



Date of Board Meeting: January 21, 2025

Subject: Lease Agreement between Wharton County Junior College and Bay City Community Development Corporation

Recommendation: Approve the Three-Year Lease Agreement between Wharton County Junior College and Bay City Community Development Corporation.

Background and Rationale:

To accommodate expanded program offerings at the Wharton County Junior College (WCJC) Bay City Campus, Bay City Community Development Corporation has drafted a new Lease Agreement with the College.

The term of the Lease Agreement will be in effect from December 1, 2024 through November 30, 2027, encompassing total premises of 40,000 square feet, as outlined in Exhibit B (see attached). The premises identified in the Agreement include all current square footage occupied by WCJC, with additional space allocated for all phases of the new WCJC Construction Trades program.

Rent for the premises during the term of the agreement will be One Dollar (\$1.00) for each year of the term to be paid in advance of or on the commencement date during each year of the term.

The Lease Agreement has been reviewed and approved by the College’s legal counsel.

Cost and Budgetary Support: \$1.00 per year for the term of the agreement

Strategic Priority Alignment: Student Success Community Impact
 Resource Optimization Institutional Excellence

Resource Person(s): Betty McCrohan; President

President’s Approval:

Betty McCrohan
President

1-13-25
Date

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into by and between the BAY CITY COMMUNITY DEVELOPMENT CORPORATION, a municipal corporation ("Landlord") and WHARTON COUNTY JUNIOR COLLEGE, a public junior college district organized under the laws of the State of Texas ("Tenant").

Recital

- A. Whereas, the Landlord is the owner of certain 90,000 sq. ft. property located at 4000 Ave. F, Bay City, Texas 77414, as described and shown in Exhibit A attached hereto (the "Property"); and
- B. Whereas, the Tenant desires to lease the certain areas of Property, hereinafter defined (the "Leased Premises").

Agreement:

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord the Leased Premises.

1. **Leased Premises.** The term "Leased Premises" hereafter shall mean a 40,000 sq. ft portion of the Property as described and shown in Exhibit B attached hereto. In the event Tenant exercises its option under Section 4 hereof, the Leased Premises shall also include those areas referenced in Section 4.
2. **Non-Exclusive Use.** Landlord hereby grants to Tenant, its officers, directors, trustees, employees, agents, students, invitees, servants, contractors, and visitors a non-exclusive license for the Term for the purpose of ingress and egress to and from the Property and the Leased Premises and using the "Common Areas" of the Property defined by the parties to include the atrium, sidewalks and the parking lot.
3. **Term.** The term (the "Term") of this Lease is for three (3) years and shall be deemed to have commenced on December 1, 2024, and continue in full force and effect until November 30, 2027. Before the expiration of said Term, either party, the Landlord or Tenant, may elect to end this Lease agreement as of November 30, 2027. Either party may do so by providing thirty (30) days' notice of its intention to terminate this Lease before the expiration of said Term. Such notice is to be sent in accordance with Section 20 of this Lease. Should either party, the Landlord or Tenant, fail to provide said termination notice, this Lease shall automatically renew on an annual basis for a Term of one (1) year beginning on December 1, 2027. This Lease shall continue to renew automatically on annual basis for a Term of one (1) year thereafter unless either party elects to terminate said Lease before the expiration of the current Term by providing thirty (30) days' notice to the other party as described above.

