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AGENDA ITEM NO. 43

CITY OF SAN ANTONIO
OFFICE OF THE MAYOR
Interdepartmental Memorandum

TO: COUNCIL MEMBERS

FROM: Mayor Edward D. Garza

COPIES TO: City Manager, City Attorney, City Clerk, Finance
Budget & Performance Assessment; Asset Management; Assistant to
the Mayor-Administration; file

SUBJECT: RENEWAL AND EXTENSION OF LEASE AGREEMENT FOR
CONSTITUENT OFFICE

DATE: November 7, 2002

I request City Council concurrence in placing an item on the City Council agenda for November 14, 2002, which will authorize executive of a Renewal and Extension of a Lease Agreement originally approved by Ordinance No. 95161 on January 10, 2002, between the City of San Antonio, as Tenant, and C.A.N. Industries, Inc., as Landlord, for rental of approximately 1,310 gross square feet at 1344 South Flores Street for use as a constituent office.


The Renewal Term commences October 1, 2002 and ends June 30, 2003, at a rental of \$1,500 per month, and I am also requesting concurrence in ratifying payment by City staff of the October 2002 rent. Your favorable consideration of this request is appreciated.




EDWARD D. GARZA

Mayor

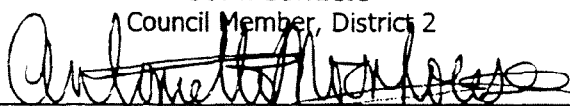
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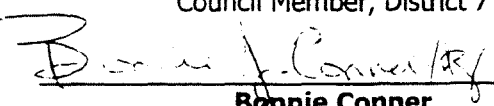
Bobby Pérez
Council Member, District 1



Enrique M. Barrera
Council Member, District 6

John Sanders
Council Member, District 2


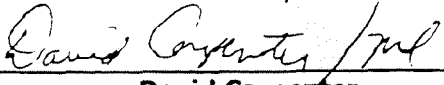
Antoniette "Toni" Moorhouse
Council Member, District 3

Julián Castro
Council Member, District 7


Bonnie Conner
Council Member, District 8

Enrique "Kike" Martin
Council Member, District 4

David A. Garcia
Council Member, District 5

Carroll Schubert
Council Member, District 9


David Carpenter
Council Member, District 10

LEASE AGREEMENT

1344 S. Flores Street
MAYOR'S OFFICE

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

§

COUNTY OF BEXAR

§

This Lease Agreement (hereinafter referred to as "Lease") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "Tenant"), a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. 95161 dated January 10, 2002 and C.A.N. Industries, Inc., a Texas corporation, (hereinafter referred to as "Landlord") for the rental of space in a building located at 1344 South Flores Street, San Antonio, Bexar County, Texas (hereinafter referred to as "Building").

I. LEASED PREMISES/USE

1.1 In consideration of the covenants and agreements contained herein, Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord, approximately 1,310 gross square feet ("Leased Premises") in a building located at 1344 South Flores Street, ("Building"); San Antonio, Bexar County, Texas 78204, with said Leased Premises and Building being one and the same, to have and to hold for the Primary Term of the Lease, as designated in Section 2.1 hereafter, and any holdover, whether a permissible holdover or non-permissible holdover, as defined herein, or any Renewal Term, as also referenced below in Section 2.1, unless sooner terminated as hereinafter provided. The Leased Premises is more particularly described by floor plan and legal description attached hereto and incorporated herein as Exhibits "A" and Exhibit "B" respectively.

1.2 The Leased Premises may be used for general office and related purposes. The permitted uses may be expanded by Tenant upon Landlord's written consent. Tenant intends to utilize the space as follows, during the Primary Term, as designated in Section 2.1 hereafter:

City of San Antonio ("City") Office of the Mayor - approximately 1,310 gross square feet

However, Tenant reserves the right, and Landlord agrees to allow Tenant, to place ("substitute") any City department, department's office or division or other City entity within the Leased Premises at anytime during any Lease Term, as defined hereafter, at no additional Rent to Tenant, provided Landlord does not have to expend additional funds for remodeling or other renovation for Tenant's use.

