cost and expense, will maintain, repair and, if necessary, replace all parts of the Premises, and promptly make all such necessary repairs and replacements to the Premises, except for those elements of the Premises to be maintained by Landlord under Section 9 above. Tenant's obligation to maintain, repair and make replacements to the Premises will cover, but not be limited to: pest control (including termites); janitorial services; trash removal; the maintenance, but not repair and replacement, of all HVAC, the maintenance, repair and replacement of all electrical, and plumbing within and exclusively serving the Premises; the maintenance, repair and replacement of the interior and exterior walls, windows and doors. Tenant will not make, or permit to be made, any penetration in the roof of the Premises without prior approval from Landlord. In the event that any such roof penetration is required in connection with any repairs, maintenance, or replacement required to be made by Tenant hereunder, Tenant will use Landlord's approved roof contractor to perform the work.

10.2 Preventative System Maintenance. Tenant, at its own cost and expense, will with its own staff service or will enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all hot water, heating and air conditioning, electrical, plumbing, sprinkler, and other mechanical systems and equipment within and exclusively serving the Premises. The service contracts must include all services suggested by the equipment manufacturer and must become effective within 30 days of the date Tenant takes possession of the Premises and continue in



effect throughout the Term. Landlord will cooperate with Tenant in making all warranties on any such items applicable to the Premises available for the benefit of Tenant.

10.3 Landlord's Option to Maintain Premises. If Tenant fails to maintain the Premises in accordance with the terms of this Section 10 and, after 30 days written notice Landlord will have the right to perform, in whole or in part, maintenance, repairs and replacements to the Premises that are otherwise Tenant's obligations under this Section 10; in which event Tenant will be liable for the cost and expense of these repairs, replacements, maintenance and other similar items and will reimburse Landlord upon demand.

11. **PARKING.** Tenant will have exclusive use of the parking areas that existed as of the Lease. Tenant agrees not to park on any public or private streets adjacent to or in the vicinity of the Premises.

## 12. ALTERATIONS, TRADE FIXTURES AND RETURN CONDITION.

12.1 Approvals for Alterations. Tenant will not make any alterations, additions or improvements ("Alterations") to the Premises that require permitting without the prior written approval of Landlord and will be subject to Landlord's Design and Development Standards as they exist at that time. Landlord's approval will require the submission of a complete set of plans and specifications ("Submissions"). Tenant will be responsible for compliance with The Americans with Disabilities Act of 1990, as amended, within the Premises only. **As required by Texas law, Tenant will obtain a payment bond for all improvements over \$25,000 and a performance bond for all improvements over \$100,000, in form and content acceptable to Landlord before beginning the Alterations.** Tenant will, during the construction of any Alterations, withhold a retainage equal to at least 10% of the cost of the Alterations until the expiration of 30 days following the completion thereof in order to protect the Premises and the Building against liens and encumbrances. All Alterations will be performed in compliance with all applicable governmental laws, regulations, codes, standards and any other requirements of Landlord and in a good and workmanlike manner so as not to damage or alter the primary structure or structural qualities of the Improvements or other improvements situated on the Premises.

12.1.1 Asbestos. Before beginning any Alterations, Tenant will determine whether asbestos is present on the Premises. If Tenant intends to make Alterations that require the removal of asbestos, Tenant will submit an appropriate asbestos disposal plan to Landlord.

12.1.2 IRP/SPCP Site. The Premises has been identified by the United States Government as part of the Kelly AFB Installation Restoration Program ("IRP") on the State Permit and Compliance Plan ("SPCP") or is within an "Area of Special Notice"; therefore, Tenant must provide written notice to Landlord and the United States Government, accompanied by a detailed written description, for any proposed Alterations that may impede or impair any activities under the IRP/SPCP or within an Area of Special Notice.

12.2 Trade Fixtures. Tenant, at its own cost and expense, may erect shelves, bins, machinery and trade fixtures and special improvements necessary for its use as it desires, provided that: these items do not alter the basic character of the Premises or the Building; these items do not overload or damage same; these items may be removed without material injury to the Premises; and the construction, erection or installation thereof complies with all applicable governmental laws, ordinances and regulations.

12.3 Removal of Trade Fixtures/Return Condition of Premises. Without implying any consent of Landlord thereto, all Alterations erected by Tenant will be and remain the property of Tenant during the

Term of this Lease; and upon termination or expiration, they become the property of Landlord. All shelves, bins, machinery, special improvements, trade fixtures and personal property installed by Tenant will be removed on or before the earlier to occur of the day of termination or expiration of this Lease or vacating of the Premises, at which time Tenant will restore the Premises to a useable condition, except for normal wear and tear; damage or destruction of the Premises or any part thereof which Landlord is required to repair or restore; and changes resulting from condemnation.

**13. SIGNS.** Signs, including the size, location, design and content, will comply with the criteria provided by Landlord and will be subject to City code and Landlord's Design and Development Standards as they exist at that time. Tenant may not place any other signs on the exterior of the Premises without Landlord's prior written approval. Tenant must apply for and receive a dig permit from Landlord prior to any digging or posting of signage. Tenant will, at Tenant's sole expense, repair, paint or replace the Building fascia surface to which its signs are or become attached upon Tenant's vacating the Premises or upon the removal or alteration of its signage. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises must conform in all respects to the criteria established by Landlord. Tenant will not, without Landlord's prior written consent: make any changes to the exterior of the Premises, such as painting; install any exterior lights, decorations, flags, or banners; or erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type that can be viewed from the exterior of the Premises.

#### **14. UTILITIES.**

**14.1 Utilities at Tenant's Cost.** Landlord agrees to make available, through third party utility providers, water, sanitary sewer, gas and electricity, telephone and cable service to the Building. Tenant will extend any such utilities not already within the Premises, to and throughout the Premises at Tenant's cost. Provided the utility service is separately metered directly by the respective utility provider, and the utility service is exclusive to the Premises, Tenant will pay on demand to the utility provider as applicable for utilities and services used by Tenant on or at the Premises, together with any taxes, penalties, or surcharges pertaining to the Tenant's utility use and any maintenance charges for utilities imposed by the utility providers.

**14.2 Interruption of Utility Service.** Landlord will not be liable for any interruption or failure of utility service on the Premises, and Tenant has no rights or claims as a result of any failure, except that if the Premises are rendered unusable by Tenant in whole, or in substantial part, by reason of a material interruption in the supply of any utility service, which continues for more than 48 hours after written notice to Landlord by Tenant, Gross Rent will abate with respect to the portion of the Premises so affected from the end of the 48 hour period until the utility service is restored, unless the interruption is caused by the act or omission of Tenant, its employees, agents, contractors, invitees or acts of God or failure caused by the third party utility provider, in which event rent will not abate.

