

AN ORDINANCE

2011-11-17-0950

**AUTHORIZING A FIVE-YEAR LEASE WITH BRASS CENTERVIEW HOLDING LLC, FOR APPROXIMATELY 1,108 SQUARE FEET OF OFFICE SPACE, LOCATED AT 4414 CENTERVIEW DRIVE, FOR THE CITY COUNCIL DISTRICT 7 FIELD OFFICE, FOR THE MONTHLY RENTAL AMOUNT OF \$1,717.92 DURING THE FIRST YEAR INCREASING ANNUALLY TO \$1,933.53 IN THE FIFTH AND 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 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.

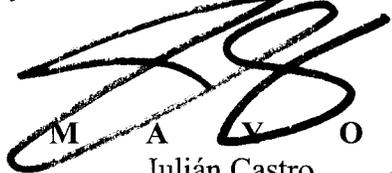
**SECTION 2.** Funding in the amount of \$16,320.24 for this ordinance is available in Fund 11001000, Cost Center 0107020001 and General Ledger 5206010, as part of the Fiscal Year 2012 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Brass Centerview Holding LLC, and should be encumbered with a purchase order.

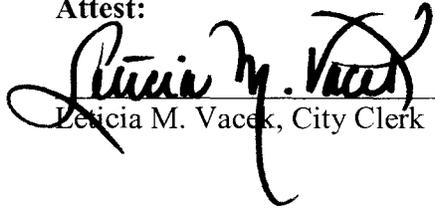
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

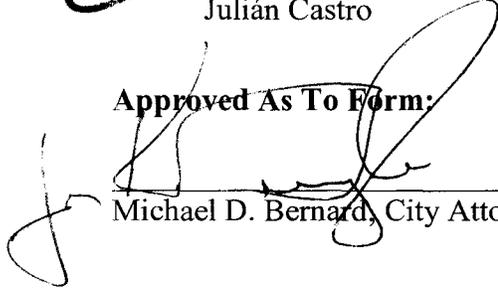
**PASSED AND APPROVED** this 17<sup>th</sup> day of November 2011.

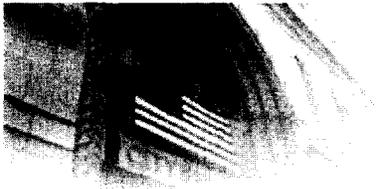
  
M A Y O R  
Julián Castro

**Attest:**

  
Leticia M. Vacek, City Clerk

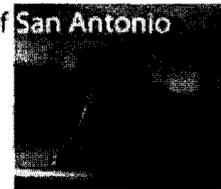
**Approved As To Form:**

  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 15

<b>Name:</b>	15						
<b>Date:</b>	11/17/2011						
<b>Time:</b>	09:47:55 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a five-year lease agreement with Brass Centerview Holding LLC, for approximately 1,108 square feet of office space, located at 4414 Centerview Drive, for the City Council District 7 field office, for the monthly rental amount of \$1,717.92 during the first year increasing annually to \$1,933.53 in the fifth and final year of the term. [Ben Gorzell, Assistant City Manager; Jorge Perez, Director, Building and Equipment Services]						
<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>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				

**Attachment I**

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**Office Lease**  
**(District 7 Constituent Office/4414 Centerview)**

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**1. Basic Information, Definitions.**

**Authorizing Ordinance:**

**Landlord:** Brass Centerview Holdings, LLC

**Landlord’s Address:** 4440 Piedras Drive, Suite 150, San Antonio, Texas  
78228

**Tenant:** City of San Antonio

**Tenant’s Address:** P.O. Box 829966, San Antonio, Texas 78283-3966  
(Attention: Manager, Leasing Division)

**Premises:** Suite 160 at 4414 Centerview Dr., San Antonio, Texas 78228, as graphically depicted on **Exhibit A**. The Premises are located at Lot 2, Block 2, NCB 14275, San Antonio, Bexar County, Texas.

**Permitted Use:** General office use

**Commencement Date:** December 15, 2011, subject to 2.03 of this Agreement

**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:** 5 years from the Commencement Date

**Address for Payment of Rent:** Brass Centerview Holdings, LLC, 4440 Piedras Drive, Suite 150, San Antonio, Texas 78228

**Asbestos Survey Deadline:** November 15, 2011

**Common Areas:** All facilities and areas of the Building and Parking Facilities 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.