II. TERM/RENEWAL

2.1 The Primary Term (also referenced herein as "Lease Term") of this Lease shall be for a period commencing on the later of (1) January 1, 2002 or (2) the date of occupancy of the Leased Premises by the Mayor's office ("Commencement Date") and ending September 30, 2002, unless said Lease Term is sooner terminated as hereinafter provided. The parties agree to execute a Memorandum of Commencement Date, being in the form set forth in Exhibit "C" hereto.

2.2 Unless Tenant is in default in the payment of Rent or other default herein which occasions earlier termination, Landlord grants to Tenant the right to extend and holdover each Lease Term on a month-to-month basis upon the same terms and conditions, including Rent, as set forth herein, not to exceed an additional six (6) months ("permissible holdover").

2.3 **RENEWAL.** Provided Tenant is not in default at the end of the Primary Term and permissible holdover stated in Section 2.2, this Lease may be renewed and extended for an additional period ("Renewal Term") not to exceed one (1) additional consecutive renewal period of nine (9) months from October 1, 2002 through June 30, 2003 and one (1) additional consecutive renewal period of two (2) years from July 1, 2003 through June 30, 2005, as evidenced by passage of a subsequent City Ordinance in each instance. Tenant must notify Landlord of its intent to exercise each renewal option in writing no later than ninety (90) days prior to the end of the Primary Term hereof or permissible holdover period set forth in Section 2.2, if Tenant holds over, and first Renewal Term, as applicable, and the notice must state the intended length of each renewal. Upon receipt of such notice, Landlord reserves the right to modify the conditions and provisions herein, specifically, including, Landlord will notify Tenant in writing of such modifications within thirty (30) days after such receipt of Tenant's notice. Should Tenant and Landlord be unable to reach an agreement for the modified terms, conditions, and provisions at least thirty (30) days prior to the end of the Primary Term, or permissible holdover period, if applicable, or first Renewal Term, if applicable, then this Lease will not be renewed.

III. SERVICES BY LANDLORD

3.1 Except for those repairs mentioned in **ARTICLE VI.** of this Lease, Landlord, at Landlord's sole cost and expense, agrees to provide all maintenance, repair and replacement, of any kind and character required on the Leased Premises or the Building as necessary for proper upkeep of all (1) heating, ventilation, air conditioning (2) in wall plumbing and electrical systems, (3) building structure, specifically including the foundation and roof of the building, and (4) structural soundness of the exterior walls, interior partitions, doors, corridors and windows.

3.2 Landlord warrants and represents that the Leased Premises are currently serviced by and will continue to be serviced by all necessary utilities, including but not limited to, electric, gas, water and sewer services.

3.3 Landlord further warrants:

- (a) Landlord shall pay for Tenant's monthly water and sewage usage.
- (b) Landlord shall pay for Tenant's monthly electricity and gas consumption.
- (c) Landlord shall provide Tenant's janitorial cleaning service and trash removal for the Leased Premises and Building.

IV. SERVICES BY TENANT

4.1 Tenant agrees to provide and furnish the following services in reference to the Leased Premises during its occupancy:

If Tenant avails itself of any other utility services, Tenant shall pay for the monthly usage of such services.

V. RENT/TAXES

5.1 **Rent.** Tenant agrees to pay Landlord rent ("Rent") as follows:

Mayor's Office Space of approximately 1,310 gross square feet at the rate of \$.76 per gross square foot per month, or a total of \$1,000.00 per month from the Commencement Date through September 30, 2002; with an option to renew for an additional nine (9) month period from October 1, 2002 through June 30, 2003, at the rate of \$1.145 per gross square foot per month or a total of \$1,500.00 per month; with an additional option to renew for a two year period from July 1, 2003 through June 30, 2005, at the rate of \$1.309 per gross square foot per month, or a total of \$1,716.00.

Rent shall be due and payable in each instance, on or before the first day of each succeeding calendar month during the Lease Term, except that the first prorated monthly Rent installment shall be paid by Tenant on the Commencement Date hereof, as set forth in Exhibit "C", and shall be sent to Landlord at the address and in the manner provided in ARTICLE XXXIII. of this Lease. Rent for any fractional month at the beginning or end of the Lease Term, including the first monthly installment of Rent shall be prorated based on the actual number of days in said month. The Rent includes the payment of Tenant's proportionate share of (1) Landlord's cost of Tenant's janitorial cleaning service and trash removal and (2) Common Area Maintenance. Landlord and Tenant acknowledge that the Rent will be renegotiated during the 30-day period set forth in Section 2.3 for each Renewal Term.

