

AN ORDINANCE 2008-06-19-0575

AUTHORIZING AN AMENDMENT TO THE LEASE WITH HEB GROCERY COMPANY L.P. AT SAN INTERNATIONAL AIRPORT TO PERMIT IMPROVEMENTS/SERVICES ASSOCIATED WITH THE PERIMETER ROAD IN EXCHANGE FOR RENTAL CREDITS.

* * * * *

WHEREAS, on November 27, 2007, the City and HEB Grocery Company, L.P. entered into that certain San Antonio International Airport Lease (the "Original Agreement") authorized by Ordinance No. 2007-11-01-1160; and

WHEREAS, certain improvements are necessitated to the perimeter road for ingress and egress to the Leased Premises; and

WHEREAS, Aviation Staff and Lessee have negotiated for Lessee to perform certain improvements in connection with the perimeter road in exchange for rental credits; and it is now necessary to amend the Original Agreement; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute the attached amendment to the lease with HEB Grocery Company, L.P. at San Antonio International Airport, allowing for improvements to the perimeter road in exchange for rental credits.

SECTION 2. This amendment will result in the reduction of lease revenues from HEB through lease credits by up to \$865,000.00 over a 13 year period, in exchange for infrastructure improvements to a temporary perimeter road with an estimated cost of \$25,000.00 and infrastructure improvements to a permanent perimeter road with an estimated cost of \$840,000.00. COSA will record the capital contribution and related construction costs for the temporary road in the Aviation Operations Fund. The capital contribution and related construction costs for the permanent perimeter road will be recorded in the Romeo-Charlie Taxiway extension project.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, 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 take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 19th day of June, 2008.



MAYOR

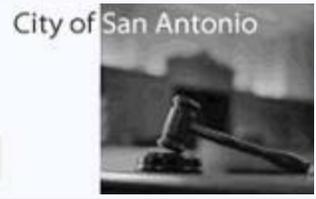
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 35

Name:	35
Date:	06/19/2008
Time:	03:41:16 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an Amendment to the lease with HEB Grocery Company L.P. at San Antonio International Airport to permit improvements/services associated with the perimeter road in exchange for rental credits. [Penny Postoak Ferguson, Assistant City Manager; Mark Webb, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x			x	
Delicia Herrera	District 6	x					
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

AMENDMENT TO SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Amendment to San Antonio International Airport Lease (“Amendment”) is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation acting by and through its City Manager, and **HEB GROCERY COMPANY, LP** (“Lessee”), acting by and through its General Partner, both of which may be referred to herein collectively as the “Parties”.

WHEREAS, on November 27, 2007, the City and Lessee entered into that certain San Antonio International Airport Lease (the “Original Agreement”), as authorized by Ordinance No. 2007-11-01-1160 of November 1, 2007; and

WHEREAS, certain improvements are necessitated to the perimeter road for ingress and egress to the Leased Premises; and

WHEREAS, Aviation Staff and Lessee have negotiated for Lessee to perform certain improvements in connection with the perimeter road in exchange for rental credits; and it is now necessary to amend the Original Agreement; **NOW THEREFORE**,

In consideration to the terms, covenants, agreements and demises herein contained, and in consideration of other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the Original Agreement by and between the parties is amended as follows:

A. Article X. Special Provisions. The following provisions are hereby added after Section 10.7 of the Original Agreement:

“10.8. Notwithstanding Special Provision 10.4 above, Lessor and Lessee agree to the following with regard to perimeter road improvements at the Airport that are necessary for Lessee’s beneficial use of the Lease Premises.

10.8.a Lessee agrees to contract and pay for cost (collectively, the “Costs”) of conducting certain geotechnical, survey, engineering, design, environmental testing, soil management, construction management, construction, and contract administration services associated with the perimeter road (all such extension and improvement work shall be referred to herein collectively as the “Extension and/or Perimeter Road Work). In return for Lessee’s payment of these Costs, Lessor agrees to provide Lessee with a credit for all reasonable Costs against the rent due under this Lease; and no rent shall be due until such time as Costs shall have been offset. Such rent credits shall be provided upon receipt by the Aviation Director, or his designee, of itemized contractor’s invoices, not more often than once per month, detailing the Costs incurred by Lessee for the Extension and/or Perimeter Work hereunder (including Costs incurred prior to the effective date of the Lease Amendment adding this Section 10.8 to the Lease). At the Aviation Director’s request, Lessee shall provide proof of payment or other reasonably requested documentation for Costs incurred by Lessee for which a rental credit has been granted or is being requested.

10.8.b The amount of the Rent Credits for Perimeter Road Work shall not exceed \$865,000.00, unless otherwise approved in writing by the Aviation Director. Any Rent Credits in excess of \$865,000 shall require the approval of the Aviation Director. Lessee's liability and responsibility for the Costs is limited to the express provisions of Section 10.8 hereof. Lessee shall have no liability with respect to any of the Perimeter Road Work, except for payment of the Costs as expressly described herein.

10.8.c Length and duration of rent credits (but not the amount) may be modified by mutual agreement of the parties, without need for formal amendment. In the event that Lessee does not contract for contract administration services, as allowed in this Section 10.8, but instead performs such services in-house, Lessee shall be entitled to an 8% markup on all reasonable Costs for which a credit is granted.

B. All provisions of the Original Agreement that are not modified by this Amendment remain in full force and effect.

EXECUTED and **AGREED** by the Parties as of the dates indicated below.

LESSOR:
CITY OF SAN ANTONIO

LESSEE:
HEB GROCERY COMPANY, LP
a Texas limited partnership

By: _____
Sheryl Sculley, City Manager

By: HEBCO GP, LLC
a Texas limited liability company,
its general partner

Date: _____

ATTEST:

By: _____
Todd A. Piland

City Clerk

Date: _____

Approved as to form:

City Attorney