

**CITY OF SAN ANTONIO  
OFFICE OF THE CITY COUNCIL  
INTERDEPARTMENTAL CORRESPONDENCE SHEET**

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**TO:** Mayor and Councilmembers

**FROM:** Councilwoman Antoniette Moorhouse, District 3

**COPIES TO:** Terry M. Brechtel, City Manager; Yolanda Ledesma, Acting City Clerk; Andrew Martin, City Attorney; Gayle McDaniel, Assistant to City Council; Lou Lendman, Director of Management & Budget; Milo Nitschke, Director of Finance

**SUBJECT:** AGENDA ITEM - DISTRICT 3 LEASE FOR CONSTITUENT OFFICE

**DATE:** March 3, 2003

I respectfully request Council concurrence to place on the March 6, 2003 Council Agenda an ordinance approving the terms of a Lease Agreement with Brooks Development Authority for the use of 1,038 square feet at Brooks City-Base for the District 3 Field Office. The agreement establishes a rental rate of \$468 per month for the period of April 1, 2003 through March 31, 2004 and provides for a 12-month renewal option, subject to City Council approval, and contingent upon annual appropriation of funds.

Your favorable consideration of this matter is requested.

*Antoniette Moorhouse (ic)*  
ANTONIETTE MOORHOUSE, DISTRICT 3

ED GARZA, MAYOR

*Bobby Perez (ic)*  
BOBBY PEREZ, DISTRICT 1

*John H. Sanders*  
JOHN H. SANDERS, DISTRICT 2

*Enrique Martin / Oh*  
ENRIQUE MARTIN, DISTRICT 4

NORA X. HERRERA, DISTRICT 5

*Enrique Barrera*  
ENRIQUE BARRERA, DISTRICT 6

JULIAN CASTRO, DISTRICT 7

*Bonnie Conner*  
BONNIE CONNER, DISTRICT 8

CARROLL SCHUBERT, DISTRICT 9

DAVID CARPENTER, DISTRICT 10

**LEASE AGREEMENT  
(COUNCIL DISTRICT NO. 3 FOR OFFICE SPACE)**

This Lease Agreement ("Lease") is entered into by and between The City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or designee ("**TENANT**"), pursuant to City of San Antonio Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2003, and BROOKS DEVELOPMENT AUTHORITY ("**LANDLORD**").

**I. PREMISES/USE**

**1.1** **LANDLORD** leases to **TENANT** and **TENANT** accepts the "Leased Premises" or "Premises" situated in the City of San Antonio, County of Bexar, State of Texas, such Premises consisting of approximately 1,038 square feet in Building 624, located at 8005 Crouch Road, Brooks City Base, which must be used for City of San Antonio Constituent ("District No. 3 ") office use, but prohibiting personal business or political campaigning. (see **APPENDIX "A"** attached hereto for further description).

**1.2** **LANDLORD** also grants to **TENANT** the non-exclusive right to use all of the parking areas adjacent to the Leased Premises with three designated spaces, two reserved for the handicapped (one of the handicapped parking spaces will be van accessible), and non-exclusive use of the common service drives, appurtenant to the Leased Premises.

**II. GRANTING CLAUSE**

**2.1** **LANDLORD**, in consideration of the covenants and agreements to be performed by **TENANT** and upon the terms and conditions hereinafter stated, leases to **TENANT**, and **TENANT** takes from **LANDLORD**, the Leased Premises, to have and to hold said Leased Premises for the Lease Term as specified below, and any holdover period, unless sooner terminated as herein provided, to be continuously used and occupied during said Lease Term and for any holdover period, by **TENANT**, only for the use(s) permitted herein and not otherwise.

