

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

DEPARTMENT: Economic Development

AGENDA DATE: December 9, 2014

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-212-1572

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a Lease Agreement between the City of El Paso (Lessor) and The Opera Company, Inc. (Lessee), for approximately 1,240 square feet of the building located at 400 W. San Antonio along with associated parking areas to conduct the organization's administrative activities, for an Initial Term of five years commencing on the date this Lease is executed and ending on the date that is five years from the Rent Commencement Date, at a base rental rate of \$1,085.00 per month for the Initial Term, and that there is an option to extend the Initial Term for two (2) additional five (5) year terms that may be exercised by the City Manager for a base rental rate of \$1,654.54 per month for the first Extended Term and a base rental rate \$1,816.30 per month for the Second Extended Term.

BACKGROUND / DISCUSSION:

The Union Plaza Transit Terminal (UPTT) building was designed to have retail spaces on the first floor. One of the existing spaces is currently vacant, as such it is underutilized. Leasing the space to The Opera Company, Inc. will eliminate vacancy at the UPTT, provide an income stream, and will help increase the pedestrian activity to the area. The tenant will use the space as their administrative offices, a location for small, private events, and as a ticket booth for their larger events. The tenant is a good option as they are a local non-profit organization committed to bringing culturally enriching events to the region. They also have a well established reputation. The tenant will make all of the improvements to the space to make it operable for their operation. The tenant will make approximately \$44,548.36 of improvements to the space. The FTA has reviewed and approved the lease.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

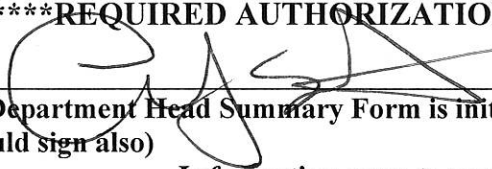
N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


(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 a Lease Agreement between the City of El Paso (Lessor) and The Opera Company, Inc. (Lessee), for approximately 1,240 square feet of the building located at 400 W. San Antonio along with associated parking areas to conduct the organization's administrative activities, for an Initial Term of five years commencing on the date this Lease is executed and ending on the date that is five years from the Rent Commencement Date, at a base rental rate of \$1,085.00 per month for the Initial Term, and that there is an option to extend the Initial Term for two (2) additional five (5) year terms that may be exercised by the City Manager for a base rental rate of \$1,654.54 per month for the first Extended Term and a base rental rate \$1,816.30 per month for the Second Extended Term.

ADOPTED THIS _____ DAY OF _____, 2014.

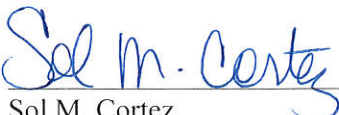
THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic & International Development

LEASE

By and between

CITY OF EL PASO

Lessor

and

THE OPERA COMPANY, INC.

Lessee

for the Premises located at
400 W. San Antonio Ave.

Effective Date

CITY OF EL PASO)
)
STATE OF TEXAS) **THE OPERA COMPANY, INC. – UNION
 PLAZA TRANSIT TERMINAL RETAIL
 LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2014 by and between the **CITY OF EL PASO**, a home rule municipal corporation ("Lessor") and **THE OPERA COMPANY, INC.**, a Texas nonprofit corporation ("Lessee") for the premises as more fully identified hereunder, which is located in the Union Plaza Transit Terminal, in El Paso, Texas.

WHEREAS, Lessor is the owner of that certain property commonly known as the Union Plaza Transit Terminal, a property located at 400 W. San Francisco Street, El Paso, Texas, which includes several buildings and parking facility (the "Property"), which was acquired and improved with funds from the Federal Transportation Authority; and

WHEREAS, Lessee is a Texas nonprofit corporation devoted to presenting opera productions in the City of El Paso region; and

WHEREAS, Lessee has indicated a desire to lease approximately 1,240 square feet of the Property in premises further described in this Lease as the leased Premises (as defined in Section 1.01 below) along with associated parking areas and has the willingness and ability to use the leased Premises to conduct the Lessee's administrative activities in accordance with the terms of this Lease; and

WHEREAS, Lessee has the willingness and ability to lease the Premises 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;

WHEREAS, the Lessor has negotiated the terms of this Lease with Lessee for the lease of the Premises.

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, more fully depicted in Exhibit "A":

Approximately 1,240 square feet of usable space in the building located upon 51 feet on Leon Street x 120 feet on San Antonio Street, more particularly being a portion of Block 46, Mills Addition, El Paso, El Paso County, Texas, containing approximately 6120 square feet being municipally known and numbered as 400 W. San Antonio Street, El Paso, Texas.

