



February 16, 2015

## MEMORANDUM

**TO:** District Board of Trustees

**FROM:** Jim Murdaugh, President 

**SUBJECT:** TCC Capitol Center - Reimagining

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### Item Description

This item requests approval and execution of the following documents related to the TCC Capitol Center, formerly known as the Mary Brogan Museum: Amendment to Amended and Restated Lease Agreement, Option to Sublease and Sublease.

### Overview and Background

Since 2003, TCC in partnership with the Leon County School Board and the City of Tallahassee have operated under an agreement to occupy a portion of the building formerly known as the Mary Brogan Museum and now recognized as the TCC Capitol Center. In the space provided, TCC supports the community by making available the following: conference and event space, meeting space, computer lab/classroom and twenty-four (24) offices/cubicles for lease.

Over the last 12 months the 3 stakeholders have worked collaboratively to develop mutually agreed upon revisions to the previously executed agreements. These revisions take into account the mission and vision of each organization. Additionally, they build on the key role shared by all stakeholders in promoting economic development activities and creating a vibrant downtown.

Note by taking the recommended staff action, the College will assume the following roles and functions related to the TCC Capitol Center: building oversight and program development led by innovation.

### Past Actions by the Board

December 9, 2003 - District Board of Trustees approved and executed the following documents: Assignment of Lease and Assignment of Sublease for the property located at 300 W. Pensacola Street and referred to as the Mary Brogan Museum/TCC Capitol Center.

### Funding/Financial Implications

None associated with the recommended action at this time.

**Staff Resource**

Kimberly Moore, N/A

**Recommended Action**

Approval and execution of the following documents: Amendment to Amended and Restated Lease Agreement, Option to Sublease and Sublease Agreement.

**AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT**

THIS AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT (the "Amendment") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between **THE CITY OF TALLAHASSEE**, a Florida municipal corporation (the "City") and the **DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE** ("TCC").

**RECITALS**

WHEREAS, the City, as lessor, and the School Board of Leon County, Florida (hereinafter, the "School Board"), as lessee, executed a Lease Agreement dated January 28, 1992, for use of certain property owned by the City for construction, maintenance, and operation of a community educational facility (the "Lease Agreement");

WHEREAS, the Lease Agreement was amended by the Amendment to Lease Agreement between the School Board and the City dated February 28, 1995, and by the Second Amendment to Lease Agreement between the School Board and the City dated April 11, 1995;

WHEREAS, the School Board received funding under Section 235.196, Florida Statutes, from the Florida Department of Education from the Capital Outlay Debt Service Trust Fund and constructed a community educational facility on property owned by the City;

WHEREAS, the School Board assigned its interest in the Lease Agreement, as amended, to TCC, pursuant to and subject to the terms and conditions of that certain Assignment of Lease dated December 9, 2003 (the "School Board Assignment of Lease") with the consent of the City;

WHEREAS, at the time of the School Board Assignment of Lease, the Lease Agreement was subject to, among other things, the following subleases: (1) Sublease between the School Board, as sublessor, and ODYSSEY Science Center, Inc., as sublessee, dated April 11, 1995, as amended (the "Odyssey Sublease"); and (2) Sublease between the School Board, as sublessor, and Museum of Art/Tallahassee, Inc., as sublessee, dated April 11, 1995, as amended (the "Museum Sublease") (collectively, the Odyssey Sublease and Museum Sublease shall be referred to hereinafter as the "Subleases");

WHEREAS, the School Board assigned its interest in the Subleases to TCC pursuant to that certain Assignment of Subleases dated December 9, 2003 (the "School Board Assignment of Subleases");

WHEREAS, on January 31, 2000, Museum of Art/Tallahassee, Inc. merged into ODYSSEY Science Center, Inc.;

WHEREAS, on June 30, 2000, ODYSSEY Science Center, Inc. changed its name to The Mary Brogan Museum of Art and Science, Inc. (the "Sublessee");

WHEREAS, the Lease Agreement, as amended, was amended and restated by that Amended and Restated Lease Agreement between TCC, as lessee, and the City, as lessor, dated September 20th, 2006 (the "Restated Lease Agreement");

WHEREAS, Restated Lease Agreement was entered into by TCC and the City without the joinder and consent of the School Board, but the terms and conditions of the School Board Assignment of Lease was incorporated into the Restated Lease Agreement by reference;

WHEREAS, the Sublessee operated the premises governed by the Restated Lease Agreement as "The Mary Brogan Museum of Art and Science" until operations ceased in January of 2012;

WHEREAS, the Sublessee was dissolved on September 1, 2013;

WHEREAS, Sublessee has released any claim, right or interest in the Subleases;

WHEREAS, there is a dispute between the School Board and TCC as to whether the leasehold interest assigned by the School Board to TCC under the School Board Assignment of Lease has reverted back to the School Board;

WHEREAS, the City and TCC, with the consent of the School Board, desire amend the Restated Lease Agreement in order to have an agreement to be consistent with the current status and proposed future use of the premises;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the City and TCC agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are hereby incorporated herein as if again set forth in their entirety.

2. **Definitions.** Any terms used herein with an initial capital letter that are not specifically defined herein shall have the same meaning as set forth in the Restated Lease Agreement.