**2.2** **TENANT** has thoroughly and independently inspected the Leased Premises, , and accepts the Leased Premises in an "as-is" condition, subject to the provisions set forth in **Sections 7.4 and 7.5** and subject to completion of the work set forth in **APPENDIX "B"-LANDLORD's WORK** hereof. **LANDLORD** will comply with the San Antonio City Charter, City Code, City and County ordinances, Federal and State laws (collectively "Code") and confirms that the Leased Premises and Building are, or will be, and will continue to be during the Lease Term, (1) suitable for **TENANT's** intended purpose and (2) in compliance with the Americans with Disabilities Act and all regulations thereunder that are applicable to the Leased Premises and the Building. **TENANT** acknowledges that the Leased Premises was originally built to United States Air Force building code requirements and specifications and for the purposes of compliance with the Code during the Lease Term, **LANDLORD** will be treated the same as an owner of property newly annexed to the City of San Antonio.

### III. TERM/RENEWAL OPTION

3.1 The term of this Lease ("Term") will commence on April 1, 2003 ("Commencement Date") and will continue until March 31, 2004 ("Expiration Date"), provided (1) funds are appropriated annually by the San Antonio City Council for rent payments beyond the current City of San Antonio Fiscal Year, as detailed in Section 6.5, and (2) the **TENANT** remains in office, unless the term is sooner terminated as provided elsewhere in this **ARTICLE III**.

3.2 **LANDLORD** agrees and understands that as a local government, **TENANT** is subject to the Texas Public Information Act ("Act"), thus making this Lease subject to the terms of the Act.

3.3 The Parties agree and understand that this Lease is granted for the use of the officeholder of City Council District No.3 of the City of San Antonio, Texas during the Term and holdover period and that in the event the person holding this public office changes during the term of this Lease, or holdover period, whether from the results of an election, resignation, death or any other reason, no further action is necessary to continue this Lease in full force and effect for the remaining Term of this Lease. However, in the event of termination, **TENANT** will not be liable to **LANDLORD** for any further payments of rent or other sums due, or for any damages whatsoever or for specific performance for the balance of the term, following the termination, except for sums due through the date of termination.

3.4 Notwithstanding the foregoing, if such event occurs whereby the current officeholder of District No.3 is no longer able to continue in office, as detailed in the foregoing **Section 3.3**, then **LANDLORD** grants the right to said officeholder's successor in office, at said successor's option, to continue occupancy of the Premises for the remainder of the Term, or holdover period, upon the same terms and conditions herein, as such right is detailed in the assignment provisions hereafter. A successor in office who does not wish to continue occupancy of the Premises, will give **LANDLORD** 30 days advance written notice of termination. Any end of the Term as provided herein will be designated "Termination." Further, if prior to the Commencement Date or at anytime during the Term or Renewal Term hereof, the boundaries of District No. 3 are modified for any reason to the extent that the Premises are no longer included within the boundaries of District No. 3, then this Lease will terminate with 30 days' prior written notice by **TENANT** to **LANDLORD** and both **TENANT** and **LANDLORD** will be relieved of any further obligations whatsoever hereunder. Upon advance notice to **TENANT**, **LANDLORD** will have the right to show the **Leased Premises** to other prospective tenants during said 30-day period.

3.5 **LANDLORD** grants to **TENANT** the right to renew and extend the Term of this Lease for an additional period of 12 months, upon the same terms and conditions as set forth herein, except that the rent is subject to renegotiations. Further, any renewal must be approved by the passage of a future ordinance by the San Antonio City Council.

#### IV. SERVICES BY LANDLORD/TAXES, ETC.

4.1 In addition to the duties set out in **ARTICLE VII.** below, **LANDLORD**, at **LANDLORD'S** sole cost and expense, agrees to and will provide to **TENANT** for the Term of this Lease and any holdover period, all janitorial services required on the Leased Premises, including trash removal, and the Building as necessary for proper upkeep.

4.2 **LANDLORD** agrees to pay all State, City and County taxes, against the real property on which the Building, including the Leased Premises, is located and all assessments and other fees that may arise out of the improvements on said real property prior to such taxes, assessments and other fees becoming delinquent.

4.3 **LANDLORD** agrees to make certain modifications to the Leased Premises as set out on **APPENDIX B ("LANDLORD's WORK")**.