**14.3 Utilities Exclusive to Landlord.** All utility providers, including, but not limited to, water, chilled water, sanitary sewer, electricity, gas, telephone (except long distance, Internet access and cell phones), cable television and all future technologies related to the delivery of those utilities, will be only those chosen by Landlord and Tenant has no right to contract with or otherwise engage anyone to provide these utilities.

**14.4 Telephone Services.** Local exchange carriers such as AT&T and Time Warner provide dial tone and data service to various points of demarcation on Port San Antonio. Any communications



service above standard voice-grade service, such as standard business lines, dial-up modem lines or single channel ISDN, may entail an additional cost to the Tenant. Tenant may contact Landlord's Property Manager for information on obtaining special services, such as T-1 service and dedicated data circuits, prior to entering into any contracts or agreements to obtain such service with local exchange carriers or other third party providers. Tenant is responsible for installation of communication lines and systems from the main communications room, one or more of which is located in or around every building, to Tenant's desktops.

## 15. INSURANCE.

### 15.1 Landlord's Insurance.

(A) Property Insurance. Landlord will maintain "All-Risk" (broad form) insurance coverage for the full replacement cost of the Building (including the Premises) ("Landlord's Property Insurance"), but excluding Tenant's trade fixtures, equipment, inventory and personal property located therein (even that personal property owned by Landlord and leased or supplied to Tenant).

(B) Environmental Insurance. At its option, Landlord will maintain an umbrella insurance policy to protect it from claims for environmental contamination liability. The insurance company will establish the Tenant's rating as one aspect of a risk assessment that is required to activate a tenant's endorsement under the Landlord umbrella policy. In order to underwrite Landlord's coverage and to provide Tenant endorsement as an additional insured, the insurance company and Landlord will jointly perform the required risk assessment in cooperation with the Tenant, which risk assessment will be based on commercially reasonable standards. In the event any activity of Tenant causes an increase in Landlord's premium, Tenant will pay the same. Tenant will not cause or allow to be caused any activity on the Premises that would have the effect of negating Landlord's environmental insurance coverage.

15.2 Tenant's Insurance. *Landlord agrees to accept Tenant's representation of being self-insured, provided however, Tenant agrees to waive any claim against Landlord for damage to any property of Tenant's on the Premises and any injury to persons occurring on the Premises unless and to the extent such injury to persons is solely caused by Landlord.*

15.3 Landlord as Additional Insured. Tenant's Liability Insurance will name Landlord as an additional insured. Such insurance will be issued by an insurance company which is reasonably acceptable to the Landlord and will not be canceled or materially changed unless 30 days prior written notice has been given to Landlord. Within 20 days of the Lease Date, Tenant will provide Landlord with a copy of the Tenant's Liability Insurance policy and the additional insured endorsement thereto.

15.4 Prohibited Uses. If any increase in the cost of any insurance on the Premises or the Buildings is caused by Tenant's use of the Premises or because Tenant vacates the Premises, then Tenant will pay the amount of such increase to Landlord upon demand. Tenant will not permit the Premises to be used for any purpose or in any manner not permitted by this Lease that would: void the insurance thereon; increase by any material amount the insurance risk or cost thereof unless Tenant makes the payment required pursuant to the last sentence of this Paragraph 15.4; or cause the disallowance of any sprinkler credits; including without limitation, use of the Premises for the receipt, storage, handling or use of any product, material or merchandise that is explosive or highly inflammable, except as used by Tenant in the ordinary course of its business and in accordance with all applicable state and federal law.

## 16. FIRE AND CASUALTY DAMAGE.

16.1 Damage or Destruction. If 50% or less of the Premises is damaged by any peril covered by Landlord's Property Insurance maintained by Landlord under Paragraph 15.1, then this Lease will not terminate and Landlord will receive the proceeds from Landlord's Property Insurance and will use those proceeds to substantially restore the Premises to its previous condition, except that Landlord will not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant except for those constructed as initial tenant improvements. The rent will be abated on only the part of the Premises damaged beyond Tenant's then use in accordance with this Lease and only so long as the damage was not caused by the acts or omissions of Tenant, its agents or invitees. If the damaged part of the Premises cannot be repaired within 180 days or if more than 50% of the Premises then in use by Tenant is damaged, then either Landlord or Tenant may terminate this Lease.

16.2 Lienholders' Rights in Proceeds. Notwithstanding anything herein to the contrary, if the damaged Premises cannot be restored within 12 months and, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or this Lease requires that Landlord's Property Insurance proceeds be applied to such indebtedness, then Landlord has the right to: (i) use other resources to rebuild the Premises as set out in Paragraph 16.1; or (ii) terminate this Lease by delivering 30 days written notice of termination to Tenant.

## 17. LIABILITY AND INDEMNIFICATION

### 17.1 Tenant's Indemnification of Landlord, et al. Intentionally Omitted

17.2 Limits on Liability of Landlord, et al. Neither Landlord, nor its board of directors, agents, employees, officers or representatives, individually and collectively ("Landlord, Et Al") will be liable in any event for personal injury or loss of Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities or other occurrences. Tenant will give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord, Et Al, will not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of Port San Antonio, regardless of whether such loss occurs when the area is locked against entry. Landlord, Et Al will not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any sublessee or their agents or invitees anywhere on Port San Antonio, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Tenant will give Landlord prompt notice of any criminal conduct it actually observes within or about the Premises, or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent these are obtained at Landlord's sole discretion, Landlord, Et Al, will not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord will use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises, and Landlord will not be responsible for additional lighting or any security measures in Port San Antonio, the Premises, or the parking areas.



**18. PERMITTED USE.** The Premises will be used for the purpose set out on **APPENDIX 1** and for no other use or purpose without the prior written consent of Landlord, which may be withheld for any reason. Tenant will comply with all governmental laws, ordinances and regulations including but not limited to the Emergency Planning Community Right to Know Act (42 U.S.C. §11001) regarding hazardous materials stored on Port San Antonio applicable to the use of the Premises and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant will not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other lessees or sublessees anywhere on Port San Antonio.

**19. HAZARDOUS WASTE AND ENVIRONMENTAL LAW VIOLATIONS.**

19.1 Definitions. The term "Hazardous Substances," as used in this Lease, means pollutants, contaminants, pesticides, toxic or hazardous wastes, radioactive materials or any other substances, the use or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law(s)," which term means any federal, state or local statute, ordinance, regulation or other law of a governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances.

