

AGREED AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF BAY CITY AND EMPOWERMENT FOR EXCEEDING TOGETHER

WHEREAS, The City of Bay City (“the City”) owns the property located at 2320 Avenue K, Bay City, Texas (“the Premises”); and

WHEREAS, the City has entered a lease which allows the Premises to be used by Empowerment for Exceeding Together (“E4E2”) (“Tenant”); and

WHEREAS, the date of the Lease was omitted from the Lease, making the calculation of the term problematic; and

WHEREAS, the City wishes to authorize Tenant to sublease a portion of the premises to Literacy Volunteers of America, a non-profit organization providing services to combat illiteracy;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, it is agreed as follows:

This Lease is amended as follows and entered into effective as of this the 13th of March 2014 by and between the City of Bay City and Empowerment for Exceeding Together.

On the first page of the Lease, the section entitled “**Basic Terms**” is amended by inserting a date for the Lease:

“**Date:** February 14, 2013 ”

The “**Definitions**” section of the Lease is amended by inserting a Commencement Date:

“Commencement Date: February 14, 2013.”

The Lease is further amended by allowing for a variety of educational programs and adding a new section, numbered E(17), entitled “*Authorized Sublease*” and reading as follows:

“Notwithstanding Section B(8) of the Lease, Tenant may sublease a portion of the Premises to Literacy Volunteers of America (“Sublessee”). A sublease must address the following:

- a) Sublessee must assume responsibility for injury, loss, or damage to the Premises resulting from Sublessee’s use of the premises.
- b) The use to be one that is within the permitted uses and services to be provided at the Premises.
- c) An allocation of responsibility for utility costs.
- d) A term to coincide with the Term of the underlying lease between City and Tenant.
- e) Sublessee’s commitment to be bound by the “Clauses & Covenants” of the Lease between City and Tenant, specifically Sections A(7), A(8), B(1), B(2), B(3), B(4), B(5), B(6), B(7), and B(8).

Before executing such a sublease, Tenant agrees to submit the proposed sublease to City Council for formal approval.”

CONTINUED CONDITIONS

The original Lease is attached as Exhibit A, and is incorporated herein for all purposes.

All other provisions of the Lease will remain in effect as originally agreed.

EXECUTED THIS THE _____ DAY OF MARCH, 2014.



MARK BRICKER
Mayor



Authorized Representative

Lease

Basic Terms

Date:

Landlord: City of Bay City

Landlord's Address: 1901 Fifth Street
Bay City, Texas 77414

Tenant: Empowerment for Exceeding Together

Tenant's Address: 3318 Avenue D
Bay City, Texas 77414

Premises

Street address: 2320 Avenue K

City, state, zip: Bay City, Texas 77414

Term (months): 12 Months. Notwithstanding any provision contained herein to the contrary this Lease may be terminated by either party without cause upon 30 days written notice to the other party.

Commencement Date:

Termination Date: 365 days from commencement date. Lease shall renew annually unless terminated by either party.

Base Rent (annually): One Dollar

Security Deposit: NONE

Permitted Use: Provide Vocational skills training and educational assistance to individuals pursuing a Graduation Equivalent Diploma.

Insurance: Tenant shall not be required to maintain insurance under the terms of this Agreement. However, notwithstanding any provision in this Agreement to the contrary; Tenant shall be solely responsible for any injury, loss or damage to Tenant's property regardless of cause of such loss or damage.

Definitions

"Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

“Essential Services” means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

“Injury” means (1) harm to or impairment or loss of property or its use, (2) harm to or death of a person, or (3) “personal and advertising injury” as defined in the form of liability insurance Tenant is required to maintain.

“Lienholder” means the holder of a deed of trust covering the Premises.

“Rent” means Base Rent plus any other amounts of money payable by Tenant to Landlord.

Clauses and Covenants

A. Tenant agrees to—

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

2. Accept the Premises in their present condition “AS IS,” the Premises being currently suitable for the Permitted Use.

3. Obey (a) all laws relating to Tenant’s use, maintenance of the condition, and occupancy of the Premises and Tenant’s use of any common areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.

4. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

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

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

7. Vacate the Premises on the last day of the Term.

8. INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY’S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **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 CAUSE IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.

B. Tenant agrees not to—

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.
5. Change Landlord's lock system.
6. Alter the Premises.
7. Allow a lien to be placed on the Premises.
8. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

C. Landlord agrees to—

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Obey all laws relating to Landlord's operation of the Premises.
3. Provide the Essential Services.
4. Repair, replace, and maintain the (a) roof, (b) foundation, and (c) structural soundness of the exterior walls, excluding windows and doors.

D. Landlord agrees not to—

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.
2. Unreasonably withhold consent to a proposed assignment or sublease.

E. Landlord and Tenant agree to the following:

1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

2. *Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

3. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

4. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease.

5. *Default by Tenant/Events.* Failing to comply within ten days after written notice with any provision of this lease.

6. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet.

7. *Default/Waiver/Mitigation.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.

8. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

9. *Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

10. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

11. *Venue.* Exclusive venue is in the county in which the Premises are located.

12. *Entire Agreement.* This lease constitutes[s] the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the lease of the Premises by Landlord to Tenant that are not in this lease.

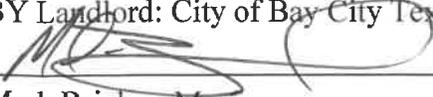
13. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

14. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

15. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

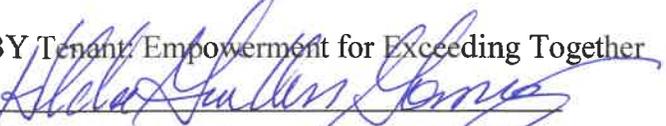
16. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

BY Landlord: City of Bay City Texas



Mark Bricker, Mayor

BY Tenant: Empowerment for Exceeding Together



[Name and title of tenant's representative]