

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering

**AGENDA DATE:** Consent Agenda  
September 13, 2011

**CONTACT PERSON NAME AND PHONE NUMBER:** R. Alan Shubert, City Engineer, (915) 541-4423

**DISTRICT(S) AFFECTED:** District #8, Rep. Niland

**SUBJECT:**

That the City Manager be authorized to sign the lease by and between the City of El Paso and Centro Artístico Y Cultural-Buena Vista, an Internal Revenue Code, Section 501 (c) (3) public charity, for the use of the following described City property as a digital reference library service, after school tutorial service and art gallery: Lots 30 and 31, Sundown Subdivision, City of El Paso, El County, Texas, municipally known as 120 Courchesne Street.

**BACKGROUND / DISCUSSION:**

The City has a building located at 120 Courchesne which no longer serves a municipal purpose. The Centro Artístico Y Cultural- Buena Vista will lease the building for a dollar a year and provide the following public purpose as additional consideration: digital reference library services, after school tutorial services, and an art gallery. The initial term is for two years, if the Leasee is not in default, the lease may be extended for four (4) additional terms of five (5) years. The Leasee will be responsible for bringing the building up to code within two years, maintenance, utilities, and security.

**PRIOR COUNCIL ACTION:**

**AMOUNT AND SOURCE OF FUNDING:**

Revenue generating

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**BOARD / COMMISSION ACTION:** Approved by CARE

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also) Information copy to appropriate Deputy City Manager

## RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the Lease by and between the CITY OF EL PASO and CENTRO ARTISTICO Y CULTURAL-BUENA VISTA, an Internal Revenue Code, Section 501(c)(3) public charity, for the use of the following described City property as a digital reference library service, after school tutorial service and art gallery: Lots 30 and 31, Sundown Subdivision, City of El Paso, El Paso County, Texas, municipally known as 120 Courchesne Street.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.

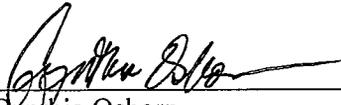
CITY OF EL PASO:

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
City Engineer

# **LEASE**

**CITY OF EL PASO  
EL PASO, TEXAS**

Lessor

**CENTRO ARTISTICO Y CULTURAL-BUENA VISTA**

Lessee

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**Effective Date**

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**ATTACHMENTS**

**EXHIBIT "A"** - Property Description & Metes and Bounds of Premises

**EXHIBIT "B"** - Required Improvements

# LEASE

THIS LEASE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between the City of El Paso, a home rule municipal corporation ("Lessor") and Centro Artístico Y Cultural-Buena Vista, an Internal Revenue Code, Section 501(c)(3) public charity ("Lessee").

**WHEREAS**, Lessor owns the property located at 120 Courchesne Street, El Paso, El Paso County, Texas 79922; and

**WHEREAS**, Lessor has determined that a public purpose will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

**WHEREAS**, Lessee has indicated a willingness and ability to use the property to provide digital reference library services, after school tutorial services, and an art gallery in accordance with the terms of this Lease and to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

## **ARTICLE I - PREMISES AND PRIVILEGES**

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

Lots 30 and 31, Sundown Subdivision, City of El Paso, El Paso County, Texas and certain improvements located thereon and municipally known and numbered as 120 Courchesne Street, as more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Premises").

**1.02 Right to Construct.** Lessee shall have the right and privilege to construct, maintain, and remove improvements upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to the construction or any modifications to the Premises, the plans and specifications for any improvements, additions, alterations or changes shall be submitted to the City Engineer or designee, with a copy to the Capital Assets Manager, for review and approval. No work shall commence until the City Engineer has given written approval.

**1.03 Restriction of Privileges, Uses and Rights.** The rights and privileges granted Lessee hereunder are subject and expressly limited to Lessee's use of the Premises for a digital reference library service, after school tutorial services, an art gallery and any necessary related office uses in accordance with Lessee's mission of universal computer literacy and its mission to integrate libraries with other aspects of public community life in accordance with its role as an arts and cultural organization. Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than a digital reference library, after school tutorial services, an art gallery and any necessary related office uses shall constitute an event of default and may result in termination of the Lease.