19.2 Tenant's Activities Related to Hazardous Waste. Tenant agrees that:

(A) No activity will be conducted on the Premises that will produce any Hazardous Substances, except for activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided that the Permitted Activities are conducted in accordance with all Environmental Laws and timely written notice of compliance is provided to Landlord. Tenant is responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency and Tenant will provide Landlord with copies of all permits, authorization, notices of non-compliance and administrative actions;

(B) The Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of materials required to conduct Permitted Activities ("Permitted Materials") provided that the Permitted Materials are properly stored in a manner and location meeting the requirements of all Environmental Laws. Tenant is responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency, and Tenant must provide Landlord, upon request, documentation as reasonably required to satisfy Landlord of Tenant's compliance;

(C) Except for the Permitted Materials, Tenant will not permit any Hazardous Substances to be brought onto the Premises, and if so brought, they will be immediately removed, properly disposed of and, if spilled, all required clean-up procedures will be diligently undertaken by Tenant in accordance with all Environmental Laws and at Tenant's cost. Tenant will also develop Hazardous Substances management and spill response plans.

19.3 Inspection and Correction. Landlord and its agents and representatives have the right, but not the obligation, to enter the Premises upon notice for the purpose of inspecting the storage, use and disposal of any Permitted Materials or for any other reason to ensure compliance with all Environmental Laws. If it is determined, in Landlord's sole opinion, after review of applicable environmental laws and receipt of opinion



from legal counsel or other qualified expert, that any Permitted Materials are being improperly stored, used or disposed of, then Tenant will make timely and appropriate corrective action as reasonably requested by Landlord. If Tenant fails to begin corrective action within 24 hours, Landlord may report the violation to the Texas Commission on Environmental Quality or perform any work as Landlord deems necessary to correct the situation or both and Tenant will reimburse Landlord, on demand, for any and all costs associated with any work that is necessary to bring the Premises into compliance with Environmental Laws. If at any time during or after the Term of this Lease, the Premises are found to have been contaminated by Tenant or any of its agents or invitees with Hazardous Substances, Tenant will diligently institute clean-up procedures in accordance with the applicable requirements of governmental authorities, at Tenant's sole cost.

**19.4 Indemnity.** Intentionally Omitted

**20. RIGHT OF ENTRY AND CLOSEOUT INSPECTION.**

20.1 Right of Entry. Landlord's agents and representatives have the right to enter the Premises at any reasonable time during business hours, with notice (or at any time in case of emergency): to inspect the Premises for any reason; to maintain, repair, connect, extend, and modify utilities; to make any other repairs as may be required or permitted pursuant to this Lease; and during the last 6 months of the Term, for the purpose of showing the Premises and to install signs stating the Premises are available for lease.

20.2 Closeout Inspection. Tenant will notify Landlord in writing at least 90 days prior to vacating the Premises and Tenant will arrange to meet with Landlord for a joint operational close-out inspection by Landlord's property manager and, if required by Landlord, an environmental due diligence report to be paid for by Tenant. Tenant will pay to close-out all of Tenant's regulatory permits. If Tenant fails to give notice or to arrange for inspection, then Landlord's close-out inspection of the Premises will be deemed correct for the purpose of determining Tenant's responsibility for repairs and restoration of the Premises, and Tenant's liability for environmental contamination.

**21. ASSIGNMENT AND SUBLETTING.**

21.1 Approval Required. Tenant will have the right to substitute any of its subsidiaries or affiliates, including any parent or successor entity, as occupants of the Premises without the Landlord's prior consent; provided that, Tenant is not in Default and Tenant remains liable for this Lease and Tenant has provided Landlord with the contact information for the Tenant-requested substituted entity; otherwise, Tenant will not have the right to sublet the Premises, assign or otherwise transfer or encumber this Lease, or any interest in this Lease, without the prior written consent of Landlord. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of the terms and covenants of this Section 21 will be void.

21.2 Existing Tenants or Prospects. Landlord expressly reserves the right to refuse to give its consent to any assignment or subletting to an assignee or subtenant (or any party that, directly or indirectly, controls or is controlled by or is under common control with the proposed assignee or subtenant) that is an existing tenant on Port San Antonio or a party with whom Landlord is then actively negotiating to lease space on Port San Antonio. Without in any way limiting Landlord's right to refuse the consent to any assignment or subletting of this Lease, Landlord reserves the right to refuse to give such consent if in Landlord's opinion: (i) the Premises are or may be adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; or (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder.

21.3 Transferees. Any assignee, lessee or transferee of Tenant's interest in this Lease (collectively referred to as "Transferees"), by assuming Tenant's obligations hereunder, will assume liability to Landlord for the payment of all amounts payable by Tenant and the performance of all obligations of Tenant hereunder. No assignment, subletting or other transfer, whether or not consented to by Landlord or permitted hereunder, will relieve Tenant of its liability under this Lease. If an Event of Default occurs while the Premises or any part thereof are assigned or sublet, then, in addition to any other remedies provided in Section 26 or provided by law, Landlord may collect directly from Transferee all rents payable to the Tenant or Landlord and apply the collected rent against any amounts due Landlord under this Lease. This collection will not be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations under this Lease. If Landlord consents to any subletting or assignment by Tenant and any category of rent subsequently received by Tenant under any lease is in excess of the same category of rent payable under this Lease, or any additional consideration is paid to Tenant by the assignee under any assignment, then Landlord may declare such excess rents under any lease or additional consideration for any assignment, following deduction for the costs associated with obtaining such lease, to be due and payable to Landlord as additional rent under this Lease.

**22. CONDEMNATION.** If 50% or more of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease will terminate and the rent will be abated during the unexpired portion of this Lease, effective on the date of taking. If less than 50% of the Premises are taken for any public or quasi-public use under any governmental laws, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, or if the taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease will not terminate, but the rent payable during the unexpired portion of this Lease will be reduced to the extent as may be fair and reasonable under the circumstances. All compensation awarded in connection with or as a result of any of the foregoing proceedings will be the property of Landlord, and Tenant hereby assigns any interest in any award to Landlord; except Landlord will have no interest in any award made to Tenant for the loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property or for relocation expense, whether or not a separate award for such items is made to Tenant. If the condemnation procedures of the relevant jurisdiction do not permit separate claims by landlords and tenants, Landlord's award will be equitably divided between Landlord and Tenant to compensate Tenant for lost tenant improvements installed by Tenant (not including Initial Tenant Improvements), business disruption, and the cost of moving Tenant's business and goods to an alternate location.

**23. HOLDING OVER.** 23.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold over is the same as the rent for the term being held over, and all other terms of this Lease apply. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Capital Improvements Management Services deems the holdover beneficial.

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



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

**24. QUIET ENJOYMENT.** Upon payment by Tenant of the Base Rental and all other sums due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant will peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord.