**Essential Services:** (a) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment) during Building Operating Hours; (b) hot and cold water for lavatories and drinking; (c) the cleaning and maintenance services on **Exhibit B**; (d) elevator service, if necessary, to provide access to and from the Premises; (e) electricity for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (f) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

The exhibits to this Lease are:

Exhibit A: Graphic Depiction of Premises  
Exhibit B: Cleaning and Maintenance Schedule  
Exhibit C: Finish-out Diagram

## 2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of the Lease, Landlord must provide Tenant two reserved parking spaces at no charge.

2.02. Subject to the subparagraph below, Tenant's right of occupancy begins at the Commencement Date. Likewise subject to the subparagraph below, Tenant's first rent payment is due at the Commencement Date.

2.03. If Landlord has not completed the finish-out in all material respects by December 15, 2011, the Commencement Date is shifted until such later date as Landlord has completed the finish-out. If Landlord has not completed the finish-out by December 31, 2011, Tenant may choose to cancel this Lease by delivering written notice of termination to Landlord.

**3. Rent.**

3.01. Tenant must pay Rent in advance on the first day of each month or within 10 days thereafter without penalty, as follows:

Rent Period	Monthly Rent
December 15, 2011 thru November 30, 2012	\$1,717.92
December 1, 2012 thru November 30, 2013	\$1,769.46
December 1, 2013 thru November 30, 2014	\$1,822.54
December 1, 2014 thru November 30, 2015	\$1,877.22
December 1, 2015 thru December 14, 2016	\$1,933.53

3.02. Tenant further may be more than 10 days late twice in a calendar year without penalty. On the third and each later occasion in a calendar year on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 15 days from delivery of Landlord's notice, then Tenant owes a late charge of 5% of the delinquent amount as additional rent. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.03. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

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

**4. Term, Renewal.**

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease. Tenant may terminate this lease at any time without cause by delivering 30-days prior written notice to Landlord.

4.02. Tenant may renew this Lease for one 5-year term by giving Landlord 60-days' prior written notice before expiration of the previous term, whether initial or

renewal. Renewals are on the same terms and conditions as the Initial Term, except for rent. Rent will be at fair-market rental value. All renewals must be approved by City Council.

4.03. Whenever this Lease calls for determination of market rent, market rent is determined by the following procedures:

4.03.01. The parties should try to agree on market rent.

4.03.02. If they cannot agree on market rent within 10 calendar days of Tenant's notice of desire to renew, they should agree on an appraiser to determine market rent. The parties share equally in the appraiser's fees. The appraiser's estimate of market rent is market value for the purpose of calculating rent under this Lease.

4.03.03. If the parties cannot agree on an appraiser within 15 calendar days of Tenant's notice of desire to renew, they should each appoint an appraiser within five additional days. To effect appointment, the appointing party must deliver notice to the other party according to the notice provisions of this Lease. Each party pays the fee for that party's respective appraiser. The two appraisers should try to reach agreement on market rent within 30 days of appointment. If they cannot agree but the higher of the two estimates of market rent is within 10% of the lower, the two figures are to be averaged, and the average is market rent for the purposes of rent calculation.

4.03.04. If the higher of the two estimates of market rent is not within 10% of the lower, the two appraisers should appoint a third appraiser within five days of the completion of the latter of the two appraisals. The third appraiser must make his estimate of market rent within 30 days of appointment, and the third appraiser's estimate is averaged with the market rent estimate of the other two appraisers that is closest to the third's estimate. The market rent estimate of the other two appraisers that is farthest from the estimate of the third appraiser is discarded, and the party who appointed the appraiser whose estimate is discarded pays the fees for the third appraiser

4.04. If Tenant gives notice of desire to renew, the parties must immediately try to agree on market rent. If they cannot agree and the above market-rent-determination process extends beyond the beginning of the renewal term, Tenant must pay rent as follows until market rent is determined: (A) Tenant pays rent at the rate for the previous term directly to Landlord and (B) Tenant pays the difference between the rent for the previous term and Landlord's demand into an account drawable only jointly by Landlord and Tenant. When market rent is determined, the amount in the rent escrow account should be distributed accordingly, and if the amount in the account is insufficient to pay Landlord what is owed, Tenant must promptly pay Landlord the difference.