3. **Modifications to the Restated Lease Agreement.**

a. Paragraph 1(c) of the Restated Lease Agreement is deleted in its entirety and replaced with the following:

(c) TCC's mission is to provide learning environments that prepare students for success in a global economy by offering education pathways, workforce opportunities, and civic engagement purposes. The School Board's mission is to prepare students to become responsible, respectful, independent learners equipped with the critical thinking skills necessary to compete in our global society. The parties hereto recognize that the leasehold interest in the Premises is subject to automatic reversion of Lessee's interest to the School Board, should TCC default on its obligations (a) to use the Premises as an educational facility consistent with the missions of both TCC the School Board and City of Tallahassee, (the "Required Use"), and (b) to make the Premises available to students enrolled in the School Board's programs and all residents of the area at a reasonable cost (the "Required Access").

All parties (City of Tallahassee, Leon County School Board and TCC) entering into the Lease agree that the Premises, subject to Paragraph 2 of the Lease, will be used for educational purposes consistent with the mission and vision of both educational institutions and will promote a vibrant downtown that encourages citizen engagement and fosters workforce and economic development through the programs and services offered. As such, any sub-lease entered into by TCC shall include an education focus along with other value-added services meant to invigorate the downtown area and encourage use by local residents and outside visitors. TCC assumes oversight and operating authority for the property/building which includes and is not limited to developing programming that addresses and upholds the aforementioned intent of all parties.

If TCC ceases to use the Premises for the Required Use or ceases to provide the Required Access, then the Lessee's leasehold interest of the Lease shall automatically revert back to the School Board, except under no circumstances will the reversion be deemed effective until the School Board has delivered to TCC written notice that a reversion has occurred.

- b. Paragraph 2 of the Restated Lease Agreement is deleted in its entirety and replaced with the following:

2. The Lessee shall use and maintain the Premises as an educational facility (the "Facility") consistent with the mission of both TCC and the School Board, and Paragraph 1(c) of this Lease. All such uses must be approved in writing by the City Manager, which approval will not be unreasonably withheld (the "Permitted Use").

- c. Paragraph 3 of the Restated Lease Agreement is deleted in its entirety and replaced with the following:

The Term of this Lease shall begin on January 28, 1992, and shall end at midnight on the fiftieth (50th) anniversary of the date on which the Certificate of Occupancy was issued, which date of issuance was October 15, 1997 (hereinafter called the "Term"). This Lease may be terminated by either party, provided the terminating party, prior to the effective date of such termination, gives at least twelve (12) months prior written notice thereof to the other party and to the School Board.

(a) In the event this Lease is terminated by the Lessee while the Lessee holds the leasehold interest in the Premises, and the Florida Department of Education determines that Public Capital Outlay Trust Funds ("PECO") have been improperly expended and must be reimbursed, the Lessee shall be responsible for such reimbursement. The Lessee shall reimburse the Florida Department of Education in amount equal to the product of the total amount of PECO funds provided, and paid to the School Board, for design and construction of the Facility multiplied by a fraction, the denominator of which shall be six hundred (600) and the numerator of which shall be the total number of months remaining in the Term of the Lease. As a result of accepting the School Board Assignment of Lease, TCC assumed and agreed to perform all of the terms, conditions, covenants, agreements and other obligations of Lessee (as that term is defined by the Lease) under the Lease and hereby reaffirms and ratifies its agreement to perform all such obligations. TCC specifically acknowledges and agrees that the obligations of Lessee under the Lease assumed by TCC include, without limitation, the obligations of Lessee under the Lease to reimburse PECO funds as set forth in Paragraphs 1(c) and this Paragraph 3 of the Lease and that the School Board has been relieved of any such reimbursement obligations. In the event the Florida Department of Education determines that the PECO funds in connection with the Facility must be reimbursed, TCC shall be solely responsible for Lessee's PECO reimbursement obligations under Paragraphs 1(c) and Paragraph 3 of the Lease, except that, if the Lease has not terminated, upon a reversion of the leasehold interest of the Lease back to the School Board becoming effective, then the obligations of Lessee under the Lease, including the obligation to reimburse PECO funds as set forth in Paragraphs 1(c) and Paragraph 3 of the Lease arising and accruing after such reversion is effective will revert back to the School Board.

(b) In the event of a termination of the Lease by the City, and the Florida Department of Education determines that PECO funds have

therefore been improperly expended and must be reimbursed, the City shall be responsible for such reimbursement. The City shall reimburse the Florida Department of Education in amount equal to the product of the total amount of PECO funds provided, and paid to the School Board, for design and construction of the Facility multiplied by a fraction, the denominator of which shall be six hundred (600) and the numerator of which shall be the total number of months remaining in the Term of the Lease.

(c) It is understood by both parties that it is not the intent of the State of Florida to fund projects of this nature for an educational facility only to have it abandoned after a few short years of use and that a lease term of at least forty (40) years is required by the Florida Department of Education, and a lease term of at least fifty (50) years is required by the Florida Department of State in order to ensure that funds provided by the State of Florida will be used for the construction of a facility to be used for educational and cultural arts purposes on a long-term basis.

