TM [2/12/15]
Item No. 19B.

AN ORDINANCE 2015-02-12-0093

AUTHORIZING THE EXECUTION OF A FIVE YEAR LEASE FOR 1,276 SQUARE FEET OF OFFICE SPACE LOCATED AT 9504 IH-35, SUITE 205, IN COUNCIL DISTRICT 2, WITH MCWARDLAW NORTHEAST LTD FOR AN ANNUAL RENTAL AMOUNT OF $21,696.00 IN THE FIRST YEAR OF THE TERM INCREASING TO $24,240.00 IN THE FINAL YEAR OF THE TERM.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement in the amount of $21,696.00 in the first year of the term increasing to $24,240 in the final year of this term for rental of office space between the City of San Antonio and the McWardlaw LTD substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. The sum of the lease amounts are hereby appropriated in the above designated fund and will be disbursed from GL 5206010 "Rental of Facilities" with IO 136000000643.

SECTION 3. Under the terms of the lease the annual rate for this lease agreement for the initial year will be $21,696.00 increasing to $24,240.00 in the final year of the term. The chart below identifies the costs associated with this lease during the term.

Term Monthly Rent Annual Rent		
Term Commencement Date thru end of 1st year	$1,808.00	$21,696.00
Year 2	$1,861.00	$22,332.00
Year 3	$1,914.00	$22,968.00
Year 4	$1,968.00	$23,616.00
Year 5	$2,020.00	$24,240.00

SECTION 4. 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 5. This ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

PASSED AND APPROVED this 12th day of February, 2015.

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Martha G. Sepeda, Acting City Attorney

ATTACHMENT 1

DRAFT 6(9504 IH-35 Suite 205)
Metro Health Healthy Start at NE Atrium

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: McWardlaw Northeast LTD

Landlord's Address: 16601 Blanco Road, Suite 1000
San Antonio, TX 78232

Tenant: City of San Antonio

Tenant's Address: P. O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Office of EastPoint & Real Estate Services)

Premises:	1,276 rentable square feet of office space on the 2nd Floor, Suite 205 located at 9504 IH-35, San Antonio, Texas, as depicted in Exhibit A.
Permitted Use:	General office use
Binding Date:	This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.
Initial Term:	60 months plus any period before the first day of the first full month after the rent commencement date.
Term Commencement Date:	The first day of the first full month following the Rent Commencement Date.
Rent Commencement Date:	Upon the later of (i) February 15, 2015 or (ii) 15 days after the date that Tenant completes the installation of its telephone system or (iii) the date that Landlord completes the Tenant Improvements. In no event shall the Rent Commencement Date be more than 30 days after the date that Landlord completes the Tenant Improvements. The parties will memorialize the Term Commencement Date and Rent Commencement Date in a document similar in format to that attached hereto as Exhibit B.
Rent:	Rent shall be paid pursuant to the schedule detailed in Section 3.1 of this Lease.
Address for Payment of Rent:	16601 Blanco Road, Suite 1000 San Antonio, TX 78232
Asbestos Survey Deadline:	January 5, 2015
Hours of Use:	24 hours per day 7 days per week
Common Areas:	All facilities and areas of the building and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all building tenants. Landlord has exclusive control over and right to manage the Common Areas.
Tenant Improvements:	Prior to the Rent Commencement Date, Landlord at its sole cost and expense shall ensure that there is (1) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment); (2) fully functional hot and cold water for lavatories and drinking; (3) building code compliant electrical distribution within the Premises for office machinery found in the ordinary course of business and the building's standard lighting reasonable for the Permitted Use; and to complete the following work: (a) remove wall with glass panel in it completely, patch carpet to match existing or replace in the 2 rooms affected by the

work, reconfigure ceiling grid as necessary, paint and reconfigure electrical systems, lighting and HVAC as necessary to accommodate the work. As part of its obligation to complete the Tenant Improvements, Landlord, at its sole cost and expense shall obtain a Certificate of Occupancy.

Parking: Four parking spaces plus visitor spaces in the parking lot belonging to Landlord.

The exhibits to this Lease are:

Exhibit A: Description of Premises
Exhibit B: Term and Rent Commencement Memorandum

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from subject to the terms and conditions of this Lease including, but not limited, to the requirement that Landlord construct Tenant Improvements.

2.02. Tenant's right of occupancy begins at the Rent Commencement Date. Rent is due beginning on that date as described in section 3 below 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 March 15, 2015. *Move-in ready* means that Landlord 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.