**1.04 Conditions of Granting Lease.** The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. Alcohol will not be served on the premises.
- D. The use of tobacco products/smoking is prohibited in the building.
- E. Within two (2) years from the effective date of this Lease, Lessee shall obtain for the Premises a Certificate of Occupancy issued by the appropriate City department. Failure to obtain a Certificate of Occupancy within two years of the effective date of this Lease shall be an event of default and may result in termination of the Lease.

## **ARTICLE II - OBLIGATIONS OF LESSOR**

**2.01 Quiet Enjoyment.** Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

### **ARTICLE III - OBLIGATIONS OF LESSEE**

**3.01 Net Lease.** This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II above and elsewhere in this Lease. Lessee shall:

- A. Keep and maintain the Premises and improvements located thereon in a good state of repair at all times; and
- B. Keep and maintain the landscaping for the Premises in a good state of repair at all times; and
- C. Pay any and all taxes assessed against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- D. Pay any and all operational costs including all utilities, utility connection fees, trash pickup, and security costs; and
- E. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

**3.02 Condition of Premises.** Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Any remediation required as a result of any environmental assessment will be at the sole cost of Lessee. If Lessee determines that remediation costs are prohibitive, Lessee may terminate the Lease with thirty (30) days written notice to Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**3.03 Annual Inspection.** At least once each calendar year during the term of this lease, Lessor shall conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Lessor shall give Lessee 72 hours notice prior to the annual inspection. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements. Failure to complete such repairs within 10 (ten) days from notice of required repairs shall be an event of default and may result in termination of the Lease.

**3.04 Compliance With Laws.** Lessee, at Lessee's expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with the terms, conditions

and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon related to Lessee's activities under this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon related to Lessee's activities under this Lease, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.
- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee related to Lessee's activities under this Lease results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not

potentially have any material adverse long-term effect on the Premises or on any improvements thereon.

- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon related to Lessee's activities under this lease, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.04 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

**3.05 Lessor's Approval of Plans.** Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Engineering and Construction Management Department, Lessee may be required to obtain the approval of other departments as well, such as Capital Assets and Real Estate Manager.

**3.06 Landscaping and Maintenance of Improvements.** Lessee shall maintain the landscaping on the Premises and keep the improvements on the Premises in a good state of repair and condition. Lessor agrees that attractive, low water usage landscaping is a desirable goal and agrees to consider and approve appropriate low water usage landscaping plans if improvements are made to the current landscaping.

Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which plus ten percent (10%) shall be borne by Lessee.

**3.07 Utilities.** Lessee shall pay all costs for utility services, including connection fees for utilities, during the term hereof.

**3.08 Trash, Garbage, and Other Refuse.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

**3.09 Security.** Any security required by Lessee shall be at Lessee's own expense.

**3.10 Permitted Uses.** Lessee will not enter into any activity on the Premises other than those permitted in Paragraph 1.03.

#### **ARTICLE IV - TERM OF LEASEHOLD**

**4.01 Term.** This Lease shall be for a term of two (2) years, commencing on the Effective Date, as defined in Section 11.17, and shall terminate two (2) years from the Effective date. This two (2) year term shall hereinafter be referred to as the "Initial Term".

**4.02 Option to Extend.** In the event Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for four (4) additional terms of five (5) years. Lessee may exercise each five (5) year option ("Option Period") by notifying Lessor in writing of Lessee's election at least ninety (90) days prior to the expiration of the previous term. In the event the election is so exercised, the Lease shall be extended for five (5) years on the same terms and conditions. The City Manager for the City of El Paso shall have authority to approve the exercise of the option(s) on behalf of Lessor without the necessity of City Council approval.

**4.03 Holding Over.** It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee shall be

liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**4.04 National Emergency.** In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of time of such suspension.

#### **ARTICLE V - CONSIDERATION**

**5.01 Rent.** As monetary consideration for this Lease, Lessee will deliver to the City ONE DOLLAR AND NO/00 (\$1.00) for the initial one-year term of this lease and ONE DOLLAR AND NO/00 (\$1.00) per year for each year of any extensions exercised.

**5.02 Place of Payment.** All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso  
Financial Services  
2 Civic Center Plaza, 7<sup>th</sup> Floor  
El Paso, TX 79901.