- d. The second sentence of Paragraph 4 of the Restated Lease Agreement is deleted in its entirety.
- e. The following is added as Paragraph 25 of the Restated Lease Agreement:

25. The School Board is relieved of any and all responsibility and liability for actions or activities under the Lease, Subleases, and O&E Agreement, unless and until the leasehold interest of the Lease reverts to the School Board as set forth in Paragraph 1(c) hereinabove, in which case the School Board's liability shall be limited to only those actions or activities arising after the reversion is effective. The School Board shall have no liability for, and TCC shall defend the School Board against, any judgments, claims, demands, suits, actions, losses, penalties, fines damages, costs and expenses, including reasonable attorneys' fees, due or arising out of or from bodily injuries, death, property destruction or damage, workman's compensation claims, illness, or disease arising out of the use and occupation of the Premises. TCC shall also indemnify, save and hold harmless the School Board, to the extent allowed by the laws of the State of Florida and pursuant to Section 768.28, Florida Statutes, from and against any loss, cost, expense, damage, claim, action, cause of action, suit or other liability asserted against the School Board arising out of, or based upon, a failure by TCC to timely perform any covenant, agreement, duty, responsibility or obligation of TCC, as lessee, under the Lease, as sublessor under the Subleases, and as a party to the O&E Agreement.

- f. The following is added as Paragraph 26 of the Restated Lease Agreement:

26. TCC covenants and agrees that during the term of the Lease and any extension thereof, TCC shall not lease, use or occupy the Premises, or permit the Premises to be used, leased or occupied, as a charter school or in any other manner that would compete, directly or indirectly, with any K-12 school or other program of the School Board. The School Board will be entitled, in addition to all other remedies provided in this Lease or by law, without the requirement of posting a bond or other

security, to equitable relief, including injunctive relief and specific performance to enforce this restrictive covenant.

g. The following is added as Paragraph 27 of the Restated Lease Agreement:

27. The City and TCC agree that the School Board shall be an intended third party beneficiary of the Lease for purposes of enforcing Paragraphs 1(c), 2, 3 and 25 through 27 of the Lease.

4. **Entire Agreements and Conflicts.** All terms and conditions of the Lease not inconsistent with this Amendment shall remain in full force and effect during the term of the Lease. In the event of a conflict between the Lease and this Amendment, the terms of this Amendment shall control.

[SIGNATURES INTENTIONALLY PLACED ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties to this Amendment have caused it to be executed at Tallahassee, Leon County, Florida so that it is effective on the Effective Date indicated hereinabove.

CITY:  
CITY OF TALLAHASSEE

Attest: James O. Cooke IV  
Name: James O. Cooke, IV  
Title: City Treasurer-Clerk

By: Anita Favors Thompson  
Name: Anita Favors Thompson  
Title: City Manager

Approved as to form:

By: [Signature]  
City Attorney

STATE OF FLORIDA  
COUNTY OF LEON

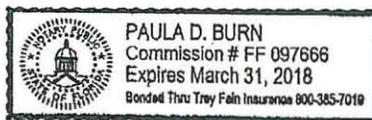
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of January, 2015, by Anita Favors Thompson, as City Manager of THE CITY OF TALLAHASSEE, a Florida municipal corporation, on behalf of such entity. Such person:  is personally known to me; ( ) produced a current driver's license as identification; ( ) produced \_\_\_\_\_ as identification.

Paula D. Burn

(Signature of Notary Public)

(Notarial Seal)

(Typed or Printed Name of Notary Public)



Witnesses:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name \_\_\_\_\_

TCC:

**DISTRICT BOARD OF TRUSTEES OF  
TALLAHASSEE COMMUNITY COLLEGE**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the  
**DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE**, on behalf of  
such entity. Such person: ( ) is personally known to me; ( ) produced a current driver's license as  
identification; ( ) produced \_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed Name of Notary Public)

**CONSENT**

**THE SCHOOL BOARD OF LEON COUNTY, FLORIDA** hereby provides its written consent to the Amendment and hereby ratifies the Restated Lease Agreement, as modified by this Amendment.

Dated this \_\_\_\_ of \_\_\_\_\_, 2015.

Witnesses:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name \_\_\_\_\_

School Board:

**THE SCHOOL BOARD OF  
LEON COUNTY, FLORIDA**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of **THE SCHOOL BOARD OF LEON COUNTY, FLORIDA**, on behalf of such entity. Such person: ( ) is personally known to me; ( ) produced a current driver's license as identification; ( ) produced as identification.

(Notarial Seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed Name of Notary Public)

## OPTION TO SUBLEASE

THIS OPTION TO SUBLEASE (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between **DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE** ("TCC") and the **THE SCHOOL BOARD OF LEON COUNTY, FLORIDA** ("LCSB").

1. **Grant of Option.** TCC, in consideration of the sum of Ten Dollars (\$10.00) paid by LCSB to TCC ("**Option Fee**"), the receipt and sufficiency of which is hereby acknowledged, grants to LCSB the exclusive and irrevocable right and option to lease ("**Option**") the unshaded premises depicted on Exhibit "A" attached hereto (the "**Premises**") which are located on the second floor of the building commonly known as the Mary Brogan Building having a street address of 350 S. Duval Street, Tallahassee, Leon County, Florida (the "**Building**"), together with a right for the benefit of LCSB, its employees, agents, contractors, servants, customers, licensees and other invitees, in common with TCC to the following: ingress and egress to and from the Premises through the Building and over property adjoining the Building outside of the Premises, use of the stairways, walkways, toilet rooms and elevators within the Building but outside of the Premises, use of the common areas within the Building but outside of the Premises, and use of the other areas designated on Exhibit "A", together with all rights appurtenant to the Premises, including full and unimpaired access to the Premises at all times.