4.05. Time is of the essence in all deadlines in the preceding subparagraph about determining market rent. If a party fails to make a timely appointment, the party

forfeits the right to an appointee from that point forward in the market rent determination process. The Director of Capital Improvement Management Services may make all agreements and appointments and otherwise act on behalf of the City as may be necessary or convenient under the preceding paragraph about determining market rent.

#### **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. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

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

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

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

5.06. On request, execute an estoppel certificate that states the 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.

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

Tenant promises that it will not:

6.01. Create a nuisance.

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

6.03. Permit waste.

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

6.05. Change Landlord's lock system.

6.06. Alter the Premises.

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

6.08. 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 Commencement Date.

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

7.03. Provide the Essential Services.

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.

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

7.09. Finish out the Premises with the partitions shown on **Exhibit C** no later than the Commencement Date. All carpets, colors, door knobs, fittings, cabinets, laminates and other finish-out details must be building standard or better, and approved in writing by Tenant.

## **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:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Premises	No	Yes
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

**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 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 \$1,000,000 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	Department of Capital Improvements Management Services City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966 Attention: Director"
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"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 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 or an invitee of 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 Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise**

**indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.**

**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.**

**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 Capital Improvements Management 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.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice; (ii) failing to provide

Essential Services 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. *Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service 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.* 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. *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, (y) 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: (i) the Property violates any Environmental Law; (ii) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (iii) 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 (iv) the Property is subject to a lien under any Environmental Laws; and (z) 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 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 (1) for either party to seek emergency injunctive relief or (2) 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, 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.

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 the department in which City's leasing personnel are employed 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 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 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.

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. 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

**Brass Centerview Holdings, LLC**, a  
Delaware limited liability company

Signature: \_\_\_\_\_

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

James Stewart, authorized representative

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

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

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

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

**Attest:**

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

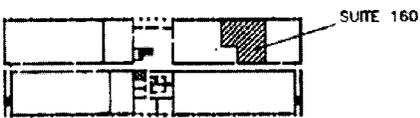
**Approved as to Form:**

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

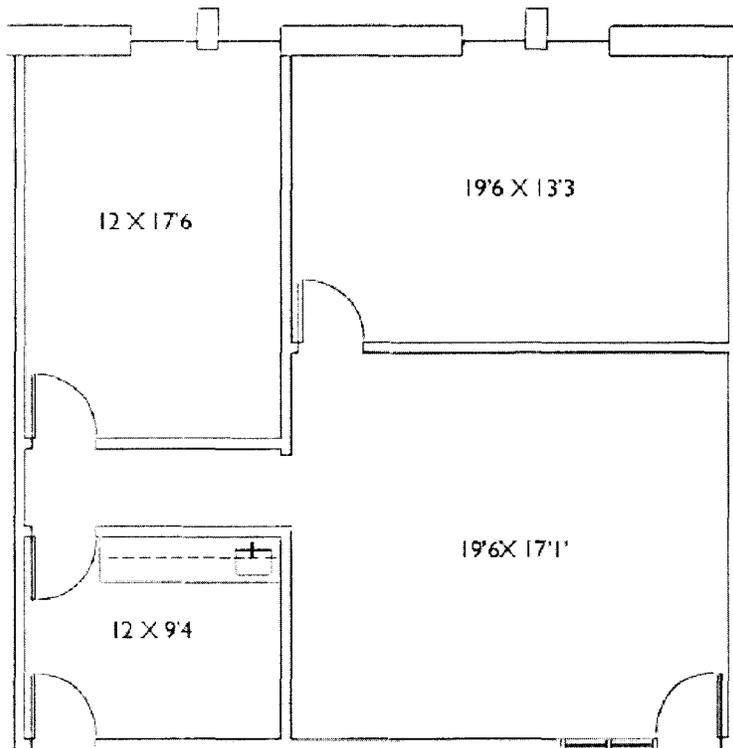
**Exhibit A: Description of Premises**



**BRASS PROFESSIONAL CENTER**



LOCATION PLAN



SCALE 1/8" = 1'-0"  
DIMENSIONS ARE  
APPROXIMATE ONLY.