#### V. UTILITIES

5.1 **LANDLORD** agrees, at **LANDLORD'S** sole cost and expense, to provide, maintain and repair all utility services to **TENANT**, including extension of service, separate metering, and payment of monthly charges for such services, as necessary, including but not limited to electric, gas, water and sewer during **TENANT'S** occupancy of the Premises.

#### VI. RENT/SECURITY DEPOSIT

6.1 **RENT:** **TENANT** agrees to pay **LANDLORD** a total monthly rental of \$468.00 beginning on April 1, 2003, and thereafter on or before the first day of each succeeding calendar month during the Lease Term and holdover period.

6.2 **SECURITY DEPOSIT:** The parties agree that **TENANT** will not pay a security deposit.

6.3 **PLACE OF PAYMENT:** **TENANT** will mail all payments to: Brooks Development Authority, 8030 Challenger Drive, San Antonio, Texas 78235, Attention: Fiscal Operations Manager.

6.4 **GRACE PERIOD:** **LANDLORD** agrees to allow **TENANT** a grace period of 10 days past the due date of any payment of rent or otherwise due from **TENANT** to **LANDLORD** before the payment will be considered delinquent.

6.5 **LANDLORD** agrees and understands that **TENANT** has projected costs for this Lease and **TENANT** expects to pay all obligations of this Lease from projected revenue sources, but all obligations of **TENANT** are subject to annual appropriation by the City Council in future years. Accordingly, the above provisions notwithstanding, in the event that **TENANT** will fail to appropriate sums to pay any of the **TENANT** obligations under this Lease, and due to such failure to appropriate, fails to pay such obligations, the **LANDLORD'S** sole option will be to terminate **TENANT'S** right under this Lease and

**TENANT** will have no further obligations hereunder. **TENANT** agrees to give **LANDLORD** a minimum of 30 days written notice if **TENANT** must terminate the Lease because of any non-appropriation.

6.6 **LANDLORD** agrees and understands that the Texas Constitution (Article II, Section 5) prohibits the creation of an unfunded debt by a local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause enforceable on its face against the **TENANT** in this Lease *void ab initio*.

## **VII. REPAIR AND MAINTENANCE**

7.1 **LANDLORD's DUTIES:** **LANDLORD** agrees to repair and maintain in such condition acceptable to **TENANT** for its intended office space purposes, the exterior of the Leased Premises, including, but not limited to, repair and maintenance of the roof, foundation, load bearing walls, and other structural members/elements of the Leased Premises, and of the Building in which the Leased Premises is located, as well as, the exterior and interior (i) plumbing system and fixtures, (ii) electrical systems and fixtures, and (iii) HVAC, (iv) the parking lot, (v) landscaping and (vi) Common Areas of the Leased Premises and of said Building, if any.

7.2 **TENANT's DUTIES:** **TENANT** will maintain the interior of the Leased Premises in a clean and healthful condition, limited to keeping the interior walls and windows clean, to the extent janitorial service provided by **LANDLORD** does not maintain such portions of the Leased Premises. Further **TENANT** will comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal, and other agencies or bodies having any jurisdiction thereof) with reference to use, conditions, or occupancy of the Leased Premises. **TENANT** will use its best efforts to conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb other tenant or **LANDLORD**.

7.3 **NO WASTE:** **TENANT** will not commit or allow any waste to accumulate or damage to be committed on any portion of the Leased Premises and will at the Termination Date of this Lease or at the end of any holdover period, deliver up said Premises to **LANDLORD** in the same original condition as of date of possession, ordinary wear and tear excepted, and upon such Termination Date, **LANDLORD** will have the right to enter and resume possession of the Leased Premises.

