

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
PUBLIC WORKS DEPARTMENT**

CONSENT AGENDA  
26

**TO:** Mayor and City Council

**FROM:** Thomas G. Wendorf, P.E., Director of Public Works

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Melissa Byrne Vossmer, Assistant City Manager; Lou Lendman, Director of Office of Management and Budget; Rebecca Waldman, Director of Asset Management; Milo D. Nitschke, Director of Finance; Andrew Martin, City Attorney; Jason Cosby, P.E., Assistant Director of Public Works, File

**SUBJECT:** Renewal and Extension of a Lease Agreement with VIA Metropolitan Transit for the use of 725 square feet of retail/office space at the Mid-City Parking Garage

**DATE:** January 29, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the execution of a Renewal and Extension of a Lease Agreement with VIA Metropolitan Transit for a period of two (2) years for the use of 725 square feet of retail/office space at the Mid-City Parking Garage. A monthly rent of \$1,050.00 will be charged commencing on January 1, 2004. Additional fees for Common Area Maintenance of \$36.25 and the tenant's proportionate share for utilities of \$115.00 will also be charged on a monthly basis.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

VIA Metropolitan Transit relocated their Downtown Information Center to the Mid-City Parking Garage on January 1, 2001, under a Lease Agreement for 725 square feet, which was approved by Ordinance 93056. The original Lease Agreement provided for an Initial Term of three (3) years with the right to renew the term for two (2) additional 2-year periods. All renewals require mutual consent and are subject to approval by the City Council.

**POLICY ANALYSIS**

The Parking Fund was established as a self-sustaining enterprise fund. This ordinance is consistent with the City's policy to generate revenue through the leasing of City owned properties. Previous Parking Division leases with similar terms and conditions have been approved in the past and revenues have been added to the Parking Division Operating Fund.

## **FISCAL IMPACT**

Revenues generated by this Renewal Agreement for the first year are estimated to be \$14,415.00, calculated as follows:

Rental Fees January - December 2004	12 months @ \$1,050.00 per month	\$12,600.00
CAM Fee January - December 2004	12 months @ \$36.25 per month	\$435.00
Utility Reimbursement January - December 2004	12 months @ \$115.00 per month	\$1,380.00
		\$14,415.00

Revenues for the second year will remain the same with the exception of the CAM fees, which could increase per the terms of the agreement.

## **COORDINATION**

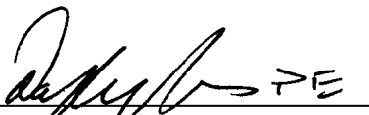
This request has been coordinated with the City Attorney's Office, Risk Management and Asset Management.

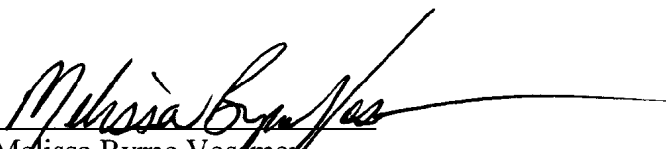
## **SUPPLEMENTARY COMMENTS**

The Discretionary Contract Disclosure Form required by the Ethics Ordinance is attached.

## **ATTACHMENTS**

1. Lease Agreement
2. Discretionary Contracts Disclosure Form

 PE 1/3/04  
65 Thomas G. Wendorf, P.E.  
Director of Public Works

  
Melissa Byrne Vosmer  
Assistant City Manager

Approved:

