

AN ORDINANCE 2006-04-13-0472

AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH FAULKNERUSA FOR 1,000 SQUARE FEET OF SPACE AT THE HENRY B. GONZALEZ CONVENTION CENTER FOR A TERM OF TWO (2) YEARS, COMMENCING MAY 1, 2006 THROUGH APRIL 30, 2008 AT A MONTHLY RENTAL RATE OF \$500.00.

* * * * *

WHEREAS, FaulknerUSA, a Texas corporation, is constructing the Convention Center Hotel and is seeking an area within the Henry B. Gonzalez Convention Center (the "Center") to construct a model of condominiums that will be available for lease when construction is completed and to use such model to promote preleasing of said comdominiums; and

WHEREAS, the City of San Antonio has identified 1,000 square feet of space within the Center that could be used for such purpose; and

WHEREAS, FaulknerUSA has agreed to lease said space and, by the terms of a Lease Agreement with the City, pay a monthly rental fee of \$500.00; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Lease Agreement between the City of San Antonio and FaulknerUSA for the use of approximately 1,000 square feet of space located in the Henry B. Gonzalez Convention Center hereby approved. A copy of the Lease substantially in its final form is attached as "EXHIBIT A" and made a part of this ordinance. A final copy of the Lease will be attached when executed.

SECTION 2. The City Manager or the City Manager's designee is hereby authorized to execute a Lease Agreement with FaulknerUSA for the use of 1,000 square feet of space located in the Henry B. Gonzalez Convention Center for a monthly base rent of \$500.00.

SECTION 3. The proceeds of this agreement shall be deposited into Fund 29006000, entitled "Hotel Motel Tax Fund," Internal Order 242000000001, entitled "Convention Center," and the General Ledger Account 4407231, entitled "Facility Rental Income."

The \$3,000 reimbursement shall be deposited into Fund 29006000, entitled "Hotel Motel Tax Fund," Cost Center 4201010001, and the General Ledger Account 6301130, entitled "Recovery of Prior Year Expenditure."

SECTION 4. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund

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Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 13th day of APRIL 2006.



M A Y O R

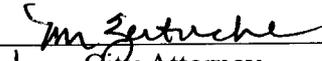
PHIL HARDBERGER

ATTEST:



Patricia M. Viced
City Clerk

APPROVED AS TO FORM:


for City Attorney

Agenda Voting Results

Name: 5.

Date: 04/13/06

Time: 10:44:17 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing the execution of a lease agreement with FaulknerUSA for 1,000 square feet of space at the Henry B. Gonzalez Convention Center for a term of two years, commencing May 1, 2006 through April 30, 2008 at a monthly rental rate of \$500.00. [Presented by Michael Sawaya, Director, Convention Facilities; Roland A. Lozano, Assistant to the City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10	Not present			
MAYOR PHIL HARDBERGER	MAYOR		x		

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 "Landlord"), a Texas Municipal Corporation acting by and through its Director of Convention Facilities and Faulkner USA Inc., a corporation formed in accordance with the laws of the State of Texas, (hereinafter referred to as "Tenant") for the lease of premises located at 200 E. Market Street, San Antonio, Bexar County, Texas 78205 (hereinafter referred to as "Leased Premises").

I. LEASED PREMISES/USE

1.1 In consideration of the covenants and agreements contained herein, subject to (i) all laws, codes, rules, regulations and ordinances of any governmental or quasi-governmental entity (hereinafter referred to as "Laws") and to (ii) all matters of record which affect or relate to the Leased Premises (hereinafter referred to as "Permitted Exceptions"), Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord, one thousand (1,000) square feet of usable space in the Henry B. Gonzalez Convention Center (hereinafter referred to as the "Center") located at 200 E. Market Street, San Antonio, Bexar County, Texas 78205, to have and to hold for the Lease Term and any holdover or renewal periods, unless sooner terminated as hereinafter provided. The Leased Premises are more particularly designated and shown on site plan, **Exhibit "A"** attached hereto, which shows the Leased Premises as part of the entire premises.

1.2 The Leased Premises will be used by Tenant as hotel room/condominium mock-ups. The permitted uses may be expanded by Tenant upon Landlord's written consent, which shall not be unreasonably withheld by Landlord.

1.3 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 stated in Section 1.2 above or is unlawful in part or in whole or deemed to be disreputable in any manner, or is in violation of any Laws or Permitted Exceptions. Tenant must procure at its sole expense any permits and licenses required for the transaction of its business in the Leased Premises and otherwise comply with all Laws and Permitted Exceptions.