2. **Option Period.** The "**Option Period**" shall commence on the Effective Date and shall continue until and expire on the date that is twelve (12) months after the Effective Date (the "**Lease**").

3. **Exercise of Option.** During the Option Period, LCSB may exercise this Option by giving TCC signed written notice of its election to exercise the Option. Such notice shall be addressed and transmitted to TCC pursuant to the provisions of Section 8(b) below.

4. **Lease Terms.** If LCSB exercises the Option, then TCC shall lease to LCSB, and LCSB shall lease from TCC, the Premises under the terms set forth in the Sublease Agreement in a form mutually agreeable to LCSB and TCC (the "**Sublease Agreement**") wherein the permitted use of the Premises shall be for any lawful purpose consistent with the vision and mission of LCSB, including not limited to, use of part or all of the Premises as an educational facility, subject to the written consent of the City Manager, which consent will not be unreasonably withheld, conditioned, or delayed. Rent under the Sublease for the Premises will be the sum of One Dollar (\$1.00) per year, and whereby the term shall be and continue, at LCSB's option, for a period of time no less than the term of that certain Lease Agreement between LCSB, as lessee, and the City of Tallahassee, as lessor, dated January 28, 1992, as amended by that Amendment to Lease Agreement between LCSB and the City dated February 28, 1995, and that Second Amendment to Lease Agreement between LCSB and the City dated April 11, 1995, as assigned from LCSB to TCC via that Assignment of Lease dated December 9, 2003, as amended and restated by that Amended and Restated Lease Agreement between TCC, as lessee, and the City, as lessor, dated September 20, 2006, as amended by that certain Amendment to Amended And Restated Lease Agreement between TCC and the City dated \_\_\_\_\_ (the "**Lease**"). Within ten (10) days after LCSB's exercise of the Option, TCC and LCSB shall enter into the Sublease Agreement in the form attached as Exhibit "B".

5. **Failure to Exercise Option.** If LCSB fails to exercise this Option in accordance with its terms and within the Option Period, then: (a) this Agreement and the rights of LCSB shall immediately terminate without notice, and (b) TCC shall retain the Option Fee paid by LCSB for this Option.

6. **Record of Memorandum of Option.** This Agreement will not be recorded. LCSB may execute and record, at the cost of LCSB, a memorandum of this Agreement in the Public Records of Leon County, Florida.

7. **Brokerage Fee.** TCC and LCSB each represent that it has not engaged the services of any broker or realtor in this transaction, and it does not owe any commission to any person or company. TCC agrees to indemnify, defend, and hold LCSB harmless from any and all fees and commissions owed to persons and companies retained by TCC relating to this Agreement and transaction. LCSB agrees to indemnify, defend, and hold TCC harmless from any and all fees and commissions owed to any persons and companies retained by LCSB relating to this Agreement and transaction.

8. **Miscellaneous.**

(a) **Further Assurances.** Each Party shall, from time to time, execute and deliver such further instruments and documents as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement and, if the Option is exercised, to complete the closing in accordance with the terms of this Agreement.

(b) **Notices.** Whenever any notice, certificate, demand, or consent is required or permitted under this Agreement, such shall be given in writing to the address of the Party listed on page one or at such other addresses as the Party may specify in writing. Notice to LCSB shall be sent to the attention of its Manager. Notice to TCC shall be sent to the attention of its Manager. Notice shall be deemed given, delivered, received, and effective on the earliest of: (i) the date on which it is actually received, (ii) the date of delivery if hand-delivered, (iii) the next business day after it is deposited with a commercial overnight courier service for next business day delivery, or (iv) three (3) business days after its deposit in the United States Mail with postage pre-paid and properly addressed; provided, however, notice not given as above shall be deemed given if and when actually received by a Party. Refusal to receive the notice shall constitute receipt of notice.

(c) **Entire Agreement.** This Agreement (including all exhibits) constitutes the entire agreement between the Parties with respect to the matters addressed in this Agreement. It supersedes all prior written or oral agreements or understandings that may exist with respect to the matters addressed in this Agreement.

(d) **Amendment and Waiver.** This Agreement may not be amended or modified except in writing signed by both Parties. No failure or delay by a Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any right,

power, or privilege. Any waiver of a breach shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach.

(e) **Assignment.** LCSB shall have the right to assign its rights under this Agreement with the prior written consent of TCC and the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. If such an assignment is made, the lease made pursuant to this Agreement shall be consummated in the name of such assignee, who shall succeed to all of the rights, obligations and liabilities of LCSB under this Agreement.

(f) **Binding Effect.** The benefits and obligations in this Agreement shall run with the Premises and shall be binding upon and shall inure to the benefit of the parties and to their respective administrators, trustees, representatives, successors or assigns. This Agreement shall survive a sale or transfer of any interest in the Premises, or any part thereof; provided, however, the foregoing does not authorize any such sale or transfer.

(g) **No Third-Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, any rights or remedies upon any person or entity other than the Parties and as set forth in Sections 8(e) and 8(f), and their successors and permitted assigns.

