

AN ORDINANCE 101239

AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A LEASE AGREEMENT WITH GRAGG LAND AND CATTLE COMPANY, LTD. FOR 955 SQUARE FEET OF LEASED SPACE LOCATED AT THE SUMMIT II BUILDING LOCATED AT 5835 CALLAGHAN ROAD, SUITE 101 FOR THE DISTRICT 7 CONSTITUENT OFFICE, PROVIDING FOR RENTAL OF \$1,000.00 PER MONTH, WITH A COMMENCEMENT DATE OF SEPTEMBER 1, 2005 THROUGH AUGUST 31, 2007 WITH A HOLDOVER PROVISION OF UP TO 6 MONTHS SUBJECT TO THE AVAILABILITY OF FUNDS, AND A TWO-YEAR RENEWAL PERIOD SUBJECT TO CITY COUNCIL APPROVAL AND CONTINGENT UPON APPROPRIATION OF FUNDS; AS REQUESTED BY COUNCILMEMBER ELENA GUAJARDO OF COUNCIL DISTRICT 7

\* \* \* \* \*

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

**SECTION 1.** The City Manager or his designee is hereby authorized and directed to execute and deliver on behalf of the City a lease agreement for a District 7 Constituent Office 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.

**SECTION 2.** Funds are available in the FY05 budget in Fund 11001000, Cost Center 107020001, General Ledger 5206010.

**SECTION 3.** 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 4.** This ordinance shall become effective August 28, 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 18<sup>th</sup> day of August, 2005.



M A Y O R

PHIL HARDBERGER

ATTEST



ASSISTANT City Clerk

APPROVED AS TO FORM:



City Attorney



**Exhibit A**

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**Lease Agreement**  
**(Council District No. 7 Constituent Office)**

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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:** Gragg Land and Cattle Company, Ltd.

**Landlord’s Address:** % Spencer Property Management, 5835 Callaghan Road, Suite 215, San Antonio, Texas 78228

**Authorizing Ordinance:**

Suite 101 of Summit III, 5835 Callaghan Road, San Antonio, Texas 78228 consisting of approximately 955

**Premises:** rentable square feet and depicted graphically on **Exhibit A**, which is incorporated herein by reference for all purposes.

**City Council District:** 7

**Initial Term:** September 1, 2005 to August 31, 2007

**Renewal Term:** September 1, 2007 to August 31, 2009

**Rent:** \$1,000 a month

**Address for Payment:** % Spencer Property Management, 5835 Callaghan Road, Suite 215, San Antonio, Texas 78228

## **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.** Parking at the Premises is unassigned and will remain so during any occupancy under this Lease. Tenant has the non-exclusive right to use all of the parking areas for 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, after completion of improvements to the Premises to be made by Landlord, at Landlord's sole cost and expense, as detailed below.

**3.3 Additional Contingencies For Occupancy.** 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.** Landlord has provided to 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. Tenant acknowledges that such report complies with such provisions.

**(2) Mold. Procedure if Presence of Mold Suspected.** 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.

#### **4. Initial Term/Renewal Option.**

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

**4.2** This lease is contingent on (i) the City Council of the City of San Antonio adopting an ordinance authorizing this lease and (ii) Tenant's occupancy not being sooner terminated according to this agreement.

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

**4.4 Officeholder Reelection.** 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 step into officeholder's shoes in occupying 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. 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.

**4.5 Renewal Option.** Tenant may, at its option, renew and extend this lease for the 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 Term or the Optional Holdover Period, if the Holdover Period goes into effect. 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."

**4.6 Termination Without Cause.** Tenant may terminate this Lease for any reason during any term by giving 30 days' advance written notice to Landlord. If Tenant terminates, except for matters pertaining to the period before termination, Tenant will not be liable to Landlord for any matters arising out of or relating to this lease or the Premises.

**4.7 Showing Premises Before Termination.** Upon advance notice to Tenant, Landlord will have the right to show the Leased Premises to other prospective tenants during the 30-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. HVAC must be available 24 hours a day, seven days a week. Tenant

must pay for any telephone, cable, satellite, or other television services, and connections for alarm 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.** Landlord must provide janitorial services Monday through Friday nights. Sunday nights may be substituted for Friday nights.

**5.4 Security Patrol.** Landlord will contract for and assure the performance of at least 27 security patrols a week to the Building.

**5.5 After-Hours Access.** Tenant may access the building after normal business hours by means of a security code.

## **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 15 day grace period past the due date before any payment owing hereunder is considered delinquent.