5.2 **Real Property Taxes.** Landlord agrees to pay all taxes, assessments and governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Premises, the Building and/or the land of which the Premises or the Building are a part. If at any time during the term of this Lease there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the Rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such Rents from the Premises and/or the land and improvements of which the Premises are a part, then all such taxes, assessments, levies or charges, or the part thereof so measured or based shall be deemed to be included within the term "Taxes" for the purposes hereof. The Landlord shall have the right to employ a tax-consulting firm to attempt to assure a fair tax burden on the real property within the applicable taxing jurisdiction.

5.3 **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against any personal property or trade fixtures placed in or on the Premises by Tenant. If any such personal property taxes are levied or assessed against Landlord or Landlord's property and (i) Landlord pays the same or (ii) the assessed value of Landlord's property is increased by inclusion of such personal property and/or trade fixtures placed in or on the Premises by Tenant and Landlord pays the increased taxes, then Tenant, to the extent funds have been appropriated, shall pay to Landlord, upon demand and upon verification of payment by Landlord of the amount due for said personal property taxes, the amount of such personal property taxes.

VI. INITIAL FINISH-OUT BY LANDLORD/SUBSEQUENT REPAIRS BY TENANT

6.1 **Initial Finish-out by Landlord.** Landlord and Tenant agree that Landlord shall oversee and be responsible for the finish out of the Leased Premises to the satisfaction of and as designated by Tenant.

6.2 **Subsequent Repairs by Tenant.** Tenant shall, at Tenant's own expense, repair or replace any damage done to the Building or any part thereof proven to have been caused by the sole active negligence of Tenant or Tenant's agents, employees and invitees or guests. If Tenant

falls to make such repairs or replacements promptly or within fifteen (15) days after the damage is brought to Tenant's attention, Landlord may, at its option, make such repair or replacement, and Tenant, to the extent funds have been appropriated, shall repay the cost thereof to Landlord on demand, and based on verified statements of payments made to disinterested third parties.

6.3 Tenant agrees not to commit waste or damage on the Leased Premises and will, at the termination of this Lease or at the end of any permissible holdover, non-permissible holdover, or renewal periods, deliver up said premises to Landlord in the same condition as of date of possession, ordinary wear and tear excepted, and upon such Termination Date, Landlord shall have the right to enter and resume possession of the Leased Premises.

VII. ACCESS TO PREMISES

7.1 As long as a representative of Tenant is present and always accompanies Landlord or Landlord's authorized representatives, Landlord shall have the right to enter upon the Leased Premises during business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon or for the purposes of exhibiting the same to prospective purchasers, at any time during the Primary Term or either Renewal Term or to prospective tenants within thirty (30) days before the end of the Primary Term or either Renewal Term, unless otherwise agreed to in writing by Tenant. Further, Landlord shall have the right, without Tenant's consent, to enter upon the Leased Premises for emergency purposes, such as, but not limited to, curing plumbing or electrical problems.

VIII. MORTGAGE OF LANDLORD'S INTEREST

8.1 Landlord shall have the right to (1) mortgage and/or (2) sell or otherwise transfer, ("sell or otherwise transfer" is collectively hereinafter referred to as "transfer", whether used as a verb or noun) its fee simple interest in the real property and Building, including the Leased Premises, located thereon (hereinafter referred to collectively as "Property") with the following conditions:

