TM 06/26/14
Item No.7

AN ORDINANCE 2014-06-26-0509

AUTHORIZING A THREE YEAR LEASE AGREEMENT WITH VIA METROPOLITAN TRANSIT AUTHORITY TO OCCUPY 1,742 SQUARE FEET OF STREET LEVEL OFFICE SPACE IN THE ST. MARY'S STREET PARKING GARAGE AT 400 N. ST. MARY'S STREET.

* * * * *

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 as per the table below:

Amount	General Ledger	Internal Order	Fund
$34,840.00	4407720	219000000123	53001000
$1,654.90	4401111	219000000123	53001000
Total Amt $36,494.90			

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 26th day of June, 2014.

M A Y O R
Julián Castro

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Robert F. Greenblum, City Attorney

Agenda Item:	**7 (in consent vote: 4, 7, 9, 10, 11, 12, 15)**
Date:	06/26/2014
Time:	09:51:02 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a three year lease agreement with VIA Metropolitan Transit Authority to occupy 1,742 square feet of street level office space in the St. Mary's Street Parking Garage at 400 N. St. Mary's Street. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development]
Result:	Passed

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

VIA Metropolitan Transit Authority Lease

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Background:

VIA Metropolitan Transit Authority is seeking street level office space for streetcar project public informational purposes.

1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Contracts Div., Center City Development Office)

Tenant:	VIA Metropolitan Transit.
Tenant's Address:	VIA Metropolitan Transit, Strategic Planning and Project Development, P.O. Box 12489, San Antonio, Texas, 78212
Premises:	Approximately 1,742 square feet of the first floor of the St. Mary's Garage located at 400 N. St. Mary's, Suite 109, San Antonio, Bexar County, Texas, 78205, as depicted in Exhibit A.
Permitted Use:	General office use.
Initial Term:	Three years beginning July 1, 2014.
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.
Commencement Date:	July 1, 2014
Termination Date:	June 30, 2017
Address for Payment of Rent:	City of San Antonio, Financial Services Division-Revenue Collections, P.O. Box 839975, San Antonio, TX 78283-3975

2. Grant and Termination Right.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Either party to this Lease may terminate it at any time without cause with 180 days' prior written notice to the other party.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

3.02. Base Rent over the three-year initial term is $36,494.90 annually, based on annual rate of $20.95 per square foot, which includes common area maintenance fee of $.95 per square foot. Tenant shall undertake finish out improvements to Premises that are anticipated to be completed by October 1, 2014, which shall be the first date rent shall be due.

3.03. Tenant must pay Base Rent and any other sums regularly due Landlord under this Lease in advance on or before the first day of each month. Due but unpaid amounts bear interest at the prime rate of interest in effect on the due date as published from time to time in The Wall Street Journal (or, if The Wall Street Journal ceases publication, another financial publication reasonably selected by Landlord) plus four percent per annum (Interest Rate) from the due date until paid in full. In addition, if Tenant is delinquent in paying an amount, Tenant must pay to Landlord upon demand a $50 late charge. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.04. Tenant's covenant to pay Rent and Landlord's covenants are independent.

4. Term and Renewal.

4.01. The Term of this Lease is the *Initial Term*, unless sooner terminated as provided in this Lease.

4.02. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease for up to five additional years by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew and approval of the proposed renewal by further ordinance of City Council. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to City Council, even though Tenant has given the requisite notice.

4.03. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be at Landlord's estimate of fair market rental value. All Rental amounts must be agreed upon prior to any exercise of the Lease option period and Rent may increase or remain unchanged but shall never decrease.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition, as-is.

5.02. 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.

5.03. Obtain and pay for all utility services Tenant uses. Tenant must transfer utilities into its own name with the exception of water.

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

5.05. Repair, replace, and maintain all of the Premises and the equipment and appurtenances associated with the Premises, except for repair, replacement, and maintenance responsibilities specifically allocated to Landlord under this Lease.

5.06. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

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

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

5.09. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, non-disturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

5.10. Keep the interior and exterior of the Premises neat, clean and secure.

6. Indemnity.

Landlord and Tenant acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq*,, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Landlord and Tenant shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Lease.