**FINESILVER - STE 160  
1108 R.S.F**

**4414 CENTERVIEW DR  
SAN ANTONIO, TEXAS 78228**

Magi Real Estate Services  
4440 Piedras Drive South  
Suite 150  
San Antonio, TX 78228  
Tel: 210.736.2494  
Fax: 210.451.0403

## **Exhibit B: Cleaning and Maintenance Schedule**

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### **Cleaning and Maintenance Schedule**

#### ***Daily (Monday through Friday)***

Carpets Vacuumed

Composition floors dust-mopped

To the extent accessible, desks, desk accessories and office furniture dusted. Papers and folders left on desk, not to be moved.

Wastebaskets and other trash receptacles emptied; remove trash from the building to an area designated outside of the Premises.

Chairs and wastebaskets returned to proper position.

Fingerprints removed from glass doors and partitions.

Drinking fountains cleaned, sanitized and polished.

Lavatories, toilets and toilet rooms cleaned and mopped. Toilet supplies replenished.

Malfunctioning light bulb and tube replaced, as required.

Graffiti expunged as needed after Tenant has given Landlord verbal notice of the existence of graffiti.

Day porter service from 8:00 AM to 5:00 PM.

#### ***Weekly***

Low-reach areas such as, but not limited to, chair rungs, baseboards and insides of doorjambs dusted.

Windowsills, ledges and wood paneling and molding dusted.

Floors washed in uncarpeted office areas.

#### ***Monthly***

Floors waxed in uncarpeted office areas.

Picture molding and frames dusted.

Wall vents and ceiling vents vacuumed.

As per Landlord's mechanical maintenance contract, HVAC chiller water checked for bacteria, chiller water conditioned as necessary.

***Quarterly***

High-reach areas, such as, but not limited to, door frames, tops of partitions and hanging light fixtures dusted.

Light fixtures cleaned and dusted, but not less frequently than Quarterly.

Wood furniture polished.

Mini-blinds cleaned as required, but not less frequently than Quarterly.

As per Landlord's mechanical maintenance contract, HVAC units serviced for preventative maintenance purposes, all filters changed.

***Semi-Annually***

All painted wall and door surfaces washed and stains removed.

All walls treated with vinyl covering washed and stains removed.

All carpet to be cleaned using non-detergent, low moisture, soil encapsulation system as recommended by the carpet manufacturer. The cost for the carpet cleaning will be included in Tenant's operating expenses.

***Annually***

Windows washed as required inside and outside annually.

Bathroom and any other ceramic tile surfaces professionally cleaned using a hand scrub process. All grout and porous surfaces resealed with a professional grade sealant.

***As Needed***

Touch-up paint all interior painted surfaces in a color and finish to match existing.

Premises and the sidewalks, driveways, parking areas and all means of ingress and egress serving the Premises should be maintained in good repair, and in clean and safe condition at all times.

All lawns, shrubbery and foliage on the grounds of which the Premises are part should be maintained in good condition and neat in appearance. Grass and shrubbery must be replanted as needed to maintain the grounds in good appearance and condition.

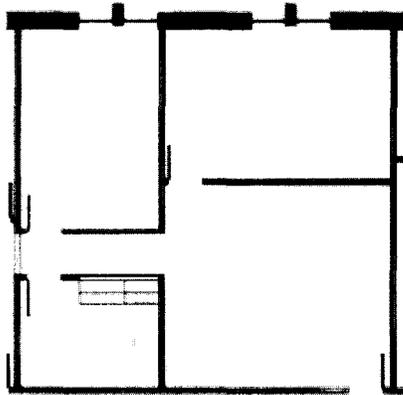
Carpet professionally spot cleaned as required to remove stains.

***General***

Landlord must, upon request of Tenant, produce written service contracts as evidence of compliance with the terms of this Cleaning and Maintenance Schedule.

### Exhibit C: Finish-out Diagram

Post Finish-out Configuration  
of Suite 160



Pre-Lease Configuration of Suite 160