(h) **Remedies.** Any Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement, and that in the event of a breach or threatened breach of this Agreement, each Party will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. No remedy set forth in this Agreement is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other right or remedy given under this Agreement or existing at law or in equity. Any party may pursue its rights and remedies concurrently or in any sequence, and no exercise of one right or remedy shall be deemed to be an election of remedies. No delay by Any party shall constitute a waiver, election, or acquiescence by it. No single or partial exercise of a right or remedy shall preclude other or further exercise of that or any other right or remedy.

(i) **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, without regard to conflict of laws principles.

(j) **Attorneys' Fees and Costs.** If a dispute arising under this Agreement results in the filing of a lawsuit or other proceeding, then the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and cost. The reasonable costs to which the prevailing Party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

(k) **Severability.** If any provision of this Agreement, or any part of any provision of this Agreement, is determined to be invalid or unenforceable in whole or in part for any reason, it shall be severable from the rest of this Agreement and shall not invalidate or affect the other portions or parts of this Agreement which shall remain in full force and effect and be enforceable according to their terms.

(l) **Survival.** The termination of this Agreement by either Party for any reason, shall not terminate those obligations and rights of the Parties which by their terms are intended to survive, including Sections 7 and 8.

(m) **Time of Essence.** Time is of the essence of this Agreement.

(n) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the requirements of law. The headings used in this Agreement are used for ease of reading purposes only and do not constitute matter to be considered in construing the terms of this Agreement. No provision under this Agreement shall be construed against, or interpreted to the disadvantage of, any Party by reason of such Party having or being deemed to have structured or drafted such provision. Unless a clear contrary intention appears: (i) the singular includes the plural and vice versa; (ii) reference to any person or Party includes such person's or Party's successors and permitted assigns but, if applicable, only if such successor and assigns are not prohibited by this Agreement; (iii) reference to any gender includes each other gender; (iv) reference to any laws and regulations, agreement, document, or instrument means such laws and regulations, agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (v) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such terms; (vi) "or" is used in the inclusive sense of "and/or"; (vii) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section, or other provision hereof; and (viii) unless otherwise indicated, references to "days" mean calendar days (not business or work days).

(o) **Counterparts.** This Agreement may be executed in any one or more counterparts, each of which shall be deemed an original, and all of which shall constitute the entire binding agreement. This Agreement shall become binding when all parties have executed and delivered counterparts to each of the other parties. It shall not be necessary in making proof of this Agreement or any counterpart to produce or account for any of the other counterparts. Any signatures delivered by electronic mail or facsimile will be treated for all purposes as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Witnesses:

TCC:

Printed Name: \_\_\_\_\_

**DISTRICT BOARD OF TRUSTEES OF  
TALLAHASSEE COMMUNITY  
COLLEGE**

Printed Name \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the **DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE**, on behalf of such entity. Such person: ( ) is personally known to me; ( ) produced a current driver's license as identification; ( ) produced \_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed Name of Notary Public)

Witnesses:

LCSB:

Printed Name: \_\_\_\_\_

**THE SCHOOL BOARD OF  
LEON COUNTY, FLORIDA**

Printed Name \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_  
of **THE SCHOOL BOARD OF LEON COUNTY, FLORIDA**, on behalf of such entity. Such  
person: ( ) is personally known to me; ( ) produced a current driver's license as identification;  
( ) produced \_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed Name of Notary Public)

**EXHIBIT A**

**[The Premises]**

See attached *Capital Center, Second floor Planning document, Diagram 2.1*. The rooms identified on this drawing as Lease Space #1 (unshaded area), to include room number 220 through room number 228, are reserved for the purposes of this Option to Sublease.



**EXHIBIT B**

**[Form of Sublease]**

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between **THE DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE** ("SUBLESSOR") and **SCHOOL BOARD OF LEON COUNTY, FLORIDA**, a public body corporate under the laws of Florida ("SUBLESSEE").

**RECITALS:**

WHEREAS, SUBLESSOR is the lessee under that certain Lease Agreement originally between SUBLESSEE, as lessee, and the City of Tallahassee, as lessor ("Master Landlord"), dated January 28, 1992, as amended by that Amendment to Lease Agreement between SUBLESSEE and the Master Landlord dated February 28, 1995, and that Second Amendment to Lease Agreement between SUBLESSEE and the Master Landlord dated April 11, 1995, as assigned from SUBLESSEE to SUBLESSOR via that Assignment of Lease dated December 9, 2003, and as amended and restated by that Amended and Restated Lease Agreement between SUBLESSOR, as lessee, and the Master Landlord, as lessor, dated September 20, 2006, and as amended by that certain Amendment to Amended and Restated Lease Agreement between SUBLESSOR, as lessee, and the Master Landlord, as lessor, dated \_\_\_\_\_ (the "Master Lease");

WHEREAS, SUBLESSOR and SUBLESSEE desire to enter into this Agreement for the purpose of subleasing a portion of the premises described in the Master Lease; and

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations, receipt and sufficiency of which is acknowledged by the execution and delivery of this instrument, SUBLESSOR does hereby covenant and agree with the SUBLESSEE as follows:

1. **LEASED PREMISES.** Subject to the uses and conditions set forth hereinafter, SUBLESSOR hereby leases and demises to SUBLESSEE the unshaded premises depicted on Exhibit "A" (the "Premises") which are located on the second floor of the building commonly known as the Mary Brogan Building having a street address of 350 S. Duval Street, Tallahassee, Leon County, Florida (the "Building"), together with a right for the benefit of SUBLESSEE, its employees, agents, contractors, servants, customers, licensees and other invitees, in common with SUBLESSOR to the following: ingress and egress to and from the Premises through the Building and over property adjoining the Building outside of the Premises, use of the stairways, walkways, toilet rooms and elevators within the Building but outside of the Premises, use of the common areas within the Building but outside of the Premises, use of other parking areas serving the Building, and use of the other areas designated on Exhibit "A", together with all rights appurtenant to the Premises, including full and unimpaired access to the Premises at all times.