  
Terry M. Brechtel  
City Manager

## **RENEWAL AND EXTENSION OF LEASE AGREEMENT (Incorporating Amendments to Lease Agreement)**

This Renewal and Extension of Lease Agreement (Incorporating Amendments to Lease Agreement) is entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "LANDLORD"), acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, passed and approved \_\_\_\_\_, 200~~2~~<sup>7</sup>, and VIA METROPOLITAN TRANSIT, a metropolitan transit authority created and conformed pursuant to Article 1118x Revised Civil Statutes of Texas V.A.T.S., codified at Ch. 451 Texas Transportation Code, acting by and through its General Manager, (hereinafter referred to as "TENANT") for the purpose of renewing and extending the terms of that certain Lease Agreement (hereinafter referred to as either "Lease Agreement" or "Lease") approved by Ordinance No. 93056 on December 14, 2000, for the lease of the premises at 260 E. Houston (the "leased premises") containing approximately 725 square feet of gross leaseable floor area (also referred to herein and in the original Lease Agreement as "rentable area contained in the leased premises"), within a structure commonly known as the Mid-City Parking Garage legally described as being a 0.646 acre (28,139.76 sq. ft.) tract of land out of Block 21, New City Block 406 and being the east 5 feet of Lot 5, and all of Lots 6, 7, and 8 of Block 21, New City Block 406, in the City of San Antonio, Bexar County, Texas. The location of the leased premises is shown as the area highlighted on Exhibit A attached hereto and made a part hereof.

### **WITNESSETH: RENEWAL AND EXTENSION**

TENANT has notified Landlord of TENANT's intent to renew and extend the terms of such Agreement, subject to the approval of the City of San Antonio City Council, as evidenced by passage of the ordinance referenced above, such right to renew and extend having been granted by LANDLORD in **ARTICLE III. Term of Lease/Renewal**, Section 3.3 of the Lease Agreement. Further, the following revisions and amendments are made to the Lease Agreement:

A. **ARTICLE III. Term of Lease/Renewal**, of the original Lease Agreement is deleted in full and the following wording is substituted therefor:

#### **"ARTICLE III. Term of Lease/Renewal**

"3.1 The first renewal period of the term of this Lease Agreement shall be for a period of two (2) years ("lease term" or "term") beginning on January 1, 2004 ("Commencement Date") and ending on December 31, 2005, unless terminated earlier.

"3.2 During the last sixty (60) days of the lease term, or thirty (30) days prior to early termination, TENANT agrees to allow LANDLORD to: (1) post a "FOR LEASE" sign in the window(s) of the leased premises and (2) to show the leased premises to potential tenants at those times of the day agreed to by LANDLORD and TENANT.

"3.3 By mutual agreement (rates and other terms) duly approved by the governing bodies, the parties may extend this Lease Agreement for a second renewal period of up to two years from the 31<sup>st</sup> day of December, 2005, that is to begin on January 1, 2006. The second renewal period would then end on or before the 31<sup>st</sup> day of December, 2007."

B. **ARTICLE V. Rental**, Section 5.2 of the original Lease Agreement is deleted in full and the following wording is substituted therefor:

"5.2 **TENANT**, in consideration of said demise, does hereby covenant and agree with **LANDLORD** to pay to **LANDLORD** without deduction or set-off of any kind, during the lease term, the following sums as rent for said leased premises:

"For and during both the First Year and Second Year of the first renewal period of the lease term, the rent is to be paid in equal monthly installments of One Thousand Fifty Dollars and No/100 (\$1,050.00), on or before the first day of each and every month during the First Year and Second Year of said lease term, beginning on the first day of January, 2004."

**C. ARTICLE V. Rental**, Section 5.6 of the original Agreement is amended by changing the amount from "Ninety Dollars and No/100 (\$90.00) per month" to read: "One Hundred Fifteen Dollars and No/100 (\$115.00) per month" as the amount which **TENANT** agrees to pay for **TENANT'S** portion of gas, electricity and water "and also sewer", which reference to "sewer" in quotation marks within the series of portions for which **TENANT** agrees to pay is added to conform to the provisions of **ARTICLE XVIII.**, Section 18.1. Further, as in the original Lease Agreement, this amount shall be in addition to the rent set out in Article V.

**D. ARTICLE XII. Liens**, Section 12.4 of the original Lease Agreement is amended by changing the reference to "Article XXVIII." to read: "Article XXVII."

**E. ARTICLE XIV. Costs of Common Areas**, Sections 14.6 and 14.7 of the original Lease Agreement are deleted in full and the following wording is substituted therefor:

"14.6 During the First Year of the first renewal period of the lease term, it is agreed that **TENANT** shall pay as **TENANT'S** proportionate share of the costs of common areas the amount of five (5¢) cents per square foot per month for each square foot of space that **TENANT** leases from **LANDLORD** under this Lease Agreement, based on 725 square feet or \$36.25 per month payable with, and in addition to, **TENANT'S** monthly rental payments, commencing with the first rental payment due under the terms herein. This monthly amount shall be subject to adjustment annually as hereinafter provided.

