

AN ORDINANCE 2017-10-19-0809

**AUTHORIZING A LEASE RENEWAL AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND ELLA
AUSTIN COMMUNITY CENTER FOR THE FACILITY
LOCATED AT 1023 NORTH PINE STREET FOR A
TERM OF FIVE-YEARS UNTIL OCTOBER 30, 2022
FOR A TOTAL RENTAL RATE OF \$10.00 FOR THE
ENTIRE LEASE TERM.**

* * * * *

WHEREAS, through various City Council actions, the City of San Antonio has leased the property at 1023 North Pine Street to the Ella Austin Community Center (EACC) since January 1983; and

WHEREAS, the EACC is a non-profit organization serving the City's east side community by providing a wide array of human development services such as early childhood development, senior nutrition, youth and family services and income tax assistance; and

WHEREAS, this action will serve to continue the City's support of the EACC's community-based mission by leasing the property for an additional five-year term; and

WHEREAS, pursuant to the terms of the Lease Agreement, EACC will continue to be responsible for all costs related to the maintenance of the property; **NOW THEREFORE:**

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

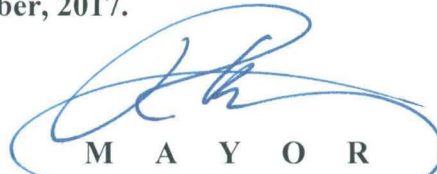
SECTION 1. The City Manager or her designee, or the Director of the Department of Human Services or her designee, is authorized to execute a lease renewal agreement between the City of San Antonio Department of Human Services and Ella Austin Community Center for the facility located at 1023 North Pine Street for a term of five-years until October 30, 2022 for a total rental rate of \$10.00 for the entire lease term. A copy of said lease renewal agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 11001000, Internal Order 2380000000005 and General Ledger 4401110.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

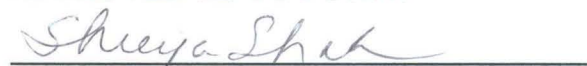
PASSED AND APPROVED this 19th day of October, 2017.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney

Agenda Item:	14						
Date:	10/19/2017						
Time:	10:19:23 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a lease renewal agreement between the City of San Antonio and Ella Austin Community Center for the facility located at 1023 North Pine Street for a term of five-years until October 30, 2022 for a total rental rate of \$10.00 for the entire lease term. [María Villagómez, Assistant City Manager; Melody Woosley, Director, Human Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SS
10/19/2017
Item No. 14

Attachment I

1st Renewal and Amendment to Lease Agreement

(Ella Austin Community Center)

This 1st Renewal and Amendment to Lease Agreement is between Tenant and the City of San Antonio ("Landlord"), pursuant to the Ordinance Authorizing Renewal.

1. Identifying Information.

Ordinance Authorizing Renewal:

Tenant: Ella Austin Community Center

Tenant's Address: 1023 N. Pine Street, San Antonio, Texas 78202

Lease: Lease Agreement dated June 1, 2012, for Lots 1 through 18 Block 15, NCB 522, San Antonio, Bexar County, Texas 78202, consisting of approximately 183,184 square feet of real property, between Landlord and Tenant, and authorized by the Ordinance Authorizing Original Lease

**Ordinance Authorizing
Original Lease:** 2012-05-03-0318

**Beginning of Renewal
Term:** November 1, 2017

**Expiration of Renewal
Term:** October 30, 2022

2. Defined Terms.

All terms used in this instrument and not otherwise defined herein but defined in the Lease or any previous amendment to it have the meanings previously ascribed to them. References to "Lease" in this amendment and renewal include both the original Lease and all previous amendments to it.

3. Renewal.

The term of the lease is extended from the Beginning of Renewal Term through and including the Expiration of Renewal Term. At the Expiration of Renewal Term, the Lease, as renewed hereby, terminates. Tenant must then vacate the Premises no later than the Expiration of Renewal Term.

4. Rent.

Rent for the entire Renewal Term is \$10.00 due to Landlord no later than December 1, 2017.

