

AN ORDINANCE **2012-08-30-0645**

AUTHORIZING A FIVE YEAR LEASE AGREEMENT FOR THE CENTRO DE ARTES BUILDING IN MARKET SQUARE AND A THREE YEAR SERVICES AGREEMENT FOR PAYMENT OF \$455,000.00 IN BUILDING OPERATING COSTS AND PROGRAMMING WITH TEXAS A&M UNIVERSITY-SAN ANTONIO; AND A TERMINATION AGREEMENT WITH CENTRO ALAMEDA, INC. REGARDING THE LEASE FOR THE SAME PROPERTY.

* * * * *

WHEREAS, Texas A&M-San Antonio proposes to lease the Museo Alameda (“Facility”), located in the Centro de Artes Building in Market Square at 101 S. Santa Rosa Street, from the City for a term of five years for \$1 per year, and Centro Alameda, Inc., the current tenant at the Facility, has agreed to enter into a Lease Termination Agreement with the City; and

WHEREAS, City proposes a Services Agreement with Texas A&M University-San Antonio that authorizes the City to use up to \$455,000.00 annually to directly pay the Facility’s building operating and programming costs for three years; **NOW THEREFORE:**

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

SECTION 1. A five year Lease Agreement with Texas A&M-San Antonio for the Facility located at 101 S. Santa Rosa Street, is approved. The City Manager or her designee is authorized to execute the Lease, a copy of which, in substantially final form, is set out in **Attachment I**.

SECTION 2. Funds received under the Lease approved by this Ordinance shall be deposited in Fund 29604001, Internal Order 219000000153 and General Ledger 4407720.

SECTION 3. A three-year Services Agreement with Texas A&M-San Antonio providing up to \$455,000.00 for building operations and programming for the Facility is approved. The City Manager or her designee is authorized to execute the Services Agreement, a copy of which, in substantially final form, is set out in **Attachment II**.

SECTION 4. Funding for the Services Agreement in the amount of \$150,000.00 is available in Fund 29006000, Cost Center 8520230001 and General Ledger 5407030, as part of the Fiscal Year 2012 Budget. Funding in the amount of \$301,243.00 is available in Fund 2904001 as part of the Fiscal Year 2012 Budget per the table below. Additional funding for this Services Agreement is contingent upon City Council approval of Fiscal Year 2013 and 2014 budgets.

| Amount | Cost Center | General Ledger |
|-------------------------------|-------------|----------------|
| \$66,620.00 | 1904120002 | 5404530 |
| \$16,823.00 | 1904120002 | 5404540 |
| \$20,672.00 | 1906030001 | 5201040 |
| \$96,000.00 | 1906030001 | 5202020 |
| \$61,146.00 | 1906030001 | 5204050 |
| \$27,864.00 | 1906030001 | 5204060 |
| \$7,318.00 | 1906030001 | 5301010 |
| \$4,800.00 | 1906030001 | 5303010 |
| Total Amount: \$301,243.00 | | |

SECTION 5. Payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 6. The City Manager or her designee is authorized to execute the Lease Termination Agreement with Centro Alameda, Inc, a copy of which is set out in **Attachment III**.

SECTION 7. 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 8. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 30th day of August, 2012.

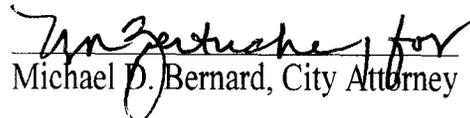


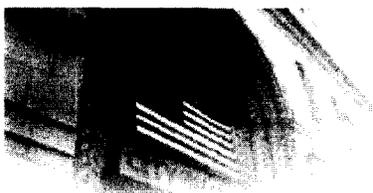
M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 11

| Name: | 11 | | | | | | |
|---------------------|--|--------------------|------------|------------|----------------|---------------|---------------|
| Date: | 08/30/2012 | | | | | | |
| Time: | 09:37:25 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance authorizing a five year lease agreement, with a twenty-year renewal option, between the City of San Antonio and Texas A&M University -San Antonio for the Centro de Artes Building in Market Square; a services agreement with Texas A&M University – San Antonio providing for payment of up to \$455,000.00 in building operating costs and programming for three years from the Market Square and Cultural Affairs Funds; and a termination agreement with Centro Alameda, Inc. regarding the lease for the same property. [Pat DiGiovanni, Deputy City Manager; Felix Padron, Director, Cultural Affairs] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | x | |
| Ivy R. Taylor | District 2 | | x | | | | |
| Leticia Ozuna | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | x |
| David Medina Jr. | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| W. Reed Williams | District 8 | x | | | | | |
| Elisa Chan | District 9 | | x | | | | |
| Carlton Soules | District 10 | x | | | | | |