1.4 Tenant will maintain the Leased Premises in a clean and healthful condition and comply with all Laws, 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 Landlord, tenants or Landlord's Licensees.

II. TERM/RENEWAL/TERMINATION

2.1 The primary term of this Lease Agreement shall be for a period of twenty four (24) months, with a Commencement Date of May 1, 2006 and an Expiration Date of April 30, 2008 unless terminated earlier as provided herein.

2.2 Tenant may request an extension of the terms of this Lease Agreement in writing and within ninety (90) days of the expiration lease term. Landlord, in his sole discretion, may renew the terms of this Lease Agreement for a period of time not to exceed six (6) months but may not be less than \$500.00 per month. If Landlord renews the terms of this Lease Agreement, then the monthly rent during the renewal terms shall be negotiated between Tenant and Landlord prior to the end of the primary term. In the event that Landlord and Tenant cannot agree to a monthly rental amount prior to

the expiration of the primary term or the renewal term, as applicable, either party will have the option to terminate this Lease Agreement within thirty (30) days written notice to the other party.

2.3 Notwithstanding any other terms of this Lease, Landlord and Tenant agree that should Landlord find that this Lease is not in its best interest, it may notify Tenant of such finding and terminate this Lease upon ninety (90) days prior written notice to Tenant.

III. SERVICES BY LANDLORD

3.1 Landlord agrees to provide maintenance, repair and replacement as may be required on the Leased Premises and common areas for proper upkeep of the building structure.

3.2 Landlord warrants and represents that the Leased Premises are currently serviced by and will continue to be serviced by all necessary utilities, including but not limited to, electric, gas, water, sewer.

3.3 Landlord agrees to provide telecommunication service to Tenant upon written request by Tenant and at Tenant's expense. Any installation or use of telecommunication services by Tenant other than that provided by Landlord is prohibited under this Agreement.

IV. SERVICES BY TENANT

4.1 Tenant agrees to provide and furnish the following services in reference to the Leased Premises during its occupancy:

- (a) Tenant shall keep Leased Premises in good repair.
- (b) Tenant shall be responsible for janitorial cleaning service and trash removal.

V. RENT /TAXES

5.1 **Base Rent.** Tenant agrees to pay Landlord base rent ("Base Rent") in the following monthly installments commencing on the Rent Commencement Date ("R.C.D."), and continuing thereafter on the 1st day of each month.

<u>For the period that is:</u>	<u>Monthly Base Rent</u>	<u>Monthly Base Rent Per S.F.</u>
1 – 24 months after the R.C.D.	\$500.00	\$0.50

5.2 **Prorated Rental Payment.** Should Tenant elect to occupy the Lease Premises prior to May 1, 2006, Landlord shall prorate the amount of rent due in accordance with the Base Rent for the month. For example, should Tenant elect to occupy the Leased Premises on April 15, 2006 the amount due to Landlord for that month's rent shall be determined by dividing the Monthly Base Rent (\$500.00) by the number of days in April (30) and then multiplying that number by the number of days Tenant occupies the Leased Premises prior to the Rent Commencement Date (15). The formula is as follows:

$$(\$500.00/30) \times 15 = \$250.00$$

5.3 **Additional Rent.** Without limiting in any way Tenant's other obligations under this Lease, Tenant agrees to pay to Landlord \$3,000.00 upon initial occupation of the Leased Premises for services performed in preparing the Leased Premises. After such payment, Tenant shall pay monthly as additional rent ("Additional Rent") the sum of \$0.00. per square foot per month (CAM charges, as defined below) \$0.00 monthly payable on the Rent Commencement Date and on the first day of each month of the Primary Lease Term thereafter through April 30, 2008.

5.4 **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against any

personal property or fixtures placed in or on the Leased Premises.

VI. ALTERATIONS AND ADDITIONS

6.1 Tenant accepts lease space in "as is" condition and shall be responsible for and will pay for all finish-out costs for the Leased Premises. All work and materials must be coordinated with and approved by Convention Center staff. Any and all improvements made to the property by Tenant shall become the property of Landlord after the Lease term or upon termination of this Lease by Landlord.

6.2 Tenant shall not do, nor suffer to be done, anything on the Leased Premises, during the term of this Lease, in violation of the laws of the United States, the State of Texas, or any of the ordinances of CITY including, but not limited to, license and permit requirements of the CITY of San Antonio. Further, Tenant shall obey all rules and regulations of the CITY of San Antonio for the government and management of the San Antonio Convention Facilities, together with all rules and requirements of the police and fire departments of CITY.