5. Tenant Maintenance Reports.

As part of its maintenance responsibilities, Tenant must submit written quarterly maintenance reports to the Director of the Human Services Department. The quarterly maintenance reports are due one month after the end of each quarter of the lease no later than April 30, July 31, October 31, and January 31, respectively, in order to give Tenant sufficient time to compile each report. Quarterly maintenance report submissions begin on April 30, 2018 (which will cover the period from December 1, 2017 through March 31, 2018), and each subsequent quarterly period thereafter. Tenant has the initial discretion to format the maintenance report as desired subject to Landlord's approval; however, once approved by Landlord, this format shall be standard for all subsequent submissions. Each maintenance report must include, at a minimum, the type of maintenance, the date it was performed, the amount it cost, and who performed the service. Landlord reserves the right to require the inclusion of additional items in each maintenance report including, but not limited to:

- Pest Control Services as needed
- Fire Alarm Inspections as required
- Other required permit and or inspection fees as required
- Security and fire alarm monitoring
- HVAC preventative maintenance and repairs
- Garbage Disposal
- Landscape services
- Janitorial services /Cleaning Services including janitorial supplies
- Other Building Repairs (i.e. electrical, plumbing, graffiti removal, etc.)
- Salary of any maintenance staff.

6. Subleasing.

6.01. **Section 22. Sublease, Assignment** is hereby amended to authorize Tenant to sublease the Leased Premises to a third party upon prior Department of Human Services (DHS) approval. Tenant must submit a written request for permission to sublease to DHS. A request for permission does not guarantee approval and DHS reserves the right to deny the request, but no reasonable request shall be denied. The City of San Antonio Department of Human Services will approve or deny any sublease request within 5 business days. Under no circumstances will Landlord approve a sublease of the Leased Premises that has a proposed expiration date that is later than the expiration date of Tenant's Lease term. Authorization to assign any part of the Lease remains expressly prohibited under the terms of the Lease.

6.02. Tenant is required to spend sublease revenue for facilities cost such as utilities, building maintenance, landscaping, painting, replacement of flooring, ceiling tile, and new equipment and/or marketing and community events such as "National Night Out".

6.03. Tenant must deliver to the DHS, not later than March 1st of each year, an annual report of all revenue Tenant derived from the Premises in the preceding calendar year. The report must show revenue received and used as mandated under the terms of this Lease.

6.04. All sublease agreements must be in substantially the form of **Exhibit A**, or in such other form as the City Attorney may, from time to time, approve. Landlord will generally consent to Tenant's insertion of additional protections to itself as Sublandlord but it will not consent to dilution or other

impairment of the sublease form's protections for Landlord as Master Lease Landlord. Tenant is required to forward a copy of the sublease to DHS upon execution.

7. No Default.

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

8. Same Terms and Conditions.

This renewal instrument is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this renewal, the Lease remains a comprehensive statement of the rights and obligations of Landlord and Tenant. Landlord and Tenant reaffirm the Lease as modified by this agreement. Landlord and Tenant reaffirm the Lease as modified by this agreement and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

9. Public Information.

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

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

Landlord

Tenant

City of San Antonio, a Texas municipal corporation

Ella Austin Community Center, a Texas non-profit corporation

By: _____

Signature: 

Printed Name: _____

Printed Name: Anthony E. Hargrove

Title: _____

Title: Chief Executive Officer

Date: _____

Date: 13 Oct 2017

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A: Approved Sample Form of Sublease Agreement

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1. Basic Information, Definitions.

Sublandlord: Ella Austin Community Center

Sublandlord's Address: 1023 N. Pine Street, San Antonio, Texas 78202

Subtenant:

Subtenant's Address:

Sublease Premises: 1023 N. Pine Street, San Antonio, Texas 78205

Term:

Master Lease: Lease between the City of San Antonio and the Ella Austin Community Center as authorized by Ordinance 2012-05-03-0318, and renewed by Ordinance XXXXXXXX.

Master Lease Landlord: City of San Antonio

Master Lease Tenant: Ella Austin Community Center

2.01. Sublandlord subleases the Sublease Premises to Subtenant, and Subtenant takes the Sublease Premises from Sublandlord on the terms and conditions of this Sublease.

3. Master Lease.

3.02. Except as specified in this Sublease, Subtenant will perform and observe all of the terms and conditions of the Master Lease. Subtenant acknowledges that the terms and conditions of the Master Lease are hereby incorporated into this Sublease. Subtenant agrees to pay rent under this Sublease in lieu of any obligation Subtenant might have to pay rent under the Master Lease.

3.04. Subtenant must not alter the Sublease Premises, except as permitted by the terms of the Sublease, without the express, written permission of Sublandlord and Master Lease Landlord.

3.06. Sublandlord retains all compliance obligations as to portions of Sublease Premises under the Master Lease not included within the Sublease Premises.

4.01. Rent includes all sums due to Sublandlord under this Sublease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Subtenant, or otherwise, no matter how denominated.