4. Rent. As rent for the Premises during the Term, it is agreed between the parties hereto that Tenant shall pay to Landlord the sum of One Dollar (\$1.00) (the "Rent") for each year of the Term. Rent shall be due and payable in advance on or before the commencement date during each year of the Term.
5. Use. The Leased Premises may be used for any and all legal purposes connected with the Tenant's provision of instructional courses at the Leased Premises. Except as provided in this Lease, Tenant shall comply with all Applicable Laws (as defined below) relating to the use of the Leased Premises.
6. Compliance with Laws. Hereinafter the term "Applicable Laws" shall mean all applicable laws, ordinances, statutes, regulations, orders, rules and restrictions relating to the Leased Premises.
7. Utilities. Utilities. Tenant agrees to pay the costs associated with the provision of all utility services to the Leased Premises for Tenant's use thereof, including electricity, hot and cold water, gas, sewer, trash pick-up, wastewater, extermination, and security. By way of example, said utility costs include, but are not limited to, those necessary for the operation of Tenant's Hot Skid Unit and Boiler installed on the Leased Premises in 2011. Whereas the Leased Premises are not be separately metered for utilities, Landlord agrees to contract for the provision of such utility services to the entire property, including common areas, and will promptly pay all charges therefor. Common area Tenant agrees to promptly pay to Landlord, the prorated share of all such charges for services, based on a 3/4 split to Tenant, upon presentation of an invoice for same by Landlord.
8. Taxes. Landlord agrees to pay before they become delinquent all taxes, assessments and governmental charges of any kind and nature whatsoever lawfully levied or assessed against the Leased Premises. The Tenant shall at no time be responsible for any costs associated with the payment of taxes, except for taxes, if any, levied against its personal property.
9. Maintenance. Landlord covenants and agrees to perform, or cause to be performed, at its sole cost and expense, all maintenance, repairs, alterations or improvements necessary to maintain the Property, including the Leased Premises, throughout the Term in a condition consistent with industry standards. Such general maintenance shall be ongoing throughout the Term of the lease. Tenant shall not be responsible for any costs associated with such maintenance.
10. Services. Landlord shall provide to Tenant, at no cost to Tenant and as part of Rent, the following services:
 - a. Heating, ventilation and air conditioning;
 - b. Landscaping for the Property; and
 - c. Extermination services for the Property.

Tenant shall provide:

- a. Custodial/Janitorial; including 1/3 of the common area as defined in 2
- b. Security

With the exception of life and safety issues which shall require a response by Landlord within twenty-four (24) hours, in the event that Landlord shall fail to provide any such services within fourteen (14) days after delivery of written notice by Tenant to Landlord of same, Tenant shall have the right, at its option and in addition to any other rights Tenant may have pursuant to the terms of this Lease, to contract for the providing of such services, and shall be entitled to reimbursement from Landlord for all expenses incurred by Tenant in accomplishing same.

11. Parking. At all times during the Term, Tenant shall have the non-exclusive right to use, at no cost to Tenant, parking spaces in the parking lot located at the Property.

12. Assignment and Subletting.

- a. Tenant shall have the right to assign this Lease or to sublet the whole or any part of the Leased Premises upon receipt of the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed.
- b. Upon any sale or transfer of the Property and the Leased Premises, Landlord shall have the right to assign this Lease without the prior written consent of Tenant so long as such transfer does not have the purpose or effect of avoiding specific liability under this Lease.

13. Quiet Enjoyment. Landlord represents and warrants that it now has good title to the Leased Premises, free and clear of all liens and encumbrances. Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, upon paying Rent and performing its other covenants and agreements under this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises for the Term without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

14. Improvements. The Landlord shall be responsible for installing, at its sole cost, all improvements which are necessary for the Tenant to provide instructional courses at the Leased Premises. All materials and equipment installed by the Landlord pursuant to this Section 14 shall be subject to the Tenant's approval.

15. Casualty; Condemnation.

- a. Casualty. Should all or any part of the Leased Premises be damaged by fire or other casualty (including, without limitation, flood or rising waters) (a "Casualty"), the Landlord shall proceed with reasonable diligence to restore the Leased Premises at Landlord's expense. However, in the event that the Leased Premises are destroyed or damaged so that Landlord's total restoration of the Leased Premises would require more

than sixty (60) days, the Tenant may terminate the Lease at any time after the occurrence of the casualty.

- b. Condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain, this lease shall terminate and expire as of the date of such taking or the possession of the Leased Premises by the Condemning authority. Eminent domain proceedings resulting in the condemnation of part of the Leased Premises herein that leave the rest usable by Tenant for purposes of the Tenant's provision of instructional courses will not terminate the Lease, unless Tenant, at Tenant's option, terminates the Lease by giving written notice of the termination to the Landlord. The effect of such a condemnation, should such option not be exercised, will be to terminate the Lease as to the portion of the Lease Premises condemned, and leave it in effect as to the remainder of the Leased Premises. Any portion of the condemnation award to which the Tenant is entitled to under law shall be Tenant's.