3. Rent.

3.01. Base Rent for the Initial Term is as depicted in the table immediately below and is inclusive of all costs and expenses associated with Tenant's occupancy save for those services expressly made the Tenant's responsibility as detailed in Section 9 of this Lease. Landlord is required to cover electricity costs for the Premises and Common Areas. There is no pass through or additional charges of any kind during this Term.

TERM	BASE RENT
Rent Commencement Date – Term Commencement Date	$60.26 per day
Months 1 to 12	$1,808.00
Months 13to 24	$1,861.00
Month 25 to 36	$1,914.00
Months 37 to 48	$1,968.00
Months 49 to 60	$2,020.00

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

4. Term, Renewal, Early Termination.

4.01. The term of this Lease is the Initial Term as defined in section 1 above, unless sooner terminated as provided in this Lease.

4.02. Tenant shall have the option to renew for a 60 month term at the annual rate of $19.25 in the first year of the renewal term, increasing by $0.25 per square foot annually during the term inclusive of all costs on the condition that Tenant provides not less than 120 days written notice prior to the end of the Initial Term to Landlord. Upon Tenant's exercise of the option to renew, Landlord shall paint and re-carpet the Premises using building standard finishes prior to the beginning of the renewal period.

4.03. Tenant shall have the right to terminate at or any time after the 24th month upon 120 days written notice.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

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

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

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

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

5.05. On request, execute an estoppel certificate that states the Rent Commencement Date, the Term Commencement Date and duration of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

5.06 Provide janitorial services to the Premises only.

6. Tenant's Negative Promises.

Tenant promises that it will not:

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

6.02. Create a nuisance.

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

6.04. Permit waste.

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

6.06. Change Landlord's lock system.

6.07. Alter the Premises.

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

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

7. Landlord's Affirmative Promises.

Landlord promises that it will:

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

7.02. Obey all applicable laws with respect to Landlord's operation of the building and Common Areas.

7.03. Provide at no cost to Tenant (a) maintenance services as specified in Section 9; (b) utilities; and (c) lighting in Common Areas, including the parking area serving the building of which the Premises is part; (d) on-site trash removal for use by Tenant's janitorial contractor; (e) janitorial services to the building common areas including, but not limited to maintaining the exterior landscaping, cleaning all common area bathrooms at least one time per day including replenishing paper and other supplies and vacuuming or sweeping as the case may be on a daily basis all common area hallways, stairways and lobby areas and; (e) fully operational elevator service to the floor on which the Premises is located.

7.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, (f) floors (but not carpeting or similar floor covering, unless damaged by a problem with the floor), (g) damage to Tenant's improvements, including concealed mechanical systems, caused by failure or malfunctioning of building features or equipment for which Landlord is responsible, (h) other structures or equipment serving the Premises, and (i) all other parts of the Premises the repair, replacement, and maintenance of which is not otherwise expressly allocated to Tenant.

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

7.06. Timely pay when due all charges for utility services to the Premises, except for services the payment of which are expressly allocated to Tenant, if any.

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

7.08. Timely complete at its own cost all work allocated for the Tenant Improvements.

7.09. Allow Tenant the nonexclusive right to use the Common Areas subject to reasonable rules and regulations that Landlord may prescribe.

8. Landlord's Negative Promises.

Landlord promises that it will not:

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

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

9. Repair, Maintenance and Replacement Responsibilities.

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

Item	*Tenant Responsibility*	*Landlord Responsibility*
Janitorial Services to Premises	Yes	No
Janitorial Services to Common Areas	No	Yes
Utility Services	No	Yes
Parking Lot Maintenance	No	Yes
Landscaping	No	Yes
Exposed Electrical Systems	No	Yes
Light bulbs and tubes	No	Yes
Concealed Electrical Systems	No	Yes
Exposed Plumbing Systems	No	Yes
Concealed Plumbing Systems including under slab drain lines	No	Yes
HVAC Systems	No	Yes
Pest Control Service	No	Yes
Trash Hauling	No	Yes

10. Alterations.

Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Rent Commencement Date, normal wear excepted.

11. Insurance.

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

11.02. Landlord must maintain Commercial General Liability insurance of not less than $2,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 100% of replacement cost.

