TM
11/6/2014
Item No. 12.

AN ORDINANCE 2014-11-06-0853

AUTHORIZING AMENDMENT AND RENEWAL OF A LEASE AGREEMENT WITH THE GUADALUPE CULTURAL ARTS CENTER FOR A PERFORMING ARTS THEATER LOCATED AT 1301 GUADALUPE STREET, IN COUNCIL DISTRICT 5, FOR AN ADDITIONAL PERIOD OF 10 YEARS.

* * * * *

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. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 256000000006 and General Ledger 4401110.

SECTION 3: 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 4. This ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

PASSED AND APPROVED this 6th day of November, 2014.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Robert F. Greenblum, City Attorney

Agenda Item:	**12 (in consent vote: 5, 6, 8, 9, 10A, 10B, 10C, 11, 12, 13, 14, 16, 17, 18, 19)**
Date:	11/06/2014
Time:	10:49:22 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment and renewal of a lease agreement with the Guadalupe Cultural Arts Center for a performing arts theater located at 1301 Guadalupe Street, in Council District 5, for an additional period of 10 years. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, EastPoint & Real Estate Services Office]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

Amendment and Renewal of Lease Agreement

(Guadalupe Cultural Arts Center)

This Renewal of Lease Agreement is between Tenant and the City of San Antonio ("Landlord"), pursuant to the Ordinance Authorizing Renewal.

1. Identifying Information.

Ordinance Authorizing 1st Amendment and Renewal:

Landlord:	City of San Antonio
Landlord's Address:	P. O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Office of EastPoint & Real Estate Services)
Tenant:	Guadalupe Cultural Arts Center
Tenant's Address:	1300 Guadalupe Street, San Antonio, Texas 78207
Lease:	Lease agreement for the Guadalupe Theater located at 1301 Guadalupe Street relating to the property more particulary described in the original lease and authorized by the Ordinance Authorizing Original Lease.
Ordinance Authorizing Original Lease:	90597, dated September 30, 1999
Beginning of 1st Renewal Term:	Upon execution of this Renewal of Lease by the last party to sign the agreement.
Expiration of 1st Renewal Term:	October 10, 2024

2. Defined Terms.

All terms used in this instrument and not otherwise defined herein but defined in the Lease or any previous amendment to it have the meanings previously ascribed to them.

3. Term of Lease.

Term commences upon Beginning of 1st Renewal Term and continues until Expiration of 1st Renewal Term unless terminated as provided in the Lease.

4. Rent.

$1 per year, the entire ten year term to be paid in advance by Tenant in one lump sum amount of $10.00 upon commencement date of this lease agreement renewal.

FINAL

ATTACHMENT I

5. Fundraising/Financial Management.

Article IV, Fund Raising and Financial Management, sections 4.1 – 4.3 are deleted and the following is inserted in substitution thereof:

On or before September 1st of each calendar year during the Renewal Term, Tenant shall deliver to City a detailed operating budget for the upcoming fiscal year showing all projected income and expenses for the operation of the Guadalupe Theater only including but not limited to:

Income

- Tickets sales
- Event sales
- Any other income derived from the Guadalupe Theater operation

Expenses

- Salaries being charged to the Premises exclusively
- Insurance attributable to the Premises only
- Ongoing preventive maintenance of the Premises
- Proposed Capital Improvements
- Utilities
- Any other expenses attributable to the operation of the Guadalupe Theater

On or before January 31st of each calendar year during the Renewal Term, Tenant shall provide Landlord an Audited Financial Report for the 12 month period ending September 30th of the prior year prepared by a Certified Public Accountant confirming:

1) all revenue and expenses associated with the operation of the Guadalupe Theater separate from any financial statements provided for the Tenant's other operations. This statement should be compared to the operating budget so that the reviewer can easily ascertain the validity of the proposed operating budget versus the actual revenue and expenses associated with the theater operation; and

2) an audit of the entire GCAC Operation including the theater operation. The audit can be based on financial statements prepared by GCAC provided they are a fair presentation of the Tenant's financial statements prepared in accordance with accounting principal generally accepted in the United States of America, this includes the design, implementation and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error. The auditor must express an

opinion on these financial statements based on their audit in accordance with Auditing Standards generally accepted in Government Auditing standards issued by the Comptroller General of the United States.

6. Bookings Procedure.

Article V, Bookings Procedure, sections 5.1 – 5.4 are deleted and the following is inserted in substitution thereof:

> Tenant agrees that City will have a license to use the Guadalupe Theater up to 25 days per calendar year, with no rental charge. The license to use the theater shall be governed by procedures to be agreed upon by City and Tenant regarding the days, booking procedures, and performance charges (the "Procedures"). In the event that Tenant fails to provide the Procedures to City within 120 days of the date that City executes the Renewal Agreement then provided the Premises has not been previously booked as evidenced by an executed contract, City may exercise its right to use the Premises on 48 hours prior notice.

7. Preservation Fee/Concessions Income.

Article VI, Preservation Fee/ Concessions Income, sections 6.1 – 6.8 are deleted and the following is inserted in substitution thereof:

> The existing balance in the Wells Fargo Bank Preservation account of $2,198.92 (the "Preservation Fee Balance") will be delivered to the control of Tenant for future infrastructure improvement of the Premises. Within 180 days of the date this Renewal Agreement is executed by the Landlord, Tenant will provide a complete accounting of how the Preservation Fee Balance was expended. In the event that Tenant fails to timely provide this accounting, then the entire Preservation Fee Balance shall be forfeited and paid to Landlord.

8. References to "Preservation Fee."

Sections 25.2, 25.4, 25.11, 25.12 and 25.13 are hereby amended to remove any reference to Preservation Fee and the remaining text is reformed as though written initially without it.

9. No Default.

Neither Landlord nor Tenant is in default under the Lease, and neither party is aware of a cause of action against the other arising out of or relating to the period before this renewal.

10. Same Terms and Conditions.

This renewal instrument is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this renewal, the Lease remains a comprehensive

statement of the rights and obligations of Landlord and Tenant. Landlord and Tenant reaffirm the Lease as modified by this agreement. Landlord and Tenant reaffirm the Lease as modified by this agreement and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

11. Public Information.

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

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

Landlord	**Tenant**
City of San Antonio, a Texas municipal corporation	**Guadalupe Cultural Arts Center**, a Texas non-profit organization
By:_____	By: Pedro A. Rodriguez
Printed Name:_____	Printed Name: Pedro A. Rodriguez
Title:_____	Title: Exec. Director
Date:_____	Date: 10/8/2014

Approved as to Form:

_____
City Attorney