1.02 Restriction of Privileges, Uses and Rights. The nonexclusive rights and privileges to use the Premises granted to Lessee hereunder are subject and expressly limited to the use of administrative offices and related uses for Lessee's operations. 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 any purpose other than the purposes set forth herein shall constitute an event of default and may result in termination of the Lease. The Premises shall be for the use of the public, and therefore, no person shall be denied entrance thereto, nor will anyone be refused the use of the same.

1.03 Right to Construct Leasehold Improvements Lessee shall have the right and privilege to construct, maintain, and remove certain leasehold improvements upon the Premises subject to the terms, covenants, and conditions contained herein. Prior to any modifications, additions, alterations or changes to the Premises, Lessee shall submit the plans and specifications for any modifications, improvements, additions, alterations or changes as well as schedule for completion of Tenant Improvements to the Lessor's Capital Assets Manager, with a copy to the City Engineer or designee, for review and approval. No work shall commence until the City Engineer has given written approval, which permission shall not be unreasonably withheld. All improvements constructed on the Premises shall be of substantial construction and good architectural design. Lessee shall employ licensed engineers and architects.

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. Lessee shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Property. Lessee shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose in accordance with City ordinances and state and federal laws, nor shall Lessee cause, maintain or permit any nuisance in or about the Premises or the Property.
- C. City may make reasonable rules for use of the Property and the common areas to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be

made available to every member of the community.

- D. 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.

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.

2.02 Parking Spaces. Lessor shall make two (2) monthly parking spaces in the Union Plaza Transit Terminal parking facility available at the rate of \$45.00 per month per space. The Lessee will use the parking spaces Monday through Friday from 7:00 a.m. to 6:00 p.m. The rates for the parking spaces shall be paid monthly with the monthly rent.

2.03 No Cost. Except the for Lessor's obligation in this Article II, this Lease shall be without any cost whatsoever to Lessor, including but not limited to any cost for construction, maintenance, or improvement of the property.

ARTICLE III - OBLIGATIONS OF LESSEE

3.01 Net Lease. Lessee shall:

- A. Keep and maintain the leased Premises and improvements located thereon in a good state of repair at all times; and
- B. 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
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

3.02 Condition of Premises. As of the Possession Date (as defined in Section 4.01), Lessee agrees that it will accept 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. 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 may conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. 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 in order to ensure compliance with all federal, state and local laws and regulations and maintain the property to the standard set forth in Section 3.01. Failure of Lessee to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

3.04 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will operate and maintain, and to the extent applicable, construct, 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, 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 will comply with all applicable Federal Transportation Administration ("FTA") clauses as described and set forth in Exhibit "B".

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, 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, volunteers, 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. 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, 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 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, 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 3.03 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. It is specifically understood that the City Development Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the City Development Department; Lessee may be required to obtain the approval of other departments as well, such as Engineering and Construction Management, Municipal Services, or Building and Planning Services.

3.06 Janitorial Service, Trash, Garbage, and Other Refuse. Lessee shall provide janitorial services for the Premises. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of Lessee's use and occupancy of the Premises. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse at the area designated by Lessor, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner.

3.07 Utilities. Lessee is solely responsible for the provision of all utilities services furnished during the term hereof, including, but not limited to gas, electricity, telephone, cable, and water services required for the operation of Lessee's organization within the

Premises. Lessor shall in no event be liable to Lessee for any interruption in the service of any such utilities to the Premises, without regard to the reason for such interruption.

3.08 Signs. All signs on the Premises shall comply with all building codes and other ordinances of the City of El Paso. The size, design and location of all signs shall be subject to approval by the City Manager or Designee prior to installation. No outdoor commercial advertising signs, billboards or flashing lighting shall be permitted. Signs on the property shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

3.09 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work has received prior written approval of the City Engineer and a grading permit obtained if required by the grading ordinance of the City of El Paso.