7. Tenant's Negative Promises.

Tenant promises that it will not:

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

7.02. Create a nuisance.

7.03. Permit waste.

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

7.05. Change Landlord's lock system without Landlord's written approval.

7.06. Alter the Premises, other than the finish out work contemplated by this Lease.

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

8. Landlord's Affirmative Promises.

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

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

8.03. Repair, replace, and maintain the roof and foundation of the Premises, as necessary.

8.04 Within the initial thirty days of the Lease Term (Inspection Period), allow Tenant the opportunity to inspect any and all systems servicing the Premises, including but not limited to, the HVAC and electrical systems. Tenant may, after completing inspections, may accept the Premises, notify Landlord in writing of any defects or terminate the Lease, without any further obligation under this Lease. If Tenant notifies Landlord of the defects, Landlord may repair the defects at its own expense prior to the end of the Inspection Period or alternatively, either Party may elect to terminate this Lease on or before the thirtieth day of the inspection period.

9. Landlord's Negative Promise.

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

10. Alterations.

10.01. 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.

10.02. Landlord and Tenant contemplate that Tenant will alter the interior of the building on the Premises to suit Tenant's needs. No work may be done before Landlord has approved Tenant's plans in writing. No work may deviate materially from the approved plans. Tenant must provide Landlord with as-built drawings for all alterations. All alteration is at Tenant's expense.

10.03. Landlord's approval as landlord is not the approval of the City of San Antonio as a municipality. To complete the finish-out, Tenant must procure all the permits and certificates from all the City departments that a tenant from a private landlord would be required to procure.

11. Insurance.

Landlord and Tenant each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

With respect to the Landlord and Tenant, it is the policy of both entities not to acquire commercial general liability insurance for torts committed by employees of the political subdivisions who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in Texas is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the Landlord under this chapter is limited to money damages in a maximum amount of $250,000.00 for each person and $500,000.00 for each single occurrence for bodily injury or death and $100,000.00 for each single occurrence for injury to or destruction of property. Employees of Landlord and Tenant are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

12. Release of Claims/Subrogation.

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

13. Environmental Matters.

13.01. "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.

13.02. "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.

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

13.04. Landlord hereby warrants and represents that at the time this Lease is entered into, there are no environmental issues on the Premises. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises, if any. At least 180 calendar days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

13.05. 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 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.

13.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

13.07. If at any time during the Lease Tenant uses hazardous materials on the Premises then Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

13.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

14. Landlord's Municipal Powers.

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

15. Prohibited Interests in Contracts.

15.01. 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.

15.02. Tenant warrants and certifies as follows:

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

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

15.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

16. Casualty/Total or Partial Destruction.

16.01. If the Premises are damaged by casualty and can be restored within ninety calendar days, Landlord will, at its expense, restore the roof, foundation, Common Areas,

and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises the maintenance of which is not assigned to Tenant under this lease. 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 ninety calendar days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

16.02. If the Premises cannot be restored within ninety calendar 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 twenty calendar days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

16.03. To the extent the Premises are untenable after the casualty, the Rent will be abated to the extent the Premises cannot be reasonably used for the permitted use.

16.04. If Landlord is obligated to rebuild or chooses to do so, Tenant may terminate the Lease by giving notice to Landlord within twenty calendar days after Landlord notifies Tenant of its decision to rebuild. If Tenant chooses not to terminate, it must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

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

17. Condemnation/Substantial or Partial Taking.

17.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

17.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

17.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

18. Holdover.

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) Tenant is a tenant at sufferance and (B) the Base Rent is double what it was immediately before the term ended.

19. Contractual Lien.

Reserved

20. Default, Remedies for Default.

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

20.01.01. Tenant fails to pay when due any installment of Rent.

20.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 calendar calendar days after written notice thereof to Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

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

20.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

20.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

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

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

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

20.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

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

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

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

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

20.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant establishes a security deposit in an amount determined by Landlord,

(iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

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

20.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

20.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of

competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

20.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property; (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants; (D) all rental concessions as a result of reletting; and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

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

20.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-calendar days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

20.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

20.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant will indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

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

21. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

21.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

21.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

21.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

21.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

(i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Building;

(ii) adversely affect the reputation of the Building; or

(iii) be incompatible with other users of the Building.

21.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

21.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

22. 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. Tenant's Bankruptcy.

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

23.01. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.02. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.03. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

23.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

23.05. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

23.06. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee;

(ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than 20 calendar days after Tenant's receipt of the proposal, but in no event later than 10 calendar days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 calendar days after Landlord's receipt of the notice.

23.07. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

24. Warranty Disclaimer.

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

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

25. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term without any accounting to Tenant.

26. Appropriations.

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

26.2 All obligations of Tenant under this instrument are funded by the Board of Trustees annually through its budgetary process. If the Board of Trustees fails to appropriate money for this Lease in an annual budget, the Tenant may terminate this Lease and have no further liability.

27. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent.