ATTACHMENT I

Museo Alameda Lease
Board of Regents of The Texas A&M University System,
For the use and benefit of Texas A&M University – San Antonio

1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Downtown Operations)

Tenant: Board of Regents of The Texas A&M University System,
for the use and benefit of Texas A&M University-San
Antonio, an agency of the State of Texas

Tenant's Address: One University Way , San Antonio, Texas 78224

Premises: Centro de Artes Building, 101 S. Santa Rosa Street, San
Antonio, Bexar County, Texas, together with adjoining
porches and overhang areas, but excluding any part of the
sidewalks, public streets, and common areas of Market
Square, El Mercado, and the Farmer's Market. The Centro
de Artes building is depicted on **Exhibit A**.

Commencement Date: October 1, 2012

Expiration of Term: September 30, 2017

Rent: \$1 per year

Address for Payment of Rent: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Finance Department)

Common Areas: All facilities and areas of Market Square and related land
that are intended and designated by Landlord from time to
time for the common, general, and nonexclusive use of all
occupiers of Market Square. Landlord has exclusive
control over and right to manage the Common Areas.

Common Area Expenses: All expenses that Landlord must reasonably pay in
connection with ownership, operation, and maintenance of
the Common Areas of the Market Square complex,
including landscaping.

Minor Repairs/Maintenance: All expenses for minor repair and/or maintenance
(excluding replacement) which are essential for the
continued operation of the Premises, including but not

Expenses limited to electrical, HVAC, elevator and plumbing. The determination of whether such a repair or maintenance is required shall be made solely by Landlord.

Services Contract This Lease is subject to a 3-year Services Contract of even date by and between Landlord and Tenant, attached hereto as **Exhibit B**, and incorporated herein by reference for all purposes. In the event the Services Contract terminates for any reason prior to the end of the Services Contract's 3-year term, then this Lease shall automatically terminate.

2. Grant.

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

3. Rent.

3.01. Rent includes all sums due to Landlord under this Lease, no matter how denominated.

3.02. As Additional Rent, commencing October 1, 2015, Tenant must pay to Landlord a share of Landlord's Common Area Expenses calculated by allocating the Common Area Expenses among Landlord's tenants at Market Square based on how many square feet each occupies.

4. Term.

The term of this Lease is from October 1, 2012 through September 30, 2017, unless sooner terminated as provided in this Lease. With City Council approval and approval of Tenant's Board of Regents, this Lease may be renewed upon mutually agreeable terms; however, a request by Tenant for renewal of the Term must be presented in writing to Landlord no later than six months prior to expiration of the initial term of the Lease.

5. Permitted Use.

The only permissible uses ("Permitted Uses") of the Premises shall be for educational purposes and for use as a museum/gallery/exhibit space for items related to the Latino experience, with a focus on San Antonio and South Texas through local and regional art, history and culture, with a strong educational component that expands on Tenant's Mission. Tenant may permit use as an auditorium or assembly hall and for receptions. Tenant may also use the Premises for activities incidental to all the above purposes.

6. Landlord’s Use of the Premises.

Landlord may use the Premises for up to 15 events per calendar year. Landlord may assign this use right in whole or in part from time to time. Landlord shall give Tenant on October 1st of each year a list of the Landlord events and dates, and the Parties agree to coordinate scheduling around other events that Tenant has previously scheduled, but Tenant must not schedule events at times on the list provided by Landlord each year, when Landlord will require some or all the Premises for an event, such as for Fiesta in April of each year. Landlord need pay no rent for its use of the Premises, but it will reimburse Tenant for use-related costs such as labor, equipment usage, and similar items. After responsibilities shift as provided in Section 10.02, Landlord will further reimburse Tenant for incremental increases in utility charges arising from Landlord’s events, prorated based on the utility charges for months in which Landlord events are held. Neither Landlord nor its assignee is bound to use a caterer selected by Tenant. Landlord and its assignee may contract for independent catering services or may bring its own food.

Sections 7 and 8. *Intentionally Omitted.*

9. Concessions

9.01. At ticketed special events, Tenant may sell catered food and alcoholic beverages if the sale complies with liquor-license rules.

