

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE ON BEHALF OF THE CITY OF DENTON A LEASE OF OFFICE SPACE LOCATED IN THE NORTH LAKES ANNEX BUILDING, 1117 RINEY ROAD BETWEEN THE CITY OF DENTON AND DENTON EXPLORIUM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton hereby finds that the Lease Agreement between the City and Denton Explorium, attached hereto and made a part hereof by reference (the "Lease"), serve a municipal and public purpose and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Lease attachment and incorporated herein as Attachment "A", and to exercise all rights and duties of the City under the Lease, including authorizing and ratifying the expenditure of funds.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

Attachment A

LEASE OF CITY PROPERTY

This Lease Agreement is made and executed to be effective this 24th day of October, 2016 at Denton, Texas, by and between the City of Denton, Texas, a Texas home rule municipal corporation, hereinafter referred to as "Landlord" or "City", and Denton Explorium, a Texas limited liability company, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, Tenant has requested that it be allowed to lease the Northwest room of the North Lakes Annex building, 1117 Riney Road owned by Landlord in order to construct, occupy and maintain an office space; and

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants contained in this Agreement, the parties agree as follows:

I. LEASED PREMISES

Landlord, for and in consideration of the covenants and agreements herein contained, to be kept by Tenant, does hereby demise and lease, without warranty of title, unto Tenant, and Tenant does hereby lease from Landlord, for the lease term described in Article II, the following described land situated in Denton County, Texas:

A. IMPROVEMENTS PROVIDED BY LANDLORD. NONE: There will be no improvements provided by Landlord.

B. IMPROVEMENTS PROVIDED BY TENANT. NONE: There will be no improvements provided by Tenant.

C. LEASEHOLD CONNECTED TO TENANT' PROPERTY. This leasehold shall not be severable from the ownership interests of Tenant's Property and the covenants, terms and conditions under this Agreement shall be binding upon and inure to the benefit of the owners and subsequent owners of Tenant's Property. Nothing contained herein shall be construed to allow assignment or sublease of this Lease Agreement without the consent of Landlord as prescribed in Article VI.

D. LEASEHOLD CONDITION. THE LEASED PREMISES IS LEASED TO TENANT IN ITS PRESENT CONDITION "AS IS," "WHERE IS" AND "WITH ALL FAULTS". TENANT STIPULATES THAT IT HAS THOROUGHLY INSPECTED THE LEASED PREMISES AND FINDS THAT THE LEASED PREMISES IS CURRENTLY SUITABLE FOR THE USES PERMITTED BY THIS LEASE AGREEMENT. LANDLORD MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND OR NATURE CONCERNING THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF HABITABILITY OR FITNESS FOR PARTICULAR PURPOSE OF USE. TENANT HEREBY STIPULATES TO LANDLORD

THAT, DUE TO ITS INSPECTION OF THE LEASED PREMISES, IT IS AWARE OF THE CONDITION OF THE LEASED PREMISES.

II. TERM

The term of this Lease Agreement shall be for a period of 1 year, with option for renewal, commencing on the 24th day of October, 2016 and continuing through the 30th day of September, 2017 unless earlier terminated under the provisions of the Lease Agreement.

III. PAYMENTS, RENTALS AND FEES

Tenant covenants and agrees to pay Landlord, as consideration for this Lease Agreement, the following payments, rentals and fees:

A. LAND RENTAL. Rent shall be due and payable annually in the sum of \$5 payable on the 24th of October, 2016, and on or before the 24th of October each successive year of tenancy, inclusive of youth programming as mutually agreed upon and scheduled between Landlord and Tenant.

B. PAYMENT, PENALTY, ADJUSTMENTS. All payments due Landlord from Tenant shall be made to Parks and Recreation offices, Civic Center, 321 McKinney St. Denton, Texas, 76201, unless otherwise designated in writing by the Landlord.

C. TAXES. Should any taxes be levied against the Leased Premises or the Improvements, payment of such taxes shall be the sole responsibility of the Landlord.

IV. RIGHTS AND OBLIGATIONS OF TENANT

A. STANDARDS. Tenant shall meet or exceed the following standards:

1. Address. Tenant shall file with the City Manager, or his designee and keep current its mailing addresses, telephone numbers and contacts where it can be reached in an emergency.
2. List. Tenant shall file with the City Manager, or his designee and keep current a list of its permitted tenants and subtenants.
3. Conduct. Tenant shall contractually require its employees and permitted subtenants (and subtenant's invitees) to abide by the terms of this Lease Agreement. Tenant shall promptly enforce its contractual rights in the event of a default of such covenants.
4. Laws. Tenant shall comply with all current and future federal, state and local laws, rules, ordinances and regulations which may apply to the conduct of business contemplated on the Leased Premises, including without limitation, rules, regulations and ordinances promulgated by Landlord, and Tenant shall keep in effect and post in a prominent place all necessary and/or required

licenses or permits.