7.4 **ASBESTOS SURVEY.** Pursuant to City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999, **LANDLORD** agrees to provide to **TENANT** an Asbestos Survey of the Leased Premises or the Building in which the Leased Premises is located. Such Survey will be provided to **TENANT** within 3 days following the execution of the Lease by **LANDLORD** and will be prepared by an individual licensed by the Texas Department of Health (TDH) to conduct an Asbestos Survey, and will be at **LANDLORD's** sole cost and expense. **TENANT's** taking possession of the Leased Premises, the

Commencement Date of the Term of this Lease and the payment of Rent by **TENANT** will be contingent upon one of the following occurrences:

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

The Management Plan will be prepared by a TDH licensed Asbestos Management Planner or Asbestos Consultant. If the plan is not provided for an Operations and Maintenance (O&M) Program, or for encapsulation or enclosure of friable ACM satisfactory to **TENANT**, or if **LANDLORD** fails to provide either the Asbestos Survey or Management Plan, also at **LANDLORD's** sole cost and expense, or if necessary, a project design, at **LANDLORD's** sole cost and expense, prepared by a Licensed Asbestos Consultant providing for abatement of friable or damaged asbestos in the Leased Premises and Building, then **TENANT**, on 10 days' prior written notice to **LANDLORD**, may terminate this Lease, without any liability whatsoever on **TENANT's** part.

**7.5 PROCEDURE IF PRESENCE OF MOLD SUSPECTED.** If **TENANT** suspects the presence of mold within the Leased Premises, **LANDLORD** will send a representative to make an inspection within 3 business days from the date of receiving notice from **TENANT**. **LANDLORD'S** representative will report the findings to **TENANT** within 3 business days from the date of the inspection. If mold is present, **LANDLORD** may, at its election, remediate the Leased Premises. If **LANDLORD** elects not to remediate, then **TENANT** may elect to terminate this Lease with 3 calendar days' written notice. **LANDLORD** will notify **TENANT** of **LANDLORD'S** election to remediate or not at the same time as **LANDLORD** reports its findings to **TENANT**.

## **VIII. ACCESS TO PREMISES**

**8.1** Provided a representative of **TENANT** is present and always accompanies **LANDLORD** or **LANDLORD's** authorized representatives, **LANDLORD** will have the right, upon 24 hours notice, to enter upon the Leased Premises during **TENANT's** business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon or for the purposes of exhibiting the same to prospective purchasers, at any time during the Lease Term or to prospective tenants within 30 days before the Termination Date of the Term, unless otherwise agreed to in writing by **TENANT**. Further, **LANDLORD** will have the right, without **TENANT's** consent, to enter upon the Leased Premises for emergency purposes, such as, but not limited to, curing of plumbing or electrical problems and for termination and relocation purposes.

## **IX. MORTGAGE OF LANDLORD'S INTEREST**

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

**a. TRANSFER OF LANDLORD's INTEREST:** LANDLORD will notify TENANT of any transfer of the Leased Premises and the name and address of the transferee, and date upon which TENANT is to commence tendering the payment of rent to such transferee.

**b. SUBORDINATION AND ATTORNMENT:** With respect to any future mortgages against, or transfers, of, the Property, and in connection with any requested subordination, TENANT agrees to subordinate its leasehold interest to any mortgage or other transfer instrument executed by LANDLORD, as Owner or transferee or otherwise, which said mortgage or other transfer instrument creates a lien or other encumbrance against the Leased Premises, or to the transferee's interest, if a transfer occurs. Further, TENANT agrees to attorn to the mortgage holder of said mortgage, if foreclosure occurs, or to the transferee, if a transfer occurs, in exchange for said mortgage holder's or transferee's written recognition of TENANT's right to remain in peaceful possession of the Leased Premises under the existing Lease with LANDLORD, if TENANT is not in default in payment of rent or otherwise.