9.02. Tenant must not sell anything on porches and overhang areas, except at ticketed special events.

10. Repair, Maintenance and Replacement Responsibilities.

10.01. Through September 30, 2015, Landlord and Tenant each must repair, maintain, and replace, if necessary, any Premises component allocated to it in the table below. For all items listed in the table below for which Landlord has responsibility in this Section 10.01, there shall be an annual maximum cap for Landlord expenses of \$301,243.00. If Landlord expenses exceed \$301,243.00 in any of the three years through September 30, 2015, Landlord shall invoice Tenant for the overage, and Tenant shall be responsible to remit payment for such invoices from Landlord.

| <i>Item</i> | <i>Tenant Responsibility</i> | <i>Landlord Responsibility</i> |
|---------------------------------|----------------------------------|------------------------------------|
| Janitorial Services to Premises | No | Yes |
| Utility Services | No | Yes |
| Common Area Expenses | No | Yes |

| | | |
|---------------------------------------|-----|-----|
| Light bulbs, tubes, and ballasts | Yes | No |
| Security services | No | Yes |
| Minor Repairs/Maintenance to Premises | No | Yes |

10.02. As of October 1, 2015, Landlord and Tenant each must repair, maintain, and replace, if necessary, any Premises component allocated to it in the table below:

| <i>Item</i> | <i>Tenant Responsibility</i> | <i>Landlord Responsibility</i> |
|---------------------------------------|----------------------------------|------------------------------------|
| Janitorial Services to Premises | Yes | No |
| Utility Services | Yes | No |
| Common Area Expenses | Yes | No |
| Light bulbs, tubes, and ballasts | Yes | No |
| Security services | Yes | No |
| Minor Repairs/Maintenance to Premises | Yes | No |

10.03. Landlord will pay for the items allocated to it in the above table to a standard that maintains the Premises at or above the condition existing on the Commencement Date only to the standard Landlord deems appropriate. If Tenant is dissatisfied with the level of service provided by Landlord, Tenant’s sole remedy is to supplement Landlord’s services at Tenant’s cost.

10.04. Tenant must use Landlord’s trash disposal service and must pay its share of costs for the service as part of the Common Area Expenses beginning October 1, 2015. Tenant may not place a dumpster or other trash receptacle on the Premises.

10.05. Notwithstanding anything to the contrary contained herein, and subject to appropriation of funds by City Council, Landlord shall solely be responsible for any and all structural or capital repairs or maintenance to the Premises, including but not limited to the roof, foundation, exterior walls, electrical systems, plumbing systems, HVAC and elevator (collectively, “Capital Items”). Expenses related to Capital Items shall not be applied toward the Landlord’s expense cap referred to in Section 10.01 herein.

11. Tenant's Affirmative Promises.

Tenant promises that it will:

11.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

11.02. Obey (a) all applicable Federal, State, and local laws and regulations 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, including any historic and design review-related restrictions.

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

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

11.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

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

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

11.08. On request, execute an estoppel certificate that states the Lease began on October 1, 2012 and will end no later than September 30, 2017, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists known 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.

11.09. Arrange with Landlord in advance for any heating, air-conditioning, or electrical needs in excess of the services provided by Landlord and pay for such additional services as billed by Landlord.

12. Liabilities.

Tenant and Landlord acknowledge that they are a political subdivision and agency of the State of Texas, respectively, and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §§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.

13. Tenant's Negative Promises.

Tenant promises that it will not:

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

13.02. Create a nuisance.

13.03. Interfere with any other tenant's normal business operations or Landlord's management of Market Square.

13.04. Permit waste.

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

13.06. Change Landlord's lock system.

13.07. Alter the Premises.

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

13.09. Erect or install any displays or decorations on the exterior of the Premises (e.g., building, porches, overhangs, walls) without first obtaining Landlord's written consent.

14. Landlord's Affirmative Promises.

Landlord promises that it will:

14.01. Lease to Tenant the Premises for the entire Term beginning on October 1, 2012 and ending September 30, 2017.

14.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas, including but not limited to The Texas Accessibility

Standards regarding architectural barriers to persons with disabilities promulgated under Chapter 469, Texas Government Code as prepared and administered by the Texas Department of Licensing and Regulation and the ADA Accessibility Guidelines promulgated under The Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. § 12181 et seq.

14.03. Assure that the entrance to the Premises is not blocked by Landlord or Landlord's contractors during City-sponsored events at Market Square.

15. 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.

16. Alterations.

Physical additions or improvements to the Premises made by Tenant will become the property of Landlord upon termination of the Lease. 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 as of October 1, 2012, normal wear and tear excepted.

17. Insurance.

17.01 Landlord acknowledges that, because Tenant is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of Tenant or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of Tenant is provided by Tenant as mandated by the provisions of the *Texas Labor Code*, Chapter 502. Landlord further acknowledges that, as an agency of the State of Texas, Tenant has only such authority as is granted to Tenant by state law or as may be reasonably implied from such law, and that Tenant shall have the right, at its option, to either (a) obtain liability insurance protecting Tenant and its employees and property insurance protecting Tenant's buildings and the contents, to the extent authorized by Section 51.966 of the *Texas Education Code* or other law; or (b) self-insure against any risk that may be incurred by Tenant as a result of its operations under this Lease. Any obligation by Tenant under this Lease to obtain insurance is expressly made subject to Tenant's authority under state law to obtain such insurance. No insurance carrier of either party shall have a right of subrogation against the other party to this Lease..

