TM [12/4/14]
Item No. 22B.

AN ORDINANCE 2014-12-04-0962

APPROVING A LEASE AGREEMENT FOR 4,000 SQUARE FEET OF OFFICE AND WORKSHOP SPACE WITH BROOKS DEVELOPMENT AUTHORITY LOCATED IN COUNCIL DISTRICT 3, AT 2712 FLIGHT NURSE FOR A TERM COMMENCING UPON OCCUPANCY AND ENDING SEPTEMBER 30, 2017 AT THE MONTHLY RATE OF $1,666.67 TO SERVE AS A RADIO SHOP FOR THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funding in the amount of $15,842.36 for this Ordinance is available for Fund 74001000, Cost Center 0905010002 and General Ledger 5206010, as part of the Fiscal Year 2015 Budget.

SECTION 3. Future funding through the term of this lease agreement is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Brooks Development Authority and should be encumbered with a purchase order.

SECTION 5. 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 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 6. This Ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

PASSED AND APPROVED this 4th day of December, 2014.

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**22B (in consent vote: 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 16E, 17, 18, 19, 20, 21, 22A, 22B, 23, 24, 26, 27, 28, 30, 31, 33, 34)**
Date:	12/04/2014
Time:	09:28:18 AM
Vote Type:	Motion to Approve
Description:	An Ordinance renewing a lease agreement for 4,000 square feet of office and workshop space with Brooks Development Authority located in Council District 3, at 2712 Flight Nurse for a term commencing upon occupancy and ending September 30, 2017 at the monthly rate of $1,666.67 to serve as a radio shop for the Information Technology Services Department.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
	District 1	x					
Keith Toney	District 2		x				
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

ATTACHMENT I

LEASE AGREEMENT

Between

BROOKS DEVELOPMENT AUTHORITY

"Landlord"

and

CITY OF SAN ANTONIO

"Tenant"

Building 912

2712 Flight Nurse
Brooks City-Base
San Antonio, Texas

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EXHIBIT A 12

1. Basic Information, Definitions.

Authorizing Ordinance:	_____
Landlord:	Brooks Development Authority ("BDA"), a Texas Defense Base Development Authority
Landlord's Address:	3201 Sidney Brooks, San Antonio, Texas 78235
Tenant:	City of San Antonio, Texas
Tenant's Address:	P.O. Box 839966, San Antonio, Texas 78283 Attention: Officer, EastPoint & Real Estate Services.
Premises:	Building 912, (4,000 square feet of space), and 20 parking spaces in the adjacent lot, located at 2712 Flight Nurse, San Antonio, Texas 78235, Brooks City Base, as graphically depicted in **EXHIBIT A**.
Term:	36 months from the Commencement Date, conditioned upon City Council approval; provided however, either party may terminate this lease at any time with 120 days' notice to the other party.
Commencement Date:	October 1, 2014
Termination Date:	September 30, 2017
Renewal Terms:	Tenant will have a 1 year renewal option. The economic terms will be negotiated at the time of the renewal. Tenant must provide at least 3, but not more than 6 month's written notice of its intent to renew the lease.
Rent:	Months: 10/01/14 – 09/30/17 $5.00/sq.ft. $1,666.67/monthly $20,000.00/annually
Address for Payment of Rent:	3201 Sidney Brooks, San Antonio Texas 78235
Tenant Improvements:	"AS IS" – "WHERE IS"; no repairs or maintenance will be made by Landlord.
Replacement Lease:	This Lease is intended to replace the Lease for Building 1106, dated November 17, 2003 for City of San Antonio Vehicle Maintenance, to automatically terminate October 1, 2014.
Electrical/Janitorial Cost:	Tenant is responsible for all utilities, trash, custodial services, etc. Tenant will also be responsible for all maintenance and repairs to the Building except as provided in Section 9.03 of this Lease.
EXHIBIT A:	**Graphic representation of Premises**

2. Premises Use

The Premises are as identified above and are to be used for radio services. Landlord has the right to inspect the Premises at any time.

3. Grant.

Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold the Premises for the Term of this agreement, unless sooner terminated as herein provided, to be continuously used and occupied by Tenant, only for the permitted use set out in paragraph 2 above.

4. Rent.

Rent is set forth in Section 1.

5. Tenant Improvements. Intentionally Omitted

6. Term, Renewal.

6.01 The initial term of this Lease is indicated above in Section1, Basic Information, Definitions. There will be one 1 year renewal period, but Tenant may holdover this Lease under the terms and conditions described in Section 17.entitled "Holdover."

6.02 Landlord and Tenant may terminate this Lease in its entirety by giving 120 days' advance written notice to the other party. If either party terminates, neither party will be liable to the other hereunder for any matters arising out of or relating to the period after termination.

7. Tenant's Affirmative Promises.

Tenant promises that it will:

7.01 Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises.