3.10 Permitted Uses. Lessee will not enter into any activity on the Premises other than those permitted in Paragraph 1.02. The Lessee shall not permit on the Premises any entertainment, amusement or other activity which violates any statute or ordinance, and will use Lessee's best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Initial Term. The Initial Term of this Lease shall be for a period of five (5) years, commencing on the date that the Lessor's governing body approves this Lease (the "**Effective Date**") and ending on the date that is five years from the Rent Commencement Date, as further defined herein. The parties shall have vested rights immediately upon the Effective Date, and this Lease shall be binding and in full force and effect in accordance with its terms upon such execution;

4.02 Construction Period. It is understood by the parties hereto that the Lessee will undertake certain Initial Leasehold Improvements to the Premises to make the Premises suitable for its specific purposes at its sole cost and expense. The Lessee shall complete the Initial Leasehold Improvements within 120 days ("**Construction Period**"); however, the Construction Period may be amended or extended in writing by both parties through City Manager or Designee approval. The right of the Lessee to possession of the Premises and the Construction Period shall commence simultaneously on the Possession Date as defined herein.

The Lessee shall take possession of the Premises on Date that is no earlier than the date in which the Lessee obtains the permits necessary for the construction of the Initial Leasehold Improvements and written approval of the proposed Initial Leasehold Improvements as established in Section 7.02 of this Lease. The Lessor shall provide a

written Notice to Proceed with the construction of the Initial Leasehold Improvements to the Lessee. The "Possession Date" shall be the date of the Lessor's Notice to Proceed.

4.03 Rent Commencement Date. Lessee's obligation to pay the Monthly Rent, as established in Section 5.02, shall commence when the City's Building Permits and Inspections issues a certificate of occupancy or at the end of the permitted Construction Period, whichever comes first, and the Monthly Rent payment for the such month shall be prorated proportionate to the number of days that the base Monthly Rent is due and payable.

4.04 Lease Year. The term "Lease Year" as used in this Lease Agreement shall mean a period during the Initial Term or any extensions thereof commencing on the Rent Commencement Date and ending at midnight on the same date in the next subsequent calendar year.

4.05 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 two (2) additional five (5) year terms (individually, the "Extended Term"), provided however that written notice is given to Lessor of such intention to extend the lease at least ninety (90) days prior to the End Date above stated; and further provided that all provisions of this Lease Agreement shall continue in full force and effect for the full period of any such extension. Rent and fees for said Extended Term of years shall increase as set forth herein.

4.06 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 at a fair market value assessed by an appraisal during the hold over period. Lessee shall reimburse the City for the cost of the appraisal. 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.

4.07 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 Credit. Lessor and Lessee acknowledge that Lessee will make a significant investment of approximately \$44,548.36 in the Leasehold Improvements, trade fixtures and equipment in order to make the Premises ready for Lessee's operation. In recognition of the Lessee's initial capital investment, the Lessor agrees that the Base Annual Rent as set forth in Section 5.02 has been adjusted to an amount that is below the fair market value of the Premises for a period of five (5) years. Lessee shall provide an itemized list of the improvements completed to the City's satisfaction along with receipts and invoices for the work performed.

5.02 Base Annual and Monthly Rent. As monetary consideration for this Lease, the annual sum of \$13,020 dollars ("Annual Rent"). total monthly base rent during the Initial Term of this Lease. The total monthly base rent shall be \$1,085.00 per month during the Initial Term of this Lease.

Lessee will deliver to the City the rent per year in advance on the first day of the anniversary month in each year of the Initial Term of this Lease and each year of any Extended Terms in which the Lessee has exercised its option to extend pursuant to Section 4.05. The Lessee shall also pay \$45.00 per parking space a month along with the Monthly Rent.

5.03 Rent for Extended Term. Lessee shall pay to Lessor the base Monthly Rent for the Premises during each Extended Term in the amounts as follows:

Extended Term One	\$1,654.54/month
Extended Term Two	\$1,816.30/month

5.04 Hold Over Rent. If Lessee holds over or occupies the Premises beyond the Initial Term or any extensions thereto, Lessee shall pay a sum equal to one and one-half (1½) times the base Monthly Rent applicable for the Initial Term or the applicable Extended Term prorated for the number of days of such holding over. In addition, Lessee shall also pay all other additional fees and charges required during the Initial Term and any extended periods.

5.05 Unpaid Rent, Fees, and Other Charges. Any installment of Rent, fees, or other charges accruing under any provision of this Lease Agreement that are not received by LESSOR by the tenth (10th) day of the month in which payment is due, shall bear interest at the highest maximum rate permitted by law.