17.02. Nothing in this Lease limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

17.03. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

17.04. Landlord will insure the Premises, improvements and fixture or self-insure the Premises, improvements and fixtures as it deems advisable. As a political subdivision of the State of Texas, Landlord is subject to the Texas Tort Claims Act, and the obligations of Landlord and the rights of persons claiming against Landlord are subject to that Act.

18. 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.

19. Environmental Matters.

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.

19.03. 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. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

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

19.05. 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.

19.06. Landlord may conduct, at Landlord's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants.

19.07. 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.

19.08. Tenant must indemnify Landlord and hold Landlord 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 Tenant's environmental representations, warranties, and covenants.

20. 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.

21. Casualty/Total or Partial Destruction.

21.01. If the Premises are damaged by casualty and can be restored within 90 days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within 90 days from the 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.

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

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

22. Condemnation/Substantial or Partial Taking.

22.01. If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this Lease terminates.

22.02. 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.

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

23. 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 \$5,000 monthly.

24. Intentionally Omitted.

25. Default, Remedies for Default.

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

25.01.01. Tenant fails to pay when due any installment of Rent, and does not cure such failure within 10 calendar days after written notice thereof to Tenant.

25.01.02. 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 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.

25.01.03. 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 calendar days after the levy thereof.

25.01.04. 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.

25.01.05. 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 60 calendar days after such institution or appointment.

25.01.06. 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, or fails to commence business operations in the Premises on or before November 1, 2012. 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.

25.01.07. 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.

25.01.08. 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.

25.01.09. 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.

25.01.10. Tenant defaults under the Services Contract attached hereto as Exhibit "B."

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

25.02.01. 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.

25.02.02. 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 having terminated the Lease.

25.02.03. Enter upon the Premises, by force if necessary, 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.

25.02.04. 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 increases its security deposit by 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 is obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

25.03. *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.

25.04. *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.

25.05. *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.

25.06. *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.

25.07. *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.

25.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages. Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-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.

25.09. *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 of 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.

25.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may 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. Landlord also may, in good faith, 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. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity.

25.11. *Delinquent Rents and Other Sums.* Any amounts owing hereunder not paid within five days after they are due bear interest at the lesser rate of (i) the maximum nonusurious rate allowed by law or (ii) 18% per annum, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. Tenant will pay state mandated interest due on delinquent rents and other sums hereunder.

25.12. *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.

27. 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:

27.01. 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;

27.02. 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;

27.03. 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.

27.04. 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.

27.05. 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

27.06. 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.

28. Intentionally Omitted.

29. Intentionally Omitted.

30. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

31. Appropriations.

31.01. 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.

31.02. This Lease is made and entered into in accordance with the provisions of Chapter 2167 of the *Texas Government Code* and is contingent upon the continuation of federally funded programs and/or the appropriation of funds by the Texas Legislature. In the event a curtailment of federally funded programs occurs, or in the event state appropriations are unavailable, Tenant may terminate this Lease upon written notice to Landlord, or may assign or sublet this Lease to another agency of the State of Texas.

32. Sublease, Assignment.

Tenant cannot assign or sublease this Lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

33. Dispute Resolution.

33.01. 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.

33.02. 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.

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

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

33.05. 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.

33.06. Mediator fees must be borne equally.

33.07. 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.

34. Miscellaneous.

34.01. *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.**

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

34.03. *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.

34.04. *Modification.* This Agreement may be changed only by a written agreement signed by both Landlord and Tenant. the party against whom enforcement of any modification is sought. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

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

34.06. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

34.07. *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.

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

34.09. *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.

34.10. *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.

34.11. *Administrative Actions and Agreements.* The Director of Downtown Operations 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.

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

34.13. *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.

35. Integration/Accord and Satisfaction.

This Lease and the Services Contract Represent 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.

36. 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 Lease waives an otherwise applicable exception to disclosure.

37. Early Termination.

This Lease may be terminated in whole or in part when Landlord determines that continuation of the Lease would not produce beneficial results commensurate with the further expenditure of funds. Such termination by Landlord shall specify the date thereof, which date shall not be sooner than 30 days following the day on which notice is sent. Tenant shall also have the right to terminate this Lease and specify the date thereof, which date shall not be sooner than the end of 30 days following the day on which notice is sent.