5. Maintenance of Leased Premises. Tenant shall keep the Leased Premises neat, clean and in respectable condition, as determined by Landlord, free from any objectionable matter or thing, including trash or debris.
6. Unauthorized use of Leased Premises. Tenant may not use any of the Leased Premises for any use not authorized herein unless Landlord gives Tenant prior written approval of such additional or different use.
7. Quit Possession. Tenant shall quit possession of the Leased Premises at the end of the Lease Term, or upon cancellation or termination of the Lease Agreement, and deliver up the Leased Premises to Landlord in the condition originally leased to Tenant, with the Improvements being removed as provided in Article I. C., above.
8. Indemnity. Tenant shall indemnify, hold harmless and defend and hereby releases the Landlord, its officers, agents, elected officials and employees, from and against liability, of any kind, type or nature, for or related to any and all claims, liens, suits, demands, losses and/or actions for damages, injuries to persons (including death), property damage, (including loss of use), and expenses, including court costs, attorneys' fees and other reasonable costs, occasioned by, related to or incidental to the Tenant's, Tenant's invitees, licensees, customers, visitors, employees, agents and any other persons occupancy or use of the Leased Premises or activities conducted in connection with or incidental to this Lease Agreement, including without limitation, all such claims, liens, suits, demands, losses and/or actions based on common, constitutional or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Tenant, its officers, agents, employees, invitees, licensees, customers, visitors or any other persons. Tenant shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, customers, visitors, invitees, licensees and other persons, as well as their property and the Leased Premises, while in, on, or involved in any way with the use of the Leased Premises. The Landlord is not liable or responsible for the negligence or intentional acts or omissions of the Tenant, its officers, agents, employees, customers, licensees, invitees, visitors and other persons and Tenant hereby releases Landlord, its officers, agents, elected officials, and employees from same. The Landlord shall assume no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the Leased Premises, responsibility for all such defects being expressly assumed by the Tenant. Without limiting the general nature of the foregoing, the Tenant agrees that this indemnity provision applies to, among all matters as prescribed herein, all claims, suits, demands, and actions arising from all premise defects or conditions.

THE LANDLORD AND THE TENANT EXPRESSLY INTEND THIS INDEMNITY AND RELEASE PROVISION TO REQUIRE TENANT AND HEREBY DOES REQUIRE TENANT TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE LANDLORD, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES AND TENANT HEREBY RELEASES LANDLORD, AND LANDLORD'S OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES FROM THE CONSEQUENCES OF THE LANDLORD'S OWN NEGLIGENCE, OF

ANY KIND, TYPE OR DEGREE, WHERE THAT NEGLIGENCE IS A CAUSE, IN WHOLE OR IN PART, OF THE INJURY, DEATH, OR DAMAGE.

THE INDEMNITY CONTAINED IN THIS PARAGRAPH (A) IS INDEPENDENT OF TENANT'S INSURANCE, (B) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (C) WILL SURVIVE THE END OF THE TERM, AND (D) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF LANDLORD, BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.

B. SIGNS. No signs, posters, or other similar devices ("Signage") shall be placed on the exterior of the Improvements or on any portion of the Leased Premises without the prior written approval of Landlord and shall be in conformance with the Denton City Code. Tenant, at its sole expense, shall be responsible for the creation, installation and maintenance of all such Signage. Without limiting the generality of Article IV.B.9., above, Tenant shall pay to Landlord any and all damages, injuries, or repairs resulting from the installation, maintenance or repair of any such Signage. Any Signage placed on the Leased Premises shall be maintained, at all times, safely, neatly, and good physical condition. All Signage shall be removed from the Leased Premises by Tenant immediately upon receipt of instructions for removal of same from Landlord, including without limitation, upon expiration or termination of this Lease Agreement. If Tenant fails to remove the Signage within 90 days after termination or upon instruction by Landlord, as the case may be, then the Landlord may do so at the sole cost and expense of the Tenant. Tenant shall pay Landlord such costs of removal within 30 days after receipt of an invoice from the Landlord. If the invoice is not paid within said time period a lien is hereby granted by Tenant and is established against Tenant's Property to secure payment. In such case Landlord is authorized by Tenant to file an affidavit in the Denton County Real Property Records against Tenant's Property to evidence the lien.