2. **TERM OF SUBLEASE:** The term of this Agreement shall begin on \_\_\_\_\_ and shall terminate on October 15, 2047.

3. **RENTAL RATE BASE TERM.** SUBLESSEE shall pay to SUBLESSOR as rent for the Premises rental in the amount of \$1.00 per year.

4. COVENANTS OF SUBLESSEE. SUBLESSEE, for itself, its successors and assigns, does hereby covenant to and with SUBLESSOR as follows:

A. DELIVERY OF ALL REQUIRED PAYMENTS: SUBLESSEE shall pay all sums due hereunder at the time and in the manner provided.

B. USE OF PREMISES: SUBLESSEE shall use the Premises subject to requirements of, and for any lawful purpose permitted by, the Master Lease.

C. ASSIGNMENT/SUBLEASE: SUBLESSEE shall have the right to assign and/or sublease its rights under this Agreement with the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

All parties (City of Tallahassee, Leon County School Board and TCC) entering into the Master Lease agree that the Premises, subject to Paragraph 2 of the Master Lease, will be used for educational purposes consistent with the mission and vision of both educational institutions and will promote a vibrant downtown that encourages citizen engagement and fosters workforce and economic development through the programs and services offered. As such, any sub-lease entered into by the SUBLESSOR shall include an education focus along with other value-added services meant to invigorate the downtown area and encourage use by local residents and outside visitors. The LESSOR assumes oversight and operating authority for the property/building which includes and is not limited to developing programming that addresses and upholds the aforementioned intent of all parties.

D. POSSESSION, END OF SUBLEASE: At the expiration of the term of this Agreement, SUBLESSEE shall peaceably yield to SUBLESSOR the Premises. At the expiration of the term of this Agreement, or any renewal period thereof, SUBLESSEE shall have the option, in its sole discretion, to either leave all alterations and additions, (including fixtures), in place to be owned thereafter by SUBLESSOR or shall have the right to remove all or any part of any alterations or additions (including fixtures).

E. MAINTENANCE, ALTERATIONS AND REPAIRS:

(1) SUBLESSEE shall, at its own expense, make any and all non-structural repairs to the Premises which are required during the term of this Agreement to keep the Premises in good order and repair. At the end of said term, SUBLESSEE shall return said leased property to SUBLESSOR in the condition existing at the commencement of this Agreement, with the exception of the usual wear and tear, fire and the elements, act of God, civil riot, war insurrection, permitted alterations or other unavoidable casualty.

(2) Non-structural alterations or additions may be made at any time without the prior written consent of the SUBLESSOR. Structural alterations or additions may be made only with the prior written consent of the SUBLESSOR and prior written approval of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. All alterations, additions or improvements to the Premises made by the SUBLESSEE shall be made at

the expense of the SUBLESSEE and in compliance with all building ordinances and governmental regulations pertaining to such work.

(3) SUBLESSEE shall pay for all charges for utility services for the Premises.

F. INSURANCE:

(1) SUBLESSEE shall be wholly responsible for insuring its personal property and contents of Premises.

(2) Any and all required insurance shall be maintained by SUBLESSEE from and after the effective date of this Agreement and throughout the balance of the term of this Agreement and all extensions or renewals thereof.

(3) Except for damages proximately caused by SUBLESSOR's negligence or willful misconduct, SUBLESSEE shall indemnify, save and hold harmless the SUBLESSOR, to the extent allowed by the laws of the State of Florida and pursuant to Section 768.28, Florida Statutes, for damage, actions, claims, suits and judgments, including costs and attorneys' fees which arise as a result of the use by SUBLESSEE of the property.

5. DEFAULT OR BREACH. It is further covenanted and agreed by and between the parties hereto that if any default shall be made by SUBLESSEE in any payment of rents or SUBLESSEE for its failure to keep and perform any other covenant, condition or agreement herein provided on the part of SUBLESSEE to be performed, and such default shall exist for a period of fifteen (15) days after notice thereof to SUBLESSEE, then and in that case, SUBLESSOR may serve upon SUBLESSEE written notice of such default; and if such default shall then continue without being wholly remedied for a period of one (1) month after the service of such notice, or in the case of a breach other than the payment of money, SUBLESSEE shall not have commenced the remedying of such default within the one-month cure period and diligently prosecuted compliance to final termination, then it shall be lawful for SUBLESSOR to give written notice of termination of this Agreement, provided, however that SUBLESSEE shall have three (3) months after receipt of such termination notice within which to vacate the property. SUBLESSEE covenants and agrees, upon the termination of said term, to surrender and deliver up said property peaceably to SUBLESSOR or its successors, immediately upon the termination of said term, and this Agreement shall become void and of no effect.