38. Privileges and Immunities.

Landlord expressly understands and acknowledges that Tenant is an agency of the State of Texas and that there are constitutional and statutory limitations on the authority of Tenant (a state agency) to enter into certain terms and conditions of this Lease, including, but not limited to, those terms and conditions relating to liens on Tenant's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and

conditions related to the Limitations will not be binding on Tenant except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of this Lease by Tenant nor any other conduct, action, or inaction of any representative of Tenant relating to this Lease constitutes or is intended to constitute a waiver of Tenant's or the state's sovereign immunity to suit.

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

Landlord:

Tenant:

City of San Antonio, a Texas
municipal corporation

**Board of Regents of The Texas A&M
University System**, for the use and benefit
of **Texas A&M University – San
Antonio**, an agency of the State of Texas

Signature: _____

By: _____

Printed
Name: _____

MARIA HERNANDEZ FERRIER
President

Title: _____

Date: _____

Date: _____

Approved as to Form:

RECOMMENDED APPROVAL:

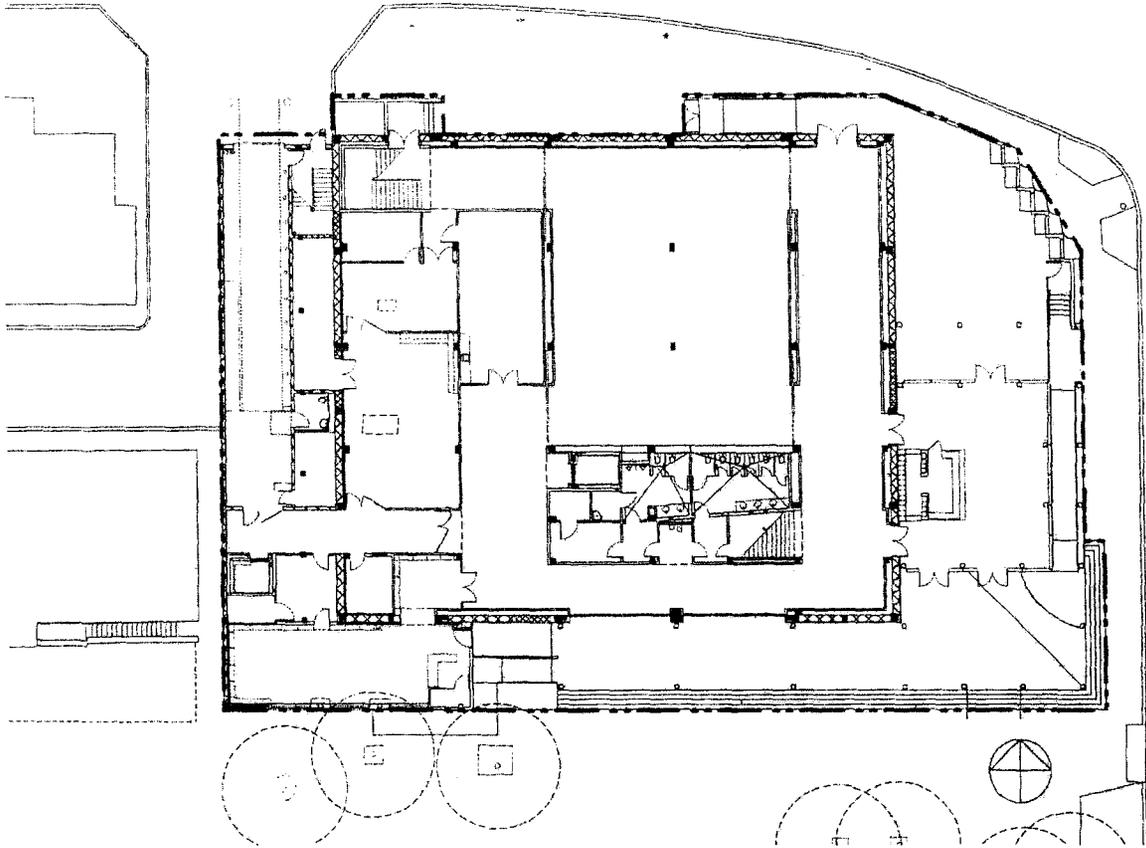
City Attorney

KEN MITTS
Vice President for Finance &
Administration

APPROVED AS TO FORM:

GINA M. JOSEPH
Assistant General Counsel
Office of General Counsel
The Texas A&M University System

EXHIBIT "A"
APPROXIMATELY 20,672 GSF OUT OF LOT 1, NCB 14489, SAN ANTONIO, BEXAR COUNTY, TEXAS AS SHOWN BELOW
APPROXIMATELY 30,435 GSF OF ENCLOSED BUILDING AREA