- a. With respect to any future mortgages against, or transfers of, the Property, and in connection with any requested subordination, Tenant agrees (1) to subordinate its leasehold interest to any mortgage or other transfer instrument executed by Landlord, as Owner, or Transferor or otherwise, as applicable, which said mortgage or other transfer instrument creates a lien or other encumbrance against the Leased Premises, or to the Transferee, if a transfer occurs, and (2) to attorn to the Mortgage Holder of said mortgage, if foreclosure thereof occurs, or to the Transferee, if a transfer occurs, in exchange for said Mortgage Holder's or Transferee's recognition of Tenant's right to remain in peaceable possession of the Leased Premises under the existing Lease with Landlord, as long as Tenant is not in default in payment of Rent or otherwise. Landlord shall, within thirty (30) days following the Commencement Date of this Lease, secure a Non-Disturbance and Attornment Agreement from any existing mortgage holder. Furthermore, Landlord agrees to secure a Non-Disturbance and Attornment Agreement from any future mortgage holder, lienholders, and any subsequent purchaser of the Property.
- b. Landlord shall notify Tenant not less than thirty (30) days prior to mortgage or transfer of the Leased Premises.

- c. It is the intent of the parties hereto, and Landlord agrees to incorporate into any legal documents evidencing a mortgage or transfer of the Property, including but not limited to, a subordination and attornment agreement and an estoppel certificate, language to the effect that any subsequent Mortgage Holder or Transferee or Lessor of the Building and/or the ground (1) will be bound by all of the provisions of this Lease and (2) will recognize Tenant's rights to remain in peaceful possession of the Leased Premises. Tenant agrees to execute any legal documents, evidencing such intent.

IX. ASSIGNMENT OR SUBLEASE

9.1 Tenant may assign or sublease any part of the Leased Premises or any right or privilege connected therewith upon Landlord's written consent, said consent not to be unreasonably withheld. The provisions in Section 1.2 for substituting City departments, offices, divisions or other City entities into the Leased Premises shall not constitute an assignment or subletting of the Leased Premises by Tenant and shall not require Landlord's prior consent.

X. ALTERATIONS AND ADDITIONS

10.1 All construction, and/or installation within the Leased Premises if and when needed by Tenant shall be done by Tenant at Tenant's sole cost and expense, and shall hereinafter be referred to as "Tenant's Work." No Tenant's Work shall be done prior to the Commencement Date. When performing Tenant's Work, Tenant shall do so at Tenant's sole risk and expense and subject to the provisions of this Lease Agreement.

10.2 At least fifteen (15) days prior to commencing the Tenant's Work, Tenant agrees to submit to Landlord plans and specifications ("Tenant's Plans"), covering any work Tenant desires to perform and Tenant agrees not to commence any of such work until Landlord has approved Tenant's Plans in writing. Landlord's approval shall not be unreasonably withheld.

10.3 Landlord agrees to examine and approve or disapprove Tenant's Plans within ten (10) days after receipt of Tenant's Plans and to notify Tenant in writing when the same have been approved or disapproved and, in the event of approval, Tenant agrees to commence Tenant's Work promptly thereafter.

10.4 Tenant shall notify Landlord, in writing, upon the completion of Tenant's Work. Landlord may inspect Tenant's Work to determine if such work has been completed in accordance with the approved Tenant's Plans.

10.5 Any property of Tenant located on the Leased Premises shall remain the property of Tenant and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of this Lease Agreement, at any time, and from time to time, to remove any and all of its property which it may have stored or installed in the Leased Premises, including, but not limited to, furniture, fixtures, equipment, furnishings (including any partitions), alarm systems, counters, shelving, mirrors, and other property. Tenant, at its sole cost and expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such property and upon expiration or earlier termination of this Lease shall leave the Leased Premises in a neat and clean condition. The parties hereto agree that any property or other items, if not removed by Tenant from the Leased Premises on or before thirty (30) days after the termination of this Lease Agreement, shall be deemed to become the property of Landlord.

XI. USE OF PREMISES

11.1 Tenant will not occupy or use, nor permit any portion of the Leased Premises to be occupied or used for any business or purpose which is not the same as the purpose stated in ARTICLE I. above or is unlawful in part or in whole or deemed to be disreputable in any manner, or extra hazardous.

XII. GOVERNMENTAL REQUIREMENTS: ACTIVITY ON PREMISES

12.1 Tenant will maintain the Leased Premises in a clean and healthful condition and comply with all laws, ordinances, orders, rules and regulations (state, federal municipal, and other agencies or bodies having any jurisdiction thereof) with reference to use, conditions, or occupancy of the Leased Premises. Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb other tenants or Landlord.