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

City of El Paso
Department of Financial Services
300 N. Campbell
El Paso, TX 79901

ARTICLE VI- MAINTENANCE OF THE PREMISES

6.01 Maintenance by Lessor. Lessor shall keep or cause to be kept the foundation, roof, and structural portions of walls, HVAC and plumbing systems of the Premises in good order, repair, and condition except for damage due to the acts or omissions of Lessee, its employees, or invitees. Lessor shall commence required repairs as soon as reasonably practicable after receiving written notice from Lessee of any required repair. Except as provided in this Section, Lessor shall not be obligated to make repairs, replacements, or improvements of any kind upon the Premises, or to any equipment, merchandise, stock in trade, facilities, or fixtures therein, all of which shall be Lessee's responsibility.

6.02 Maintenance by Lessee. Lessee shall at all times keep the Premises (including all entrances and vestibules) and all partitions, window and window frames and moldings, glass doors, door openers, fixtures, equipment and appurtenances thereof and any Leasehold Improvements it makes and all other parts of the Premises not required herein to be maintained by Lessor in good order, condition and repair and clean, orderly, sanitary and safe, damage by unavoidable casualty excepted. Such maintenance responsibilities shall include but not limited to those activities necessary to cause the Premises to comply with applicable laws, ordinances, rules, regulations and orders or governmental and public bodies and agencies. If replacement of equipment, fixtures and appurtenances thereto are necessary and upon prior review and approval of Lessor, Lessee shall replace the same with equipment, fixtures and appurtenances of the same quality, and repair all damages done in or by such replacement.

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. If Lessee fails to perform work resulting from Lessee's acts, actions or omissions Lessor may add the cost of the same to the next installment of Rent due hereunder as Additional Rent.

6.03 Condition at Surrender of Premises. At the expiration or termination of this Lease Agreement, Lessee shall surrender the Premises in the same condition as they were in on the Commencement Date, reasonable wear and tear excepted, and deliver all keys for, and all combinations on locks, safes, and vaults in, the Premises to Lessor.

ARTIVLE VII- ALTERATIONS AND IMPROVEMENTS

7.01. Initial Leasehold Improvements. The parties agree that the interior condition of the Premises requires certain build out of the shell space by Lessor during the Construction Period as defined in Section 4.02 of this lease prior to the Lessee's. All

Initial and subsequent Leasehold Improvement shall be completed pursuant to Section 7.02.

7.02. Leasehold Improvements. Pursuant to the provisions in this Lease the Lessee shall obtain the Lessor's approval prior to the construction of any leasehold improvements. Within 90 days of the Effective Date of the Lease, or at least 60 days prior to the date of any subsequent improvements proposed by Lessee, the Lessee shall submit to the Lessor the Lessee's plans, specifications and working drawings for Lessee's construction or alterations of any improvements to the Premises (the "Leasehold Improvements"), and a schedule for completion of such Leasehold Improvements for review and approval. Such Leasehold Improvements shall include, but not be limited to the installation of any signs, landscaping or fixtures on the Premises. During construction, the construction of the Leasehold Improvements shall not interfere with access from the Premises to the common areas of Union Plaza Transit Terminal. Lessee shall have no right whatsoever to the interior or exterior walls or the roof of the Premises except as expressly approved. Any Leasehold Improvements permitted to be installed by Lessee shall incorporate new or completely reconditioned fixtures and materials.

No work shall commence until the City Manager or her designee has given written approval. It is specifically understood that the Real Estate division is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Real Estate Manager, Lessee shall be required to obtain the approval of other departments as well, such as Engineering and Construction Management, Municipal Services, or Building and Planning Services.

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.

7.03. Improvements Upon Termination or Expiration. All Improvements, including leasehold improvements, made by LESSEE, or made by LESSOR on LESSEE's behalf, whether or not paid for wholly or in part by LESSOR, shall remain LESSEE's property for the Lease Term. Upon expiration or termination of this Lease Agreement, any such Improvements shall immediately become LESSOR's property, be considered part of the Premises, and shall not be removed without LESSOR's prior written consent unless LESSOR, in writing, requests LESSEE to remove same. If LESSEE removes any shelving, decoration, equipment, trade fixtures, or personal property, LESSEE shall repair or pay for the repair of any damage done to the Premises resulting from removing the same.

7.04. Discharge of All Liens. Where applicable, Lessee shall promptly pay all contractors and materialmen, and not permit or suffer any lien to attach to the Premises, the Union Plaza Transit Terminal, or any part thereof. Lessee shall and does hereby indemnify and save harmless Lessor against the same. Lessor shall have the right to require Lessee to furnish a bond or other indemnity satisfactory to Lessor prior to the

commencement of any work by Lessee or its contractors or subcontractors on the Premises or Union Plaza Transit Terminal. Lessee shall be fully responsible for the full discharge of any and all contractor, materialmen, or other lien claimed.