4.03. Additional Rent ?????

4.04. Subtenant must pay Base Rent and Additional Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. Due but unpaid amounts bear interest at ??????.

5. Term.

5.01. The term of this Sublease is the Term, unless sooner terminated as provided in this Sublease.

5.02. This Sublease terminates automatically without action by either party if the Master Lease terminates for any reason.

6. Subtenant's Affirmative Promises.

Subtenant promises that it will:

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

6.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Sublease Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Sublease Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Sublandlord.

6.03. Obtain and pay for all utility services used by Subtenant and not provided by Sublandlord.

6.04. Allow Sublandlord to enter the Sublease Premises to perform Sublandlord's obligations, inspect the Sublease Premises, and show the Sublease Premises to prospective purchasers or Subtenants.

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

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

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

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

6.09. On request, execute an estoppel certificate that states the Rent Commencement Date, the Occupancy Commencement Date, and Termination Date of the Sublease, identifies any amendments to the Sublease, describes any rights to extend the Term or purchase rights, lists defaults by Sublandlord, and provides any other information reasonably requested. If Sublandlord sells the Sublease Premises, Subtenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Subtenant's obligation to

deliver the agreement may be conditioned on buyer's agreement to honor this Sublease according to its terms, but buyer will not be estopped to act on Subtenant's default under this Sublease.

7. Indemnity.

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

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

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

7.01.03. "Indemnitor" means Subtenant.

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

7.03. If an Indemnitee is finally adjudged to be solely negligent, Indemnitor need not further indemnify the so-adjudged Indemnitee from its sole negligence. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be solely negligent and must continue to indemnify other Indemnitees.

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

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

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

7.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

7.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

7.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

8. Subtenant's Negative Promises.

Subtenant promises that it will not:

8.01. Use the Sublease Premises for any purpose other than the Permitted Use.

8.02. Create a nuisance.

8.03. Interfere with any other Subtenant's normal business operations or Sublandlord's management of the Building.

8.04. Permit waste.

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

8.06. Change Sublandlord's lock system.

8.07. Alter the Sublease Premises.

8.08. Allow a lien to be placed on the Sublease Premises.

9. Sublandlord's Affirmative Promises.

Sublandlord promises that it will:

9.01. Sublease to Subtenant the Sublease Premises for the entire Term beginning on the Occupancy Commencement Date and ending on the Termination Date.

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

9.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, and (d) other structures or equipment serving the Sublease Premises.

9.04. Allow Subtenant the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Sublandlord may prescribe

10. Sublandlord's Negative Promise.

Sublandlord promises that it will not interfere with Subtenant's possession of the Sublease Premises as long as Subtenant is not in default.

11. Alterations.

Physical additions or improvements to the Sublease Premises made by Subtenant will become the property of Sublandlord. Sublandlord may require that Subtenant, at the end of the Term and at Subtenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Sublease Premises to the condition existing at the Occupancy Commencement Date, normal wear excepted. Subtenant's making of physical additions or improvements must comply with all requirements of the Master Lease, including obtaining consent of the Master Lease Landlord, if applicable.

12. Insurance.

Subtenant must maintain throughout the term of this Sublease, as it may be extended, insurance coverage as to the sublease Premises complying with all insurance requirements of this section. Insurance coverage must be written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Master Lease Landlord, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Sublandlord
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of Sublandlord
3. Commercial General Public Liability Insurance to include (but not be limited to) coverage for the	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its

following:

equivalent in umbrella or excess liability coverage

(a) Sublease
Premises/Operations

(b) Independent Contractors

(c) Products/Completed
Operations

(d) Contractual Liability

(e) Personal Injury Liability

(f) Broad form property damages to include fire legal liability Coverage for replacement cost of Subtenant's improvements

(g) Host Liquor Liability, if alcoholic beverages are served on the Sublease Premises

(h) Liquor Legal Liability
Insurance if alcoholic beverages are sold on the Sublease Premises

4. Business Automobile Liability, including

Combined single limit for bodily injury, death, and property damage of \$1,000,000 per occurrence

(a) Owned/Subleased
Automobiles

(b) Non-Owned Automobiles

(c) Hired Automobiles

5. Property Insurance for physical damage to the property of Subtenant, including improvements and betterments

Coverage for replacement cost of Subtenant's improvements

12.02. Each insurance policy required by this Sublease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966

and

Department of Capital
Improvements Management
Services
City of San Antonio

Attention: Risk Manager

P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director"

"The insurance provided by Subtenant is primary to any insurance or self-insurance maintained by Ella Austin Community Center, and by the City of San Antonio."