XIII. ACCEPTANCE OF PREMISES

13.1 Tenant has inspected the Leased Premises and accepts the Leased Premises in an "AS-IS" condition, following completion of Landlord's finish - out work to make the Leased Premises ready and suitable for Tenant's occupancy. Landlord warrants that the Leased Premises and Building are, and will continue to be during the initial and any extended term of this Lease, in compliance with all Federal, State and Local laws and regulations, including but not limited to, the Americans with Disabilities Act that are applicable to the Leased Premises and the Building. Landlord will secure all necessary permits and licenses, and pay all costs and fees incurred in connection with the finish-out work, including securing plan approval and prior review of the proposed finish-out work by the City Architect or his designee, will allow Tenant to monitor such work, if requested by Tenant, with Tenant to assure that the finish-out work is satisfactory to Tenant and timely performed.

13.2 Pursuant to City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999, Landlord agrees to provide to Tenant an Asbestos Survey of the Leased Premises or the building in which the Leased Premises is located. Such Survey shall be provided to Tenant within 10 days following the execution of the Lease by Tenant and shall be prepared by an individual licensed by the Texas Department of Health to conduct an Asbestos Survey, ("Licensed Surveyor,") and shall be at Landlord's sole cost and expense. Tenant's taking possession of the premises, the commencement of the term of this Lease and the payment of Rent by Tenant shall be contingent upon one of the following occurrences:

- a. the Asbestos Survey reflecting the absence of any friable or damaged Asbestos Containing Material (ACM); or
- b. Landlord providing a Management Plan (Plan) satisfactory to Tenant to properly and safely contain the ACM; or
- c. abatement by removal of said friable or damaged ACM, if the Management Plan is not satisfactory to Tenant.

The Management Plan must be prepared by a Licensed Management Planner or Consultant. If the Plan is not provided for an Operations and Maintenance (O&M) Program, or for encapsulation or enclosure of friable ACM satisfactory to Tenant, or if Landlord fails to provide either the Asbestos Survey or Management Plan, also at Landlord's sole cost and expense, or if

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necessary, a Project Design, at Landlord's sole cost and expense, prepared by a Licensed Asbestos Consultant providing for abatement of friable or damaged asbestos in the Leased Premises and building, then Tenant, on ten days prior written notice to Landlord, may terminate this Lease, without any liability whatsoever on Tenant's part.

XIV. DISCLAIMER OF INDEMNITY

14.1 Tenant shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or any other loss or claim except as results from Tenant's sole active negligence, as determined by a court of competent jurisdiction and upon final adjudication or settlement and then not in excess of the limits of liability under the Texas Tort Claims Act.

XV. RULES AND REGULATIONS OF BUILDING

15.1 The Parties agree and understand that the Landlord, during the Primary Term of this Lease, may create and implement Building Rules and Regulations for the operation and protection of the Building and the protection and welfare of its tenants and invitees. In the event Tenant objects to any or all of the Rules and Regulations or amendments thereto, Tenant may upon thirty (30) days written notice to Landlord, terminate this Lease and any and all obligations imposed in this Lease. Termination under this section is not and shall not be considered a breach of this Lease. The Rules and Regulations and any changes and additions shall become effective and a part of this Lease thirty (30) days after delivery of a copy thereof to Tenant unless the Lease is terminated as herein provided. The failure of the Landlord to enforce any of the Rules and Regulations against the Tenant and/or any other tenant in the Building shall not be a waiver of such Rules and Regulations. Landlord shall be responsible to Tenant for any non-observance or violation of any of the Rules and Regulations by any other tenant and Landlord will require compliance with all such Rules and Regulations by all tenants. Tenant shall be responsible for the compliance with such Rules and Regulations by the employees, agents and invitees of Tenant. Upon creation, a copy of the Building Rules and Regulations will be attached hereto as Exhibit "D".

XVI. QUIET ENJOYMENT

16.1 Landlord hereby covenants that Tenant, upon paying Rent as herein reserved, and performing all covenants and agreements herein contained on part of Tenant, shall and may peacefully and quietly have, hold and enjoy the Leased Premises. Landlord agrees to use its best efforts to protect Tenant from interference or disturbance by other tenants or third persons.