6. COVENANTS OF SUBLESSOR. SUBLESSOR does hereby covenant with SUBLESSEE as follows:

A. SUBLESSOR agrees during the term of this Agreement, and any extension hereof to keep the Building (including the Premises) insured to its full insurable value against loss or damage by fire, lightning, windstorm with extended coverage perils.

B. SUBLESSOR represents that the Master Lease is in full force and effect and that there are no defaults on SUBLESSOR's part under it as of the commencement of the term of this Agreement. SUBLESSOR covenants with SUBLESSEE, upon payment of all rentals due and the performance of all covenants on its part herein contained to be performed, shall have the quiet and peaceful possession and occupancy of the Premises as to title to the Premises.

C. SUBLESSOR shall keep and maintain (a) the roof, structure, columns, walls and foundations, and floors, in sound, watertight condition and good state of repair; and (b) all Building systems and facilities including, but not limited to, the Building electrical, potable water, plumbing, and HVAC in good operating condition, maintenance and repair; and (c) the common areas of the Building, sidewalks, curbs, driveways, parking areas and landscaping in good condition and repair, open and free of debris or other obstruction.

7. SIGNS: SUBLESSEE may erect signs on the exterior and interior of the Premises and at the entrance of the Building. SUBLESSOR shall be entitled to approve all exterior signs as to the size, type and location.

8. MASTER LEASE. Notwithstanding any other provision in the Master Lease and/or this Agreement, Master Landlord agrees to provide SUBLESSEE with written notice of any alleged default by either SUBLESSOR or SUBLESSEE under the Master Lease. SUBLESSEE shall have the absolute right to cure any default by SUBLESSOR which is not cured by SUBLESSOR within thirty (30) days of the alleged date of default or the cure period afforded SUBLESSOR, whichever is later. In the event SUBLESSEE elects to cure SUBLESSOR's uncured default, then SUBLESSEE shall have the right, at SUBLESSEE's sole option, by notice to SUBLESSOR and Master Landlord within thirty (30) days after SUBLESSEE receives notice of the default from Master Landlord, to take an assignment of SUBLESSOR's entire interest in the Master Lease from SUBLESSOR and to assume SUBLESSOR's obligations thereunder, without any further charge or consideration. In the event SUBLESSEE elects to accept such an assignment of the Master Lease from SUBLESSOR and to assume such obligations thereunder within such time period, this Agreement shall terminate without further liability of SUBLESSEE to SUBLESSOR or any other party. Additionally, upon acceptance of such assignment by SUBLESSEE and assumption of the obligations of SUBLESSOR thereunder, SUBLESSOR shall be released of further liability to Master Landlord thereunder. If SUBLESSEE does not elect to take an assignment of SUBLESSOR's rights and assume SUBLESSOR's obligations under the Master Lease within the aforesaid thirty (30) day period, SUBLESSEE shall be deemed to have elected the remedies provided in the next two sentences. In no event shall a default by SUBLESSOR cause a termination of this Agreement. Instead, in the event of such a default, SUBLESSEE shall, with written notice to Master Landlord and SUBLESSOR, pay its base monthly rent and other consideration payable under this Agreement, or perform any other obligations then in default, directly to or for the benefit of Master Landlord, and Master Landlord and SUBLESSEE shall promptly enter into a new Master Lease between them for the Premises on the same terms and conditions as those set forth in this Agreement, wherein Master Landlord will be the "landlord" and SUBLESSEE will be the "tenant."

9. NOTICES. It is understood and agreed that the notices and payments required by the terms hereof be given shall be directed until and unless either party shall request a change of address, as follows:

As to SUBLESSEE:

School Board of Leon County, Florida  
2757 West Pensacola Street  
Tallahassee, Florida 32304

As to SUBLESSOR:

District Board of Trustees of Tallahassee Community College  
444 Appleyard Drive  
Tallahassee, Florida 32304-2895

10. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers as of the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
(1<sup>st</sup> Witness Signature)

\_\_\_\_\_  
(1<sup>st</sup> Witness - Printed Name)

\_\_\_\_\_  
(2<sup>nd</sup> Witness Signature)

\_\_\_\_\_  
(2<sup>nd</sup> Witness - Printed Name)

**SUBLESSEE:**

**SCHOOL BOARD OF LEON COUNTY,  
FLORIDA**, public body corporate under the laws of  
Florida

By: \_\_\_\_\_

Name: \_\_\_\_\_

As Chairman

Signed, sealed, and delivered  
in the presence of:

**SUBLESSOR:  
DISTRICT BOARD OF TRUSTEES OF  
TALLAHASSEE COMMUNITY COLLEGE**

\_\_\_\_\_  
(1<sup>st</sup> Witness Signature)

\_\_\_\_\_  
(1<sup>st</sup> Witness - Printed Name)

\_\_\_\_\_  
(2<sup>nd</sup> Witness Signature)

\_\_\_\_\_  
(2<sup>nd</sup> Witness - Printed Name)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONSENT**

The **CITY OF TALLAHASSEE**, as Master Landlord under the Lease Agreement between SUBLESSEE, as lessee, and the City of Tallahassee, as lessor, dated January 28, 1992, as amended by that Amendment to Lease Agreement between SUBLESSEE and the City dated February 28, 1995, and that Second Amendment to Lease Agreement between SUBLESSEE and the City dated April 11, 1995, as assigned from SUBLESSEE to SUBLESSOR via that Assignment of Lease dated December 9, 2003, and as amended and restated by that Amended and Restated Lease Agreement between SUBLESSOR, as lessee, and the Master Landlord, as lessor, dated September 20, 2006, and as amended by that certain Amendment to Amended And Restated Lease Agreement between SUBLESSOR, as lessee, and the Master Landlord, as lessor, dated \_\_\_\_\_, hereby provides its written consent to the Sublease Agreement. By execution of this consent, Master Landlord does not assume or undertake any contractual obligations to SUBLESSEE, except as expressly provided in the Sublease Agreement.