**6.5 Payment Subject To Annual Appropriation.** Tenant expects to pay all obligations of this Lease from projected revenue sources, but all obligations of Tenant are subject to annual appropriation by the City Council. 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.

**6.6 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's Improvements.**

Before Tenant occupies the Premises, Landlord must clean the carpet, spot-treating as necessary, repaint as needed to restore the Premises to a professional appearance, and cure all other deferred maintenance.

## **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, except to Tenant's agents and employees, without first obtaining Landlord's prior written consent. Landlord's consent must not be unreasonably withheld. Landlord need not consent to occupancy by a successor officeholder.

## **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 must 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 untenantable 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 untenantable 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 untenantable 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 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. Indemnification.**

**15.1 Landlord must indemnify Tenant and its elected officials, employees, agents, officers, and volunteers and hold them harmless of and from any and all loss, cost, liability, or expense arising from or relating to Landlord's activities, Tenant's activities, or the acts of other parties on or about the Premise and related to this Lease. The provisions of this indemnification are solely for the benefit of the parties hereto and do not create or grant any rights, contractual or otherwise, to any other person or entity. Landlord must promptly advise Tenant in writing of any claim or demand against Tenant or Landlord known to Landlord subject to this indemnity and must investigate and defend against all subject claims at Landlord's cost. Notwithstanding any condition imposed by a policy of insurance, Tenant retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Landlord under this article without relieving Landlord of any of its obligations under this article.**

**15.2 This indemnity expressly covers matters arising out of the negligence of indemnitees, except when the negligent act of an indemnitee is the sole active cause of the resultant injury, death, or damage.**

**15.3 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.**

#### **16. 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.

**17. Default and Remedy: Tenant's Default.**

**17.1 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 10 days after written notice thereof, it is an Event of Default under this lease.

**17.2 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.

**18. Default and Remedy: Landlord's Default.**

**18.1 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.

**18.2 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, and Landlord's liability for the payment of any amounts due to Tenant will be limited to amounts due as of the date of termination.

## **19. Dispute Resolution.**

**19.01** 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.

**19.02** 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.

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

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

**19.05** 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.

**19.06** Mediator fees must be borne equally.

**19.07** 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.

## **20. Optional Holdover**

**20.01** Tenant may holdover after the expiration of the Lease for up to six additional months. Tenant may terminate the lease at any time during the six month period on 30 days' prior written notice. Monthly rent during the holdover period is the same as the rent paid for the last month of the immediately expired term or renewal term, as the case may be. Occupancy by Tenant during a holdover period is "occupancy under this lease" for the purposes of lease provisions referring to "occupancy under this lease."

**20.02** Exercise of the Optional Holdover period does not preclude exercise of the Renewal Option.

**20.03** By approving this lease, the City Council authorizes occupancy for the holdover period without further action of council.

## **21. Miscellaneous.**

**21.01 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.

**21.02 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.

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

**21.04 Taxes.** Landlord must pay, before delinquency, all state, city, and county taxes 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.

**21.05 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.

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

**21.07 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.

**21.08 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.**

**21.09 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.

**21.10 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.

**21.11 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. Notice to Tenant must be sent to the address set forth below. If the addressee is a corporation, notices must be addressed to the attention of its President. 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 ?????
P.O. Box 839966		P.O. Box 839966
San Antonio, TX 78283-3966		San Antonio, TX 78283-3966

**21.12 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.

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

**21.14 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.

**21.15 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

**21.16 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.

**21.17 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.

**22. Prohibited Interests in Contracts.**

**22.01** The Charter of the City of San Antonio and its Ethics Code prohibit a City (Tenant) officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City (Tenant) or any City (Tenant) agency such as City (Tenant) owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City (Tenant) or in the sale to the City (Tenant) 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 (Tenant) 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 (Tenant) contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

**22.02** Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City (Tenant).
- (ii) Landlord has tendered to the City (Tenant) a Discretionary Contracts Disclosure Statement in compliance with the City's (Tenant's) Ethics Code.

**22.03** Landlord acknowledges that City's (Tenant's) reliance on the above warranties and certifications is reasonable.