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

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

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

City of San Antonio
Leasing Division P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: "Leasing Manager"

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

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

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

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

11.02.02. Within 30 days after the Rent Commencement Date and promptly after Tenant's later request, Landlord must, at its own expense, deliver certificates to Tenant's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and pay the cost thereof. Tenant's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

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

12. Release of Claims/Subrogation.

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

13. Indemnity.

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

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

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

13.01.03. "Indemnitor" means Landlord.

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

13.03. If one or more Indemnitees are finally adjudged to bear fault outside the scope of this indemnity, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from

the Indemnitees' adjudicated share of liability. But despite allegations that one or more Indemnitees bear such fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication and all appeals have been exhausted. An Indemnitee may but need not waive appeals. Indemnitor may not recover sums previously spent defending or otherwise indemnifying Indemnitees finally adjudged to bear fault outside the scope of this indemnity and must continue to indemnify other Indemnitees if claims are still asserted against them.

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

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

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

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

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

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

14. Casualty/Total or Partial Destruction.

14.01. If the Premises are damaged by casualty and can be restored within 90 days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which

Landlord is responsible within 90 days from the loss, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

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

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

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

15. Condemnation/Substantial or Partial Taking.

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

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

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

16. Holdover.

16.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may 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 EastPoint and Real Estate Services deems the holdover beneficial.

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

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

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice; (ii) failing to provide any of the services detailed as Landlord's responsibility pursuant to Section 9 of this Lease to Tenant within 10 days after

written notice and; (iii) failure to timely pay for utility services the payment of which is allocated to Landlord under this Lease; and (iv) failure to pay property taxes before assessment of interest or penalty.

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide any of the services detailed as Landlord's responsibility pursuant to Section 9 of this Lease within 30 days after default, terminate this lease. Further, if a utility service the payment of which is allocated to Landlord is in imminent threat of being terminated, Tenant may, without prior notice to Landlord, pay some or all the charges and deduct the entire amount paid against the next occurring Rent payment.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

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

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

18. Warranty Disclaimer.

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

19. Environmental.

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

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

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

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

19.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

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

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

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

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

20. Appropriations.

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

21. Dispute Resolution.

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

21.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive

mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

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

21.06. Mediator fees must be borne equally.

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

22. Prohibited Interests in Contracts.

22.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Landlord warrants and certifies as follows:

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

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

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

23. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

23.11. *Administrative Agreements.* The Director of EastPoint and Real Estate Services may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

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

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

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

24. Landlord's Relocation Right

(a) Provided Landlord has in hand a written bonafide offer to lease the Premises as confirmed by a letter of intent and cashed security deposit check from the party proposing to lease the Premises, then Landlord shall have the right at any time from the Rent Commencement Date through the end of the 48th month of the Initial Term to substitute, instead of the Premises other space hereinafter referred to as "Substitution Space," in the Building of which the Premises is part.

(b) If Landlord desires to exercise such right, it shall give Tenant at least sixty (60) days prior notice thereof specifying the effective date of such substitution, whereupon, as of such effective date: (a) the description of the Premises set forth in this Lease shall, without further act on the part of Landlord or Tenant, be deemed amended so that the Substitution Space shall, for all intents and purposes, be deemed the Premises hereunder, and all of the terms, covenants, conditions, provisions and agreements of this Lease shall continue in full force and effect and shall apply to the Substitution Space and Tenant shall move from the presently leased Premises into the Substitution Space, vacate and surrender possession to Landlord of the presently leased Premises timely upon approval of the amended terms by the City Council. In the event that the size of the Substitution Space is smaller on a rentable square foot basis then the Premises, then the monthly rent shall be adjusted based upon the price per rentable square foot as presently in effect for this Lease and in the event the Substitution Space is larger than the Premises, then the monthly rent shall not exceed the cost as specified in this Lease.

(c) Tenant shall have the option to (i) accept possession of the Substitution Space in its "as is" condition as of such effective date; (ii) require Landlord to alter the Substitution Space in a manner comparable to that in which the presently leased Premises were altered or were to be altered, including a complete painting and re-carpeting of the Substitution Space or (iii) terminate the Lease. Tenant shall exercise such notice to Landlord in writing within ten (10) days after the aforesaid notice from Landlord to Tenant of such proposed relocation. If Tenant fails to deliver to Landlord within such ten (10) day period notice of its election, or if Tenant is in default under any of the terms, covenants, conditions, provisions or agreements of this Lease, Tenant shall be deemed to have elected to accept possession of the Substitution Space in its "as is" condition. If Tenant elects to require Landlord to alter the Substitution Space, then (a) Tenant shall continue to occupy the presently leased premises, (upon all of the terms, covenants, conditions, provisions, and agreements of this Lease, including the covenant for the payment

