

AN ORDINANCE **101844**

**AUTHORIZING A TWO YEAR DISTRICT 3 CONSTITUENT OFFICE
LEASE AGREEMENT, CALLING FOR \$468.00 PER MONTH IN RENT
AND ONE TWO-YEAR RENEWAL OPTION.**

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is hereby authorized and directed to execute and deliver on behalf of the City a lease agreement with Brooks Development Authority in substantially for the form attached as **Exhibit A**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City Manager or her designee are further authorized and directed to take all other actions reasonably necessary or convenient to effect the transaction reflected in Exhibit A, including agreeing to non-material changes to the terms thereof.

SECTION 2. Funds for this expenditure are part of the FY06 budget.

SECTION 3. Payment of \$468.00 monthly is authorized in the FY06 to Brooks Development Authority and should be encumbered upon issuance of a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio for the City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall become effective December 25, 2005 unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it shall be effective immediately.

PASSED AND APPROVED this 15th day of December, 2005.



M A Y O R

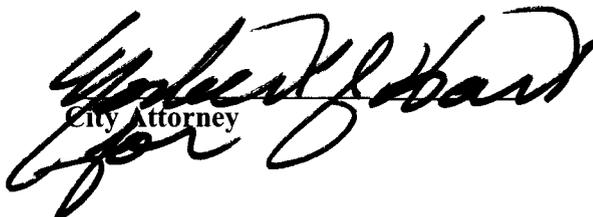
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Exhibit A

**Lease Agreement
(Council District No. 3 Constituent Office)**

This Lease Agreement ("Lease") is entered into by and between Landlord (identified below) and the City of San Antonio, a Texas municipal corporation (Tenant), pursuant to the Authorizing Ordinance.

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1. Information.

Landlord: Brooks Development Authority, a Texas Defense Base Development Authority

Landlord's Address: 830 Challenger Drive, San Antonio, Texas 78235

Authorizing Ordinance:

Premises: Approximately 1,492 net rentable square feet of office space located in Suite 2, Building 624 E, 8005 Crouch Road, Brooks City_Base, San Antonio, Bexar County, Texas, as more particularly described on **Exhibit A**.

City Council District: 3

Commencement Date: January 1, 2006

Initial Term: Two years

Renewal Term: One, two-year renewal term
Rent: \$468 monthly
Address for Payment: Same as Landlord's Address
Pre-Commencement Work: If requested by Tenant, Landlord must clean the carpet and touch-up the paint where needed within the Premises
Asbestos Survey Deadline: 30 days before the Commencement Date

2. Premises/Use/Parking.

2.1. Description of Premises. The Premises are as identified above and are to be used for a City of San Antonio City Council member constituent office for the district indicated above. Use of the Premises for personal business or political campaigning is prohibited. The building in which the Premises are located is referred to in this lease as the "Building."

2.2. Parking. Tenant has the non-exclusive right to use all of the parking areas adjacent to the Premises. In addition, Tenant has three designated spaces, two of which are reserved for the handicapped. One of the handicapped parking spaces must be van accessible. Tenant also has non-exclusive use of the common service drives appurtenant to the Building.

3. Granting Clause.

3.1. Grant. Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold the Premises for the Term(s) of this agreement, unless sooner terminated as herein provided, to be continuously used and occupied by Tenant, only for permitted use(s).

3.2. Acceptance of Premises. Tenant has inspected the Premises, through its District Council Member and members of his staff, and accepts the Premises in an "as-is" condition.

4. Initial Term/Renewal Option.

4.1. Initial Term. The initial term of this Lease is as indicated above.

4.2. Contingencies. This lease is contingent on (i) the City Council of the City of San Antonio adopting an ordinance authorizing this lease, (ii) Tenant's occupancy not being sooner terminated according to this agreement, and (iii) City Council making annual appropriations for the payment of rent. If Tenant is unable to pay sums due hereunder because City Council fails to appropriate money to pay such sums, Landlord's sole remedy is to terminate this Lease. Upon such termination, Tenant will have no further obligations hereunder.