**Tenant:**

City of San Antonio, a Texas municipal corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Landlord:**

Gragg Land & Cattle Company, Ltd, a Texas limited partnership, by and through its authorized agent

\_\_\_\_\_  
William C. Spencer, d/b/a Spencer Property Management

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

**Attest:**

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

**Approved as to Form:**

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

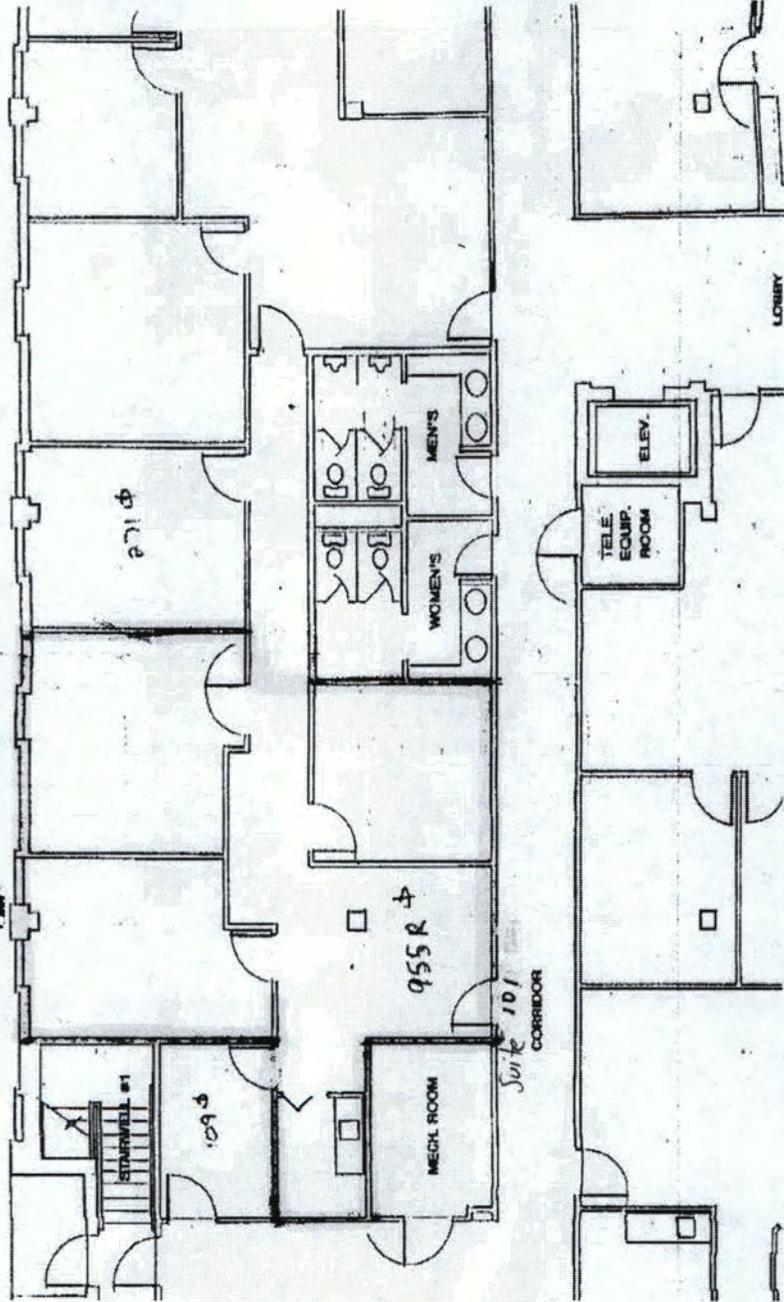
Exhibit A

140 PM

210 682 2773

P. 81

SUMMIT III 5826 CALLAGHAN  
SUITE 101 1335 RSF



**CITY OF SAN ANTONIO  
OFFICE OF THE CITY COUNCIL  
INTERDEPARTMENTAL CORRESPONDENCE**

CONSENT AGENDA  
RECEIVED  
CITY OF SAN ANTONIO  
ITEM NO. **29**

05 AUG 12 PM 4:15

**TO:** Mayor and Council Members

**FROM:** Councilwoman Elena Guajardo, District 7

**COPIES TO:** J. Rolando Bono, City Manager; Leticia Vacek, City Clerk; Martha Sepeda, Acting City Attorney; Gayle McDaniel, Assistant to City Council; Peter Zanoni, Director of Management & Budget; Milo Nitschke, Director of Finance

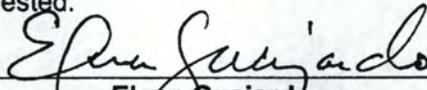
**SUBJECT:** REQUEST FOR COUNCIL CONSIDERATION - LEASE AGREEMENT

**DATE:** August 12, 2005

Your concurrence is hereby requested to place an item on the August 18, 2005 Council agenda for Council consideration.