**c. ESTOPPEL CERTIFICATE:** TENANT agrees to furnish from time to time, within 30 days after receipt of a written request from LANDLORD or LANDLORD's mortgagee, a statement certifying, if applicable and to the extent true, the following: TENANT is in possession of the Premises; the Premises are acceptable; the Lease is in full force and effect, the Lease is unmodified; TENANT claims no present charge, lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; there is no existing default by reason of some act or omission by LANDLORD; and such other matters as may be reasonably required by LANDLORD or LANDLORD's mortgagee, including evidence of the subordination of TENANT's leasehold interest referenced herein, and attornment to said mortgagee or transferee in exchange for written recognition of TENANT's right to remain in peaceful possession of the Leased Premises. Such statements may be executed by the City Manager or her designee and will not require City Council approval.

## **X. ASSIGNMENT OR SUBLEASE**

**10.1** TENANT agrees not to assign or sublease the Leased Premises, lease any part thereof, or any right or privilege connected therewith, or to allow any other person, except TENANT's agents and employees, to occupy the Leased Premises or any part thereof, without first obtaining the LANDLORD's prior written consent, such consent not to be unreasonably withheld. LANDLORD agrees and understands that if the TENANT's elected

official occupying the Premises fails to continue in office for any reason whatsoever during the Lease Term, or holdover period referenced above, including, but not limited to, failure to get reelected, then **TENANT** may, without penalty, provide the Leased Premises to the successor in office, at said successor's option to continue peaceful occupancy of the Premises during said Lease Term, or holdover period, upon the same terms and conditions herein. Such process of succession and exercise of the option to occupy are detailed in **Section 3.4** above.

**10.2 LANDLORD** may make an assignment to a mortgagee without prior consent of **TENANT** provided the provisions of **ARTICLE IX.** above are complied with.

## **XI. ALTERATIONS AND ADDITIONS/SIGNAGE**

**11.1 TENANT** will not permit, make or allow to be made, any alterations or physical additions in or to the Leased Premises without the prior written consent of **LANDLORD**, which consent will not be unreasonably withheld. However, **TENANT** may, at its own cost and expense, install an alarm/security system within the Leased Premises, without **LANDLORD's** prior written consent, including the right for the installer of such system to enter into the Leased Premises on or before the Commencement Date for the purpose of such installation, if so desired by **TENANT**. **TENANT** will have the right, within 15 days after the Termination Date, or any holdover period, to remove from the Leased Premises all of its furniture, fixtures, equipment, trade fixtures, furnishings, and other personal property, including any partitions, any alarm/security systems or other items which are not the property of **LANDLORD** and with respect to any damage caused by **TENANT's** negligence in such removal, **TENANT** will have the obligation to restore the Leased Premises to its condition prior to such removal, save and except for damage from normal wear and tear, and subject to appropriation of funds by the San Antonio City Council for such restoration. **TENANT** may place pictures and decorations on the interior walls and doors without **LANDLORD's** prior written consent, provided no large holes are made in the walls by such placement.

**11.2 SIGNAGE: LANDLORD** grants to **TENANT** the right to place a sign or signs on the Leased Premises at a location or locations mutually agreed to by the parties.

## **XII. QUIET ENJOYMENT**

**12.1 LANDLORD** hereby covenants that **TENANT**, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on **TENANT's** part, will and may peacefully and quietly have, hold and enjoy the Leased Premises. **LANDLORD** agrees to use its best efforts to protect **TENANT** from interference or disturbance by other tenants or third persons.

**12.2 LANDLORD** also agrees to abide by the provisions of **ARTICLE IX.** of this Lease as to any mortgage holders, lienholders, and subsequent transferees during the Lease Term and any holdover period.



### **XIII. DESTRUCTION OF LEASED PREMISES**

**13.1** If less than 50% of the Leased Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the Term of this Lease, or any holdover period, **LANDLORD** will (1) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within 30 days after the partial destruction, and (2) diligently pursue the repair work in the order of priority designated by **TENANT**, and (3) complete such repairs within 90 days after the date of destruction. Rent for the Leased Premises will be reduced proportionately or fully abated to the extent to which the repair operations interfere with the normal conduct of **TENANT's** business on the Leased Premises. If the repairs cannot be so made within 90 days after the date of such partial destruction, **TENANT** may terminate this Lease, with 10 days' prior written notice to **LANDLORD**.