4.3. Electoral Changes. This Lease is granted for use as a City Council District constituent office. If the current officeholder does not continue in office, officeholder's successor may, but need not, agree to occupy the Premises for any Term of this Lease. The successor's occupancy, if any, will be on the same terms and

conditions as the current officeholder, and the successor will be presumed to continue this Lease unless Tenant gives written notice of termination for the reason that the successor elected not to occupy the Premises. If the boundaries of the District are modified for any reason such that the Premises are no longer included within its boundaries, then this Lease will terminate on 30 days' prior written notice by Tenant to Landlord. Both Tenant and Landlord will thereupon be relieved of any further obligations hereunder, except for sums owing or liabilities incurred for the period before termination.

4.4. Renewal Option. Tenant may, at its option, renew and extend this lease for a two-year Renewal Term by delivering written notice of intent to do so to Landlord. Tenant must deliver the notice not less than 30 days before expiration of the Initial Term. The Renewal Term will be governed by this lease and will be at the same Rent as the primary term. The Renewal Term must be approved by future ordinance of the San Antonio City Council.”

4.5. Termination Without Cause. After the first year, Tenant may terminate this Lease for any reason by giving 90 days' advance written notice to Landlord. If Tenant terminates, Tenant will not be liable to Landlord hereunder for any matters arising out of or relating to the period after termination. Upon advance notice to Tenant, Landlord will have the right to show the Premises to other prospective tenants during the 90-day period.

5. Services.

5.1. Utilities. Landlord represents that all electric and water connections are available to the Premises. Landlord must, at Landlord's sole cost and expense, pay all monthly charges for utility services, as necessary, including but not limited to, electric, water, and sewer. Tenant must pay for any telephone, cable, satellite, or other television services, and connections for security service, if used by Tenant.

5.2. Repair and Maintenance. During Tenant's occupancy of the Premises, at its sole cost and expense, Landlord must repair and maintain, in condition acceptable to Tenant for its intended office space purposes, the entire exterior and interior of the Premises, including, but not limited to the exterior roof, foundation, load bearing walls, and other structural members/elements of the Premises and of the Building in which the Premises are located, as well as the exterior and interior (i) plumbing system and fixtures, (ii) electrical systems and fixtures, (iii) ceiling and walls, (iv) windows and doors, (v) HVAC, (vi) the parking lot, (vii) landscaping and (viii) Common Areas of the Premises and of the Building if any, and all other portions of the exterior and interior of the Premises, not otherwise detailed herein, including a trash receptacle for use by Tenant.

5.3. Janitorial Service. At Landlord's sole cost and expense, Landlord will provide to Tenant all janitorial services, including trash removal, necessary for proper upkeep.

6. Rent/Security Deposit.

6.1. Rent. Rent is due on the first of each month.

6.2. Security Deposit. Tenant will not pay a security deposit.

6.3. Place of Payment. Tenant will mail all payments to the Address for Payment.

6.4. Grace Period. Tenant has a 10 day grace period past the due date before any payment owing hereunder is considered delinquent.

6.5. Prohibition of Unfunded Debt. The Texas Constitution (Article II, Section 5) prohibits unfunded debts of local governments. The prohibition includes contractual indemnity clauses, thus making any indemnity by Tenant void *ab initio*.

7. Landlord Obligations.

7.1. Before the Commencement Date, Landlord must complete all Pre-commencement Work.

7.2. Landlord must comply with the San Antonio City Charter, City Code, City and County ordinances, federal and state laws (collectively "Code") and confirms that the Premises, following completion of the improvements and the Building will be, and will continue to be during any occupancy governed in whole or in part by this instrument (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 applicable regulations thereunder, including a restroom located within the Premises. Further, occupancy by Tenant is also subject to, and contingent upon, the following, unless otherwise satisfied by Landlord, as indicated herein:

(1) Asbestos Survey. Not later than Asbestos Survey Deadline, Landlord must provide Tenant an Asbestos Survey of the Premises and the Building in which the Premises is located, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

(2) Mold. If Tenant delivers notice to Landlord of the possible presence of mold in the Premises, Landlord must inspect within three business days from receipt of the notice. Landlord must report the findings to Tenant within three business days from the date of the inspection. If mold is present, Landlord may, at its election, remediate the Premises. If Landlord does not remediate, then Tenant may elect to terminate this Lease with three 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.