This item will request an ordinance to authorize the execution of a Lease Agreement with Gragg Land and Cattle Company, Ltd. for 955 square feet of leased space located at the Summit III Building, 5835 Callaghan Road, Suite 101 for the District 7 Constituent Office. The lease provides for a rental rate of \$1,000 per month with a commencement period of September 1, 2005 through August 31, 2007 and authorizes one two-year renewal period, subject to City Council approval and contingent upon appropriation of funds.

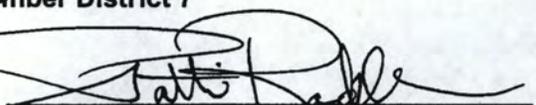
Staff members have reviewed this request and concurred with this action. Your favorable consideration of this matter is requested.



Elena Guajardo  
Council Member District 7

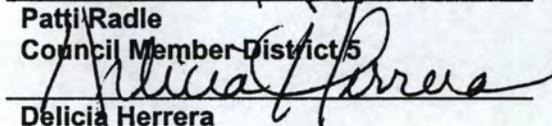


Phil Hardberger  
Mayor



Patti Radle  
Council Member District 5

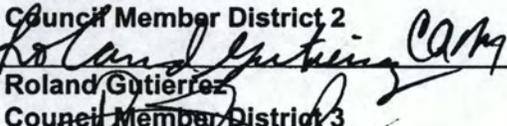
Roger O. Flores  
Council Member District 1



Delicia Herrera  
Council Member District 6

Sheila McNeil  
Council Member District 2

Art A. Hall  
Council Member District 8



Roland Gutierrez  
Council Member District 3

Kevin Wolff  
Council Member District 9

Richard Perez  
Council Member District 4

Chip Haass  
Council Member District 10

**Lease Agreement**  
**(Council District No. 7 Constituent Office)**

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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:** Gragg Land and Cattle Company, Ltd.

**Landlord's Address:** % Spencer Property Management, 5835 Callaghan Road, Suite 215, San Antonio, Texas 78228

**Authorizing Ordinance:** 161239 August 18, 2005

**Premises:** Suite 101 of Summit III, 5825 Callaghan Road, San Antonio, Texas 78228 consisting of approximately 955 rentable square feet and depicted graphically on **Exhibit A**, which is incorporated herein by reference

for all purposes.

**City Council District:** 7

**Initial Term:** September 1, 2005 to August 31, 2007

**Renewal Term:** September 1, 2007 to August 31, 2009

**Rent:** \$1,000 a month

**Address for Payment:** % Spencer Property Management, 5835 Callaghan Road, Suite 215, San Antonio, Texas 78228

## **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.** Parking at the Premises is unassigned and will remain so during any occupancy under this Lease. Tenant has the non-exclusive right to use all of the parking areas for 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, after completion of improvements to the Premises to be made by Landlord, at Landlord's sole cost and expense, as detailed below.

**3.3 Additional Contingencies For Occupancy.** 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.** Landlord has provided to 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. Tenant acknowledges that such report complies with such provisions.

**(2) Mold. Procedure if Presence of Mold Suspected.** 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.

#### **4. Initial Term/Renewal Option.**

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

**4.2** This lease is contingent on (i) the City Council of the City of San Antonio adopting an ordinance authorizing this lease and (ii) Tenant's occupancy not being sooner terminated according to this agreement.

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

**4.4 Officeholder Reelection.** 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 step into officeholder's shoes in occupying 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. 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.

**4.5 Renewal Option.** Tenant may, at its option, renew and extend this lease for the 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 Term or the Optional Holdover Period, if the Holdover Period goes into effect. 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."

**4.6 Termination Without Cause.** Tenant may terminate this Lease for any reason during any term by giving 30 days' advance written notice to Landlord. If Tenant terminates, except for matters pertaining to the period before termination, Tenant will not be liable to Landlord for any matters arising out of or relating to this lease or the Premises.

**4.7 Showing Premises Before Termination.** Upon advance notice to Tenant, Landlord will have the right to show the Leased Premises to other prospective tenants during the 30-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. HVAC must be available 24 hours a day, seven days a week. Tenant must pay for any telephone, cable, satellite, or other television services, and connections for alarm 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.** Landlord must provide janitorial services Monday through Friday nights. Sunday nights may be substituted for Friday nights.

**5.4 Security Patrol.** Landlord will contract for and assure the performance of at least 27 security patrols a week to the Building.

**5.5 After-Hours Access.** Tenant may access the building after normal business hours by means of a security code.

## **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 15 day grace period past the due date before any payment owing hereunder is considered delinquent.