It is expressly acknowledged and understood that City does not consent, and has not by the execution and delivery of this Lease consented, to the imposition of any liens upon the City's interest in the Premises or Property by any party whomsoever. Lessee covenants and agrees that all Improvements at any time constructed upon the Premises will be completed free and clear of all valid liens and claims of contractors, subcontractors, mechanics, laborers and materialmen, and other claimants related to the Improvements.

ARTICLE VIII – INSURANCE AND INDEMNIFICATION

8.01 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.

8.02 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.

8.03 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.

8.04 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.

8.05 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.

8.06 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 IX - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

9.01 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.

9.02 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.

9.03 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 X – CONDEMNATION

10.01 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.

10.02 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.

10.03 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.

10.4 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.

10.05 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.

10.06 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.

10.07 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.

10.08 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 XI – ENCUMBRANCES

11.01 Encumbrance. Lessee may not permit any liens or encumbrances upon its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises, except as may be approved by the Lessor.

ARTICLE XII - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

12.01 Expiration. This Lease shall expire five (5) years from the Effective Date of this Lease, unless as extended pursuant to paragraph 4.02 above. Upon expiration or any termination of the Lease pursuant to the terms and conditions herein, Lessee shall peacefully surrender such Premises and improvements to the City free of all such liens or encumbrances. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises or improvements, together with reasonable attorney's fees, costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.

12.02 Termination. The Lessor and Lessee agree that at any time during the Term of the Lease, the Lessor may terminate this Lease if the Lessor needs the Premises for another public use. The Lessor will provide written notice to Lessee at least ninety (90)

days in advance of the date of termination. Upon such termination, at the sole option of Lessor, the Premises and all the improvements thereon 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. On the date stated in the notice, 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.

12.03 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 maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;
- B. Fail to maintain insurance and provide proof of said insurance;
- C. Fail to use the Premises for the purpose identified in paragraphs 1.02 and 1.03;
- D. 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;
- E. 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;
- F. Make any general assignment for the benefit of creditors;
- G. Abandon the Premises;
- H. 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;
- I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- J. 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.

12.04 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.

12.05 Assignment, Subletting and Transfer.

- A. Lessee shall not assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise, and shall not sublet the Premises or any part thereof, except upon receipt of prior written permission and consent of Lessor. Any attempt to assign, sublet or

otherwise transfer any interest in this Lease shall be void and shall be an event of default which may result in immediate termination of the Lease. Consent of Lessor to any such assignment or subletting shall not be permitted if: (i) at the time of such assignment or subletting, Lessee is in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee, sublessee, or Lessee will not expressly assume in writing all of Lessee's obligations hereunder; and (iii) Lessee's provision of proof to Lessor that the assignee's or sublessee's financial condition is not satisfactory to Lessor.

- B. Any such assignment or subleasing, even with the approval of Lessor shall not relieve Lessee from liability for payment of all forms of rental, fees, and other charges herein provided or from the obligations to keep and be bound by the Initial Term, conditions, and covenants of this Lease. Lessor's acceptance of rent, fees, or other charges from any person or entity other than Lessee shall not be deemed to be a waiver of any of the provisions of this Lease, or a consent in the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed a consent to any further assignment or subletting. Any merger, consolidation, or transfer of corporate shares of Lessee, if Lessee is a corporation, so as to result in a change in the present voting control of Lessee by the person or persons owning a majority of said corporate shares on the date of this Lease.

12.06 Rights Upon Expiration. At the expiration of this Lease, at the sole option of Lessor, the Premises and all the improvements thereon 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. Lessee shall peacefully surrender such Premises and improvements to the City.

12.07 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 XIII - GENERAL PROVISIONS

13.01 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.

13.02 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
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: City Manager

Copy to: City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: Real Estate Coordinator,
City Development Department

LESSEE: The Opera Company, Inc.
301 N. Mesa, Suite 601
El Paso, Texas 79901
Attn: President

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.

13.03 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.

13.04 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.

13.05 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.

13.06 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.

13.07 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.

13.08 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.

13.09 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.

13.10 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.

13.11 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.

13.12 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.

13.13 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 PURPOSE. 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. LESSEE LEASES THE PREMISES "AS-IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

13.14 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 3.03 and 6.05.

13.15 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.

13.16 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.

13.17 Effective Date. This Lease shall be effective on _____, 2014.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2014.


