

**CITY OF SAN ANTONIO
POLICE DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA
ITEM NO. 24

TO: Mayor and City Council

FROM: Albert A. Ortiz, Chief of Police

SUBJECT: Ordinance Authorizing Execution of a Lease Agreement

DATE: December 9, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a new Lease Agreement with Washington Place Joint Venture, dba Washington Place, as Landlord, for the lease of approximately 11,687 square feet of office space at the Washington Place Office Building located at 215 S. San Saba, for use by the San Antonio Police Department, at an average annual rental of \$133,877.00, for a total cost of \$669,384.00 for five (5) years, with the term ending on September 30, 2009.

Staff recommends approval.

BACKGROUND INFORMATION

The lease agreement authorized by City Ordinance No. 90615, dated October 7, 1999 was for 11,072 square feet of office which houses the following Police Department Units: Applicant Processing, Volunteers in Policing, and the School Crossing Guard office. The lease agreement expired September 30, 2004. The reason for the delay in finalizing a new lease agreement is because new language was incorporated in the indemnification clause in reference to liability being apportioned comparatively in accordance with state law. Also, changes were made to the time period and notification requirements in the clause which covers mold in the building.

Currently, the space houses the same units in the same offices. In this new lease agreement, the cost per square foot remains exactly the same as the previous lease, at \$0.899 per square foot per month. The reason for the 5.6% increase in rent is due to the addition of 615 square feet of space which is a conference room. Under a separate lease agreement and until they vacated the property, the Economic Development Department had the building's conference room included in their lease of the property. Since this Department utilizes the conference room, it was decided to include it in this new lease agreement. The new lease agreement will continue to accommodate these units and the public they serve.

POLICY ANALYSIS

The proposed ordinance is consistent with the policy of leasing non-city owned facilities. The rental rate per square foot of this lease agreement remains the same as the previous lease and is consistent with other comparable leased facilities.

FISCAL IMPACT

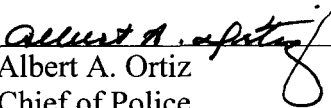
Under the terms of this agreement, the lease of 11,687 square feet of office space will be graduated from a monthly rent of \$10,518.00 or \$126,216.00 per year, to a monthly rent of \$11,804.00 or \$141,648.00 per year, for an average annual rental of \$133,877.00. The total rent for the sixty (60) month lease will be \$669,384.00. Funds are available in the Police Department General Fund budget. Subsequent years' funding is contingent on City Council approval of the annual General Fund budget.

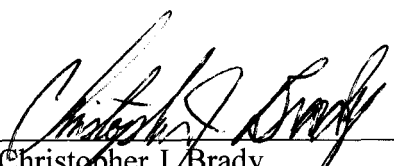
COORDINATION

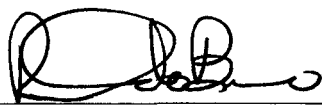
This ordinance request has been coordinated with the Finance Department, Office of Management & Budget, Asset Management, and the City Attorney's Office.

SUPPLEMENTARY COMMENTS

A copy of the Lease Agreement and the required Discretionary Contracts Disclosure Form is attached.


Albert A. Ortiz
Chief of Police


Christopher J. Brady
Assistant City Manager


J. Rolando Bono
Interim City Manager

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:

Max Burkhardt - Owner
Lowell Holmes - Owner
Mrs. Victoria Ellis - Owner

William C. Spencer - Property Manager
Non-Owner

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

NONE

and the name of:

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

NONE

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;

NONE

¹ 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.

NONE


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:
NONE	NONE	NONE

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 question² 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.

Signature: 	Title: Partner Washington Place Company: Joint Venture	Date: 10/20/2004

² 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 refusal or require careful consideration of whether or not refusal is required.

LEASE AGREEMENT

STATE OF TEXAS

§

COUNTY OF BEXAR

§

KNOW ALL MEN BY THESE PRESENTS

§

This Lease Agreement (hereinafter referred to as "Lease") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "Tenant"), a Texas Municipal Corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. _____ dated _____, 2004 and WASHINGTON PLACE JOINT VENTURE, dba Washington Place, (hereinafter referred to as "Landlord") for the rental of office space at the Washington Place Office Building located at 215 S. San Saba, San Antonio, Bexar County, Texas 78207.

1. LEASED PREMISES/USE/PARKING/ACCEPTANCE

1.1 LEASED PREMISES. In consideration of the covenants and agreements contained herein, Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord, approximately 11,687 rentable square feet, located on the first floor of a building known as the Washington Place Office Building (hereinafter referred to as "the Building") located at 215 S. San Saba, San Antonio, Bexar County, Texas 78207, to have and to hold for the Lease Term, as defined hereafter, and any holdover or renewal periods, unless sooner terminated as hereinafter provided. The Leased Premises are more particularly described by (A) Floor Plan and (B) Site Plan/Lot and Block Description, both attached hereto and incorporated herein as Exhibit "A" and Exhibit "B" respectively.

1.2 USE. The Leased Premises may only be used for general office purposes, including, but not limited to, uses by the San Antonio Police Department ("SAPD") and other uses. Tenant will not occupy or use, nor permit any portion of the Leased Premises to be occupied or used for any business or purpose which is not the same as the purpose herein or is lawful in part or in whole or deemed to be disreputable in any manner, or extra hazardous on account of fire, nor permit anything to be done which will in any way increase the rate of fire insurance on the building or contents. However, the presence of firearms and the possible discharge thereof, as well as the presence of any other equipment normally used in the conduct of law enforcement activities shall not constitute any activity which might be construed as extra hazardous on account of fire or otherwise or capable of increasing the rate of fire insurance on the Building or contents.

1.3 PARKING. Throughout the Lease Term and any holdover periods and renewal periods, Tenant and its representatives, agents and employees, shall have first priority to all parking spaces adjacent to the Building in which the Leased Premises is located during normal working hours, evenings, weekends and holidays. Tenant recognizes that Landlord shall utilize the parking lot area for non-Tenant parking during non-business hours. Landlord agrees to assist Tenant in coordinating a decal system for use by Tenant and its employees as to use of the parking area, should Tenant require it.

1.4 ACCEPTANCE OF PREMISES. Tenant has thoroughly and independently inspected the Leased Premises, through its SAPD representative, and accepts the Leased Premises in an "as-is" condition, after completion of Tenant improvements to the Premises to be made by Landlord, at Landlord's own expense, as noted in ARTICLE XIII. and described in Exhibit "C"- Work Letter, Tenant Improvements. Landlord warrants that the Leased Premises and Building are, and will continue to be during the initial and extended terms of this Lease, in compliance with the Americans with Disabilities Act and all regulations thereunder that are applicable to the Leased Premises and the Building.

1.5 ADDITIONAL CONTINGENCIES FOR OCCUPANCY. Landlord agrees to 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, following completion of said improvements, and the Building will

be, and will continue to be during the Lease Term, any holdover period, whether following the original Lease Term or renewal period and during such renewal period: (1) in good and satisfactory condition, (2) suitable for Tenant's intended purpose and (3) in compliance with the Americans with Disabilities Act and all regulations thereunder that are applicable to the Leased Premises and the Building. Further, occupancy by Tenant is also subject to, and contingent upon, the following:

(1) 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 and the Building in which the Leased Premises is located. Such Survey will be provided to Tenant within 3 days following the execution of this 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 Lease 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.

(2) MOLD: 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 five (5) business days from the date of receiving notice from Tenant. Landlord's representative will report the findings to Tenant within fifteen (15) 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 five (5) calendar days' written notice. Landlord will notify Tenant of Landlord's election to remediate or not remediate within ten (10) days of Landlord's reports of findings to Tenant. Landlord will make a good faith effort to assist Tenant in relocating any affected Tenant's employees should mold be present.