ATTACHMENT II

STATE OF TEXAS *

COUNTY OF BEXAR * **SERVICES CONTRACT WITH TEXAS A&M UNIVERSITY-**
SAN ANTONIO

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2012-09-_____ dated _____, 2012, and Texas A&M University-San Antonio, an agency of the State of Texas (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Office of Cultural Affairs is designated as the managing City department (hereinafter referred to as "OCA") for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, City has allocated a portion of said funds for a project(s) entitled _____ (hereinafter referred to as "the Project"); and

WHEREAS, City wishes to engage Contractor to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 Contractor will operate the _____ ("Facility") in a manner satisfactory to City and in compliance with all applicable federal, state and local rules and regulations.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on October 1, 2012 (the "Commencement Date") and shall terminate on September 30, 2015.

2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. Funding for each fiscal year of this Contract is subject to annual budgetary appropriation by the City Council of the City of San Antonio. If such appropriation is not made, this Contract shall terminate upon written notice to Contractor. Similarly, City understands that Contractor's funding for each fiscal year of this Contract is subject to annual budgetary appropriation by the Texas Legislature. If such appropriation is not made, this Contract shall terminate upon written notice to City.

2.3 This Contract is being executed simultaneously with a Lease (the "Lease") of even date, by and between City and Contractor, attached hereto as **Exhibit A**, and incorporated herein by reference for all purposes. In the event the Lease is terminated for any reason prior to the termination of this Contract, this Contract shall automatically terminate.

III. CONSIDERATION

3.1 In consideration and in accordance with the terms of the Lease, City will directly pay the following expenses each year of this Contract:

| | | |
|--------------------------------|----------------------|---|
| (A) Annual Operational Support | \$ 301,243.00 | For building expenses ¹ , including but not limited to janitorial, security, utilities, landscaping, signage, advertising, minor repairs ² (“Services”) and Programming Support |
| (B) Annual Programming Support | \$150,000.00 | For exhibit and curatorial ³ costs (“Programming”) |

- 3.2 Some of the funds utilized for this Contract are from the City’s Hotel Occupancy Tax collections and it is the understanding of the Parties that the amounts set forth in Section 3.1 may be adjusted at any time to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations. If the amounts set forth in Section 3.1 are reduced, Contractor, in its sole and absolute discretion, may terminate this Contract.
- 3.3 All obligations of the City of San Antonio under this Contract 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 Contract in an annual City of San Antonio Budget, the City may terminate this Contract and have no further liability.
- 3.4 Contractor shall provide \$100,000.00 in in-kind personnel salary and \$200,000.00 for educational programming in its budget during each fiscal year of this Contract (October 1-September 30). Contractor shall be responsible for booking and managing such educational programming.
- 3.5 Contractor agrees to comply with the Special Provisions set forth in Article XVIII below.

IV. PAYMENT

- 4.1 City shall directly contract for and pay associated bills for Services and Programming. None of the funding provided for under this Contract shall be paid to Contractor. Prior to City making any payments under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 City will pay the allowed costs provided for in Section 3.1 within 30 days of the receipt of an invoice from the third-party providing such Services and Programming. In no event shall City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.
- 4.3 In the event the _____ does not open on or prior to November 1, 2012, Contractor shall refund all payments for Services and/or Programming made under this Contract within 30 days of the receipt of City’s written request. This Subsection shall survive any termination of this Contract.

¹ Services other than those specifically enumerated in this Contract shall be paid in the sole discretion of City and are limited to those expenses directly associated with the day-to-day building operations of the Facility. City will provide Services to the standard City deems appropriate. If Contractor is dissatisfied with the level of Services provided by City, Contractor’s sole remedy is to supplement such Services at Contractor’s cost. “Services,” as used herein, do not include “Capital Items” as defined in the Lease. Capital Items shall solely be the responsibility of City and shall not come out of the Annual Operational Support.

² These are non-structural repairs essential for the continued operation of the Facility, including but not limited to electrical, HVAC, elevator and plumbing. The determination of whether or not such a repair is required shall be made solely by City.

³ City will enter and manage contracts for exhibits during the term of this Contract for an annual amount not to exceed \$150,000.00. City will coordinate with Contractor on such Programming. Contractor may book additional exhibits at its own expense, subject to the dates previously scheduled for City Programming. Contractor shall provide schedules of all such events at least 30 days prior to the beginning of each fiscal year under this Contract or as soon as practicable prior to an event and in no case less than 30 days prior to such an event.

- 4.4 Contractor agrees that Contractor costs paid under this Contract will not be claimed under another contract or grant from another agency.