**13.2** If 50% or more of the Leased Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the Term of this Lease, or any holdover period, then either **LANDLORD** or **TENANT** may terminate this Lease in its entirety, with 30 days prior written notice to the other party. Rent will cease to be due as of the date the Leased Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason.

**13.3** If neither party terminates under the provisions of **Section 13.2**, then **LANDLORD** will be obligated to provide written notice (the "Restoration Notice") to **TENANT** within 10 days of such event of casualty stating a good faith estimate, certified by an independent architect, of the period of time (the "Stated Restoration Period") which will be required for the repair and restoration of the Leased Premises. **TENANT** will thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period will be in excess of 90 days following the event of casualty, whereupon **TENANT** may terminate this Lease with written notice thereof to **LANDLORD** within 10 days following delivery of the Restoration Notice, or (ii) **LANDLORD** will fail to substantially complete the repair and restoration of the Leased Premises within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of materials or other causes which are agreed to by **TENANT**) and **TENANT** delivers written notice of such termination to **LANDLORD** within 10 days following the expiration of the Stated Restoration Period deadline. Rent will abate (pro rata to the space lost) as of the date the Leased Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason.

### **XIV. INSURANCE**

**14.1 TENANT'S INSURANCE COVERAGE:** **TENANT** will provide such self-insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

**14.2 LANDLORD's INSURANCE COVERAGE:** **LANDLORD** agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 combined

single limits for bodily injury and property damage; and property and casualty insurance for physical damage in an amount not less than 80% of the actual cash value of said Leased Premises.

#### **XV. INDEMNIFICATION**

**15.1** **LANDLORD** and **TENANT** both acknowledge and understand that **TENANT** is a political subdivision of the State of Texas and that **TENANT** is subject to and will comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

#### **XVI. EFFECT OF EMINENT DOMAIN PROCEEDINGS**

**16.1** Eminent domain proceedings commenced which result in the condemnation of a portion or all of the Leased Premises herein or of the Building will allow **TENANT** to terminate this Lease in its entirety, with 30 days' notice to **LANDLORD**. If less than 50% of the Premises is condemned and **TENANT** elects to continue in possession, following 30 days written notice to **LANDLORD**, then **TENANT's** monthly rental for the remainder of the Lease Term will in such case be reduced by the amount that the Leased Premises taken bears to the total rentable square footage of the original Leased Premises. If 50% or more of the Leased Premises is condemned or otherwise made untenable, either **LANDLORD** or **TENANT** may terminate this Lease in its entirety, and **TENANT** and **LANDLORD** will each be entitled to compensation for any loss arising from such condemnation. **LANDLORD** and **TENANT** may pursue their rights to such compensation separately. Rental payments will be abated proportionately for any period of time in which **TENANT** is unable to occupy any portion of the Premises, based on the number of useable square feet therein.

#### **XVII. DEFAULT AND REMEDIES-TENANT'S DEFAULT**

**17.1** An Event of Default in the Lease will occur should **TENANT** neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on **TENANT's** part to be performed or in any way observed and if such default should continue for a period of 30 days after the date of mailing by **LANDLORD** to **TENANT** of written notice from the **LANDLORD**, which notice will specify the exact nature of said default with particularity and how the same may be cured, except for delinquency in the payment of any installment of rent or additional rent wherein such delinquency is a default and must be cured within 10 days after receipt by **TENANT** of written notice of such default. **LANDLORD** will notify **TENANT** of any monetary default by certified or registered mail, return receipt requested, to all required parties as identified in **Section 19.6** of this Lease and the Director of Finance, City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966..

**17.2** Upon failure of **TENANT** to timely cure an Event of Default, as stated above, **LANDLORD** will have the right to terminate this Lease by 5 days' prior written notice to

**TENANT** or without terminating, **LANDLORD** may, without being obligated to do so, re-enter and, to the extent required under the Texas Property Code, as amended, as to **LANDLORD's** duty to mitigate, relet the Leased Premises or any part thereof upon the best rent and best terms possible as soon as reasonably possible and with reasonable effort on the part of **LANDLORD**. **LANDLORD's** remedy will be limited to termination of this Lease and **TENANT's** liability for the payment of rent will be limited to rent due as of the date of termination, without acceleration of rent for the balance of the Term of the Lease.