**25. EVENTS OF DEFAULT.** Each of the following events ("Event of Default") will be deemed to be a default in or breach of Tenant's obligations under this Lease:

25.1 Failure to Pay. If Tenant fails to pay any installment of the rent required herein when due, or any other payment or reimbursement to Landlord required in this Lease when due, and Tenant's failure continues for a period of 10 days after the date of written notice from Landlord, except Tenant is entitled to only two 10 day notices per each 12 month period, after which failure to pay is an immediate default.

25.2 Vacation or Abandonment. If Tenant vacates or abandons all or a substantial portion of the Premises for more than 6 months whether or not Tenant is in default of the rental payments due under this Lease.

25.3 Liens on Premises. If Tenant fails to discharge any lien placed upon the Premises in violation of Sections 27 and 28 hereof within 30 days after any such lien or encumbrance is filed against the Premises.

25.4 All Other Lease Violations. If Tenant fails to comply with any term, provision or covenant of this Lease (other than those listed above in this Section 25 and has not cured such failure within 30 days after the date of written notice from Landlord. If, however, the time required to return to compliance exceeds the 30 day period, Tenant will not be in default if Tenant, within the 30-day period, begins the actions necessary to bring it into compliance with this Lease in accordance with a compliance schedule submitted to, and accepted by Landlord.

25.5 Cross Default. In the event Tenant has any other lease or leases with Landlord, then an event of default under such other lease or leases will be an event of default of this Lease and an event of default under this Lease will be an event of default in the other lease or leases.

25.6 Chronic Violations. If Tenant fails more than twice within any 12 month period to observe or perform any covenant, condition or agreement of this Lease (including without limitation, the payment of rent), regardless of whether such defaults have been cured by Tenant, any subsequent default will at the election of Landlord, in its sole and absolute discretion, be deemed a non-curable Event of Default.

25.7 Falsification of Information. If Tenant or any agent of Tenant intentionally falsifies any report or misrepresents other material information required to be furnished to Landlord pursuant to this Lease.

25.8 Tenant's or Guarantor's Dissolution or Liquidation. The commencement of steps or proceedings toward the dissolution, winding up or other termination of the existence of the Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

25.9 Bankruptcy. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within 60 days after the date of its filing.

25.10 Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's Lease obligations for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including without limitation, by attachment, execution or similar legal process, which is not discharged or vacated with 60 days.

25.11 Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's Lease obligations, unless such appointment is vacated within 30 days of its entry.

25.12 Evidence of Inability to Pay. Evidence of inability of Tenant or of any guarantor of Tenant's Lease obligations to pay its debts as they come due. Such evidence will include, but will not be limited to, an admission in writing by Tenant or any such guarantor of its inability to pay its debts when due or if one or more judgments are docketed against Tenant or any such guarantor and not paid, bonded or otherwise discharged with 60 days.

25.13 Diminution in Financial Status of Guarantor. The net worth of Guarantor, if any, is reduced to an amount less than \$10 million or any of Guarantor's debt securities are rated by any national rating firm at less than investment grade.

## **26. REMEDIES UPON DEFAULT.**

26.1 Right to Terminate or Repossess. Upon each occurrence of an Event of Default, Landlord has the option to pursue any one or more of the following remedies without any additional notice or demand:

(A) Terminate this Lease;

(B) Enter upon and take possession of the Premises without terminating this Lease;

(C) Make payments or take actions to fulfill whatever Tenant is obligated to pay or perform under the terms of this Lease to third parties, and Tenant agrees that Landlord will not be liable for any damages resulting to Tenant from such actions;

(D) And in the event that Landlord elects to terminate or repossess, Tenant will immediately vacate the Premises, and if Tenant fails to do so, Landlord, without waiving any other remedy it may have, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefore. Landlord may change the locks for any Event of Default and in the event of any



violation of Section 93.002 of the Texas Property Code by Landlord or by any agent or employee of Landlord, Tenant hereby expressly waives any and all rights Tenant may have under Paragraph (g) of Section 93.002.

26.2 Damages Upon Termination. If Landlord terminates this Lease pursuant to Paragraph 26.1, Tenant will be liable for and will pay to Landlord the sum of all rental and other payments owed to Landlord under this Lease accrued to the date of termination, plus as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Paragraph 4.1 (as extended, if applicable), less (ii) the present value of the then fair market rental for the Premises for such period, provided that, because of the difficulty of ascertaining the fair market value and in order to achieve a reasonable estimate of liquidated damages, Landlord and Tenant stipulate and agree that the fair market rental does not exceed 75% of the rental amount for such period as set forth in Section 5.

26.3 Damages Upon Repossession. If Landlord repossesses the Premises pursuant to Paragraph 26.1 without terminating this Lease, Tenant will be liable for and will pay Landlord on demand all rental and other payments owed to Landlord under this Lease, accrued to the date of repossession, plus all rental and other payments owed under this Lease for the remaining portion of the Term, calculated as if the Term expired on the date set forth in Paragraph 4.1 (as extended, if applicable), diminished by all amounts actually received by Landlord through reletting the Premises during the remaining Term. Actions to collect amounts due by Tenant to Landlord under this paragraph may be brought from time to time without the necessity of Landlord's waiting until expiration of the Term.

26.4 Costs of Reletting, Removing, Repairs and Enforcement. Upon an Event of Default, in addition to any amount required to be paid under this Section 26, Tenant also will be liable for and will pay to Landlord (i) reasonable brokers' fees, and all other costs and expenses incurred by Landlord in connection with reletting the whole or any part of the Premises; (ii) the costs of removing, storing or disposing of Tenant's or any other occupant's property; (iii) the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new lessee; (iv) any and all costs and expenses incurred by Landlord in effecting compliance with Tenant's obligations under this Lease; and (v) all reasonable expenses incurred in connection with such enforcement or defense, including, but not limited to, reasonable attorneys' fees. All costs incurred by Landlord pursuant to (i) and (iii) above, will be amortized over the term of the lease with the new tenant, and Tenant will only be liable for those costs allocated to the Term of this Lease.

26.5 Late Charge. In the event Tenant fails to make any payment due under this Lease within 5 days after such payment is due, including, without limitation, any rental payment, in order to help defray the additional cost to Landlord for processing late payments and not as interest, Tenant will pay to Landlord on demand a late charge in an amount equal to 5% of such payment. The late charge will be in addition to all of Landlord's other rights and remedies under this Lease or at law, and will not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

26.6 Interest on Past Due Amounts. If Tenant fails to pay to Landlord when due any sum under any provision of this Lease and Tenant's failure to pay continues for 10 days after the due date, then Tenant will pay to Landlord interest on the overdue amounts from the date due until paid at an annual rate which equals the lesser of 18% or the highest rate then permitted by law.