V. PROGRAM INCOME

Article intentionally left blank

VI. DISPUTE RESOLUTION

- 6.1 Before bringing any action arising out of this Contract, 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.
- 6.2 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.
- 6.3 Mediation must be conducted in San Antonio, Bexar County, Texas.
- 6.4 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.
- 6.5 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.
- 6.6 Mediator fees must be borne equally.
- 6.7 The parties need not mediate before going to court for either party to seek emergency injunctive relief. .

VII. AUDIT

- 7.1 City shall send Contractor a quarterly report indicating the funds expended under this Contract beginning on January 1, 2013.
- 7.2 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to OCA within 10 days of Contractor's receipt of the report.
- 7.3 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and other records related to the Project.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall

retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, names and titles of employees assigned to the Facility, and other data relating to matters covered by this Contract.

- 7.5 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been paid by City be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than 10 days from the date of notification of such disapproval or disallowance by City.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 OCA is assigned monitoring, fiscal control, and evaluation of projects funded by OCA. Therefore, at such times and in such form as may be reasonably required by OCA, Contractor shall furnish to OCA, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel and program participants pertaining to the matters covered by this Contract.
- 8.2 Contractor shall submit to OCA such reports as may be reasonably required by City.
- 8.3 The Public Information Act, Government Code Section 552.021, requires the City and Contractor to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within 24 hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than 3 business days of Contractor's receipt of such request.
- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.
- 8.5 Within a period not to exceed 30 days from the termination date of the Contract, Contractor shall submit all final reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.
- 8.6 Contractor agrees to comply with official records retention schedules in accordance with the Policies of The Texas A&M University System.

IX. INSURANCE

- 9.1 City and Contractor will self-insure as they deem advisable. As a political subdivision of the State of Texas, City is subject to the Texas Tort Claims Act, and the obligations of City and the rights of persons claiming against City are subject to that Act. Similarly, as an agency of the State of Texas, Contractor is subject to the Texas Tort Claims Act, and the obligations of Contractor and the rights of persons claiming against Contractor are subject to that Act.

X. INDEMNITY/LIABILITY

10.1 CITY and CONTRACTOR acknowledge that they are a political subdivision and agency of the State of Texas, respectively, and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §§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.

XI. APPLICABLE LAWS

11.1 All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time, to the extent applicable to state agencies, including but not limited to:

- worker's compensation;
- unemployment insurance;
- timely deposits of payroll deductions;
- Occupational Safety and Health Act regulations;
- Employee Retirement Income Security Act of 1974, P.L. 93-406.
- Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
- American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
- City of San Antonio and Bexar County charter, ordinances and bond ordinances.

11.2 Contractor shall not engage in employment practices, which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure applicants and employees are treated without regard to their race, color, religion, national origin, sex, age, handicap, political belief or affiliation. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.

11.3 Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes, if applicable, the filing of:

- Information on Tax Return form 990, 990N or 990T,
- Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
- Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.

XII. NO SOLICITATION/CONFLICT OF INTEREST

12.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this

Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

- 12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 12.5 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are 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 "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 12.6 Contractor representative warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity.

XIII. TERMINATION

- 13.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of 10 days following the day on which such notice is sent). Similarly, should City fail to fulfill, in a timely and proper manner, obligations under this Contract or if City should violate any of the covenants, conditions, or stipulations of the Contract, Contractor shall thereupon have the right to terminate this Contract by sending written notice to City of such termination and specify the effective date thereof (which date shall not be sooner than the end of 10 days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 13.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than 30 days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of 30 days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date.

- 13.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 14.3 The prohibitions set forth in Article XIV., Sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 No City funds will be used to pay any personnel of Contractor.
- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 14.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XV. PERSONNEL MANAGEMENT

- 15.1 Contractor shall have a salaried full-time or part-time manager who is responsible for the business management of the organization on staff at all times during the term of this Contract. Contractor shall supply such manager's job description to OCA no later than November 1, 2012.
- 15.2 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.

- 15.3 Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 15.4 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor employees may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.
- 15.5 Contractor's primary contact for this Contract is _____, and _____ shall serve as the secondary contact. All contacts identified herein will have the ability to access agency files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 10 days of the change.
- 15.6 City's primary contact for this Contract is _____, and _____ shall serve as the secondary contact. City shall notify Contractor upon any change in contact information within 10 days of the change.

XVI. ADVERSARIAL PROCEEDINGS

- 16.1 Contractor agrees to comply with the following provisions:
- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
 - (B) Contractor, at City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against City remains unresolved.

XVII. CITY-SUPPORTED PROJECT

- 17.1 Contractor shall identify all events and activities funded in whole or in part with funds identified in paragraph 3.1 (B) by stating that the Project is "supported by the City of San Antonio's Office of Cultural Affairs" and by utilizing the official OCA logo (not the "sahearts" website logo).
- 17.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 17.3 Contractor shall not identify City or OCA as a funding provider for any events and activities for which City has not authorized funding.
- 17.4 If Contractor identifies City or OCA as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.