#### **XVIII. DEFAULT AND REMEDIES-LANDLORD'S DEFAULT**

18.1 An Event of Default in the Lease will occur should **LANDLORD** neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on **LANDLORD's** part to be performed or in any way observed and if such default should continue for a period of 30 days after the date of mailing by **TENANT** to **LANDLORD** of written notice from the **TENANT**, which notice will specify the exact nature of said default with particularity and how the same may be cured, Further, in addition to the general provisions for an Event of Default set forth herein, an Event of Default will occur in the instance of any of the following events:

- a. Appointment of a receiver to take possession of **LANDLORD's** assets,
- b. **LANDLORD's** general assignment of assets for the benefit of creditors,
- c. **LANDLORD's** insolvency, and
- d. **LANDLORD's** taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease.

18.2 Upon failure of **LANDLORD** to timely cure an Event of Default, as stated above, **TENANT** will have the right to immediately terminate this Lease by 5 days' prior written notice to **LANDLORD**. **TENANT's** remedy will be limited to termination of this Lease and **LANDLORD's** liability for the payment of any amounts due to **TENANT** will be limited to amounts due as of the date of termination.

#### **XIX. MISCELLANEOUS**

19.1 **NON-WAIVER**: Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. **LANDLORD's** acceptance of rent installments after a breach is not a waiver of the breach except of a breach of the covenant to pay the rent installment or installments accepted.

19.2 **HOLDOVER**: Except as otherwise provided in this Lease, should **TENANT** hold over the Leased Premises, or any part thereof; without **LANDLORD's** prior written approval, after Termination Date of this Lease, such holding over will constitute and be construed as a tenancy from month to month only, at a rental equal to 110% of the rent paid for the last month of the term of this Lease unless otherwise agreed to in writing by **LANDLORD** and **TENANT**. The inclusion of the preceding sentence, and subject to City

Council approval and appropriation of such rent, will not be construed as **LANDLORD's** consent to **TENANT** to hold over.

**19.3 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 will not be affected and that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The caption of each Article and Section hereof is added as a matter of convenience only and will be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease will be held and construed to include any other gender, and words in the singular number will be held to include the plural, unless the context otherwise requires.

**19.4 COMPLETE AGREEMENT:** This Lease and all Exhibits attached hereto constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease will be deemed to exist or to bind the parties hereto unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

**19.5 BINDING EFFECT:** This Agreement will be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns unless otherwise provided herein.

**19.6 NOTICES:** Any notice required or permitted to be given hereunder by one party to the other will be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified or registered mail, return receipt requested, addressed to the respective party to whom notice is intended to be given at the following address:

**LANDLORD:**

Brooks Development Authority  
8030 Challenger Drive  
San Antonio, TX 78235

**TENANT offices of notification:**

City Clerk  
P.O. Box 839966  
San Antonio, TX 78283-3966

and City Council Member, District 3  
P.O. Box 839966  
San Antonio, TX 78283-3966

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

**19.8 REPRESENTATION OF AUTHORITY:** The signer of this Lease for **LANDLORD** represents, warrants, assures and guarantees that he or she has full legal authority to execute this Lease on behalf of **LANDLORD** and to bind **LANDLORD** to all of terms, conditions, provisions and obligations herein contained.

**19.9 APPLICABLE LAW:** This Lease will be construed under and in accordance with the Constitution and laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

## **XX. CONFLICT OF INTEREST**

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

Effective Date: Ten days after the date of passage of the ordinance referenced on Page 1.

