Office Lease

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord:

Landlord's Address:

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: ????, ????)

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Premises:	
Permitted Use:	
No. of Parking Spaces:	
Occupancy Commencement Date:	The date a Certificate of Occupancy is issued by the City of San Antonio confirming completion of the Tenant Improvements
Rent Commencement Date:	Upon the later of (i) Tenant's occupancy of the Premises as evidence by its commencement of operations or (ii) within 30 days of the date a Certificate of Occupancy is issued by the City of San Antonio confirming completion of the Tenant Improvements
Binding Date:	
Initial Term:	
Rent:	
Address for Payment of Rent:	
Asbestos Survey Deadline:	
Building Standard Hours:	7:00 A.M. to 11:00 P.M. Monday through Saturday, except holidays
Common Areas:	
Essential Services:	

The exhibits to this Lease are:

Exhibit A: Description of Premises
Exhibit B: Rent Commencement Memorandum
Exhibit C: Cleaning and Maintenance Schedule
Exhibit D: Initial Cost Memorandum

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 reserve for Tenant the number of parking spaces indicated above.

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2.02. Tenant's right of occupancy begins at the Occupancy Commencement Date. Move-in ready means that the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

2.03. 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.

3. Rent.

3.01. Base Rent for the first year of the Initial Term is ??????.

3.02. Operating Expense Rent during the Initial Term is ?????

3.03. Tenant must pay Base Rent, Parking Rent and Additional Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. 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.

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

3.05. 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 an additional five years by giving Landlord four months prior written notice before expiration of the previous term, whether initial or renewal. Renewals are on the same terms and conditions as the

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Initial Term, except for rent. Rent during the first renewal is at $XX a rentable square foot for years one through three and $YY a rentable square foot for years four and five. Rent during the second renewal is at the then market rate for comparable premises. All renewals must be approved by City Council.

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

5.07. Arrange with Landlord in advance for HVAC needs other than during Building Standard Hours and pay for such additional services as billed by Landlord.

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6. Tenant's Negative Promises.

Tenant promises that it will not:

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

6.02. Create a nuisance.

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

6.04. Permit waste.

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

6.06. Change Landlord's lock system.

6.07. Alter the Premises.

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

6.09. Except as provided in Section 25 of this Lease, 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 Occupancy 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

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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. **Mold.**

7.05.01. **Process of Assessment.** If Tenant suspects or identifies the presence of mold within the Premises after taking possession, Landlord shall engage a licensed mold assessor ("assessor") to make an inspection not later than the third business day from the date Tenant notifies Landlord in writing of the issue (Tenant's Mold Notice). Landlord's assessor shall, within 10 business days from the date of the Tenant's Mold Notice, provide Landlord and Tenant a report of the findings of the inspection (Assessor's Report). If the Assessor's Report concludes that mold is present, Landlord shall notify Tenant, in writing (Landlord's Mold Notice), not later than the third business day from the date Landlord and Tenant receive the report, of its intention to remediate the mold. The Landlord's Mold Notice must also include a schedule outlining the period of time it will take for a licensed remediation contractor to complete the work. Failure to make this date is an event of default. If Landlord elects to remediate the mold, Landlord must retain a licensed abatement contractor to ensure the abatement is conducted in compliance with current state mold assessment and remediation legal requirements including the promulgated Mold Assessment and Remediation Rules, last amended on May 20, 2007. Upon completion of the mold remediation, licensed abatement contractor must provide both Landlord and Tenant a report from a licensed environmental testing firm confirming that mold is not present at the Premises.

7.05.02. **No Landlord Remediation or Landlord Remediation Taking Longer than 30 days.** If Landlord 1.) fails to timely provide Tenant the Landlord's Mold Notice 2.) elects not to remediate, or 3.) conveys that the remediation is scheduled to take longer than 30 calendar days to be completed, as evidenced by a remediation schedule provided by a licensed remediation contractor, then Tenant may terminate this Lease effective with 3 business days' written notice to Landlord (Tenant's Election to Terminate Notice). If Tenant exercises this option, Tenant's obligation to pay rent will cease effective 3 business days after Landlord's receipt of Tenant's Mold Notice or the date of Landlord's report, whichever occurs later. In such circumstance, Tenant shall have 30 days from the date of this Notice to fully vacate the Premises, or remediate the mold itself and deduct the remediation cost plus 10% for the management of the project from the rent next due until such time that the costs incurred by Tenant including the 10% fee are fully recovered.

7.05.03. **Rental Abatement.** During any mold assessment and remediation period, whether the work is done by Landlord or by Tenant, the rent will be abated

for any portion of the Premises deemed by Tenant unusable due to the presence of mold or the remediation activity related to it.

7.06. Provide Tenant with detailed invoices for HVAC charges ordered by Tenant for periods other than Building Standard Hours for which Landlord requests reimbursement.

7.07. 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.

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

7.09. 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.

7.10. Work letter ????????????????.

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

8. Landlord's Negative Promises.

Landlord promises that it will not:

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

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

9. Repair, Maintenance and Replacement Responsibilities.

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

Item	*Tenant Responsibility*	*Landlord Responsibility*
Janitorial Services to Premises	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
Fire Life Safety Systems including fire extinguishers and monitoring	No	Yes
Pest Control	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 Occupancy 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.

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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	Center City Development and Operations 100 West Houston Street, Mailbox 1800A San Antonio, TX 78205

> "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 Occupancy 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

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Tenant does so and the changes would increase premiums, Tenant will discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and pay the cost thereof. Tenant's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

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

12. Release of Claims/Subrogation.

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

13. Indemnity.

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

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

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

13.01.03. "Indemnitor" means Landlord.