8. Landlord's Access to Premises.

If a representative of Tenant is present and accompanies Landlord or its representative, Landlord may, upon 24 hours' notice, enter on the Premises during Tenant's business hours for the purposes of abating nuisances, protecting or inspecting the Premises, or making repairs, additions, or alterations. Under the same conditions, Landlord or his

representative may further enter the Premises for the purpose of exhibiting them to prospective purchasers or, within 30 days before expiration of a term of this Lease, to prospective tenants. Further, Landlord may, without Tenant's consent, enter the Premises for emergency purposes, such as, but not limited to, curing of plumbing or electrical problems.

9. Transfer of Landlord's Interest.

Landlord may (1) mortgage or (2) sell or otherwise transfer, in whole or in part, its interest in the real property and Building, including the Premises, located thereon (collectively as "Property") with the following conditions:

a. Transfer of Landlord's Interest. Landlord must notify Tenant of any transfer of the Premises, the name and address of the transferee, and the date, if any, that Tenant is to start tendering payments to the transferee.

b. Attornment. Tenant will attorn to the mortgage holder or transferee in exchange for the mortgage holder's or transferee's written recognition of Tenant's right to remain in peaceful possession of the Premises under the Lease, subject to Tenant not being in default under the Lease. Further, Landlord will use its best efforts to secure a subordination, non-disturbance and attornment agreement from the present mortgage holder protecting Tenant from Landlord's default thereunder.

c. Estoppel Certificate. Tenant will 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: (i) Tenant is in possession of the Premises; (ii) the Premises are acceptable; (iii) the Lease is in full force and effect, (iv) the Lease is unmodified; (v) Tenant claims no present charge, lien, or claim of offset against rent; (vi) 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; (vii) Landlord is not in default under the Lease; and (viii) such other matters as may be reasonably required by Landlord or Landlord's mortgagee. Such statements may be executed by the City Manager or the manager's designee without City Council approval.

10. Assignment or Sublease.

Except for successor officeholders, Tenant will not assign or sublease the Premises, or any part thereof.

11. Alterations and Additions/Signage.

11.1. Alterations and Additions. Tenant will not permit, make, or allow to be made, any alterations or physical additions in or to the Premises without the prior written consent of Landlord, which consent will not be unreasonably withheld. Tenant may, at its own expense, install an alarm/security system without Landlord's prior written consent. Tenant may direct the installer of such system to enter the Premises on or before the Commencement Date for the purpose of installation. Tenant may, within 15 days after the Termination Date, or the end of any holdover period, remove from the Premises all of its furniture, fixtures, equipment, trade fixtures, furnishings, and other

personal property, including any partitions, alarm/security systems, or other items not the property of Landlord. If Tenant damages the Premises in removing such items, Tenant will restore the Premises to its condition prior to such removal, save and except for 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.

11.2. Signage. Tenant may place a sign or signs on the Premises at a location or locations mutually agreed to by the parties.

12. Quiet Enjoyment.

Tenant will and may peacefully and quietly have, hold, and enjoy the Premises. Landlord agrees to use its best efforts to protect Tenant from interference or disturbance by other tenants or third persons.

13. Destruction Of Premises.

13.1. Destruction Of Less Than 25% Of Premises. If less than 25% of the Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason, Landlord will (1) commence the repair of the 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 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 Premises. If the repairs cannot be so made within 90 days after the date of such partial destruction, Tenant may terminate this Lease on 10 days' prior written notice to Landlord.

13.2. Destruction Of 25% Or More Of Premises. If 25% or more of the Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during any occupancy under this Lease, 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 Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or any other reason.

13.3. Landlord's Obligation To Restore Premises. If neither party terminates, then Landlord must provide written notice ("Restoration Notice") to Tenant within 10 days of such event of casualty stating a good faith estimate, certified by an independent architect or bonded general contractor, of the period of time (the "Stated Restoration Period") required for the repair and restoration of the Premises. Tenant will thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period is greater than 90 days following the event of casualty or (ii) Landlord fails to substantially complete the repair and restoration of the 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). Rent will abate (pro rata to the space lost) as of the date the Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other

reason. Termination will be by written notice thereof to Landlord within 20 days following expiration of the Stated Restoration Period.