"Any insurance or self-insurance maintained by Ella Austin Community Center, and the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Sublease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"Ella Austin Community Center and the City of San Antonio, their officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Sublease. This policy cannot be invalidated as to Sublandlord or the City of San Antonio because of Subtenant's breach of representation, warranty, declaration, or condition of this policy."

12.03. If Subtenant makes Subleasehold improvements, Subtenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Sublandlord's Risk Manager. The policies likewise must be in amounts required by Sublandlord's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Subtenant must maintain the insurance during the construction phase. Subtenant or its contractors or subcontractors must further provide payment and performance bonds naming Sublandlord as indemnitee. If the construction is minor, Subtenant may request the requirements of this Section be waived, but a waiver may be granted only by Sublandlord's Risk Manager. In deciding whether to waive, Sublandlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

12.04. Within 30 days after the Commencement Date and promptly after Sublandlord's later request, Subtenant must, at its own expense, deliver to Sublandlord's Risk Manager and to the City Clerk policy declarations pages reflecting all required insurance coverage. Subtenant must also deliver copies of policies and endorsements. All endorsements, certificates, and declarations pages must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Sublandlord, Subtenant must deliver to Sublandlord documentation acceptable to Sublandlord that confirms that the individual signing the declarations pages, policies, endorsements, and certificates is authorized to do so by the insurance company. Sublandlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Sublandlord does so and the changes would increase premiums, Sublandlord will discuss the changes. If Sublandlord still wants the changes after discussion, Subtenant must make the changes and pay the cost thereof. Sublandlord's review and approval of the above documents does not waive noncompliance with the requirements of this Sublease.

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

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

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

12.08. Sublandlord's insurance requirements are defined by the Master Lease and are not for the benefit of Subtenant.

13. Release of Claims/Subrogation.

The insurance requirements of this Sublease are a bargained-for allocation of risk of loss. Sublandlord and Subtenant release each other and the City of San Antonio 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 Sublease 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 Sublease. Sublandlord and Subtenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other and against the City of San Antonio for Covered Claims.

14. Master Lease Landlord's Municipal Powers.

Master Lease Landlord is a municipality as well as Master Lease Landlord of this Sublease. As a municipality, it may from time to time exercise municipal powers unrelated to the Sublease that will nevertheless adversely affect Subtenant. 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 Master Lease Landlord as a municipality is a breach of Master Lease Landlord's duties as Master Lease Landlord or entitles Subtenant to any relief under this Sublease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Master Lease Landlord's duties as Master Lease Landlord or entitles Subtenant to any relief under this Sublease. Subtenant has no more rights under this Sublease than it would if its Master Lease Landlord were a private entity.

15. Casualty/Total or Partial Destruction.

Casualty loss is handled in the Master Lease. Subtenant is bound to stay in and pay rent for the Premises under this sublease to the same extent Sublandlord is so bound by the Master Lease.

16. Default, Remedies for Default.

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

16.01.01. Subtenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Sublandlord, but Subtenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Subtenant is in default for failure to pay regularly recurring Rent installments timely even if Sublandlord does not give notice.

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

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

16.01.04. Subtenant or any guarantor of the Sublease 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.

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

16.01.06. Subtenant deserts, vacates or abandons all or any portion of the Sublease Premises, or ceases to physically occupy any substantial portion of the Sublease Premises and continuously operate its business on the Sublease Premises, or fails to commence business operations in the Sublease Premises on or before the Occupancy Commencement Date. If Subtenant 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 Sublease Premises, Subtenant's breach is established conclusively.

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

16.01.08. The business operated by Subtenant 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 Subtenant, or normal business holidays.

16.01.09. This Sublease or the estate of Subtenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

16.02. *Remedies for Default.* Upon the occurrence of any Subtenant event of default, Sublandlord has the option to pursue anyone or more of the following:

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

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

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

16.02.04. Alter all locks and other security devices at the Sublease Premises without terminating this Sublease. If Sublandlord does so:

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

(ii) Sublandlord may refuse to give Subtenant a new key unless Subtenant increases its security deposit by an amount determined by Sublandlord,

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

(iv) Subtenant is obligated to pay Sublandlord all costs and expenses incurred by Sublandlord in connection with altering the locks and other security devices.