**5.03 Additional Consideration, Services.** The proposed use of the Premises of providing a digital reference library with after school tutorial services in a computer environment and providing an art gallery, serves the public purposes of leading to universal computer literacy and integrating libraries into other aspects of public community life which are of general benefit to the citizens of El Paso.

**5.04 Additional Consideration, Capital Improvements.** As additional consideration for the lease, Lessee shall make improvements to the Premises during the initial term of the Lease.

Within two (2) years from the Effective Date of the Lease, Lessee shall complete the improvements as more fully described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Improvements") and obtain a Certificate of Occupancy for the Premises.

#### **ARTICLE VI – INSURANCE AND INDEMNIFICATION**

**6.01 Fire and Other Risks Insurance.** Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selects be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

**6.02 Liability Insurance.** Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

**6.03 Performance Bonds.** In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.
- B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

**6.04 Authorized Insurance Companies.** All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to Lessor.

**6.05 Indemnification.** Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or

attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

**6.06 Waiver of Liability.** Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

## **ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY**

**7.01 Obligations of Lessee.** During the term hereof, except as provided in Section 7.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessor shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessor as aforesaid and Lessor shall bill Lessee for the repairs, replacements or rebuilding.

**7.02 Insurance Proceeds.** Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

**7.03 Cancellation of Lease.** Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all

improvements in accordance with Section 10.06 herein below, in which case Lessee shall be entitled to such insurance proceeds. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

### ARTICLE VIII - CONDEMNATION

**8.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
  - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
  - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

**8.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

**8.03 Rights of Parties During Condemnation Proceeding.** Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

**8.04 Taking of Leasehold.** Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**8.05 Total Taking.** All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

**8.06 Partial Taking.** Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

**8.07 Obligations of Lessee Under Partial Taking.** Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

**8.08 Taking of Temporary Use of Premises and Improvements.** Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

## **ARTICLE IX - ENCUMBRANCES**

**9.01 Encumbrance.** Lessee may not encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises.

**ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**10.01 Expiration.** This Lease shall expire two (2) years from the Effective Date of this Lease, unless as extended pursuant to paragraph 4.02 above.

**10.02 Cancellation.** Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Fail to make the Improvements described in **Exhibit "B"** and obtain a Certificate of Occupancy for the Premises within one (1) year from the Effective Date of this Lease.
- B. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;
- C. Fail to maintain insurance and provide proof of said insurance;
- D. Fail to use the Premises for the purpose identified in paragraph 1.03;
- E. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- F. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- G. Make any general assignment for the benefit of creditors;
- H. Abandon the Premises;
- I. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- J. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

- K. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**10.03 Repossessing and Reletting.** In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**10.04 Assignment and Transfer.** Lessee may not assign or transfer any part of its interest in this Lease. Any attempt to transfer shall be void and an event of default which may result in immediate termination of the Lease.

**10.05 Rights Upon Expiration.** At the expiration of this Lease, at the sole option of Lessor the Premises will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee.

**10.06 Landlord's Lien.** It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

## **ARTICLE XI - GENERAL PROVISIONS**

**11.01 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

**11.02 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso  
City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City of El Paso  
Capital Assets Manager  
2 Civic Center Plaza, 4<sup>th</sup> Floor  
El Paso, Texas 79901

LESSEE: Centro Artistico Y Cultural-Buena Vista  
Roberto Salas, Director  
P.O. Box 4873  
San Diego, California 92164

Copy to: Michael R. Wyatt  
2906 Silver Avenue  
El Paso, Texas 79930

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**11.03 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**11.04 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

**11.05 Nondiscrimination Covenant.** Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of

Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**11.06 Cumulative Rights and Remedies.** All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**11.07 Interpretation.** Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**11.08 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**11.09 Paragraph Headings.** The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**11.10 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**11.11 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

**11.12 Taxes and Other Charges.** The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

**11.13 Waiver of Warranty of Suitability.** Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

**11.14 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.04 and 6.05.

**11.15 Restrictions and Reservations.** This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**11.16 Authorization To Enter Lease.** If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.17 **Effective Date.** This Lease shall be effective on the date executed by the City Manager for the City of El Paso.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this \_\_\_\_ day of \_\_\_\_\_, 2011.

**LESSOR: CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
City Engineer

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011, by Joyce A. Wilson as City Manager of the City of El Paso, Texas.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**



# 120 Courchesne Street

Geographic ID S827-999-0000-7300