16. Signage. In accordance and in compliance with all Applicable Laws, Tenant shall have the right to maintain a sign on the Property that designates Tenant's presence on the Property. Further, Tenant shall have the right to install and maintain on the inside and/or outside of the Property, such directional and/or informational signage as Tenant deems necessary to identify the Leased Premises and Tenant's use thereof.

17. Insurance.

- a. Landlord. Landlord shall carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for (i) special form (i.e., "all risk") property insurance for the Property on a full replacement cost basis and (ii) commercial general liability insurance covering the Property, with limits of not less than One Million Dollars (\$1,000,000) combined single limit for personal injury and property damage. Such policies shall (i) have the premiums thereon fully paid on or before the due dates, (ii) be issued by and binding upon a solvent insurance company which is authorized to do business in Texas that has a current A.M. Best's Rating of A-:IX or better, (iii) be subject to commercially reasonable deductibles, (iv) not be cancelable, nor shall the coverage thereunder be reduced, without at least ten (10) days advance written notice to Tenant and (v) with respect to the property insurance policy only, be on a full replacement cost basis, in amounts sufficient to satisfy any co-insurance requirements, and payments for losses thereunder shall be made solely to Landlord. Within twenty (20) days after written request of Tenant, Landlord shall deliver to Tenant certificates evidencing the insurance required to be maintained by Landlord pursuant to this section.
- b. Tenant. Tenant shall maintain at its expense such insurance that it deems necessary and prudent. Upon Commencement Date, the Tenant must provide Landlord with a copy of the insurance certificates evidencing coverage and if the insurance changes in any material manner at any time during the Lease Term, Tenant must provide Landlord a copy of an insurance certificate evidencing such change within thirty (30) days of the change.

18. Indemnity: Waiver of Subrogation.

- a. Indemnity. SUBJECT TO CLAUSE (B) BELOW, LANDLORD RELEASES TENANT AND HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT AND ITS OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL LIABILITIES, CLAIMS, SUITS, ACTIONS AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF SUIT) ARISING OUT OF OR IN CONNECTION WITH ANY INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY (1) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, ITS AGENTS, CONTRACTORS, EMPLOYEES, SERVANTS OR INVITEES OR (2) LANDLORD'S BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT OR OBLIGATION UNDER THIS LEASE OR ANY OTHER DEFAULT BY LANDLORD HEREUNDER.

- b. Waiver of Subrogation. NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, LANDLORD AND TENANT, ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE HEIRS, SUCCESSORS, LEGAL REPRESENTATIVES, ASSIGNS AND INSURERS, HEREBY (A) WAIVE ANY AND ALL RIGHTS OF RECOVERY, CLAIMS, ACTIONS OR CAUSES OF ACTION AGAINST THE OTHER AND ITS RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS, SERVANTS, EMPLOYEES, GUESTS, LICENSEES OR INVITEES FOR ANY LOSS OR DAMAGE THAT MAY OCCUR TO THE LEASED PREMISES OR OTHER PORTION OF THE PROPERTY, OR ANY IMPROVEMENTS THERETO, OR ANY PERSONAL PROPERTY OF SUCH PARTY THEREIN, BY REASON OF FIRE, THE ELEMENTS, OR ANY OTHER CAUSE WHICH IS INSURED AGAINST UNDER THE TERMS OF THE INSURANCE POLICIES REFERRED TO IN SECTION 17 HEREOF, REGARDLESS OF CAUSE OR ORIGIN, INCLUDING THE NEGLIGENCE OF THE OTHER PARTY HERETO OR ITS RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, AGENTS, SERVANTS, EMPLOYEES, GUESTS, LICENSEES OR INVITEES, AND (B) COVENANTS THAT NO INSURER SHALL HOLD ANY RIGHT OF SUBROGATION AGAINST SUCH OTHER PARTY; PROVIDED, HOWEVER, THE WAIVER SET FORTH IN THIS SECTION 18b. SHALL NOT APPLY TO ANY DEDUCTIBLES ON INSURANCE POLICIES CARRIED BY LANDLORD OR TENANT PURSUANT TO THE TERMS OF THIS LEASE. IF THE RESPECTIVE INSURER OF LANDLORD AND TENANT DOES NOT PERMIT SUCH A WAIVER WITHOUT AN APPROPRIATE ENDORSEMENT TO SUCH PARTY'S INSURANCE POLICY, THEN LANDLORD AND TENANT EACH SHALL NOTIFY ITS INSURER OF THE WAIVER SET FORTH HEREIN AND SECURE FROM SUCH INSURER AN APPROPRIATE ENDORSEMENT TO ITS RESPECTIVE INSURANCE POLICY WITH RESPECT TO SUCH WAIVER.