"14.7 If after the First Year of the first renewal period of the lease term the costs for maintaining the Common Areas increase over what costs were in effect for said First Year, then during each month of the Second Year of the first renewal period of the lease term **TENANT** agrees to pay each month its adjusted increased proportionate share of the total costs of common areas, as reasonably estimated and determined by **LANDLORD**, which share of costs shall be computed on the ratio that the gross square feet of the leased premises bears to the gross square feet of all leaseable premises on the ground floor of the Mid-City Parking Garage. The estimated annual Costs of Common Areas paid by **TENANT** may be adjusted at the end of the Second Year of the first renewal period of the lease term on the basis of the actual Common Area Costs for such Second Year. Upon the computation of such adjustment, **TENANT** shall pay to **LANDLORD** the amount of any deficiency, or **LANDLORD** shall refund to **TENANT** the amount of any excess, as the case may be, subject to the appropriation of funds by the San Antonio City Council for such refund. If the lease term is renewed and extended for a second renewal period, then if **LANDLORD** and **TENANT** mutually agree to do so, the adjustment may be made by the parties, through application of the deficiency or excess spread as evenly as possible over the twelve (12) months of the First Year of the second renewal period of the lease term."

**F. ARTICLE XV. Laws and Ordinances**, Section 15.4 of the original Lease Agreement is amended by changing the reference to "Building Inspections Department." to read: "Development Services Department."

**G. ARTICLE XVIII. Utilities.** Section 18.1 of the original Lease Agreement is amended by changing the amount from “ \$90.00 per month for electric, gas, water, and sewer services.” to read: “\$115.00 per month for electric, gas, water, and sewer services.”

**H. ARTICLE XXXV. Conflict of Interest.** Section 35.1 is deleted in full and the following wording is substituted therefor:

**"Article XXXV.  
CONFLICT OF INTEREST"**

"35.1 **TENANT** acknowledges that it is informed that the Charter of the City of San Antonio ("City" and "**LANDLORD**" herein) and City's Ethics Code prohibit City or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his or her parent, child or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent 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. **TENANT** certifies, and this Renewal and Extension of Lease Agreement (Incorporating Amendments to Lease Agreement) is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City."

**LANDLORD** and **TENANT** agree that all other terms, conditions, covenants and provisions of the original Lease Agreement, authorized by Ordinance No. 93056 dated December 14, 2000 are hereby renewed and extended, save and except for the Articles and Sections provided for herein, which the undersigned parties agree are either deleted with new wording substituted therefor or amended. Further all references the original Lease Agreement, as in this Renewal and Extension of Lease Agreement (Incorporating Amendments to Lease Agreement) to "lease term" or "term" shall mean the first renewal period of the lease term.

**EXECUTED** to be effective as of January 1, 2004 ("Commencement Date"), regardless of the date signed by either party below.

**LANDLORD:**

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
City Manager

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

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**TENANT:**

**VIA METROPOLITAN TRANSIT**

  
\_\_\_\_\_  
~~General Manager~~ President/CEO

Date: 12/9/2003

## City of San Antonio Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract.

Not Applicable

(2) the identity of any business entity that would be a party to the discretionary contract.

VIA Metropolitan Transit

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract.

Not Applicable

and the name of:

(B) any individual or business entity that is known to be a partner or a parent or subsidiary business entity of any individual or business entity who would be a party to the discretionary contract.

Not Applicable

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Not Applicable

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:

Amount:

Date of Contribution:

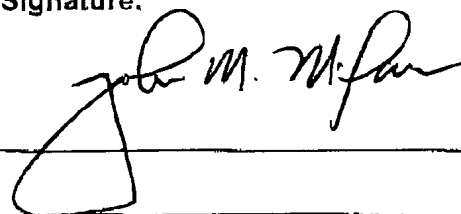
Not Applicable

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Not Applicable

Signature:



Title: President/CEO

Company:

VIA Metropolitan Transit

Date:

January 20, 2004

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.