C. ENTRY. Landlord and its designees shall have the right to enter the Leased Premises upon reasonable advance notice (written or oral) and at any reasonable times

for the purposes of inspecting the Leased Premises, and performing any work which Landlord elects to perform under this Lease Agreement. Nothing in this section shall imply any duty upon Landlord to do any work, which under any other provision of this Lease Agreement Tenant is required to perform, and any performance by Landlord shall not constitute a waiver of Tenant's default. In the event of an emergency, as determined by Landlord, Landlord, by and through the City of Denton Fire Department, City of Denton Police Department, or other department or agent of the Landlord, as applicable, may enter the Leased Premises without the notice prescribed herein.

V. COVENANTS BY LANDLORD

Landlord hereby agrees as follows:

A. PEACEFUL ENJOYMENT. Upon payment of all rent, fees, and performance of the covenants and agreements on the part of Tenant to be performed hereunder, and subject to the terms of this Lease Agreement, Tenant shall peaceably hold and enjoy the Leased Premises and all rights and privileges herein granted. Notwithstanding the foregoing, the parties understand and stipulate that the Leased Premises constitutes city property. In that regard, Landlord shall not be liable to Tenant in the event a court of competent jurisdiction enjoins Tenant from using the Leased Premises under this Lease Agreement for any reason. In such case, Tenant's sole and exclusive remedy will be termination of the Lease Agreement.

VI. ASSIGNMENT OF LEASE

Tenant shall not assign or sublet this Lease Agreement, in whole or in part, without the written consent of Landlord, which consent will not be unreasonably withheld. Any attempted assignment or sublease of this Lease Agreement without the written consent of Landlord shall be void.

VII. INSURANCE

A. REQUIRED INSURANCE. Tenant shall maintain continuously in effect at all times during the Lease Term, at Tenant's sole expense, the following minimum insurance coverages:

1. Comprehensive Commercial (Public) General Liability covering the Tenant and its company, its employees, agents, tenants, customers, invitees and independent contractors. Coverage shall be in an amount not less than \$1,000,000 per occurrence and provide coverage for premises/operations, products/completed operations and contractual liability.
2. All risk property insurance on a replacement cost basis covering loss or damage to the Improvements Without limiting the generality of Article IV.B.9., above, under no circumstances shall the Landlord be liable for any damages to fixtures, merchandise or other personal property of the Tenant or its tenants, including the Improvements.

B. COVERAGE REQUIREMENTS. All insurance coverages shall comply with the following requirements:

1. All liability policies shall name the City of Denton, and its officers and employees as additional named insureds and provide for a minimum of 30 days written notice to the City of any cancellation or material change to the policy.
2. All insurance required by this Lease Agreement must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to the examination and approval of the City's office of Risk Management for their adequacy as to content, form of protection and providing company.
3. Required insurance naming the City as an additional insured must be primary insurance and not contributing with any other insurance available to the City whether from a third party liability policy or other. Said limits of insurance shall in no way limit the liability of the Tenant hereunder.
4. The Landlord shall be provided with a copy of all such policies and renewal certificates. Failure of Tenant to comply with the minimum specified amounts or types of insurance as required by Landlord shall constitute Tenant's default of this Lease Agreement.
5. During the Lease Term, or any extension thereof, Landlord herein reserves the right to adjust or increase the liability insurance amounts required of the Tenant, and to require any additional rider, provisions, or certificates of insurance, and Tenant hereby agrees to provide any such insurance requirements as may be required by Landlord. Tenant may cancel this Lease Agreement and terminate its obligations hereunder by thirty (30) days written notice to Landlord.

VIII. DEFAULT OF TENANT/REMEDIES OF LANDLORD

A. DEFAULT. In the event that Tenant shall file a voluntary petition in bankruptcy or proceedings in bankruptcy shall be instituted against it and Tenant thereafter is adjudicated bankrupt pursuant to such proceedings; or any court shall take jurisdiction of Tenant and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or Tenant shall apply for or consent to the appointment of a receiver, trustee, or liquidator of itself or all or a substantial part of its assets; or Tenant shall be divested of its estate herein by other operation of law; or Tenant shall fail to perform, keep and observe any of the terms, covenants, or conditions herein contained, or on its part to be performed, Tenant shall be in default under this Lease Agreement and the Landlord may give Tenant written notice to correct such condition or cure such default and, if any condition or default shall be continuing thirty (30) days after the receipt of such notice by Tenant, then Landlord may exercise any right or remedy available to it by law, equity, contract or otherwise, including without limitation, termination of this Lease Agreement.

B. BREACH In the event of a material breach by Tenant of any of the covenants or agreements contained herein and the failure of Tenant to remedy such breach after ninety (90) days of receipt of written notice of the existence of such breach provided by Landlord to Tenant then the Landlord, as its sole and exclusive remedy for such breach by Tenant, may terminate this Lease Agreement.