- c. Immunity. Nothing in this Lease constitutes a waiver of immunity to which the Tenant would otherwise be entitled under applicable law.

19. Default.

- a. In case of default in any of the covenants contained herein to be performed by Tenant, including covenant to pay Rent, Landlord may terminate the Lease if such default continues for a period of thirty (30) days after Landlord notifies Tenant of such default and of Landlord's intention to terminate the Lease, such notice to be sent in accordance with Section 20 of this Lease. After such thirty (30) day period shall have expired, unless Tenant shall have completely removed or cured said default (or unless such default is of such a nature that it is incapable of being remedied with such thirty (30) day period, and provided that Tenant diligently prosecutes the remedy of such default until same is completely corrected), this lease shall cease.
- b. In the case of a default in any of the covenants contained herein to be performed by Landlord, Tenant shall be entitled to terminate the Lease upon the occurrence of such default

20. Notices. All notices, demands and requests and other communications required or permitted hereunder shall be in writing and shall be sent by certified mail, return receipt requested, by courier, by hand delivery, or by telephonic facsimile and shall be deemed to be delivered (i) three (3) days after being deposited in a depository of the United States Postal Service if sent by mail, (ii) the next business day if sent by Federal Express or any other nationally recognized overnight courier, or (iii) the next business day if sent by telephonic facsimile with receipt acknowledged by the sending machine before 5:00 p.m. C.S.T. on a business day. Landlord's and Tenant's respective addresses for purposes of this Lease, and to which all notices required hereunder shall be sent, are as follows:

If to the Tenant: Wharton County Junior College
 911 Boling Highway
 Wharton, Texas 77488
 _____ (Facsimile)
 _____ (Telephone)
 Attention: WCJC President

If to the Landlord: Bay City Community Development Corporation
 4000 Avenue F
 Bay City, Texas 77414
 979-323-1642 (Facsimile)
 979-245-8081 (Telephone)
 Attention: Jessica Russell, Executive Director

Either party hereto may change its address for notice by giving three (3) days prior written notice thereof to the other party.

21. Termination. Notwithstanding any other provisions of the Lease to the contrary, the Tenant may terminate this lease without cause by providing the Landlord thirty (30) days prior notice.

The parties acknowledge that the Landlord has established a fund ("Fund") to which various entities have made monetary donations for the purpose of supporting educational interests in Matagorda County. In the event that all of the money in the Fund is expended before the end of the Term of the Lease, the Landlord may terminate the Lease upon providing the Tenant with six (6) months notice. Upon the provision of such notice, the parties agree to make a good faith effort to negotiate a subsequent lease agreement.

22. Miscellaneous.

- a. *Usage.* Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- b. *Successors.* The terms, provisions, covenants and conditions contained in this Lease shall apply to, inure to the benefit of and be binding upon, the parties and upon their respective heirs, legal representatives, successors and permitted assigns.
- c. *Captions.* The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease or any provision of this Lease, and in no way affect the interpretation of this Lease.
- d. *Entire Agreement; Amendment.* This Lease constitutes the entire agreement between Landlord and Tenant related to the subject matter hereof, and supersedes all prior agreements and understandings. This Lease may not be altered, changed, or amended except by an instrument in writing signed by both parties.
- e. *Severability.* 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 it is the intention of the parties that the remainder of this Lease shall not be affected, and it is also the intention of the parties that in place of each clause or provision of this Lease that is illegal, invalid 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.
- f. *Choice of Law; Venue.* This Lease shall be construed in accordance with the laws of the State of Texas, without regard to principles of conflict of laws, and venue shall reside in Matagorda County, Texas.
- g. *Time of the Essence.* It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease. If the date of performance under this Lease falls on a Saturday, Sunday or legal holiday on which banks or public schools in the State of Texas are closed, then the final day of said period or the date of performance shall be extended to the next business day thereafter.
- h. *Multiple Counterparts.* This Lease may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all

purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

EXECUTED to be effective as of the 1st day of December, 2024.