26.7 No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder or otherwise available will not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that Tenant's surrender can be effected only by the written agreement of Landlord. Tenant and Landlord further agree that forbearance by Landlord to enforce any of its rights under this Lease or at law or in equity will not be a waiver of Landlord's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by Landlord will be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant, and, notwithstanding any reletting or re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any remedies provided in this Section 26 will not preclude the pursuit of any other remedy provided under this Lease or any other remedies provided by law, nor will pursuit of any remedy provided under this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of any rent following an Event of Default under this Lease will not be construed as Landlord's waiver of the Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease will be deemed or construed to constitute a waiver of any other violation or default.

26.8 Reletting of Premises. In the event of any termination of this Lease and/or repossession of the Premises due to an Event of Default, Landlord will use reasonable efforts to re-let the Premises and to collect rental after reletting, with no obligation to accept any lessee that Landlord deems undesirable or to expend any funds in connection with reletting or collection of rents therefrom. Tenant will not be entitled to credit for or reimbursement of any proceeds of reletting in excess of the rental owed under this Lease for the period of reletting. Landlord may re-let the whole or any portion of the Premises, for any period, to any lessee and for any use or purpose.

26.9 Landlord's Default. If Landlord fails to perform any of its obligations under this Lease Tenant's exclusive remedy will be an action for damages (actual damages only, not punitive or consequential), but only after Tenant has given Landlord 30 days' written notice and unless and until Landlord fails to cure the default, Tenant will not have any remedy or cause of action by reason thereof. All obligations of Landlord under this Lease will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the Premises and not thereafter. The term "Landlord" will mean only the party identified in on **APPENDIX 1** and only until Landlord transfers its interest in the Premises, after which Landlord will be released and discharged from all covenants and obligations of Landlord thereafter accruing. Notwithstanding any other provision of this Lease, Landlord will not have any personal liability under this Lease and Tenant agrees to look solely to the equity or interest, (including rents), then owned by Landlord in the Premises or the Building. In no event will any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord's directors, employees or agents.

26.10 Tenant's Personal Property. If Landlord repossesses the Premises, or if Tenant vacates or abandons all or any part of the Premises for more than 6 months, then Tenant will remove its personal property from the Premises and if Tenant does not remove its personal property within 30 days of Landlord's demand then, in addition to Landlord's rights under this Section 26, Landlord has the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, at all times prior to repossession by any lessor thereof or third party having a lien thereon. Landlord may dispose of the stored property if Tenant



does not claim the property within 10 days after the date the property is stored. Landlord will give Tenant at least 10 days prior written notice of the intended disposition. Landlord will also have the right to relinquish possession of all or any portion of Tenant's furniture, fixtures, equipment and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of Tenant's furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord stated in this Paragraph 26.10 are in addition to any and all other rights that Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted Landlord under this paragraph are commercially reasonable.

**27. MORTGAGES.** Tenant may not encumber its leasehold interest whether by mortgage or otherwise without obtaining Landlord's prior written consent. Tenant agrees that this Lease will be subordinate to any ground lease or underlying lease, first-lien mortgage or deed of trust or other first or second lien covering the Premises, upon and subject to the following terms and conditions. Tenant's subordination is conditioned on execution and delivery to Tenant by each lessor under a ground lease or underlying lease, each mortgagee, lien holder and beneficiary of a first- or second-lien deed of trust by whom subordination is requested, of a nondisturbance agreement reasonably acceptable to Tenant. With respect to any lessor, mortgagee, etc., whose interest is in existence prior to the beginning of the Term, Landlord agrees, upon written request of Tenant, to obtain a nondisturbance agreement within 30 days of the execution of this Lease. The nondisturbance agreement will be in recordable form and will recognize Tenant's rights under this Lease in the event Landlord's interest is terminated while this Lease is in effect. The nondisturbance agreement will include a provision to the effect that in the event of a termination of the ground or underlying lease or foreclosure of the mortgage, deed of trust or other lien in favor of the secured party, or upon a sale of the property encumbered thereby pursuant to the trustee's power of sale, or upon a transfer of the Premises by deed in lieu of foreclosure, then for so long as Tenant is not in material default under the terms, covenants and conditions of this Lease, this Lease will continue in full force and effect as a direct lease between the owner or succeeding owner of the Premises, as landlord, and Tenant for the balance of the Term, upon and subject to all of the terms, covenants and conditions of this Lease. The nondisturbance agreement will not in any event include any terms that are inconsistent with the terms of this Lease or that adversely affect Tenant's rights, or increase Tenant's obligations, under this Lease. Tenant will not pursue any remedy available to Tenant under this Lease for any default on the part of Landlord without first giving written notice by certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any mortgage or deed of trust, the name and post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording the mortgagee, trustee or holder a reasonable opportunity (not less than 30 days) to make performance, at its election, for and on behalf of Landlord.

**28. MECHANIC'S LIENS.** The Premises are publicly owned property and are not subject to mechanic's and materialmen's liens under Texas law. Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises.

**29. MISCELLANEOUS.**

29.1 Consent by Landlord/Tenant. Whenever in this Lease, Landlord's or Tenant's consent, permission or approval is required and has been properly requested, such consent, permission or approval

will not be unreasonably withheld, delayed or conditioned, unless such right has been specifically reserved elsewhere in this Lease.

29.2. Interpretation. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

29.3 Binding Effect. Except as otherwise expressly provided in this Lease, the terms, provisions and covenants and conditions in this Lease apply to, inure to the benefit of and are binding upon the parties hereto and upon their respective successors and assigns. Landlord has the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Buildings and other property that are the subject of this Lease.

29.4 Evidence of Authority. Tenant represents, covenants and warrants to Landlord that (i) it is a duly formed entity in accordance with the applicable requirements of the jurisdiction in which it has been formed and, if such jurisdiction is other than the jurisdiction in which the Premises is located it is duly qualified in such jurisdiction to transact business, (ii) it has the full right, power and authority to enter into this Lease, (iii) any and all corporate or other such action necessary to approve and ratify the entering into of this Lease by Tenant has been taken (and Tenant agrees to provide evidence thereof to Landlord upon Landlord's request) and (iv) the person executing this Lease on behalf of Tenant has been empowered with all necessary authority to do so and thereby to bind Tenant fully to all of the terms and conditions hereof.

29.5 Force Majeure. Neither the Landlord nor Tenant, together with their respective agents, employees, officers and representatives, individually and collectively, will be held responsible for delays in the performance of its obligations under this Lease (except for Base Rental and Additional Rent and other payments owed by Tenant to Landlord) when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord or Tenant, as the case may be.

29.6 Payments Constitute Rent. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, will constitute rent.

29.7 Estoppel Certificates. Tenant agrees, from time to time, within 10 days after written request of Landlord, to deliver to Landlord, or its designee, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease, any defaults existing under this Lease (or the absence thereof) and any other factual or legal matters pertaining to this Lease as may be requested by Landlord. It is understood and agreed that Tenant's obligations to furnish estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease.