II. TERM/RENEWAL

2.1 TERM. The term of this Lease ("Lease Term") will commence on the later of (1) October 1, 2004 or (2) the date Tenant accepts in writing the improvements to the Premises to be completed by Landlord, as noted in ARTICLE XIII. ("Commencement Date") and will continue for a period of five (5) years thereafter ("Expiration Date"), through the later of (1) September 30, 2009 or (2) the fifth anniversary of the date Tenant accepts in writing the improvements to the Premises to be completed by Landlord, as described in Exhibit "C", provided funds are appropriated annually by the San Antonio City Council for rent payments as such appropriation is detailed in ARTICLE VI., and unless the Lease Term is sooner terminated as hereinafter provided. Landlord and Tenant agree to execute a letter evidencing the actual Commencement Date and Expiration Date.

2.2 RENEWAL. Landlord grants Tenant the right to renew and extend the Lease Term for a renewal period of five (5) additional years ("Renewal Term") following the Expiration Date of the Lease Term, on

the same terms and conditions as set forth herein except rent will be renegotiated by Landlord and Tenant at least sixty (60) days prior to the Expiration Date of the Lease Term, with the payment of rent and any other charges due by Tenant subject to annual appropriation discussed elsewhere herein. Tenant agrees to notify Landlord in writing at least thirty (30) days prior to the Expiration Date of the Lease Term of Tenant's intent to renew. Any renewal shall be subject to approval by the San Antonio City Council, as evidenced by passage of a future City of San Antonio Ordinance.

2.3 TEXAS PUBLIC INFORMATION ACT. 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.

III. SERVICES BY LANDLORD/TAXES

3.1 SERVICES. Landlord, at Landlord's own expense, agrees to furnish Tenant while occupying the Leased Premises the following services:

- (a) Within thirty (30) days of the execution date of this Lease, shampoo and clean the entire carpeted area of the Leased Premises.
- (b) Except for those repairs mentioned in paragraph 7.1 of this Lease, maintenance, repair and replacement, of any kind and character to the Leased Premises or to the Building, as required for the proper upkeep of the Leased Premises and/or the Building including, but not limited to, all (1) heating, ventilation, air conditioning, plumbing and electrical systems, so that all systems are in operational condition (2) building structure, specifically including the foundation of the building, (3) common areas of the building, (4) roof, (5) lighting, (6) interior repair caused by normal Tenant occupancy of the Leased Premises and (7) structural soundness of the exterior walls, interior partitions, doors, corridors and windows.
- (c) Provision of all electric, gas, water and sewer services to the Leased Premises.
- (d) Security patrol a minimum of three (3) inspections per month and additional three (3) day inspections Saturday, Sunday, and holidays.

Failure to any extent to furnish or any stoppage of these defined services, resulting from causes beyond the control of Landlord, shall not render Landlord liable in any respect for damages to either person or property, nor be construed, nor be considered as an eviction of Tenant or work in abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Should any equipment or machinery break down, or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have no claim for rebate or rent or damages on account of any interruption in service occasioned thereby or resulting therefrom. However, if after Tenant notifies Landlord in writing of any failure to furnish such services, stoppage of such services, or any equipment or machinery breakdown and Landlord fails to furnish or restore stoppage of such services, or repair such equipment or machinery within ten (10) days, after the date Tenant sends such notice by hand-delivery to Landlord's agent, or by facsimile transmission to such agent, then Landlord that Tenant's rent and other charges will abate for the balance of the period in which the failure to furnish services, restore stoppage, or failure to repair such equipment or machinery and Tenant will be given a rebate for any rent paid in advance or other charges incurred and paid by Tenant for such balance of the period beginning on the eleventh (11th) day after Tenant so notifies Landlord. If Landlord continues to fail furnishing or restore stoppage of such services or to repair such equipment or machinery for fifteen (15) days, then Tenant may terminate this Lease in writing by hand-delivery or facsimile transmission to Landlord, with no further obligation on Tenant's part, except to pay for any past due rent and any other charges up to the day before the date of the original failure to furnish such services, date of stoppage, or date of Landlord's failure to repair such equipment or machinery. Landlord shall be excused from such duty to furnish, restore stoppage, or repair such equipment or machinery within the time period set forth herein, if Landlord provides written evidence to Tenant from a third party, such as a utility provider, or any other source, of any power failure,

emergency, act of God, shortages of supplies or materials or labor for a repair or other cause which continues to be beyond the control of Landlord and beyond such time period.