7.02 Obtain and pay for all utility services used including water, sewer, and electrical as well as telecommunications charges.

7.03 Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

7.04 Vacate the Premises promptly upon expiration of the Term, subject to any holdover rights or exercise of the renewal periods.

7.05 On request, execute an estoppel certificate that states the Commencement Date and duration of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

8. Tenant's Negative Promises.
Tenant promises that it will not:

8.01 Use the Premises for any purpose other than the Permitted Use.

8.02 Create a nuisance.

8.03 Permit waste.

8.04 Use the Premises in any way that would increase insurance premiums or void insurance on the property.

8.05 Allow a lien to be placed on the Premises.

8.06 Assign this lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.

9. Landlord's Affirmative Promises.
Landlord promises that it will:

9.01 Lease to Tenant the Premises for the entire Term, beginning on the Commencement Date.

9.02 Obey all applicable laws with respect to Landlord's operation of the Premises.

9.03 Repair and maintain the basic structure which is limited to the foundation, the roof and the exterior walls, doors and windows (the "Basic Structure").

9.04 Maintain the grounds including, but not limited to, parking lot sweeping and lawn maintenance.

10. Landlord's Negative Promises.
Landlord promises that it will not:

10.01 Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10.02 Unreasonably withhold consent to a proposed assignment or sublease.

11. Services, Repair and Maintenance

11.1. Utilities. Landlord represents that all electric and water connections are available to the Premises. Tenant must, at Tenant's sole cost and expense, pay all separately-metered monthly charges for utility services, as necessary, including but not limited to, electric,

water, and sewer. Tenant must also pay for any telephone, cable, satellite, or other television services, and connections for security service, if used by Tenant.

11.2. Repair and Maintenance. During Tenant's occupancy of the Premises Tenant will perform, at Tenant's sole cost and expense, all repairs and maintenance to the Premises; Landlord will have no duty to maintain or repair any part of the Premises, except for grounds maintenance and Basic Structure under Section 9 above.

11.3. Janitorial Service. At Tenant's sole cost and expense, Tenant will provide all janitorial services, including trash removal, necessary for proper upkeep of the Building.

12. Alterations/Signage.

12.01 Any physical additions or improvements to the Premises made by Tenant must be approved in writing by Landlord and will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

12.02 Landlord will allow Tenant to place sign(s) on the premises, so long as the Landlord has approved in writing, the type and location thereof provided such complies with Brooks City Base guidelines.

13. Insurance.

Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

14. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant each release the other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party maintains, ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

15. Indemnity. Intentionally Omitted

16. Condemnation/Substantial or Partial Taking.

16.01 If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

16.02 If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

16.03 Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

17. Holdover.

17.01 If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis, but only with Landlord's written approval, which may be withheld for any reason Tenant is required to give 60 day advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold-over is the same as the rent for the term being held over, and all other terms of this Lease apply. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Officer, EastPoint & Real Estate Services, or their successor, deems the holdover beneficial.

17.02 If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

17.03 Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

18. Default.

18.01 *Default by Landlord/Events.* Default by Landlord would be failing to comply with any provision of this lease within 30 days after written notice.

18.02 *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages or terminate this lease.

18.03 *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

18.04 *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, Tenant to reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

18.05 *Waiver of Liens.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

19. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

20. Environmental.

20.01 "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

20.02 "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

20.03 "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

20.04 Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

20.05 Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3. In representation of this fact Landlord will provide to Tenant an asbestos survey pertaining to the Premises on or before October 31, 2014.

20.06 Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

20.07 Landlord represents and warrants that, (i) with regard to activities and conditions on the Property, Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (i) the Property violates any Environmental Law; (ii) there has been a

Release, or threat of Release, of Hazardous Materials from the Property; (iii) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (iv) the Property is subject to a lien under any Environmental Laws; and (z) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

21. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding. To extent feasible, City staff will notify Landlord of proposed annual budget funding recommendation by June or July. If City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

22. Dispute Resolution.

22.01 Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The use of mediation procedures will not be construed under the doctrines of laches, waiver, or estoppels to adversely affect the rights of any party to pursue its legal remedies.

22.02 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.

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

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

22.05 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.

22.06 Mediator fees must be borne equally.

22.07 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.

23. Prohibited Interests in Contracts.

23.01 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of 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 individual(s) or entities is a party to the contract or sale:

(i) A City officer or employee;

(ii) His parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) A business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

23.02 Landlord warrants and certifies as follows:

(i) Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

23.03 Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

24. Miscellaneous.

24.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

24.02 *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

24.03 *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.

25.04 *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.**

25.05 *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an Ordinance adopted by City Council that specifically addresses the modification.

25.06 *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

25.07 *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use 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.

25.08 *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

25.09 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts 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.

25.10 *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

25.11 *Administrative Agreements.* The Officer, EastPoint & Real Estate Services may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without City Council consent.