16.2 Landlord also agrees to abide by the provisions of Section 8.1 of this Lease as to any mortgage holders, lienholders, and subsequent purchasers during the Lease Term and any renewal or permissible holdover or non-permissible holdover periods.

XVII. EXTERIOR APPEARANCE

17.1 Landlord retains exclusive control over the exterior appearance of the Building and the exterior appearance for the Leased Premises as viewed from the public halls and passageways, and Tenant shall not, without Landlord's prior written consent, install any lighting decorations, paintings, drapes, window covering, blinds, shades, signs, lettering, placards, decorations or

advertising media of any type which can be viewed from the exterior of the Building or from public halls and passageways.

XVIII. DESTRUCTION OF LEASED PREMISES

18.1 If the Leased Premises are partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any permissible holdover or non-permissible holdover or renewal periods, Landlord shall (i) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within sixty (60) days after the partial destruction, and (ii) diligently pursue the repair work in the order of priority designated by Tenant, and (iii) complete such repairs within one hundred eighty (180) days after the date of destruction. Rent, for the Leased Premises will be reduced proportionately to the extent to which the repair operations interfere with the normal conduct of Tenant's business on the Leased Premises. If the repairs cannot be so made within one hundred eighty (180) days after the destruction, Tenant has the option to terminate this Lease.

18.2 If the Building in which the Leased Premises is located is more than fifty percent (50%) destroyed, either party may at its option and, upon ten (10) days' notice to the other party, terminate the Lease whether the Leased Premises are damaged or not.

18.3 If neither party terminates under the provisions of Section 18.2, then Landlord shall be obligated to provide written notice (the "Restoration Notice") to Tenant within sixty (60) days of such event of casualty stating a good faith estimate, certified by an independent architect, of the period of time (the "Stated Restoration Period") which shall be required for the repair and restoration of the Leased Premises and/or the Building. Tenant shall thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period shall be in excess of one hundred eighty (180) days following the event of casualty and Tenant terminates this Lease with written notice thereof to Landlord within ten (10) days following delivery of the Restoration Notice, or (ii) Landlord shall fail to substantially complete the repair and restoration of the Leased Premises or the Building within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of material or other causes which are agreed to by Tenant) and Tenant delivers written notice of such termination to Landlord within ten (10) days following the expiration of the restoration period deadline.

18.4 In the Event of fire or other casualty which prevents Tenant from using all or part of the Leased Premises, Rent shall abate in proportion to the amount of unusable area for the period which Tenant is unable to utilize the space.

XIX. INSURANCE AND INDEMNITY

19.1 Tenant shall provide for and maintain commercial general liability coverage, either through self-insurance or any combination of self-insurance and commercial insurance on the Leased Premises for the full term of this Lease and any renewal or permissible holdover or non-permissible holdover terms, with coverage for bodily injury and property damage in the amount of \$500,000.

19.2 Tenant shall provide such self-insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

19.3 Landlord agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 and property and casualty insurance for physical damage to the Leased Premises and Building in the amount of 80% of the actual cash value of said Premises and Building.

19.4 Landlord and Tenant acknowledge that the Tenant is a political subdivision of the State of Texas and that the Tenant is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Lease will be interpreted according to the Constitution and laws of the State of Texas.

XX. EFFECT OF EMINENT DOMAIN PROCEEDINGS

20.1 Eminent domain proceedings which result in the condemnation of the Leased Premises herein will allow Tenant to terminate this Lease in its entirety. If Tenant does not terminate, Tenant's Rent for the remainder of the Lease Term shall in such case be reduced by the amount that the Leased Premises taken bears to the total rental square footage of the entire Building. Provided, however, if 40% or more of the Leased Premises is condemned, either Landlord or Tenant may terminate this Lease in its entirety. If the Lease is terminated, Tenant and Landlord shall each be entitled to compensation for any loss arising from such condemnation. Landlord and Tenant may pursue their rights to such compensation separately.