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

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

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

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

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

13.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's

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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 or any portion thereof are damaged by casualty and can be restored within 90 days of the date that Landlord is first aware of the damage, 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 at no cost to Tenant and in 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. Evidence of completion shall include a Certificate of Occupancy or other documentation issued from the City of San Antonio department charged with managing the building permit process that all work has been completed as required by law.

14.02. If the Premises cannot be restored within 90 days, Landlord has the optionwhether or not to restore the Premises. If Landlord chooses not to restore or fails to notify Tenant of its intent to restore the Premises within 10 days of the date that Landlord is first aware of the damage, this lease shall terminate as of that date regardless of when Tenant actually vacates the Premises. If Landlord chooses to restore the Premises, Landlord will notify Tenant of the estimated time to restore in writing as required within said 10 day period. Tenant shall then have 10 days from the date of notice to terminate the Lease. If Tenant does not terminate this Lease, the Lease will continue, and Landlord will restore the Premises as provided above.

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14.03. During the period before Landlord completes restoration, the Rent will be adjusted as may be fair and reasonable based on the portion of the Premises deemed unusable by Tenant due to the damage.

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. The Award shall be divided between Landlord and Tenant as their respective interests appear, with compensation due Landlord for damage to its reversionary interest, if any, and to Tenant for damage to its leasehold, if any. "Award" shall mean all compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation of the Premises or the land on which the Premises is situated.

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.

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

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice; (ii) failing to provide 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. *Default by Landlord/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/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

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

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

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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 handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

19.07. Landlord represents and warrants that, (i) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and

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Landlord has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

19.08. Before the Occupancy 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.

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

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

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

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

21.06. Mediator fees must be borne equally.

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

22. Prohibited Interests in Contracts.

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

(i) a City officer or employee;

(ii) his parent, child or spouse;

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

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

22.02. Landlord warrants and certifies as follows:

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

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

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

23. Miscellaneous.

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

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

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

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

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

of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

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

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

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

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

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

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

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

23.13. *Quiet Enjoyment*. As long as Tenant pays the rent and other charges under this lease and observes the covenants and terms of this lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during .the lease term

without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

23.13. *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.

25. Assignment and Subleasing.

Notwithstanding the provision in Section 6.09 of this Lease, Tenant may assign this Lease or sublet all or a portion of the Premises without Landlord's permission provided either (i) the assignee or sublessee is another governmental agency and the use classification is consistent with that provided for in Section 1 of this Lease; or (ii) any entity that has either by contract or other means assumed the responsibility for providing all or some of the services previously provided by the City at the Premises.

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

Tenant

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Landlord

??????????????

Signature:_____

Printed Name:_____

Title:_____

Date:_____

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Exhibit A: Description of Premises

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Exhibit B: Occupancy Commencement Memorandum

Occupancy Commencement Memorandum

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Exhibit C: Cleaning and Maintenance Schedule

Cleaning and Maintenance Schedule

Daily (Monday through Friday)

Carpets Vacuumed

Composition floors dust-mopped

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 but no more than two business days after Tenant has given Landlord verbal notice of the existence of graffiti.

Kitchen/lunchroom supplies replenished including paper supplies and soap.

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

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Floors waxed in uncarpeted office areas.

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

Upholstered furniture vacuumed, plastic and leather furniture wiped.

Picture molding and frames dusted.

Wall vents and ceiling vents vacuumed.

Carpet professionally spot cleaned as required to remove stains.

HVAC chiller water checked for bacteria, chiller water conditioned as necessary.

Quarterly

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

Wood furniture polished.

Draperies or mini-blinds cleaned as required, but not less frequently than Quarterly.

HVAC units serviced for preventative maintenance purposes, all filters changed.

Semi-Annually

Windows washed as required inside and outside but not less frequently than two times annually.

All painted wall and door surfaces washed and stains removed.

All walls treated with vinyl covering washed and stains removed.

Annually

Furniture Systems and other fabric or upholstered surfaces, including chairs, couches, walls, etc., spot cleaned, or if determined to be necessary in Tenant's sole discretion, professionally cleaned in their entirety using a water extraction process.

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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.

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

As Needed

On call day porter services so that all bathrooms serving the Premises are checked every day in the morning by 10:30 AM and again in the afternoon by 2:00 PM to ensure cleanliness and adequate provision of paper supplies. The day porter shall be available during business hours on 1 hour notice to handle any janitorial related issues within the building.

Premises and the sidewalks, driveways, parking areas and all means of ingress and egress serving the Premises should be free of standing water and 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 is 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.

All carpets to be cleaned using non-detergent, low moisture, soil encapsulation system as recommended by the carpet manufacturer. The following schedule will be maintained for carpet cleaning: (i) heavy traffic areas as needed with a minimum frequency of bi-monthly (six times per year); (ii) moderate traffic areas cleaned as needed with a minimum of once every six months (two times per year) and; (iii) clean light traffic areas a minimum of one time per year. Cleaning carpet via use of a bonnet cleaning system is not an acceptable method for cleaning carpets.

All walls repainted and wall coverings replaced throughout the Premises. The paint finish should be eggshell or semi-gloss as directed by Tenant and in a color acceptable to Tenant. In no event, subject to damage or destruction conditions as provided in the Lease, will Landlord be required to repaint or replace wall coverings more than one time in a five-year period, not counting the initial tenant improvements completed prior to Tenant's occupancy or as a condition to the renewal of the Lease.

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General

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

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