Dated this \_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF TALLAHASSEE**

By: \_\_\_\_\_

Name: Anita Favors Thompson

Title: City Manager

Attest: \_\_\_\_\_

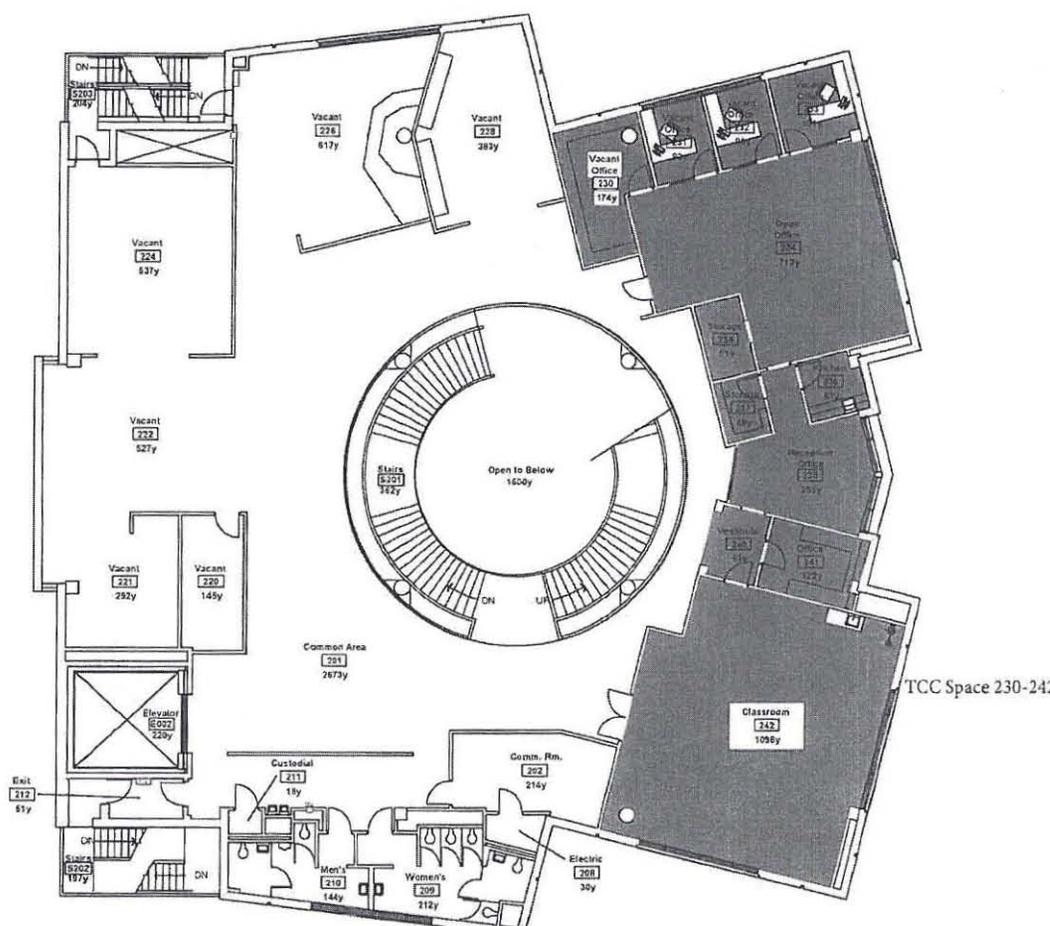
Name: James O. Cooke, IV

Title: City Treasurer-Clerk



**CAPITAL CENTER**  
 Second floor Planning  
 Facilities, Planning & Construction  
 (850) 201-8011

Exhibit A



Second Floor Gross Square Foot	10,796
Common Space:	
209 Women's	212
210 Men's	144
201 Common Area	2673
E002 Elevator	220
202 Comm. Rm.	214
S201 Lobby Stairs	362
<b>Total</b>	<b>3825</b>
Equipment/Emergency Space	500
Lease Space # 1: (hatched gray)	
230 Office	174
231 Office	83
232 Office	83
233 Office	101
234 Open Office	713
235 Storage	61
236 Kitchen	61
237 Storage	49
238 Reception/Office	251
240 Vestibule	69
241 Office	122
242 Classroom	1096
<b>Sub-Total</b>	<b>2863</b>
Vacant Space	
220 Vacant	145
221 Vacant	292
222 Vacant	527
224 Vacant	537
226 Vacant	617
228 Vacant	383
<b>Sub-Total</b>	<b>2501</b>
<b>Total Lease Space</b>	<b>5364</b>
<b>Total 2nd Floor Net Square Footage</b>	<b>9689</b>

Drawn by: WBH  
 Date: 05/29/2014  
 Revised: 06/13/2014

Diagram number  
**2.1**  
 Not to Scale