[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSOR:

CITY OF EL PASO

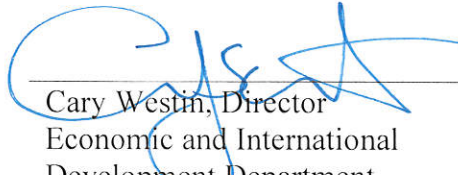
Tomás González
City Manager

APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International
Development Department

Jay Banasiak, Director
Mass Transit Department

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2014,
by Tomás González 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]

LESSOR:

CITY OF EL PASO

Tomás González
City Manager


APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary Westin, Director
City Development Department



Jay Banasiak, Director
Mass Transit Department

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2014,
by Tomás González 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]

LESSEE:

The Opera Company, Inc.

ACKNOWLEDGMENT

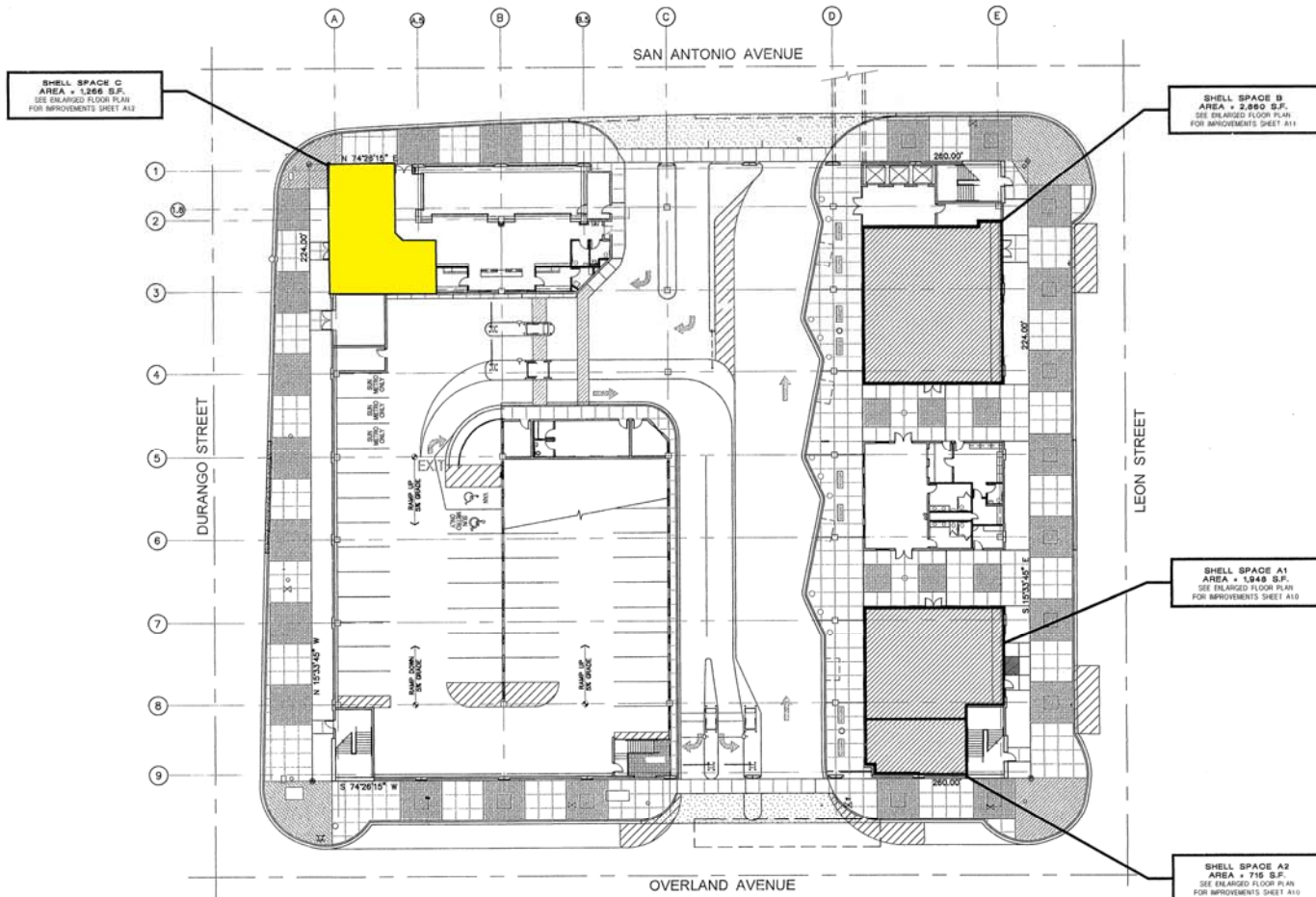
THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

 This instrument was acknowledged before me on this day ____ of
_____, 2014, by _____ The Opera Company, Inc.

Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

EXHIBIT A
LEASED PREMISES



1 SITE PLAN - GROUND LEVEL

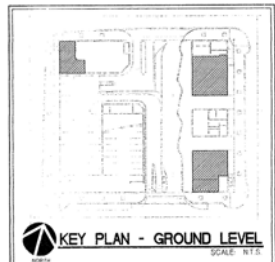
SCALE: 1"=20'-0"

PARKING TABULATION

TOTAL SHELL SPACE AREA = 6,789 SQ. FT.

17 PARKING SPACES REQUIRED.
420 PARKING SPACES PROVIDED.
1 H.C. PARKING SPACE REQUIRED.
10 H.C. PARKING SPACES PROVIDED.

LEGAL DESCRIPTION:
ALL OF LOTS A, B, C, D, E, F AND G,
BLOCK 46, WILLS ADDITION



KEY PLAN - GROUND LEVEL

SCALE: N.T.S.

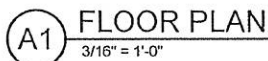
GENERAL NOTES




1. PLANS INDICATE GENERAL SCOPE OF WORK. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS PRIOR TO THE START OF ANY WORK. ANY DISCREPANCY SHALL BE NOTIFIED TO THE ARCHITECT OR THE OWNER IN WRITING BEFORE PROCEEDING WITH ANY WORK.
2. ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE INTERNATIONAL CODE AND LOCAL ORDINANCES.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIRING ANY DAMAGE AND MATCH ORIGINAL CONDITIONS.
4. CONTRACTOR SHALL INSURE THAT STRUCTURAL ELEMENTS ARE NOT OVERLOADED AND BE RESPONSIBLE FOR WEARING STRUCTURAL SUPPORTS OF EXISTING NEW SPACES AS REQUIRED AS A RESULT OF ANY CUTTING OR DEMOLITION WORK.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL BARRICADES AND OTHER PROTECTION DEVICES AS REQUIRED BY AND IN COMPLIANCE WITH ANY AND ALL BUILDING CODES, AGENCIES AND REGULATIONS APPLICABLE TO THE PROJECT.
6. CONTRACTOR SHALL BE RESPONSIBLE FOR PERIODIC CLEANING AND FINAL CLEANING OF THE WORK AREAS.
7. PRIOR TO INSTALLATION, THE CONTRACTOR SHALL SUBMIT SHOP DRAWINGS FOR APPROVAL OF WORK TO BE PERFORMED.
8. CONTRACTOR SHALL VISIT UNION PLAZA TRANSIT TERMINAL AT 401 E. SAN ANTONIO AVENUE, PRIOR TO AND SUBMITTING FOR A DETAILED REVIEW OF EXISTING SITE AND BUILDING CONDITIONS.

REFERENCES - BENCHMARK		BY
DATE		REVISIONS
CONSULTANTS NAME		DATE
ARCHITECT'S SEAL		DATE
PROJECT NAME		DATE
UNION PLAZA TRANSIT TERMINAL		DATE
SHELL SPACE A, B & C IMPROVEMENTS		DATE
CITY OF EL PASO		DATE
SHEET TITLE		DATE
SITE PLAN		DATE
A.O.C.		DATE
SHEET OF		DATE

RECORD DRAWINGS - AUGUST 2006

237857-1



	130768
	July 22, 2013
	AS SHOWN
<div><div>A-101</div><div>SHEET 1 OF #</div></div>	

Wright & Dalbin
ARCHITECTS, INC.

2112 Murchison Dr.
El Paso, Texas. 79930
wrightdalbln.com
PH: 915-533-3777
Fax: 915-532-7133

EXHIBIT B

FTA Clauses

1. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%.
 - b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work.
 - e. The contractor must promptly notify the City, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

3. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or

any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

4. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not

be modified, except to identify the subcontractor who will be subject to the provisions.