3.2 TAXES. Landlord agrees to pay, all state, city and county taxes against the real ("real estate taxes") on which the Building, including the Leased Premises, is located and all assessments that may arise out of the improvements on said real property prior to such taxes and assessments becoming delinquent.

3.3 ESCALATION. EXCESS OF TAXES OVER BASE YEAR TAXES. As an additional charge to become due under the terms of this Lease, Tenant agrees to pay to Landlord annually on demand, subject to the appropriation provisions of ARTICLE VI., Tenant's pro rata share of all real estate taxes and/or assessments levied against the entire property, in excess of the total real estate taxes and assessments levied against the entire property and paid for by Landlord for the tax year 2004 ("Base Year"). The parties agree that such pro rata share will be based on the ratio of rentable square feet (11,687 rentable square feet, subject to confirmation of the actual number of such rentable square feet) in the Leased Premises to the total square footage (25,000 rentable square feet) of the Building being 45.8% of the total of the increase annually of said real estate taxes and/or assessments. In the event that Tenant's occupancy of the Leased Premises only extends for only part of any calendar year, then said excess taxes shall be prorated according to occupancy months of any partial calendar year.

3.4 MAINTENANCE. Landlord shall maintain the parking areas, the yard and landscaping and shall provide at its own expense, any and all other repairs and maintenance of the real property on which the Leased Premises and Building are located.

IV. SERVICES BY TENANT

4.1 CARE, REPAIR AND COMPLIANCE BY TENANT. Tenant shall, at Tenant's own expense, subject to the appropriation provisions in ARTICLE VI., keep the Leased Premises and all other improvements to the extent covered by this Lease in sound condition and repair and, also subject to such appropriation provisions, Tenant shall repair or replace any damage or injury done to the Building or any part thereof by the sole active negligence of Tenant or Tenant's agents, employees and invitees or guests caused by defects on any equipment or apparatus kept on the Leased Premises by Tenant. If Tenant fails to make such repairs or replacements promptly or within fifteen (15) days of the occurrence of such damage or injury, subject to the appropriation of funds per ARTICLE VI., then Landlord may at its option make such repair or replacement, and Tenant, subject to such appropriation provisions, shall repay the cost thereof to Landlord on demand, and based on verified statements of payments made to disinterested third parties. Tenant will not commit or allow any waste or damage to be committed on any portion of the Leased Premises, and shall at the termination of this Lease or at the end of any holdover or renewal periods, deliver up said Leased Premises to Landlord in the same original condition as of date of possession, ordinary wear and tear excepted, and upon such termination date, Landlord shall have the right to enter and resume possession of the Leased Premises.

4.2 Tenant agrees to provide and furnish the following services while occupying the Leased Premises:

- (a) Tenant shall pay for its monthly water and sewage usage.
- (b) Tenant shall pay for its monthly electricity consumption.
- (c) Tenant shall provide its own janitorial cleaning service and trash removal.

V. RENT/ SECURITY DEPOSIT

5.1 RENT. Tenant agrees to pay Landlord the following monthly rental:

First Year (first 12 months following Commencement Date)----	-\$ 10,518.00 per month
Second Year-----	\$ 10,834.00 per month
Third Year-----	\$ 11,149.00 per month
Fourth Year-----	\$ 11,477.00 per month
Fifth Year-----	\$ 11,804.00 per month

5.2 Tenant agrees to pay Landlord all rental payments in monthly installments, on or before the first day of each succeeding calendar month during the Lease Term, except that the first monthly rental installment shall be paid by Tenant on the Commencement Date hereof.

5.3 Rent for any fractional month at the beginning or end of the Lease Term shall be prorated based on the actual number of days in said month.