IX. CANCELLATION AND REMEDIES OF TENANT

A. JUDICIAL ACTION. Tenant may cancel this Lease Agreement and terminate its obligations hereunder by thirty (30) days written notice to Landlord, upon or after the issuance by any court of competent jurisdiction of a permanent injunction preventing or restraining its use of the Leased Premises or any part thereof for purposes and uses authorized by this Lease Agreement.

B. CONVENIENCE. Tenant may cancel this Lease Agreement and terminate its obligations hereunder any time after October 24, 2016, by thirty (30) days written notice to Landlord.

C. RENT PAYMENTS/RESTORATION. In the event of the cancellation of this Lease Agreement pursuant to the terms of Article IX.A. or Article IX.B., above, Tenant shall promptly remove any and all improvements made to the Leased Premises and shall restore the Leased Premises to the condition found prior to possession pursuant to the terms stipulated in Article I.C. Landlord shall be entitled to retain the balance of any and all rent payments and the parties shall have no further obligations to each other, except for Tenant restoration of the Leased Premises as set forth herein.

D. DEFAULT. In the event of a material breach by Landlord of any of the covenants or agreements contained herein and the failure of Landlord to remedy such breach after ninety (90) days of receipt of written notice of the existence of such breach provided by Tenant to Landlord, then the Tenant, as its sole and exclusive remedy for such breach by Landlord, may terminate this Lease Agreement.

X. MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT. This Lease Agreement constitutes the entire understanding between the parties and as of its Effective Date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof shall be in writing signed by both parties. The Recitals of this Lease Agreement are represented by the parties hereto to be accurate, and constitute a part of the substantive agreement.

B. BINDING EFFECT. All covenants, stipulations and agreements herein shall extend to, bind and inure to the benefit of the legal representatives, successors and permitted

assigns of the respective parties hereto.

C. SEVERABILITY. If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Lease Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

D. NOTICE. Any notice given by one party to the other in connection with this Lease Agreement shall be in writing and shall be sent by certified mail, return receipt requested, with postage fees prepaid, or via facsimile as follows:

1. If to Landlord, addressed to:

City Manager
215 E. McKinney
Denton, Texas 76201
Fax No. 940.349.8596

w/copy to:

Director of Parks and Recreation
City of Denton
215 East McKinney Street
Denton, Texas 76201
Fax No. 940.349.8596

2. If to Tenant, addressed to:

Explorium Denton
P.O. Box 52145
Denton, TX 76206
Phone No. 940-595-4001

Notice shall be deemed received for all purposes when placed in the United States mail, as set forth herein, or when delivered by telephonic facsimile to the other party at the facsimile number(s) provided above.

E. HEADINGS. The headings used in this Lease Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

F. GOVERNING LAW AND VENUE. This Lease Agreement is to be construed in accordance with the laws of the State of Texas and is fully performable in Denton County, Texas. Exclusive venue for any lawsuit to enforce the terms or conditions of this Lease Agreement shall be a court of competent jurisdiction in Denton County, Texas.

G. NO WAIVER. No waiver by Landlord or Tenant of any default or breach of covenant or term of this Lease Agreement may be treated as a waiver of any subsequent

default or breach of the same or any other covenant or term of this Lease Agreement.

H. NO AGENCY. During all times that this Lease Agreement is in effect, the parties agree that Tenant is and shall not be deemed an agent or employee of the Landlord. Nothing contained herein shall be construed to create a joint venture, partnership or joint enterprise.

I. SURVIVAL. The terms and provisions of Articles I.C., III.B., IV.B. and IV.C., shall survive the termination of this Lease Agreement.

J. DELEGATION. Any action that is to be or could be taken by the Landlord hereunder is hereby delegated by the City Council of the City of Denton to the City Manager or his designee.

K. RECORDATION. This Lease Agreement shall be recorded in the Real Property Records of Denton County, Texas. Upon termination of this Lease Agreement as provided herein, either party may request the execution and delivery of a Memorandum of Release (herein so called) to be recorded in the Real Property Records, Denton County, Texas, as constructive notice of termination of this Lease Agreement. The execution and delivery of the Memorandum of Release shall not be unreasonably withheld by either party.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the Effective Date first above written.

LANDLORD:

CITY OF DENTON, TEXAS

BY: _____
HOWARD MARTIN,
INTERIM CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY:  _____

EXPLORIUM DENTON, LESSEE

BY: _____

ACKNOWLEDGMENTS

THE STATE OF TEXAS
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2016
by Howard Martin, Interim City Manager of the City of Denton, Texas, on behalf of said
municipality.

NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2016 by
_____, _____,

NOTARY PUBLIC, STATE OF TEXAS