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

16.03. *Repossession and Alteration of Locks.* Sublandlord's exercise of one or more remedies is not acceptance of Subtenant's purported surrender of the Sublease Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Sublandlord and Subtenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Sublandlord over the property of Subtenant or others at the Sublease Premises is unauthorized or

constitutes conversion. Subtenant consents to Sublandlord's exercise of dominion over Subtenant's property within the Sublease Premises in case of Subtenant's default. Subtenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Sublandlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Sublandlord may elect. Sublandlord is not liable in trespass or otherwise for such re-entry. Sublandlord's remedies and rights under this Sublease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

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

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

16.06. *Payments After Termination.* Subtenant's payment of money to Sublandlord 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 Subtenant prior to the payment. After the service a suit or after any final judgment granting Sublandlord possession of the Sublease Premises, Sublandlord may receive and collect any sums due under the terms of this Sublease 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 Subtenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

16.07. *Rights Respecting Personal Property.* If Sublandlord takes possession of the Sublease Premises under the authority of this Sublease, Sublandlord may keep in place and use all furniture, fixtures, and equipment at the Sublease Premises, including that owned by or Subleased to Subtenant at all times before foreclosure thereon by Sublandlord or repossession thereof by any lessor thereof or lienholder thereon. Sublandlord may also remove from the Sublease 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 Sublease Premises are located. In such case, Subtenant is liable to Sublandlord for costs incurred by Sublandlord in the removal and storage and must indemnify Sublandlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Sublandlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Sublandlord a copy of any instrument represented to have been executed by Subtenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Sublandlord need not inquire into the authenticity of the instrument or Subtenant's or Subtenant's

predecessor's signature thereon. Sublandlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Subtenant indemnify Sublandlord from all loss, cost, liability, or expense arising from or relating to Sublandlord's relinquishment of property to a Claimant. These rights of Sublandlord are additional to any other rights that Sublandlord has or may hereafter have at law or in equity. Subtenant stipulates that the rights herein granted Sublandlord are commercially reasonable.

16.08. *Cumulative Remedies.* Each right and remedy provided to Sublandlord in this Sublease is cumulative to every other right or remedy provided to Sublandlord by this Sublease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Sublandlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Sublandlord of another remedy. All costs incurred by Sublandlord in collecting any amounts and damages owed by Subtenant under this Sublease 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 Sublandlord from Subtenant.

17. Security Deposit.

17.01. Upon receipt of the Security Deposit, if any, Sublandlord may hold it without interest as security for Subtenant's performance of its covenants and obligations under this Sublease. The Security Deposit is not an advance payment of Rent or a measure of Sublandlord's damages in case of Subtenant's default. Sublandlord may co-mingle the Security Deposit with other funds of Sublandlord. If, at any time during the Sublease, Rent becomes overdue and unpaid, Sublandlord may, at its option, apply the Security Deposit to the delinquency. If Subtenant defaults in any other respect, Sublandlord may apply the Security Deposit, or so much thereof as shall be necessary, to compensate the Sublandlord for loss or damage sustained or suffered by Sublandlord due to Subtenant's breach. If Sublandlord applies some or all the Security Deposit to cure a Subtenant breach, Subtenant must, on written demand of Sublandlord, restore the Security Deposit to the original sum deposited, and Subtenant's failure to do so within five days after receipt of demand is a default.

17.02. If Subtenant pays all Rent timely and otherwise complies with this Sublease, Sublandlord will return the Security Deposit to Subtenant at the end of the Sublease. Sublandlord may deliver the Security Deposit to any purchaser of Sublandlord's interest in the Sublease Premises, and thereupon Sublandlord is discharged from other liability for the Security Deposit. If Sublandlord's claims exceed the Security Deposit, Subtenant remains liable for the balance of the claims.

18. Warranty Disclaimer.

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

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

19. Abandoned Property.

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

20. Sublease, Assignment.

Subtenant cannot assign or further sublease this Sublease without Sublandlord's and Master Lease Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Subtenant'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 Subtenant.

21. Miscellaneous.

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

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

21.03. *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.

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

21.05. *Modification.* This Agreement may be changed only by a written agreement, signed by both parties. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Sublease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

21.06. *Third Party Beneficiaries.* This Agreement benefits the parties, Master Lease Landlord, and their successors and permitted assigns only. It has no third party beneficiaries other than Master Lease Landlord.

21.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. 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.

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

21.09. *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.

21.10. *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.

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

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

Sublandlord:

Subtenant:

Ella Austin Community Center

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

By: _____

Signature: _____

Date: _____

Printed
Name: _____

Title: _____

Date: _____