**6.5 Payment Subject To Annual Appropriation.** Tenant expects to pay all obligations of this Lease from projected revenue sources, but all obligations of Tenant are subject to annual appropriation by the City Council. 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.

**6.6 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's Improvements.**

Before Tenant occupies the Premises, Landlord must clean the carpet, spot-treating as necessary, repaint as needed to restore the Premises to a professional appearance, and cure all other deferred maintenance.

## **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, except to Tenant's agents and employees, without first obtaining Landlord's prior written consent. Landlord's consent must not be unreasonably withheld. Landlord need not consent to occupancy by a successor officeholder.

## **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 must 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 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. Indemnification.**

**15.1 Landlord must indemnify Tenant and its elected officials, employees, agents, officers, and volunteers and hold them harmless of and from any and all loss, cost, liability, or expense arising from or relating to Landlord's activities, Tenant's activities, or the acts of other parties on or about the Premise and related to this Lease. The provisions of this indemnification are solely for the benefit of the parties hereto and do not create or grant any rights, contractual or otherwise, to any other person or entity. Landlord must promptly advise Tenant in writing of any claim or demand against Tenant or Landlord known to Landlord subject to this indemnity and must investigate and defend against all subject claims at Landlord's cost. Notwithstanding any condition imposed by a policy of insurance, Tenant retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Landlord under this article without relieving Landlord of any of its obligations under this article.**

**15.2 This indemnity expressly covers matters arising out of the negligence of indemnitees, except when the negligent act of an indemnitee is the sole active cause of the resultant injury, death, or damage.**

**15.3 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.**

## **16. 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.

## **17. Default and Remedy: Tenant's Default.**

**17.1 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 10 days after written notice thereof, it is an Event of Default under this lease.

**17.2 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.

## **18. Default and Remedy: Landlord's Default.**

**18.1 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.

**18.2 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, and Landlord's liability for the payment of any amounts due to Tenant will be limited to amounts due as of the date of termination.

## **19. Dispute Resolution.**

**19.01** 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.

**19.02** 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.

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

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

**19.05** 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.

**19.06** Mediator fees must be borne equally.

**19.07** 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.

## **20. Optional Holdover**

**20.01** Tenant may holdover after the expiration of the Lease for up to six additional months. Tenant may terminate the lease at any time during the six month period on 30 days' prior written notice. Monthly rent during the holdover period is the same as the rent paid for the last month of the immediately expired term or renewal term, as the case may be. Occupancy by Tenant during a holdover period is "occupancy under this lease" for the purposes of lease provisions referring to "occupancy under this lease."

**20.02** Exercise of the Optional Holdover period does not preclude exercise of the Renewal Option.

**20.03** By approving this lease, the City Council authorizes occupancy for the holdover period without further action of council.

## **21. Miscellaneous.**

**21.01 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.

**21.02 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.

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

**21.04 Taxes.** Landlord must pay, before delinquency, all state, city, and county taxes 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.

**21.05 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.

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

**21.07 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.

**21.08 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.**

**21.09 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.

**21.10 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.

**21.11 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. Notice to Tenant must be sent to the address set forth below. If the addressee is a corporation, notices must be addressed to the attention of its President. 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 7
P.O. Box 839966		P.O. Box 839966
San Antonio, TX 78283-3966		San Antonio, TX 78283-3966

**21.12 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.

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

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

**21.14 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.

**21.15 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

**21.16 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.

**21.17 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.

## **22. Prohibited Interests in Contracts.**

**22.01** The Charter of the City of San Antonio and its Ethics Code prohibit a City (Tenant) officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City (Tenant) or any City (Tenant) agency such as City (Tenant) owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City (Tenant) or in the sale to the City (Tenant) 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 (Tenant) 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 (Tenant) contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

**22.02** Landlord warrants and certifies as follows:

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

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

**22.03** Landlord acknowledges that City's (Tenant's) reliance on the above warranties and certifications is reasonable.

**Tenant:**

City of San Antonio, a Texas municipal corporation

By: Erik J. Walsh

Printed Name: Erik J. Walsh

Title: Assistant to the City Manager

Date: 9/8/05

RPW

**Landlord:**

Gragg Land & Cattle Company, Ltd, a Texas limited partnership, by and through its authorized agent

William C. Spencer

William C. Spencer, d/b/a Spencer Property Management

Date: 8-15-05

**Attest:**

Lucia M. Reed  
City Clerk



**Approved as to Form:**

[Signature]  
City Attorney KLO

Exhibit A

148 PM

218 682 2775

P. 01

SUMMIT II 5826 CALLAGHAN  
SUITE 101 1535 R.S.F.