XXI. DEFAULT AND REMEDIES - TENANT'S DEFAULT

21.1 An Event of Default in the Lease shall occur should Tenant neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Tenant's part to be performed or in any way observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by Tenant of written notice of such neglect or failure except for the failure or neglect to pay any installment of Rent wherein such neglect or failure must be cured within ten (10) days after receipt by Tenant of written notice of such neglect or failure. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Tenant shall be allowed to cure if within said thirty (30) day period Tenant commences and thereafter diligently proceeds to cure such event of Default but under no circumstances shall the period of notice and cure exceed sixty (60) days from the date of such event of Default by Tenant. Landlord shall notify Tenant of any monetary default by certified or registered mail, return receipt requested through the Director of Finance, CITY OF SAN ANTONIO, P.O. BOX 839966, SAN ANTONIO, TEXAS 78283-3966 and Landlord shall also provide notices of a monetary default to all parties described in Section 33.1 of this Lease in the manner prescribed by ARTICLE XXXIII. of this Lease.

21.2 Upon default and failure of Tenant to cure as stated above, Landlord may terminate this Lease by written notice to Tenant or without terminating, Landlord may, without being obligated to do so, reenter and relet the Leased Premises or any part thereof upon the best Rent and best terms possible as soon as reasonably possible and with reasonable effort on the part of Landlord in accordance with any applicable provisions of the Texas Property Code and Texas case law.

XXII. DEFAULT AND REMEDIES - LANDLORD'S DEFAULT

22.1 An Event of Default shall occur should:

WFF:wf
1344 S. Flores St.
Mayor's Office lease space
REV 12/6/01

- a. Landlord fail to perform any of its covenants or obligations hereunder after the Commencement Date of this Lease; or
- b. a receiver shall be appointed to take possession of Landlord's assets; or
- c. Landlord shall generally assign Landlord's assets for the benefit of creditors; or
- d. Landlord become insolvent; or
- e. Landlord shall suffer or voluntarily take any action under the Bankruptcy Act, which action constitutes a breach of this Lease.

Upon the occurrence of an Event of Default, Tenant shall have the right to (i) file an action for damages or (ii) terminate this Lease; provided however, Tenant shall not exercise Tenant's right to sue for damages or to terminate the Lease unless and until (1) Tenant gives written notice of such default (which notice shall specify the exact nature of said default with particularity and how the same may be cured) to Landlord, and (2) Landlord fails to cure or cause to be cured the default described in the notice within thirty (30) days from the receipt of such notice from Tenant. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Landlord shall be allowed to cure if within said thirty (30) day period Landlord commences and diligently proceeds to cure the Event of Default described in the notice, but in no event shall such date extend later than sixty (60) days after the date of the Event of Default by Landlord.

22.2 Any provision in the Lease to the contrary notwithstanding, if Landlord fails to perform its obligations under the Lease and such failure (a) is the result of a condition within the Landlord's control, (b) interferes with the normal use of the Leased Premises or appurtenant parking and/or other common areas by Tenant as allowed herein, and (c) continues for more than five (5) consecutive business days, then upon written notice from Tenant to Landlord, the Rent shall be proportionately abated until such interference is eliminated or the Leased Premises are otherwise rendered tenantable again. Additionally, if such interference continues for a period of thirty (30) or more consecutive days after receipt by Landlord of Tenant's written notice, then Tenant shall have the right and option to cancel the Lease by giving written notice to Landlord within five (5) days after the end of such thirty (30) day period."

XXIII. EFFECT OF WAIVER

23.1 Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. Landlord's acceptance of Rent installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the Rent installment or installments accepted.

XXIV. ESTOPPEL CERTIFICATES

24.1 Tenant agrees to furnish, from time to time, within ten (10) days after receipt of a request from Landlord or Landlord's mortgagee, a statement certifying, if applicable and to the extent true, the following: Tenant is in possession of the Premises; the Premises are acceptable; the

Lease is in full force and effect; the Lease is unmodified; Tenant claims no present charge, lien, or claim of offset against Rent; the Rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; there is no existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee.