TENANT:

WHARTON COUNTY JUNIOR COLLEGE

By: Betty Meluskey

President, Wharton County Junior College

Date Signed: _____

LANDLORD:

BAY CITY COMMUNITY DEVELOPMENT
CORPORATION

By: _____

JESSICA RUSSELL
Its Executive Director

Date signed: _____

Exhibit A

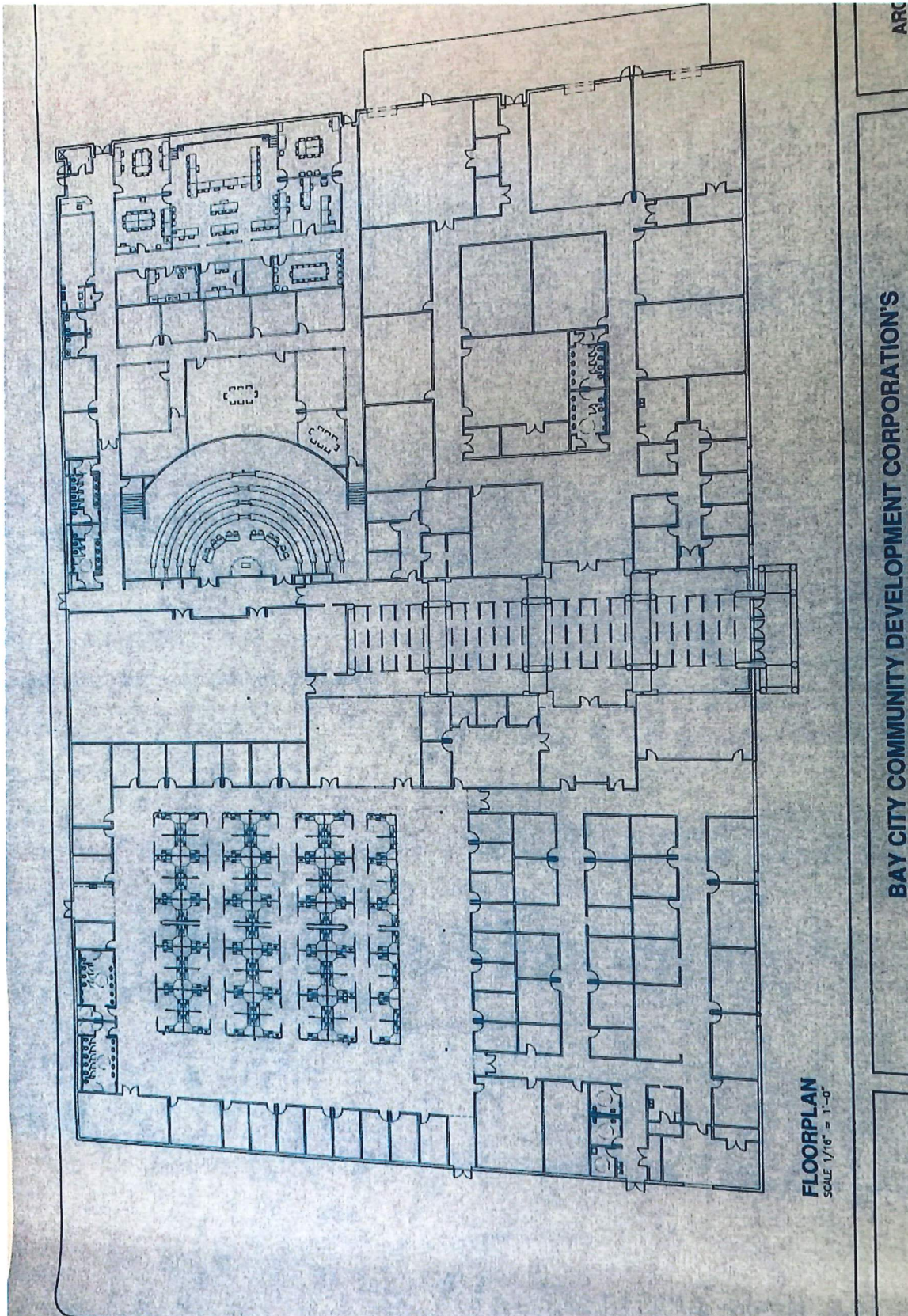


Exhibit B