28. Dispute Resolution.

28.01. 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.

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

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

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

28.05. 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.

28.06. Mediator fees must be borne equally.

28.07. 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.

29. Miscellaneous.

29.01. *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.

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

29.03. *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.

29.04. *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.**

29.05. *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.

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

29.07. *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 calendar 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.

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

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

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

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

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

29.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way, such as 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.

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

29.15. *Square Footage.* For all purposes for which square footage of the Premises is relevant, the Premises are approximately 1,742 square feet.

30. 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.

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

VIA Metropolitan Transit

By:_____

Printed Name:_____

Title:_____

Date:_____

Attest:

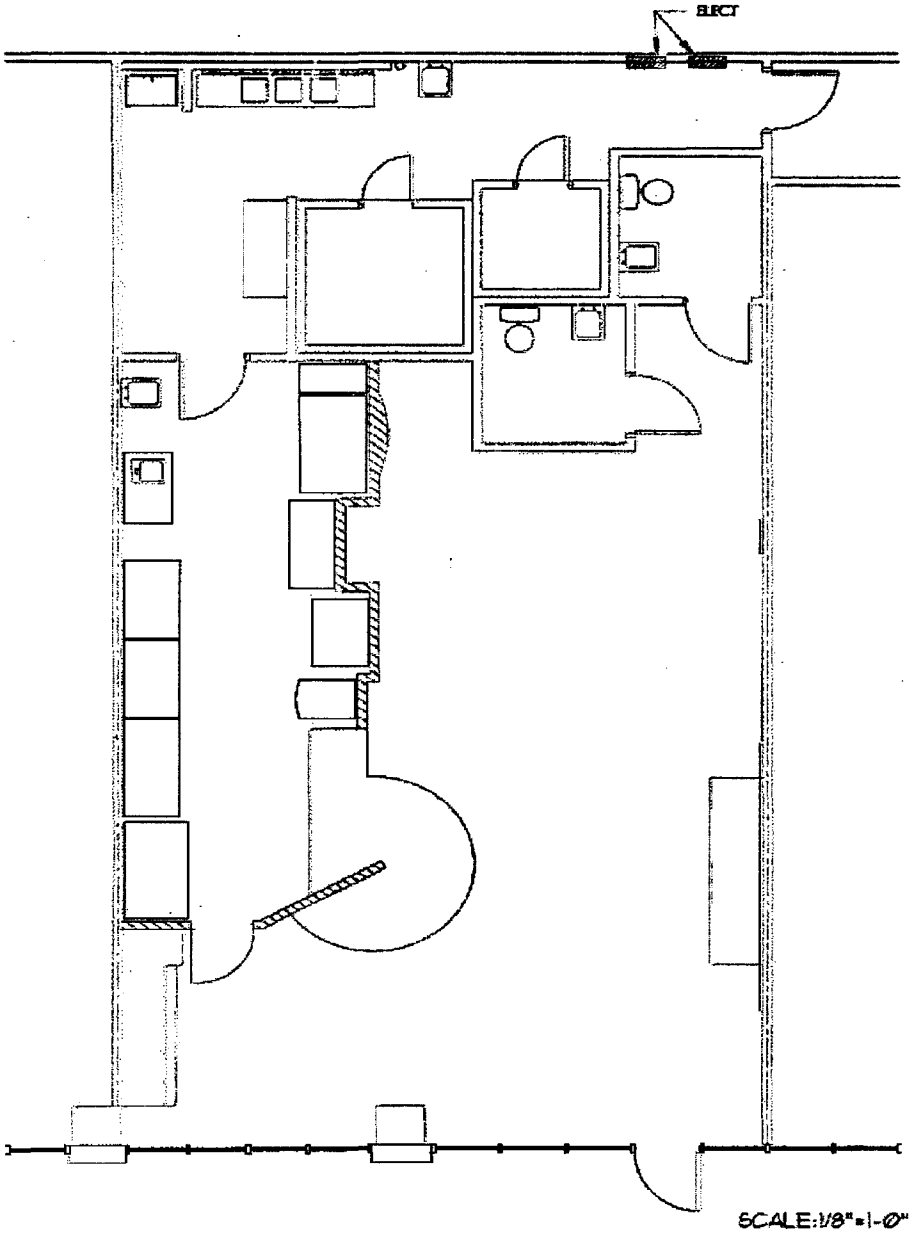
_____
City Clerk

Approved as to Form:

_____
City Attorney

Exhibit A. Description of the Premises

400 N. ST.MARY'S

SUITE #109

EXSITING CONDITIONS- 1,742 S.F.