XXV. HOLDING OVER

25.1 Should Tenant hold over the Leased Premises, or any part thereof, after the expiration or termination of the permissible holdover allowance period set forth in Section 2.2 following the end of the Primary Term of this Lease, such holding over shall constitute a non-permissible holdover and be construed as a tenancy from month to month only, at a Rent equal to the Rent paid for the last month of the term of this Lease or permissible holdover, if applicable, plus 10% for the entire non-permissible holdover period unless otherwise agreed to in writing by Landlord and Tenant. The inclusion of the preceding sentence shall not be construed as Landlord's consent for the Tenant to hold over, except for the right to a permissible holdover set forth in Section 2.2.

XXVI. APPROPRIATIONS

26.1 Landlord agrees and understands that Tenant has projected costs for this Lease and that Tenant expects to pay all obligations of this Lease from projected revenue sources, but that all obligations of Tenant are subject to annual appropriation by City Council in future years, after the first year of the Lease. Accordingly, if Tenant shall fail to appropriate sums to pay any of Tenant's obligations under the terms of this Lease, and due to the unavailability and/or the failure to appropriate funds Tenant shall not have the funds to pay such obligations, following Tenant's failure to pay such obligations due to lack of funding shall terminate this Lease and neither Landlord nor Tenant shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Lease.

XXVII. CONFLICT OF INTEREST

27.1 Landlord acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Landlord warrants and certifies, and this lease is made in reliance thereon, that it, its partners, employees and agents are neither officers nor employees of the City. Landlord further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XXVIII. SALE OF LEASED PREMISES

28.1 If the Leased Premises is sold or otherwise transferred to a party other than Tenant then when title to the Leased Premises or any part thereof has been transferred, Landlord agrees to

secure an assignment of this Lease to the purchaser/transferee, and a Non-Disturbance Agreement so that Tenant may remain in peaceful possession of the Premises.

XXIX. PARKING

29.1 Throughout the Primary Term of this Lease and any holdover periods, whether permissible or non-permissible, and renewal periods, Tenant and its representatives, agents and employees, shall have the use of 10 parking spaces located on property owned by the Landlord or owned by the parent, subsidiary, or other entity affiliated with the Landlord and located adjacent to the Leased Premises or located in the vicinity of the Leased Premises, all such 10 spaces to be available for Tenant's use during normal working hours, evenings, weekends and holidays. Tenant recognizes that Landlord may utilize the parking lot area for non-tenant parking during non-business hours. Landlord agrees to assist Tenant in coordinating a decal system for use by Tenant and its employees as to Tenant's use.

XXX. SEVERABILITY CLAUSE AND INTERPRETATION

30.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The caption of each Section and Article hereof is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXXI. ENTIRE AGREEMENT

31.1 This Lease constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXXII. PARTIES BOUND

32.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns except as otherwise expressly provided herein.

XXXIII. NOTICE

33.1 Except for those notices given pursuant to ARTICLE XXII. of this Lease, any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified or registered mail, return receipt requested, addressed to the respective party to whom notice is intended to be given at the following address:

Landlord: C.A.N. Industries, Inc.
1325 North Flores Street, Suite 102
San Antonio, Texas 78212

Tenant: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966
and
Office of the Mayor
at the same address

XXXIV. COUNTERPARTS, ONE AGREEMENT

34.1 This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one agreement. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXV. LEGAL AUTHORITY

35.1 The signer of this Lease for Landlord represents, warrants, assures and guarantees that he has full legal authority to execute this Lease on behalf of Landlord and to bind Landlord to all of the terms, conditions, provisions and obligations herein contained.

XXXVI. TEXAS LAW TO APPLY

36.1 This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

AGREED TO THIS 24th DAY OF January, 2002, to be effective on the Commencement Date set forth in Exhibit "C".

LANDLORD:

C.A.N. INDUSTRIES, INC.,
A TEXAS CORPORATION

BY: [Signature]

Title: President

TENANT:

CITY OF SAN ANTONIO,
A TEXAS MUNICIPAL CORPORATION

BY: [Signature]

City Manager

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTACHMENTS:

Exhibit "A"	Plat/footprint description of Leased Premises, showing floor plan ("Layout")
Exhibit "B"	Legal Description of property upon which Building is located
Exhibit "C"	Memorandum of Commencement Date
Exhibit "D"	The Building's Rules and Regulations (to be attached at a later time pursuant to ARTICLE XV.)