29.8 Entire Agreement. This Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained in this Lease, and any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO



THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. THE PREMISES ARE HEREBY PROVIDED TO TENANT AND TENANT HEREBY ACCEPTS THE PREMISES AS-IS, WHERE-IS. Landlord's agents and employees do not and will not have authority to make oral exceptions, changes, or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances will Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto. The foregoing warranty waiver provisions are not intended to relieve the United States Government from any liability for any environmental contamination released by the United States Government, nor to require Tenant to be responsible for clean-up, remediation, or third party liability resulting from environmental contamination, except to the extent released or aggravated by Tenant.

29.9 Survival of Obligations. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease will survive the expiration or earlier termination of the Term hereof, including, without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises for a period of 4 years following the expiration or the termination of the Lease. Upon the expiration or earlier termination of the Term hereof, and prior to Tenant vacating the Premises, Tenant will either repair or will pay to Landlord any amount reasonably estimated by Landlord as necessary to put the Premises in good condition and repair, reasonable wear and tear excluded as required of Tenant by Section 10. Tenant will also, prior to vacating the Premises, pay to Landlord the amount, as estimated by Landlord, of Tenant's obligation hereunder for taxes and insurance premiums for the year in which this Lease expires or terminates. These amounts will be used by Landlord for payment of Tenant's obligations, with Tenant being liable for any additional costs therefore upon demand by Landlord, or with any excess to be promptly returned to Tenant after all of Tenant's obligations have been determined and satisfied, as the case may be.

29.10 Severability of Terms. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term, then, in such event, it is the intention of the parties hereto that the remainder of this Lease will not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is determined to be illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to the illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

29.11 Effective Date. All references in this Lease to "the date hereof" or similar references refer to the Lease Date.

29.12 Broker's Commission. Tenant represents and warrants it has dealt with and will deal with no broker, agent or other person in connection with this Lease or extensions or amendments to this Lease other than the Tenant broker set out on **APPENDIX 1** and that no other broker, agent or other person brought about this transaction. Landlord has not used the services of a broker in connection with this Lease unless set out in **APPENDIX 1**. Any commissions paid to Landlord's Broker shall be the exclusive responsibility of Landlord.

29.13 Ambiguity. Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by Landlord and Tenant and their respective legal counsel and, accordingly,

in the event of any ambiguity in this Lease, Tenant waives the rule of construction that the ambiguity will be resolved against the party who prepared this Lease.

29.14 Joint and Several Liability. If the "Tenant" is comprised of more than one person, the obligations thereunder imposed upon Tenant will be joint and several. If there is a guarantor of Tenant's obligations, the obligations in this Lease imposed upon Tenant will be joint and several obligations of Tenant and the guarantor, and Landlord need not first proceed against Tenant before proceeding against the guarantor, nor will the guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give the guarantor any notices under this Lease.

29.15 Third Party Rights. Nothing herein expressed or implied is intended, nor will be construed, to confer upon or give to any person or entity, other than Landlord and Tenant, together with their respective agents, employees, officers and representatives, individually and collectively, any right or remedy under or by reason of this Lease.

29.16 Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Lease, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out in this Lease. All capitalized terms used in such documents will, unless otherwise defined therein, have the same meanings as are set forth in this Lease.

29.17 Applicable Law/Venue. This Lease has been executed in San Antonio, Texas, and will be governed in all respects by the laws of the State of Texas. Venue for any action brought under this Lease will be in Bexar County, Texas, and nowhere else. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever will the amount contracted for, charged or received by Landlord for the use, forbearance or retention of money hereunder or otherwise exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof would result in exceeding the legal maximum, then the obligation to be fulfilled will be automatically reduced to the legal maximum and, if from any circumstance, Landlord ever receives as interest or otherwise an amount in excess of the legal maximum, then that amount that would be excessive interest will be applied to the reduction of rent under this Lease and, if that amount that would be excessive interest exceeds the rent due, then that additional amount will be refunded to Tenant.

29.18 Time of Essence. Time is of the essence with respect to all of the rights and obligations of Tenant hereunder including, without limitation, Tenant's option rights contained in Paragraph 6.1 hereof if any.

29.19 Recording. At the request of either party, the parties will execute in recordable form a memorandum of this Lease for the purpose of giving notice to third parties of the existence of this Lease, the identity of the Premises, and the length of the Term and Extended Term. Either party may record a memorandum (but not the whole Lease) for the purpose of giving such notice.

29.20 Payment on Demand. Whenever used in this Lease, the phrase "payment on demand" means within 30 days of receipt of a bona fide and reasonably documented invoice.



29.21 Days. Whenever used in this Lease, the term "days" means calendar days.

29.22 Attorney's Fees/Legal Documents. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such litigation will be entitled to reasonable attorney's fees to be fixed by the court in such action or proceeding, and if so ordered by the court. Landlord's estoppels and lien waivers will be provided on Landlord's standard forms only.

29.23 General Terms. As used in this Lease, the terms "herein," "herewith," and "hereof" are references to this Lease, taken as a whole, the term "includes" or "including" means "including, without limitation," and references to a "Section," "subsection," "Paragraph," "subparagraph," or "Appendix" means a Section, subsection, Paragraph, subparagraph or Appendix of this Lease, as the case may be, unless in any such case the context requires otherwise. All references to Landlord or Tenant include their successors and permitted assigns. All references to a given agreement, instrument or other document will be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a Law includes any amendment or modification thereof. The singular includes the plural and the masculine includes the feminine and neuter, and vice versa.

29.24 Financial Statements. At any time (but not more often than once in any 12 month period and/or whenever Tenant fails to timely pay rent and Landlord has sent a notice letter and/or whenever Tenant is in default) and within 30 days of written request of Landlord, Tenant will deliver to Landlord Tenant's financial statements dated not more than 60 days prior to the date of such request, plus Tenant's annual fiscal year-end financial statements (with the accompanying external CPA report) for the immediately preceding fiscal year. "Financial statements" means income statement, balance sheet, statement of cash flows, any accompanying notes and federal and state tax returns.

**30. NOTICES.** Procedure for Notices. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord will be deemed to be complied with when and if the following steps are taken:

(A) All rent and other payments required to be made by Tenant to Landlord under this Lease will be payable to Landlord at the address for Landlord set forth on **APPENDIX 1** or at any other address as Landlord may specify from time to time by written notice delivered in accordance with this Section 30. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease will not be deemed satisfied until the rent and other amounts have been actually received (as opposed to deemed received as under Paragraph 30.(C) below) by Landlord.