14. Insurance.

14.1. Landlord's Insurance Coverage. Landlord must 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 the Premises.

14.2. 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 Premises.

15. Effect of Eminent Domain Proceedings.

Condemnation of all or part of the Premises or of the Building entitles Tenant to terminate this Lease in its entirety, with 30 days' written 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, Tenant's monthly rental for the remainder of the then effective Term will in such case be reduced in proportion to the percentage that the Premises taken bears to the total rentable square footage of the original Premises. If 50% or more of the 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.

16. Tenant's Default.

16.1. Tenant's Events of Default; Right To Cure. If Tenant fails to perform or observe any of the terms, provisions, conditions or covenants herein contained, other than the payment of Rent, and such failure continues for a period of 30 days after written notice specifying the default with particularity and how the same may be cured, it is an Event of Default under this lease. If Tenant fails to pay rent timely, and such failure continues for a period of 20 days after written notice thereof, it is an Event of Default under this lease.

16.2. Landlord's Remedy. Upon failure of Tenant to timely cure an Event of Default, Landlord may terminate this Lease on 10 days' prior written notice to Tenant. Landlord's remedy is limited to termination of this Lease and Tenant's liability for the payment of rent is limited to rent due as of the date of termination, without acceleration of rent for the balance of the Lease. Landlord is conclusively presumed to be able to mitigate all rent damages by reletting the Premises.

17. Landlord's Default.

17.1. Landlord's Events Of Default; Right To Cure. It is an Event of Default if Landlord neglects or fails to perform or observe any of the terms, provisions, conditions, or covenants herein contained and if such failure continues for 30 days after

written notice, which notice will specify the exact nature of the default with particularity and how the same may be cured. Further, the occurrence of any of the following events is an Event of Default:

- 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.

17.2. Tenant's Remedy. Upon the occurrence of a Landlord Event of Default, Tenant may immediately terminate this Lease by providing five days' prior written notice to Landlord. Tenant's remedy will be limited to termination of this Lease.

18. Dispute Resolution.

18.01. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

18.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

18.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

18.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

18.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

18.06. Mediator fees must be borne equally.

18.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

19. Holdover.

Except as otherwise provided in this Lease, if Tenant continues occupying the Premises, or any part thereof; without Landlord's prior written approval after this Lease expires, the occupancy will constitute a month to month tenancy. Rent will accrue at a rate equal to 110% of the Rent stated in this Lease. This clause does not constitute Landlord's consent to Tenant's holding over.

20. Miscellaneous.

20.01. Representation Of Authority. The signer of this Lease for Landlord represents and warrants 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.

20.02. Foreclosure. If the Premises are foreclosed Tenant must attorn to the purchaser and recognize such sale and such purchaser as Landlord under this Lease, if the purchaser recognizes Tenant's rights under this Lease and will agree not to disturb Tenant's possession of the Premises so long as Tenant is not in default hereunder.

20.03. Waiver of Lien. Landlord waives all common law and statutory liens against the property of Tenant.

20.04. Taxes. Landlord must pay, before delinquency, all state, city, and county taxes (if any) against the real property on which the Building, including the Premises, is located and all assessments and other fees arising out of the Premises' improvements.

20.05. Applicable Law. This Agreement is entered into in San Antonio, Bexar County, state of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

20.06. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

20.07. Successors. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

20.08. Integration. **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of**

Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

20.09. Modification. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

20.10. Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

20.11. Notices. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested. Notices to Landlord must be sent to the address specified at the beginning of this agreement to the attention of the Executive Director. Notice to Tenant must be sent to the address set forth below. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to conform to the requirement that mailings be done by certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Tenant Address for Notice:

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

20.12. Pronouns. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

20.13. Captions. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

20.14. Public Information Act. As a local government, Tenant is subject to the Texas Public Information Act, thus making this Lease subject to that act.

20.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

20.16. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

20.17. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

20.18. No Special Relationship. The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant:

Landlord:

City of San Antonio, a Texas municipal corporation, by:

Brooks Development Authority

Signature: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A