5.4 Tenant shall pay such rent, payable to:

Washington Place Joint Venture
c/o Mr. Max Burkhart
3405A South Jackson Road
Pharr, Texas 78577

5.5 SECURITY DEPOSIT. Landlord agrees that Tenant shall not be required to pay a security deposit.

VI. APPROPRIATION

6.1 OBLIGATIONS SUBJECT TO ANNUAL APPROPRIATION OF FUNDS. 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 of funds by the City of San Antonio City Council in future years, after the first year of the Lease. Accordingly, the above provisions notwithstanding, in the event the Tenant shall fail to appropriate sums to pay any of Tenant's obligations under the terms of this Lease, and due to such failure to appropriate funds Tenant shall not have the funds to pay such obligations, following Tenant's failure to pay such obligations the Landlord's sole option shall be to terminate Tenant's rights under this Lease and neither party shall have any further obligations hereunder. Tenant agrees to use its best efforts to notify Landlord at least thirty (30) days prior to such non-appropriation or, if known by Tenant by such date, then by January 1, 2005 and by each January 1 of each subsequent year of the Lease Term.

6.2 PROHIBITION OF UNFUNDED DEBT. 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. ACCESS TO PREMISES

7.1 As long as a representative of Tenant is present and always accompanies Landlord or Landlord's authorized representatives, Landlord shall have the right to enter upon the Leased Premises during 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 thirty (30) days before the end of the Lease Term unless otherwise agreed to in

writing by Tenant. Further, Landlord shall have the right without Tenant's consent to enter upon the Leased Premises for emergency purposes, such as, but not limited to curing plumbing or electrical problems.

VIII. MORTGAGE OF LANDLORD'S INTEREST

8.1 Landlord shall 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. With respect to any future mortgages against, or transfers of, the Property, and in connection with any requested subordination, Tenant agrees (1) to subordinate its leasehold interest to any mortgage or other transfer instrument executed by Landlord, as Owner, or Transferor or otherwise, as applicable, which said mortgage or other transfer instrument creates a lien or other encumbrance against the Leased Premises, or to the Transferee, if a transfer occurs, and (2) to attorn to the Mortgage Holder of said mortgage, if foreclosure thereof occurs, or to the Transferee, if a transfer occurs, in exchange for said Mortgage Holder's or Transferee's recognition of Tenant's right to remain in peaceable possession of the Leased Premises under the existing Lease with Landlord, as long as Tenant is not in default in payment of rent or otherwise. Landlord shall, within thirty (30) days following the Commencement Date of this Lease, secure a Non-Disturbance and Attornment Agreement from any existing mortgage holder. Furthermore, Landlord agrees to secure a Non-Disturbance and Attornment Agreement from any future mortgage holder, lienholders, and any subsequent purchaser of the Property.

b. Landlord shall notify Tenant not less than thirty (30) days prior to mortgage or transfer of the Leased Premises.

c. It is the intent of the parties hereto, and Landlord agrees to incorporate into any legal documents evidencing a mortgage or transfer of the Property, including but not limited to, a subordination and attornment agreement and an estoppel certificate, language to the effect that any subsequent Mortgage Holder or Transferee or Lessor of the Building and/or the ground (1) will be bound by all of the provisions of this Lease and (2) will recognize Tenant's rights to remain in peaceful possession of the Leased Premises. Tenant agrees to execute any legal documents, evidencing such intent.

IX. ESTOPPEL CERTIFICATES

9.1 Tenant agrees to furnish, from time to time, within fifteen (15) days after receipt of a request from Landlord or Landlord's mortgagee, a statement, commonly called an "Estoppel Certificate," 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. The City Manager or City Manager's designee is authorized hereunder to execute any such statement on behalf of the City of San Antonio and such execution will not require prior approval of the City Council of the City of San Antonio. HOWEVER, if the statement modifies the terms of this Lease by imposing additional conditions or duties upon Tenant, including, but not limited to, an extended cure period for the Landlord or Landlord's mortgagee in the case of Landlord's default, then such City Council's prior approval will be required.

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 written consent, such consent not to be unreasonably withheld. Landlord may make an assignment to a mortgagee without prior consent of Tenant as long as the provisions of ARTICLE VIII., above are complied with.

XI. ALTERATIONS AND ADDITIONS

11.1 Tenant shall 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. Tenant shall have the right, within thirty (30) days after the date of termination of this Lease, or any holdover or renewal period, except when termination is a result of Tenant's default under the provisions of the Lease, to remove from the Leased Premises all of its furniture, fixtures, equipment and furnishings, including any partitions, any alarm systems or other items which are not the property of Landlord and with respect to any damage caused by Tenant's sole active negligence in such removal, Tenant shall have the obligation to restore, and, subject to the appropriation provisions of ARTICLE VI., shall restore the Leased Premises to its condition prior to such removal, save and except normal wear and tear.