**TENANT:**  
CITY OF SAN ANTONIO,  
a Texas Municipal Corporation  
By: \_\_\_\_\_

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

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

City Clerk

Approved: as to Form: \_\_\_\_\_

City Attorney

**LANDLORD:**  
BROOKS DEVELOPMENT AUTHORITY

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

Print Name: Thomas M Rumora  
Title: Director, Brooks City-Base office

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

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

Mar 14, 2003

**ATTACHMENTS:**

APPENDIX A

Plat and/or Description of Leased Premises

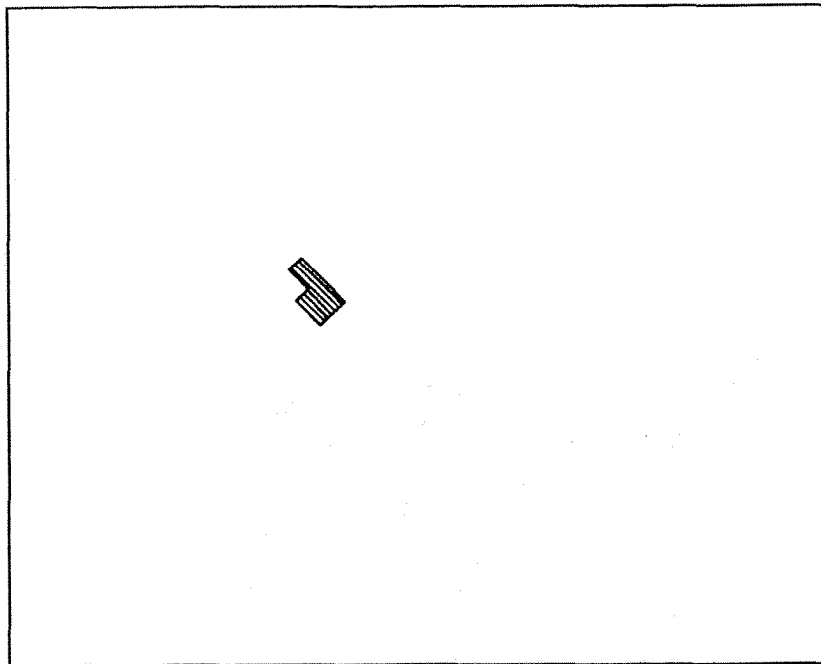
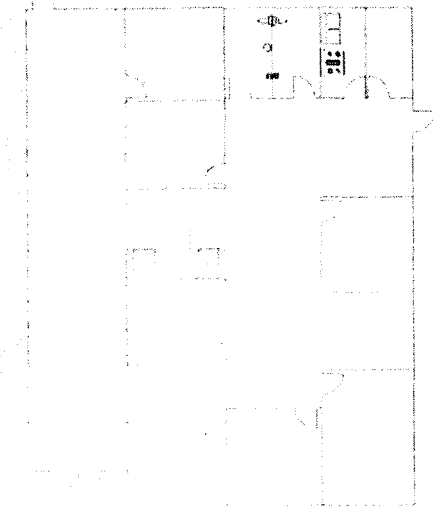
APPENDIX B

Landlord's Work

## APPENDIX A

## Plat and/or Description of Leased Premises

Premises consisting of approximately 1,038 square feet in the northern portion of Building 624, located at 8005 Crouch Road, Brooks City Base, and illustrated in the following drawings:



Improvements to Building 624 for District 3 Lease Premises

1. Replace carpet & covebase
2. Replace damaged ceiling tiles
3. Paint interior walls
4. Relocate interior office door to provide a second interior office
5. Lock/secure door at rear of space
6. Install coffee bar in interior office
7. Install demising wall to secure space from common hallway
8. Replace/repair non-operational electrical components
9. Service mechanical equipment
10. Replace flooring and fixtures in common restrooms with ADA compliant fixtures
11. Paint exterior fence
12. Secure exterior brick veneer at entrance ramp
13. Repair fire exit signs & emergency lights & provide extinguishers for fire code compliance; service fire alarms
14. Modify exterior ramp, handrail and doors for ADA compliance