of rent) until the date on which Landlord shall have substantially completed such alteration work in the Substitution Space, and (b) Tenant shall move from the presently leased Premises into the Substitution Space immediately upon the date of such substantial completion by Landlord as evidenced by Landlord obtaining a Certificate of Occupancy for Tenant's use of the Substitution Space and shall vacate and surrender possession to Landlord of the presently leased Premises on such date.

(d) If Landlord exercises this relocation right, Landlord shall be solely responsible for moving or arranging the moving of Tenant's furniture, equipment and fixtures including procuring the services required due to any warranty or other agreement that Tenant may have in place with 3rd party vendors for any leased equipment. As part of Landlord's responsibility, it shall procure the services, at its sole cost and expense, of a phone and or network communications vendor certified to work on Tenant's network phone and IT equipment including any work necessary to wire and otherwise outfit the Substitution Space to accommodate Tenant's phone equipment including lines necessary to distribute wireless internet access and phone cabling to support Tenant's operation. Additionally, Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for supplies, letterhead, notices to its customers of their change of address, and other costs customarily incurred as result of moving into the Substitution Space.

(e) The Substitution Space shall be deemed to be comparable to the Premises only if it: (a) has an amount of rentable area which is not less than 10% smaller than the net rentable area of the Premises, (b) has exterior offices are comparable in quantity and size to the Premises, and (c) has a comparable number of windows and a comparable view to the Premises.

In the event of such relocation, such Substitution Space shall be for all purposes is deemed the leased Premises hereunder and this Lease shall continue in full force and effect without any change in other terms or conditions hereof.

25. Public Information.

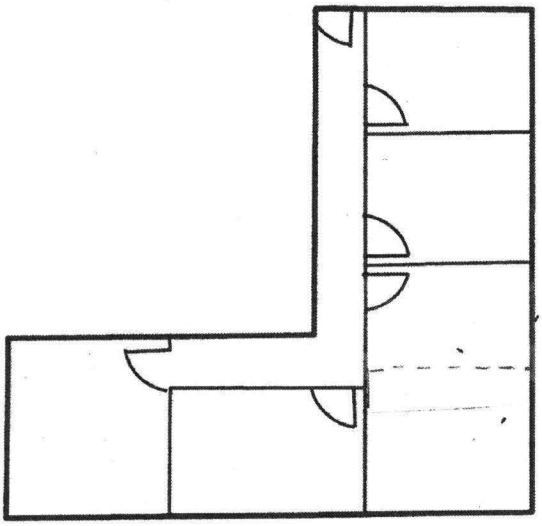
Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

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

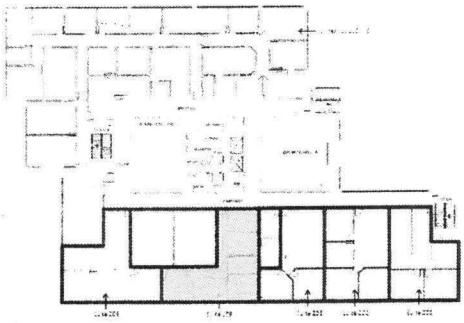
Tenant	**Landlord**
City of San Antonio, a Texas municipal corporation	**McWardlaw Northeast LTD**
Signature:_____	Signature: Malcolm R Wardlaw Malcolm Wardlaw, President
Printed Name:_____	Date: 2-10-15
Title:_____	
Date:_____	
Attest:	
_____ City Clerk	
Approved as to Form:	
_____ City Attorney	

Exhibit A: Description of Premises

Floor Plan - Suite 205



1,276 sf



- - - Wall Removed At this location

Exhibit B: Term and Rent Commencement Memorandum

Landlord: McWardlaw Northeast LTD

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 _____, 2015 for which Tenant paid $X in rent for the period up until the Term Commencement Date which occurred on _____, 2015.

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

By:_____

Printed Name:_____

Title:_____

Date: _____

McWardlaw Northeast LTD

Signature: Malcolm R. Wardlaw
Malcolm Wardlaw, President

Date: 2-10-15

Attest:

_____
City Clerk

Approved as to Form :

_____
City Attorney