6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

7. FEDERAL CHANGES 49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq. 49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9. CLEAN WATER REQUIREMENTS 33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. CLEAN AIR
42 U.S.C. 7401 *et seq*
40 CFR 15.61
49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of

Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$ 100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date



Union Plaza Transit Terminal Retail Space

400 W. San Antonio Ave.



400 W. San Antonio Ave.

Vacant +/- 1,240 Square foot commercial space
located in the Union Plaza Transit Terminal



S E R V I C E S O L U T I O N S S U C C E S S

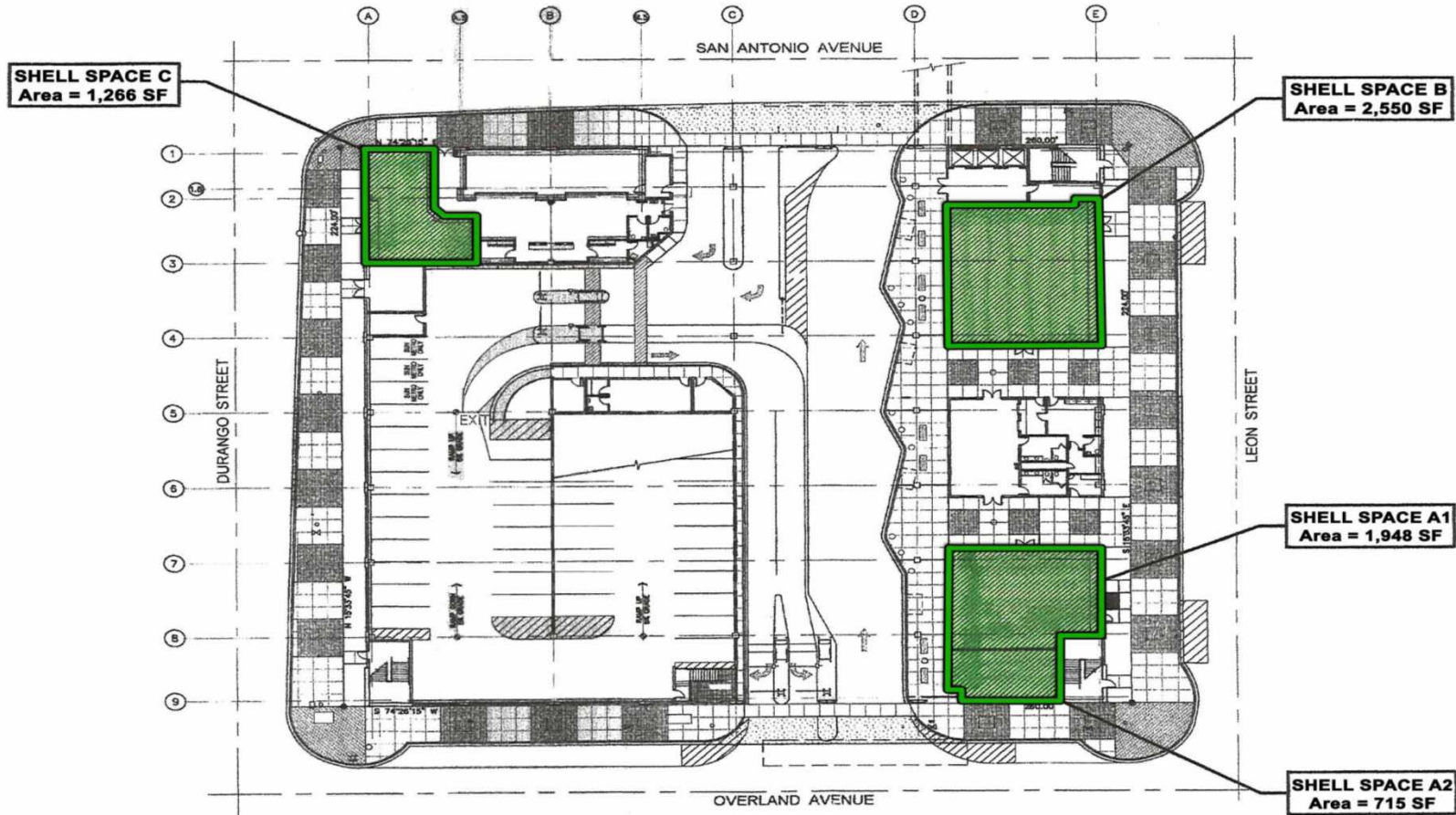


400 W. San Antonio Ave.





Union Plaza Transit Terminal – Retail Space





Union Plaza Transit Terminal – Retail Space

Lease Information:

- Tenant will be El Paso Opera
- 5 year initial lease term
- Rent will be \$13,020 per year during initial term
- Rent bumped to \$19,855 during first renewal period
- Tenant will also pay \$45 per month per parking space
- Tenant will be adding +/- \$45,000 worth of Improvements to the space
- This will be a NNN lease with no expenses incurred by the landlord



Questions?