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. 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. ASSIGNMENT OR SUBLEASE

8.1 Tenant may not assign or sublease any part of the Leased Premises or any right or privilege connected therewith.

VIX. TENANT'S PROPERTY

9.1 Any personal property of Tenant located on the Leased Premises shall remain the property of Tenant and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its personal property which it may have in the Leased Premises. Tenant, at its sole cost and expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such property and upon expiration or earlier termination of this Lease shall leave the Leased Premises in a neat and clean condition, normal wear and tear excepted. The parties hereto agree that any property or other items, if not removed by Tenant from the Leased Premises on or before ten (10) days after the termination of this Lease, shall be deemed to become the property of Landlord, and may be removed by Landlord at Tenant's expense.

X. INDEMNITY

10.1 Landlord 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, acts of terrorism, court order, requisition or order of governmental body or authority or any other loss or claim except as results from the sole active negligence of Landlord, as determined by a court of competent jurisdiction and upon final adjudication or settlement. Under no circumstances shall Landlord be liable or responsible in excess of the limits of liability under the Texas Tort Claims Act.

XI. QUIET ENJOYMENT

11.1 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, subject to the Laws and Permitted Exceptions. Landlord agrees to use good faith efforts to protect Tenant from interference or disturbance by third persons.

XII. DESTRUCTION OF LEASED PREMISES

12.1 If the Leased Premises are partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover or renewal periods, this Lease Agreement shall terminate.

XIII. INSURANCE AND INDEMNITY

13.1 Tenant shall provide for and maintain commercial general liability coverage 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.

13.2 Tenant shall provide such insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

13.3 Landlord and Tenant acknowledge that the Landlord is a political subdivision of the State of Texas and 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. This Lease will be interpreted according to the Constitution and laws of the State of Texas.

XIV. DEFAULT AND REMEDIES – TENANT'S DEFAULT

14.1 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 ten (10) 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 ten (10) days shall be required because of the nature of the Event of Default, Tenant shall be allowed to cure if within said ten (10) 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 thirty (30) days from the date of such Event of Default by Tenant. Landlord shall notify Tenant of any monetary default.

14.2 Upon an Event of Default and failure of Tenant to cure as stated above, Landlord may terminate this Lease by written notice to Tenant.

XV. DEFAULT AND REMEDIES - LANDLORDS DEFAULT

15.1 A "Landlord Default" shall occur should Landlord fail to perform any of its covenants or obligations hereunder after the Commencement Date of this Lease. In the event of a Landlord Default, Tenant shall have the right to terminate this Lease; however, Tenant shall not exercise Tenant's right 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 Landlord Default, Landlord shall be allowed to cure if within

said thirty (30) day period Landlord commences and diligently proceeds to cure said Landlord Default, but in no event shall such date extend later than sixty (90) days after the date of the Landlord Default.

15.2 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) materially and adversely interferes with the normal use of the Leased Premises 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, in accordance with the formula in Section 5.2, until such interference is eliminated or the Leased Premises are otherwise rendered tenantable again.

15.3 The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the amount of one month's rent.

XVI. EFFECT OF WAIVER

16.1 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.

XVII. HOLDING OVER

17.1 Should Tenant hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only, terminable by either party upon thirty (5) days prior written notice to the other, at a rental equal to the rent paid for the last month of the term of this Lease plus twenty-five percent (25%) 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.

XVIII. CONFLICT OF INTEREST

18.1 Tenant acknowledges that it is informed that the Charter of the City of San Antonio ("City" and Tenant 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 warrants and certifies, and this Lease is made in reliance thereon, that it, its officers and employees are neither officers nor employees of City.

XIX. SEVERABILITY CLAUSE AND INTERPRETATION

19.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease then 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

The EFFECTIVE DATE shall be the Commencement Date set forth in Section 2.1.

EXECUTED this _____ day of _____, 2004.

CITY OF SAN ANTONIO
A Texas Municipal Corporation

FAULKNER USA
A Texas Corporation

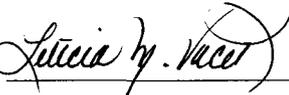
BY: _____

BY: _____

Sheryl L. Sculley
City Manager

Carl Alan Kernodle
Vice President

ATTEST:

BY:  _____

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney