

ORDINANCE 2019-04-18-0320

**APPROVING A LEASE AGREEMENT WITH
MARTINEZ STREET WOMEN'S CENTER FOR A
BUILDING LOCATED IN LOCKWOOD PARK IN
COUNCIL DISTRICT 2. THERE IS NO FISCAL IMPACT
ASSOCIATED WITH THIS ORDINANCE.**

* * * *

WHEREAS, Martinez Street Women's Center (MSWC) has an established community presence over the last 20 years and has been providing health and educational programming at Lockwood Park since 2013; and

WHEREAS, the current agreement expires on April 30, 2019, and a new Lease Agreement is proposed to commence on May 1, 2019, and expire April 30, 2022, with two (2), one-year administrative extension terms; and

WHEREAS, MWSC will continue to provide community health and educational programs for girls and women in the community; and

WHEREAS, they will be expanding services to include: basic needs services, positive parenting programs, nutrition and fitness; and

WHEREAS, in lieu of rent, the MWSC is responsible for interior building maintenance and all associated utilities; and

WHEREAS, MSWC continues to allow short term and occasional building usage to local community groups; **NOW THEREFORE:**

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

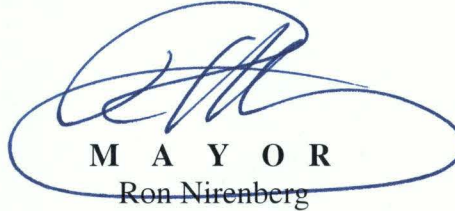
SECTION 1. The City Manager or designee, or the Director of the Parks and Recreation Department or designee, is hereby authorized to execute a Lease Agreement with the Martinez Street Women's Center for the Lockwood Park building at 801 N. Olive Street for a term of three years commencing on May 1, 2019. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. 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

SW/ah
4/18/19
Item #9

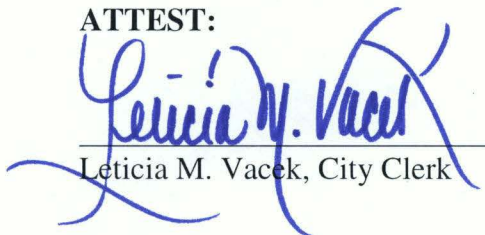
Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

PASSED AND APPROVED this 18th day of April, 2019.




M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	9 (in consent vote: 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20A, 20B)						
Date:	04/18/2019						
Time:	10:07:36 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a Lease Agreement with Martinez Street Women's Center for a building located in Lockwood Park in Council District 2. There is no fiscal impact associated with this ordinance. [Colleen M. Bridger, MPH, PhD, Interim Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		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				x
Clayton H. Perry	District 10	x					

SW/ah
4/18/19
Item #9

ATTACHMENT I

Lease Agreement with Martinez Women's Street Center

Table of Contents

I. Basic Information, Definitions.....	1
II. Grant	2
III. Rent and Consideration.....	2
IV. Term, Renewal.....	2
V. Tenant's Affirmative Promises.....	2
VI. Indemnity.....	3
VII. Tenant's Negative Promises	3
VIII. Landlord's Affirmative Promises	4
IX. Landlord's Negative Promise	4
X. Alterations and Improvements.....	4
XI. Insurance.....	5
XII. Release of Claims/Subrogation.....	6
XIII. Landlord's Municipal Powers.....	7
XIV. Conflict of Interest.....	7
XV. Non-Discrimination.....	7
XVI. Casualty/Total or Partial Destruction.....	7
XVII. Condemnation/Substantial or Partial Taking.....	7
XVIII. Default, Remedies for Default	7
XIX. Warranty Disclaimer.....	9
XX. Abandoned Property	9
XXI. Appropriations	9
XXII. Sublease, Assignment.....	9
XXIII. Dispute Resolution.....	9
XXIV. Miscellaneous	10
XXV. Reporting and Records.....	11
XXVI. Public Information	12

I. Basic Information, Definitions

Authorizing Ordinance:

Landlord: City of San Antonio, through its Parks and Recreation Department ("City")

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Parks and Recreation Department)

Tenant: Martinez Street Women's Center ("MSWC")

Tenant's Address: P.O. Box 10386, San Antonio, Texas 78210

Premises: Lockwood Park, 801 N. Olive St, Building

Permitted Use:

Youth, family and community programming, office and meeting space for administrative purposes, development, improvement, operations, maintenance, and other uses as may be approved by City through its Director of Parks and Recreation. Notwithstanding anything to the contrary contained within this Lease Agreement, the Landlord acknowledges and agrees that MSWC shall have the right, and MSWC agrees that it shall exercise such right, to utilize a building in Lockwood Park.

Commencement Date: Upon Execution

Initial Term: Expiring April 30, 2022, with two (2) one-year administrative extensions

Base Rent: See Section III. Rent and Consideration

II. Grant

- 2.1. Landlord leases the Premises to Tenant, and Tenant takes the Premises, from Landlord on the terms and conditions of this Lease.
- 2.2. Tenant's right of occupancy begins at the Occupancy Commencement Date.

III. Rent and Consideration

- 3.1 Tenant shall pay no rent to Landlord under the terms of this Lease.
- 3.2 Tenant shall be responsible for payment of all utility services used in the Premises. MSWC shall use its best efforts to ensure that its water usage shall occur in a manner, amount and frequency that is consistent with efforts to conserve water resources, and in a manner which is in strict compliance with all state and local regulation of water usage.

IV. Term, Renewal

- 4.1 The primary term of this Lease will expire April 30, 2022, commencing on the Commencement Date shown above, unless sooner terminated as provided in this Lease.
- 4.2 The extension term of this Lease will include two (2) one-year administrative extensions, unless sooner terminated as provided in this Lease.
- 4.3 Either party may terminate this lease with ninety (90) days written notice.

V. Tenant's Affirmative Promises

Tenant promises that it will:

- 5.1 Accept the Premises described in Exhibit B – Leased Area Map in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.
- 5.2 Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and surrounding land as adopted by Landlord.
- 5.3 Tenant will be solely responsible for all electric utility usage and will transfer CPS accounts into Tenant's name. At the end of this lease, Tenant will work cooperatively with Landlord to facilitate the transfer of all electric utility accounts back into Landlord's name.
- 5.4 Allow Landlord to enter the Premises to perform Landlord's obligations and inspect the Premises.
- 5.5 Allow Landlord, CPS and SAWS to enter the Premises to access utility infrastructure serving the Premises.
- 5.6 Repair, replace, and maintain in good condition all interior parts of the Premises, to include custodial and cleaning activities, and regular maintenance checks on mechanical units.

5.7 After casualty loss not terminating the Lease, rebuild any interior partitions, ceilings, wiring, light fixtures, and plumbing.

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

5.9 On request, execute an estoppel certificate that states the Occupancy Commencement Date, and Termination Date of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

VI. Indemnity

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

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

VII. Tenant's Negative Promises

Tenant promises that it will not:

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

7.2 Create a nuisance by storing supplies, equipment, nor place any furnishings in any areas other than inside the building.

7.3 Permit waste.

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

7.5 Allow a lien to be placed on the Premises.

VIII. Landlord's Affirmative Promises

Landlord promises that it will:

8.1 Lease to Tenant the Premises for the entire Term beginning on the Occupancy Commencement Date.

8.2 Maintain the exterior of the Premises and the surrounding grounds.

8.3 Obey all applicable laws with respect to Landlord's operation of the Building and surrounding land.

8.4 No provision in this agreement shall be interpreted to obligate the Landlord to make any capital improvements or extraordinary repairs to any portions of the building. Tenant reserves the right to request such repairs subject to landlord's discretion. Landlord has the right, but not the obligation to choose to make capital improvements or extraordinary repairs as landlord deems appropriate and subject to available funding.

8.5 Should the landlord's decision not to make a capital improvement or extraordinary repair render the Premises untenable for the Tenant's use purposes, Tenant has an option to terminate this Lease by notifying Landlord in writing within 10 days of when the request for repair is denied.

IX. Landlord's Negative Promise

9.1 Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

X. Alterations and Improvements

10.1 Tenant may not, without the prior written approval of City, construct, or allow to be constructed, any permanent improvements to the Premises or make or allow to be made any permanent alterations to the structures within the Premises without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. If approved by the City's Parks and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined in 10.01 b) and c) outlined above.

10.2 Tenant shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.

10.3 The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

10.4 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by Tenant and at any time placed or maintained by Tenant on any part of the Premises shall be and remain the property of the Tenant; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Premises shall become the property of the Landlord from and after the time that such improvements are made and shall remain the property of the Landlord after the termination of this Lease.

10.5 Landlord shall not be responsible or liable for, and Tenant covenants that it will not bind or attempt to bind, Landlord for payment of any money in connection with any Improvements to the Premises.

10.6 During any periods of time that Improvements are occurring within the Leased Premises, Tenant's contractors will be required to secure Builder's Risk insurance, if requested by Landlord, and provide Landlord with a certificate of insurance evidencing such coverage.

10.7 Landlord shall not have any responsibility for making any capital repairs or capital improvements to the Premises.

XI. Insurance

11.1 Prior to the commencement of any work under this Lease and throughout the term of this Lease, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "**Martinez Street Women's Center Lease Agreement**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. Landlord will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to Landlord. Landlord shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Property Damage Liability	\$100,000

11.4 Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Tenant herein, and provide a certificate of insurance and endorsement that names the Tenant and the Landlord as additional insureds. Respondent shall provide Landlord with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

11.5 As they apply to the limits required by Landlord, Landlord shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Tenant shall be required to comply with any such requests and shall submit a copy of the

replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Tenant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

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

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

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

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

XII. Release of Claims/Subrogation

12.1 The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the

maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

XIII. Landlord's Municipal Powers

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

XIV. Conflict of Interest

14.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or 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:

- A City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- An entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. Non-Discrimination

15.1 As a party to this contract, Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XVI. Casualty/Total or Partial Destruction

16.1 If the Premises are damaged by casualty Tenant may terminate this Lease.

XVII. Condemnation/Substantial or Partial Taking

17.1 If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, Tenant may terminate this Lease.

XVIII. Default, Remedies for Default

18.1 *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event

of default:

18.1.1 Tenant fails to comply with any term, provision or covenant of this Lease and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is false or misleading in any material respect when given to Landlord.

18.1.2 This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

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

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

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

18.2 *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

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

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

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

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

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

18.5 *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is termination of this lease effective on written notice to Landlord (Tenant thereby waives the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Landlord has no further liability to Tenant for an act of default. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

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

XIX. Warranty Disclaimer

19.1 **There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.**

19.2 **Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.**

XX. Abandoned Property

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

XXI. Appropriations

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

XXII. Sublease, Assignment

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

XXIII. Dispute Resolution

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

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

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

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

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

23.6 Mediator fees must be borne equally.

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

XXIV. Miscellaneous

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

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

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

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

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

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

24.7 *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of

notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

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

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

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

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

24.12 *Administrative Actions and Agreements*. The Director of Parks and Recreation may, without further Council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without Council consent.

24.13 *Conflicts Between Numbers Stated Two Ways*. Whenever this Lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

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

XXV. Reporting and Records

25.1 *Annual Report to City* On or before September 30 of each year during the term of this Agreement, Tenant shall provide a written report to the Landlord Director ("Annual Report") outlining Tenant's plan for the following calendar year, and completed activities for the previous calendar year, for the following:

- a) Fundraising, grants, and sponsorships
- b) Educational programs, events, and other activities
- c) Officers and Board Members
- d) Changes in By-laws or Articles of Incorporation
- e) Any other pertinent information regarding the actions and/or activities of Tenant

25.2 Use of the Premises

25.8.1 Tenant shall have the right to access the Premises for the purposes outlined in this Agreement.

25.8.2 Tenant, its members, officers and Board Members, shall ensure that their use of the Premises is in a manner that does not result in damage or modification of the Premises and its amenities.

25.03 *Financial Records* Throughout the term of this Agreement, Tenant shall maintain complete and accurate permanent financial records related to its rights and obligations under the terms of this Agreement. Such records

shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to City inspections, review, and audit following reasonable notification of intent to inspect.

XXVI. Public Information

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

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

LANDLORD:

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

TENANT:

MARTINEZ STREET WOMEN'S CENTER

By: _____
Xavier D. Urrutia, Director

By: _____
Andrea Figueroa, Executive Director

Approved as to Form:

City Attorney

Attestation:

City Clerk

Attachments:

Exhibit A – Leased Premises Map