(B) All payments required to be made by Landlord to Tenant under this Lease will be payable to Tenant at the address set forth on **APPENDIX 1**, or at any other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance with this Section 30.

(C) Except as expressly provided elsewhere in this Lease, any written notice, document or payment required or permitted to be delivered under this Lease will be deemed to be delivered when received or, whether actually received or not, when deposited with Federal Express or 3 days after being

mailed in the United States mail, postage prepaid, certified or registered mail, return receipt requested addressed as shown on **APPENDIX 1**.

**31. RULES AND REGULATIONS.** Tenant will abide by Landlord's Rules and Regulations for the Building, as set out on **APPENDIX C**.

**32. FAA AIRPORT LEASE REQUIREMENTS.** Tenant agrees to comply with all of the special covenants required by the Federal Aviation Administration ("FAA"), as set out on **APPENDIX D**, attached hereto, and any FAA amendments or additions, from time to time, made thereto.

**33. Appropriations.**

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

**34. Prohibited Interests in Contracts.**

34.01. 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.

34.02. Landlord warrants and certifies as follows:

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

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

Field Code Changed

**DATED** as of the date shown in **APPENDIX 1**.

**LANDLORD:**

PORT AUTHORITY OF SAN ANTONIO

**TENANT:**

CITY OF SAN ANTONIO, a Texas municipal corporation



By: \_\_\_\_\_  
Name: Roland C. Mower  
Its: President & CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Approved as to Form:

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

Attest:

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

**APPENDIX A**

**PREMISES**

Building 3761, located at 602 Dunton , San Antonio, Texas 78226;  
the Premises is described and/or shown, as follows:



APPENDIX A

FLOOR PLAN

## **APPENDIX B**

### **LANDLORD'S WORK AND TENANT IMPROVEMENTS**

The following Landlord's Work will be completed by Landlord, at no cost to Tenant:

1. Replace missing/stained/damaged ceiling tiles.
2. Strip, seal and wax VCT floors, clean and seal all grout surfaces in bathroom and professionally clean all carpet surfaces and otherwise clean facility and make facility move-in ready.
3. All existing equipment and overhead doors to be in good working order.
4. Service and make repairs as necessary to place in working order all mechanical systems including the ventilation and vehicle exhaust systems in the service bay, the HVAC systems and all plumbing systems on the Premises including the wash bay.
5. Make asphalt repairs to existing asphalt surfaces.
6. Replace damaged floor tile, not to exceed 200 square feet of area
7. Repair any damage to walls and paint repaired wall areas with matching paint, not to exceed 300 square feet in total of wall are to be repaired and painted.

The following Tenant Improvements will be completed by Landlord, but not to exceed \$125,000 with the first \$50,000 to be funded as part of the TI Allowance; any cost in excess of \$50,000 will be paid by Tenant in equal monthly payments over the term of the Lease:

1. Install two 100 AMP cam-lock outlets per the attached plan.
2. Engage an electrical engineer to provide appropriate plans, drawings and schematics required to obtain approval for electrical work in order to obtain Certificate of Occupancy.
3. Repair and paint any walls in Premises in excess of the 300 square feet allotted above.
4. Install infrastructure and equipment to accommodate low voltage security systems at the existing mechanical gate at front drive as selected by Tenant.
5. Gas line stub-out to serve Tenant installed 6 burner gas stove in break room.
6. Install vent-a-hood over 6 burner stove in break room
7. Electrical modifications to the Communications Room to accommodate Tenant's IT infrastructure.
8. Any other repairs requested by Tenant prior to the Commencement Date to the extent that Additional Tenant Improvement funds exist.

## **APPENDIX B**



## APPENDIX C

### RULES AND REGULATIONS

The following rules and regulations will apply, where applicable, to the Property:

1. Sidewalks, doorways, vestibules, halls, stairways and other similar areas will not be obstructed by tenants or used by any tenant for any purpose other than ingress and egress to and from the premises and for going from one to another part of the Property.
2. Plumbing, fixtures and appliances will be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material will be thrown or placed therein. Damage resulting to fixtures or appliances from misuse by a tenant or such tenant's agents, employees or invitees will be paid by the tenant and Landlord will not in any case be responsible therefore.
3. No signs, advertisements or notices will be painted or affixed on or to any windows or doors or other exterior part of the Property (or be visible from any public or common area) unless their color, size, style and location are first approved in writing by Landlord. Landlord, at tenant's sole cost and expense, will install all letters or numerals by or on doors in tenant's leased premises that are in building standard graphics. No nails, hooks or screws will be driven or inserted in any part of the Building outside the premises except by the Building maintenance personnel nor will any part of the Building be defaced by tenants. No curtains or other window treatments will be placed between the glass and the Building standard window treatments.
4. Landlord will provide and maintain an alphabetical directory board for all tenants in the first floor (main lobby) of the Building and no other directory will be permitted without the prior, written consent of Landlord.
5. Two keys to the locks on the doors entering each tenant's Leased Premises will be furnished by Landlord free of charge, with any additional keys to be furnished by Landlord to each tenant, at tenant's cost. Landlord will provide all locks for other doors in each tenant's leased premises, at the cost of such tenant, and no tenant will place any additional lock or locks on any door in or to its leased premises without Landlord's prior written consent. All such keys will remain the property of Landlord.
6. With respect to work being performed by tenants in any leased premises with the approval of Landlord, tenants will refer all contractors, contractors' representatives and installation technicians to Landlord for Landlord's supervision, approval and control before the performance of any contractual services. This provision will apply to all work performed in the Building including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, doors, entranceways, and any and all installations of every nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment.

7. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which requires use of elevators or stairways, or movement through the Building entrances or lobby will be restricted to such hours as Landlord will designate. All such movements will be under the supervision of Landlord and in the manner agreed between the tenants and Landlord by pre-arrangement before performance. Such pre-arrangement initiated by a tenant will include determination by Landlord, and subject to its decision and control, as to the time, method, and routing of movement and as to the limitations for safety or other concern, which may prohibit any article, equipment or any other item from being brought into the Building. The tenants are to assume all risks of damage to articles moved and injury to persons, including but not limited to, equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for a tenant from time of entering the property to completion of work. Landlord will not be liable for acts of any person engaged in, or any damage or loss to any property or persons resulting from, any act in connection with the service performed for a tenant.

8. Landlord has the right to prescribe the weight and position of safes and other heavy equipment or items, which will in all cases, stand on supporting devices approved by Landlord in order to distribute weight. All damage done to the Building by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, will be repaired at the expense of the tenant. Tenant will bear all costs incurred by Landlord or Tenant in determining the feasibility or actual installation of any heavy equipment.

9. A tenant will notify the Building manager when safes or other heavy equipment are to be taken in or out of the Building and the moving will be done under the supervision of the Building manager, after written permission from Landlord. Persons employed to move such property must be acceptable to Landlord.

9. Each tenant will cooperate with Landlord's employees in keeping its leased premises neat and clean.

10. Landlord will be in no way responsible to the tenants, their agents, employees or invitees for any loss of property from the leased premises or public areas or for any damages to any property thereon from any cause whatsoever.

11. To ensure orderly operation of the Building, no ice, mineral or other water, towels, newspapers, etc. will be delivered to any leased area except by persons appointed or approved by Landlord in writing.

12. If a tenant requires telegraphic, telephonic, annunciator or other communication service, Landlord will direct the electrician where and how wires are to be introduced and placed. Except as provided in each tenant's lease, electric current will not be used for heating or nonstandard power requirements without Landlord's prior written consent

13. Tenant will not make or permit any improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them.



14. Nothing will be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals will be brought into or kept in, on or about any tenant's leased premises.

15. No machinery of any kind will be operated by tenant on its leased area without the prior written consent of Landlord, nor will any tenant use or keep in the Building any inflammable or explosive fluid or substance.

16. No portion of any tenant's leased premises will at any time be used or occupied as sleeping or lodging quarters.

17. Each tenant and its agents, employees and invitees will park only in those areas designated by Landlord for parking by such tenant and will not park on any public or private streets contiguous to, surrounding or in the vicinity of the Building without Landlord's prior written consent.

18. Landlord will not be responsible for lost or stolen property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.

## APPENDIX D

### FAA AIRPORT LEASE REQUIREMENTS

/a 1. Tenant for itself, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all other requirement imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended. (49 CFR Part 21 – DOT Title VI Assurance – AC 150/5100 – 15A)

/a 2. The Tenant for itself, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that: (1) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Tenant will use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended. (49 CFR Part 21 – DOT Title VI Assurance – AC 150/5100-15A)

/b 3. Tenant agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and no unjustly discriminatory prices for each unit or service, PROVIDED, that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

/b 4. Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Tenant or its transferee for the period during which Federal assistance is extended to the airport program, except during which Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates Tenant or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which Landlord or any transferee retains ownership or possession of the property.

In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. (AAIA of 1982, Section 520 – AC 150/5100 – 15A)

/b 5. Tenant agrees that it will practice nondiscrimination in its activities and will provide Disadvantaged Business Enterprise participation in its leases as required by Landlord, in order to meet the Landlord's goals, or required by the FAA in order to obtain an exemption from the prohibition against long-term exclusive leases. (49 CFR Part 23 – AC 150/5100 – 15A)

/b 6. Tenant agrees that it will insert the above five provisions in any lease (agreement, contract, etc.) by which Tenant grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises. (See the documents referenced for the above clauses)

/b 7. It is hereby specifically understood and agreed that nothing herein contained will be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and Landlord reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Federal Aviation Act of 1958 Section 308(a) – AC 150/5100 – 16A)

/c 8. Landlord reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Tenant, and without interference or hindrance. (FAA Order 5190.6A – AGL – 600)

/c 9. Landlord reserves the right, but will not be obligated to Tenant, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of Tenant in this regard. (FAA Order 5190.5A – AGL – 600)

/c 10. This Lease will be subordinate to the provisions of and requirements of any existing or future agreement between Landlord and the United States, relative to the development, operation, or maintenance of the airport. (FAA Order 5190.6A – AGL – 600)

11. Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. (FAA Order 5190.6A – AGL – 600)

12. There is hereby reserved to Landlord, its successor and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on Kelly Field Airport. (FAA Order 5190.6A – AGL – 600)



13. Tenant by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder above a mean sea level elevation of 686 feet. In the event the aforesaid covenants are breached, Landlord reserves the right to enter upon the land hereunder and to remove the offending structure or object and cut the offending tree, all of which will be at the expense of the Tenant. (FAA Order 5190.6A – AGL – 600)

14. Tenant by accepting this Lease agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Kelly Field Airport or otherwise constitute a hazard. In the even the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Tenant. (FAA Order 5190.6A – AGL – 600)

/d\*\* 15. This Lease and all the provisions hereof will be subject to whatever the right the United States Government now has or in the future may have or require affecting the control, operation, regulation and taking over of the airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency. (Surplus Property Act of 1944 – FAA Order 5190.6A – AGL – 600)

/b 16. It is clearly understood by Tenant that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform. (Assurance 22 – FAA Order 5190.6A – AGL – 600)

/e 17. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23, Subpart F. Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F. Tenant also agrees to include the above statements in any subsequent complementary aeronautical activity agreements that it enters into and cause those businesses to similarly include the statements in further agreements. (49 CFR Part 23, Subpart F)

Notes:

/a Mandatory in all leases/agreements if airport is obligated by a Federal Agreement since January 30, 1965.

/b Mandatory in all leases/agreements for aeronautical services at airports subject to continuing obligations under FAAP/ADAP Agreements.

/c Mandatory in all Use Agreements permitting aeronautical operations from adjoining non-airport property.

/d Mandatory in all leases/agreements at airports acquired in whole or in part under Federal Surplus Property Transfer (unless the National Emergency Use Provision of the Surplus Transfer Document has been specifically released by the FAA).

/e Mandatory in all complementary aeronautical activity leases/agreements executed after June 1, 1992.

\* Insert the number of feet mean sea level applicable to the most critical area of the parcel contained in the lease in accordance with Part 77 of the Federal Aviation Regulations. If required, the area of a lease may be subdivided as shown on a property map to provide more than one height limitation, or more restrictive height limitations may be imposed at the discretion of the Sponsor.

\*\* If the airport is not subject to the National Emergency Use Provision generally contained in the Surplus Property Instruments of Disposal, Paragraph 15 above may be modified to exclude that portion of the provision, "or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency."

## Appednix E: Term and Rent Commencement Memorandum

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**Landlord:** Port Authority of San Antonio

**Tenant:** City of San Antonio

**Lease:**

**Authorizing Ordinance:**

### *Predicate Facts:*

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

The Lease Term is to begin at the Term Commencement Date.

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

### *Rights and Obligations:*

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

#### **1. Defined Terms.**

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

#### **2. Term Commencement Date and Rent Commencement Date.**

Tenant's right of occupancy commences as of the Rent Commencement Date which occurred on \_\_\_\_\_, 2017 for which Tenant paid \$X in rent for the period up until the Term Commencement Date which occurred on \_\_\_\_\_, 2017.

#### **3. No Default.**

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

#### **4. Conflict of Terms.**

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



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

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

Port Authority of San Antonio

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

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

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

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

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

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

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

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

**Approved as to Form:**

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