XVIII. SPECIAL PROVISIONS

- 18.1 Indecency. The following is City's policy statement regarding material and/or performances in City-owned facilities:
- (A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should

be exercised. Contractor shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 18.1(B).

- (B) Contractor must make OCA aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than 30 days prior to the actual activity.
- (C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

- 18.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions.

XIX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 19.1 Contractor agrees that none of the performance rendered hereunder funded by the City under Section 3.1(B) shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XX. ASSIGNMENT

- 20.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXI. AMENDMENT

- 21.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of OCA shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:
 - (A) an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
 - (B) budget line item shifts of funds between the categories set forth in Section 3.1(A) and (B) , so long as the total dollar amount of the budget set forth in Article III, Section 3.1 of this Contract remains unchanged; unless otherwise prohibited by law, City ordinance or City policy.
 - (C) modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of OCA; and
 - (D) adjustments to the funding awarded under this Contract in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, so long as any increases in funding comply with Section 21.1(a) above.

XXII. OFFICIAL COMMUNICATIONS

- 22.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

**City of San Antonio
Office of Cultural Affairs
PO Box 839966
San Antonio, Texas 78283-3966**

Contractor:

**Texas A&M University – San Antonio
One University Way
San Antonio, Texas 78224**

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within 5 business days of the change.

XXIV. VENUE

- 24.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXV. GENDER

- 25.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVI. AUTHORITY

- 26.1 The signer of this Contract for Contractor represents that she has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor represents that it is authorized to do business in the State of Texas and is formed under and operating in accordance with all applicable laws of the State of Texas.

XXVII. INDEPENDENT CONTRACTOR

- 27.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 27.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 27.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of

City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXVIII. SEVERABILITY

- 28.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIX. CONTRIBUTION PROHIBITIONS

- 29.1 Contractor acknowledges that City Code Section 2-309 applies to this Contract and provides that any person acting as a legal signatory for a proposed contractual relationship such as this one, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits their application for funding until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity.
- 29.2 Contractor acknowledges that this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXX. ENTIRE CONTRACT

- 30.1 This Contract and the Lease constitute the entire and integrated agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

XXXI. PRIVILEGES AND IMMUNITIES

- 31.1 City expressly understands and acknowledges that Contractor is an agency of the State of Texas and that there are constitutional and statutory limitations on the authority of Contractor (a state agency) to enter into certain terms and conditions of this Contract, including, but not limited to, those terms and conditions relating to liens on Contractor's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on Contractor except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of this Contract by Contractor nor any other conduct, action, or inaction of any representative of Contractor relating to this Contract constitutes or is intended to constitute a waiver of Contractor's or the state's sovereign immunity to suit.

In witness of which this Contract has been executed effective the _____ day of _____, 2012.

CITY OF SAN ANTONIO:

Texas A&M University-San Antonio

Felix Padrón
Executive Director
Office of Cultural Affairs

Maria Hernandez Ferrier
President

APPROVED BY:

RECOMMENDED APPROVAL:

Sheryl Sculley
City Manager

Ken Mitts
Vice President for Finance and Administration

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Gina M. Joseph
Assistant General Counsel
The Texas A&M University System

ATTACHMENT III

Termination of Lease Agreement

(Centro Alameda, Inc.)

This Termination of Lease Agreement is entered into between Tenant and the City of San Antonio (Landlord), P.O. Box 839966, San Antonio, Texas 78283-3966, pursuant to the Authorizing Ordinance.

1. Identifying Information.

Authorizing Ordinance:

Tenant: Centro Alameda, Inc.

Tenant's Address: 101 S. Santa Rosa Street, San Antonio, Texas 78205

Lease: Museo Alameda Lease, April 1, 2010

Ordinance Authorizing Lease: 2010-04-01-0272

First Amendment First Amendment to Museo Alameda Lease, October 1, 2011

Ordinance Authorizing First Amendment 2011-09-29-0803

Termination Date: September 30, 2012

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" in this amendment include both the original Lease and all previous amendments to it.

3. Termination.

Despite any provisions in the Lease to the contrary, the Lease is terminated effective the Termination Date. Tenant must vacate the premises and leave it broom clean no later than 5:00 P.M. the day before the Termination Date. All furniture, equipment, fixtures, and other property of Landlord, including, but not limited to, the two Spirit of the Dance figures, 31 theater seats, and theater curtains, must remain at the premises. All Tenant's obligations under the lease regarding condition of the leasehold upon termination remain in effect. Tenant must pay rent through the Termination Date.