25.12 *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

25.13 *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

25.14 *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

25.15. *Estoppel.* As partial inducement to entering into this Lease, Landlord and Tenant each acknowledge to the other that, between the Lease Commencement Date and the date of their respective signatures, the other party has neither breached nor anticipatorily breached the Lease. Additionally, relating to the Lease, Landlord and Tenant each represent to the other that they have no cause of action against the other between the Lease Commencement Date and the date of their respective signatures.

26. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

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

Landlord:

Brooks Development Authority, a Texas defense base development authority

_____
Signature

_____
Name Leo Gomez

_____
Title President & CEO

_____
Date

Tenant:

City of San Antonio, a Texas municipal corporation

_____
Signature

_____
Name

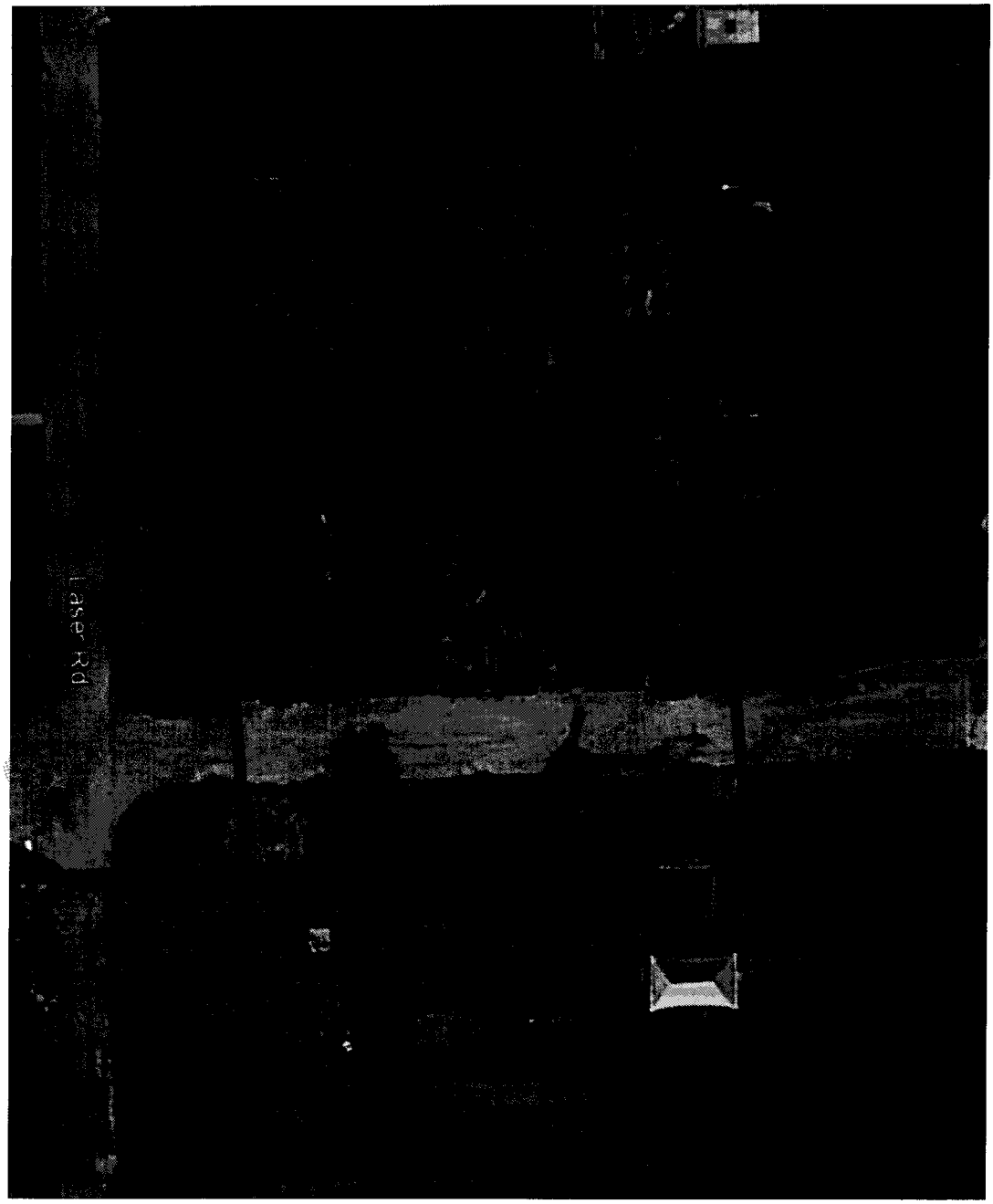
_____
Title

_____
Date

Approved as to Form:

_____
City Attorney

EXHIBIT A

Premises

Building 912, located at 2712 Flight Nurse