XII. GOVERNMENTAL REQUIREMENTS: ACTIVITY ON PREMISES

12.1 Tenant will maintain the Leased Premises in a clean and healthful condition and 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 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 Tenants or Landlord.

XIII. TENANT IMPROVEMENTS

13.1 Prior to the Commencement Date of the Lease Term and Tenant's occupancy of the said Premises Landlord agrees, at its own expense, to construct the Tenant improvements to the Leased Premise as described in Exhibit "C"-Work Letter, Tenant Improvements.

XIV. INDEMNIFICATION

14.1 Landlord covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Tenant and the elected officials, employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives of Tenant, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon Tenant directly or indirectly arising out of, resulting from or related to Landlord's activities under this Lease, including any acts or omissions of Landlord, any employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives of Landlord, and their respective employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives, or of other tenants of the Building adjacent to the Leased Premises, while in the exercise of performance or non-performance of the rights or duties under this Lease. The indemnity provided for in this Article shall not apply to any liability resulting from the negligence of Tenant, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LANDLORD AND TENANT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT,

HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

14.3 Landlord shall promptly advise Tenant in writing of any claim or demand against Tenant or Landlord known to Landlord related to or arising out of Landlord's activities under this Lease..

14.4 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 shall 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. Therefore, Tenant shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or any other loss or claim except as results from Tenant's sole active negligence, as determined by non-binding mediation, to which the parties agree to submit.

XV. INSURANCE

15.1 Tenant shall provide for and maintain commercial general liability coverage, either through self-insurance or any combination of self-insurance and commercial insurance on the Leased Premises for the full term of this Lease and any renewal or holdover terms, with combined single limits, for bodily injury and property damage, in the amount of \$500,000.

15.2 Tenant shall provide such self-insurance as it, deems advisable to insure against losses of any of its property in the Leased Premises.

15.3 Landlord agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 and property and casualty insurance for physical damage to the Leased Premises in the amount of 80% of the actual cash value of said Premises.

15.4 The liability of the Landlord or Tenant for any default by Landlord under the terms of this lease shall be limited to the proceeds of sale on execution of the interest of Landlord in the building and in the land, and Landlord shall not be personally liable for any deficiency. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord.

XVI. RULES OF BUILDING

16.1 Tenant shall comply with the building Rules and Regulation appearing in "Exhibit D" attached hereto, as well as all reasonable changes therein and additions thereto that may, from time to time, be made by Landlord for the operation and protection of the building and the protection and welfare of its Tenants and invitees. Changes and additions shall become effective and a part of this Lease upon delivery of a copy thereof to Tenant. The failure of the Landlord to enforce any of the rules and regulations against the Tenant and/or any other Tenant in the building shall not be a waiver of such rules and regulations. Landlord shall be responsible to Tenant for any nonobservance or violation of any of the rules and regulations by any other Tenant and Landlord will require compliance with all such rules and regulations by all Tenants. Tenant shall be responsible for the compliance with such rules and regulations by the employees, agents and invitees of Tenant. However, if there is any conflict between the Rules and Regulations set forth in Exhibit "D" and this Lease, then the Lease provisions shall control. Further, any monetary obligations

imposed upon Tenant as set forth in Exhibit "D" shall be subject to the appropriation provisions of ARTICLE VI.

XVII. QUIET ENJOYMENT

17.1 Landlord hereby covenants that Tenant, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on part of Tenant, shall 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. Landlord also agrees to abide by the provisions of ARTICLE VIII. of this Lease as to any mortgage holders, lienholders, and subsequent purchasers during the Lease Term and any renewal or holdover periods.

XVIII. EXTERIOR APPEARANCE/SIGNS

18.1 Landlord retains exclusive control over the exterior appearance of the building and the exterior appearance for the Leased Premises as viewed from the public halls and passageways, and Tenant shall not, without Landlord's prior written consent, install any lighting decorations, paintings, drapes, window covering, blinds, shades, signs, lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the building or from public halls and passageways.

XIX. DESTRUCTION OF LEASED PREMISES

19.1 If the Leased Premises are partially destroyed or otherwise made un-tenantable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover or renewal periods, Landlord shall (i) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within sixty (60) days after the partial destruction, and (ii) diligently pursue the repair work in the order of priority designated by Tenant, and (iii) complete such repairs within one hundred eighty (180) days after the date of destruction. Rent for the Leased Premises will be reduced proportionately 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 one hundred eighty (180) days after the partial destruction, Tenant has the option to terminate this Lease.

19.2 If the building in which the Leased Premises are located is more than fifty percent (50%) destroyed, either party may at its option, terminate the Lease whether the Leased Premises are damaged or not.

19.3 If neither party terminates under the provisions of Section 19.2, then Landlord shall be obligated to provide written notice (the "Restoration Notice") to Tenant within sixty (60) 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 shall be required for the repair and restoration of the Leased Premises and/or the Building. Tenant shall thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period shall be in excess of one hundred eighty (180) days following the event of casualty and Tenant terminates this Lease with written notice thereof to Landlord within ten (10) days following delivery of the Restoration Notice, or (ii) Landlord shall fail to substantially complete the repair and restoration of the Leased Premises or the Building within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of material or other causes which are agreed to by Tenant) and Tenant delivers written notice of such termination to Landlord within ten (10) days following the expiration of the restoration period deadline.

9.4 In the Event of fire or other casualty which prevents Tenant from using all or part of the Leased Premises, rent shall abate in proportion to the amount of unusable area for the period which Tenant is unable to utilize the space.

XX. EFFECT OF EMINENT DOMAIN PROCEEDINGS

20.1 Eminent domain proceedings commenced by entities other than Tenant which result in the condemnation of the Leased Premises herein will allow Tenant to terminate this Lease in its entirety. If

Tenant does not terminate, Tenant's rental for the remainder of the Lease Term shall in such case be reduced by the amount that the Leased Premises taken bears to the total rentable square footage to the entire Building. Provided, however, if 40% or more of the Leased Premises is condemned, either Landlord or Tenant may terminate this Lease in its entirety. If the Lease is terminated, Tenant and Landlord shall each be entitled to compensation for any loss arising from such condemnation. Landlord and Tenant may pursue their rights to such compensation separately.

XXI. DEFAULT AND REMEDIES - TENANT'S DEFAULT

21.1 **DEFAULT.** An Event of Default in the Lease shall 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 neglect or failure should continue for a period of thirty (30) days after receipt by Tenant of written notice of such neglect or failure except for the failure or neglect to pay any installment of rent or additional rent wherein such neglect or failure must be cured within ten (10) days' after receipt by Tenant of written notice of such neglect or failure. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Tenant shall be allowed to cure if within said thirty (30) day period Tenant commences and thereafter diligently proceeds to cure such event of Default but under no circumstances shall the period of notice and cure exceed sixty (60) days from the date of such event of Default by Tenant. Landlord shall notify Tenant of any monetary default by certified or registered mail, return receipt requested through the Director of Finance, CITY OF SAN ANTONIO, P.O. BOX 839966, SAN ANTONIO, TEXAS 78283-3966 and Landlord shall also provide notices of a monetary default to all parties described in Section 29.1 of this Lease in the manner prescribed by ARTICLE XXIX. of this Lease.

21.2 **LANDLORD'S REMEDY.** Upon default and failure of Tenant to timely cure an Event of Default as stated above, Landlord may terminate this Lease by tendering ten (10) days' prior written notice to Tenant or without terminating, Landlord may, without being obligated to do so, reenter 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 and other charges will be limited to rent and other charges due as of the date of termination, without acceleration of rent for the balance of the Lease Term.

XXII. DEFAULT AND REMEDIES - LANDLORD'S DEFAULT

22.1 **DEFAULT.** An Event of Default shall occur should Landlord fail to perform any of its covenants or obligations hereunder after the date of commencement of this Lease or 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.
- d. Landlord's taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease, and

said Tenant shall have the right to (1) file an action for damages or (2) terminate this Lease; however, Tenant shall not exercise Tenant's right to sue for damages or to terminate unless and until (1) Tenant gives written notice of such default (which notice shall specify the exact nature of said default with particularity and how the same may be cured) to the Landlord, and (2) said Landlord fails to cure or cause to be cured said default within thirty (30) days from the receipt of such notice from Tenant. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Landlord shall be allowed to cure if within said thirty (30) day period Landlord commences and diligently proceeds to cure said Event of Default, but in no event shall such date extend later than sixty (60) days after the date of the Event of Default by Landlord.

22.2 TENANT'S REMEDY. Any provision in the Lease to the contrary notwithstanding, if Landlord fails to perform its obligations under the Lease and such failure (a) is the result of a condition within the Landlord's control, (b) interferes with the normal use of the Leased Premises or appurtenant parking and/or other common areas by Tenant as allowed herein, and (c) continues for more than five (5) consecutive business days, then the rental shall be proportionately abated until such interference is eliminated or the Leased Premises are otherwise rendered tenantable again. Additionally, if such interference continues for a period of 30 or more consecutive days, then Tenant shall have the right and option to cancel the Lease by giving written notice to Landlord within 15 days after the end of such 30-day period.

XXIII. EFFECT OF WAIVER

23.1 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.

XXIV. HOLDING OVER

24.1 Should Tenant hold over the Leased Premises, or any part thereof, after the expiration or termination of the Lease Term, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to the rent paid for the last month of the Lease Term plus 10% for the entire holdover period unless otherwise agreed to in writing by Landlord and Tenant. The inclusion of the preceding sentence shall not be construed as Landlord's consent for the Tenant to hold over.

XXV. CONFLICT OF INTEREST

25.1 Landlord acknowledges that it is informed that the Charter of the City of San Antonio ("Tenant" herein) 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, a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XXVI. SEVERABILITY

26.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease 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 section hereof is added as a matter of convenience only and shall 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 shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVII. ENTIRE AGREEMENT

27.1 This Lease constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXVIII. PARTIES BOUND

28.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns except as otherwise expressly provided herein.

XXIX. NOTICE

29.1 Except as to hand-delivery, facsimile notification and any other specific means provided herein in another provision of this Lease, any notice required or permitted to be given hereunder by one party to the other shall 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:

Washington Place Joint Venture
c/o Mr. Max Burkhart
3405A South Jackson Road
Pharr, Texas 78577

AND

Spencer Property Management
c/o Mr. William C. Spencer, CPM
5835 Callaghan Road, Suite 215
San Antonio, TX. 78228

Tenant:

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

And with copies to:

San Antonio Municipal Integrity Department
Attn: Virginia Quinn, Director
800 Dolorosa, Suite 115, San Antonio TX 78207

AND

City of San Antonio
Department of Asset Management
Municipal Plaza
114 W. Commerce Street-2nd Floor
San Antonio, TX 78205

XXX. COUNTERPARTS, ONE AGREEMENT

30.1 This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one Agreement. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXI. LEGAL AUTHORITY

31.1 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 the terms, conditions, provisions and obligations herein contained.

XXXII. TEXAS LAW TO APPLY

32.1 This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

Effective on the Commencement Date referenced in Section 2.1 and agreed to in writing by letter between Landlord and Tenant.

LANDLORD:

WASHINGTON PLACE JOINT VENTURE
A Limited Partnership

By: _____, its General Partner

By: _____

Name: _____

Title: _____

Date Signed: _____, 2004

TENANT:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BY: _____

_____ Manager

Date Signed: _____, 2004

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

By: _____

City Attorney

Exhibit "A"- Floor Plan (Description of Leased Premises)

Exhibit "B"- Site Plan/ Lot and Block Description

Exhibit "C"-Work Letter, Tenant Improvements.

Exhibit "D"- Building Rules and Regulations

EXHIBIT C

WORK LETTER, TENANT IMPROVEMENTS

Landlord, at Landlord's sole cost, shall repaint 100% of the Demised Premises covered by this lease, replace the ceiling tile in the Conference Room, San Antonio Police Department Recruiting Office, and install new carpet in the Conference Room.