

AN ORDINANCE 2009-11-19-0932

AUTHORIZING A TEN-YEAR LEASE WITH ZACHRY INDUSTRIAL, INC. FOR PREMISES LOCATED AT SAN ANTONIO INTERNATIONAL AIRPORT COMMENCING ON DECEMBER 1, 2009 FOR ANNUAL RENTALS OF \$76,498.00.

* * * * *

WHEREAS, Zachry Industrial, Inc. requested a ten-year lease for a hangar and ground space it currently occupies at San Antonio International Airport; and

WHEREAS, Aviation staff has negotiated a lease with Zachry Industrial Inc. for the use of said premises;
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 a lease with Zachry Industrial, Inc. for the premises located at 10226 John Cape Road, San Antonio, TX in substantially the same form and content as the document set out in **Attachment I**.

SECTION 2. Funds generated by this Ordinance will be deposited as per the table below:

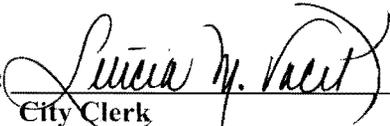
Amount	General Ledger	Fund	Internal Order
\$318,381.00	4409040	51001000	233000000004
\$446,600.00	4409016	51001000	233000000004
\$122,000.00	4409021	51001000	233000000102
Total Amount: \$886,981.00			

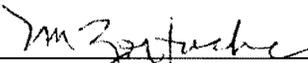
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General 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 November, 2009.


MAYOR
JULIÁN CASTRO

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Item:	23 (in consent vote: 6, 7, 8, 9, 10, 12, 13, 15, 16A, 16B, 16D, 17A, 17B, 17D, 18B, 19A, 20A, 20B, 20C, 20D, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33A, 33B, 33C, 33D, 33E, 33F, 34A, 34B)						
Date:	11/19/2009						
Time:	01:19:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a ten-year lease agreement with Zachry Industrial Inc. for hangar and ground space at San Antonio International Airport for annual rentals of \$76,498.00. [Penny Post oak Ferguson, Assistant City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x

Item No. 23 - Ordinance Attachment I
11/19/2009 Agenda

SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This San Antonio International Airport Lease (hereinafter "Lease") is entered into by and between the **CITY OF SAN ANTONIO** ("Lessor"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____, and **ZACHRY INDUSTRIAL, INC.** ("Lessee"), a Delaware corporation, acting by its authorized officer through a resolution of its Board of Directors, **WITNESSETH:**

WHEREAS, Lessee is a current tenant at the San Antonio International Airport under San Antonio International Airport Lease No. 124113; and said lease has been continued on holdover basis since September 1, 2009; and

WHEREAS, the Aviation Department and Lessee have negotiated a new Lease Agreement;

NOW THEREFORE: Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

I. DESCRIPTION OF LEASED PREMISES

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, the following described property (collectively referred to as "Leased Premises"):

1.1.1 Ground Space: 60,644 Square Feet of land at the San Antonio International Airport, San Antonio, Bexar County, Texas, identified in "Exhibit 2" which is attached hereto and made a part hereof by reference, more commonly known as 10226 John Cape Road, San Antonio, Bexar County, Texas. ("Ground Space").

1.1.2 Building Space: one hangar building with an area of 15,400 square feet situated upon the Ground Space and identified in the attached Exhibit 2.

II. RENTAL

2.1 Lessee agrees to pay Lessor as rental as indicated on the table below, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided. All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the Commencement Date and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof. In the event that the term of this Lease Agreement shall commence on the day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments will be prorated for the first or last month as the case may be.

<u>Leased Premises</u>	<u>Area in. Sq. Ft.</u>	<u>Annual Rate Per Sq. Ft.</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
Ground Space	60,644	\$0.525	\$31,838.10	\$2,653.18
Building Space	15,400	\$2.900	\$44,660.00	\$3,721.67

2.2 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, 78216 unless otherwise notified in writing. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the rate of eighteen (18) percent per annum from that date.

2.3 The parties hereto agree that if a survey of the Leased Premises is performed, at Lessor's expense, at any time during the term of this Lease; and if such survey should identify any discrepancies in the square footage of either the ground or building space, then the corrected square footage shall be automatically substituted herein, subject to applicable rental rates and to all other terms and conditions herein contained. In such event, notice shall be provided to Lessee by Lessor, acting through its Aviation Director, reflecting the corrected square footage and any revisions to this Lease necessitated thereby. Such writing shall be filed of record with the City Clerk and shall automatically become a part of this Lease on such date as shall be specified in said notice.

2.4 Such rentals shall be subject to the adjustments in rental rates contained in Standard Provision 1.

III. USE OF LEASED PREMISES

Lessee shall use the premises for any and/or all of the following activities: the storage and maintenance of Lessee's corporate aircraft and for office support activities reasonably related thereto. No other uses are permitted unless approved in writing by the Aviation Director.

IV. LEASE TERM

4.1 The term of this Lease Agreement shall be ten (10) years that shall commence on the first day of the month following the passage of an Ordinance by the City Council of San Antonio approving this Lease ("Commencement Date") and shall terminate at midnight of the last day of the ten-year term unless earlier terminated in accordance with this Lease.

V. INDEMNIFICATION

5.1 **LESSEE** covenants and agrees to **FULLY INDEMNIFY, DEFEND** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LESSEE's** activities under this **LEASE**, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant

or subcontractor of **LESSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE's** activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **LESSEE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

5.2 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this section (Section 5), is an **INDEMNITY** extended by **LESSEE** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LESSEE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

VI. INSURANCE

6.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to City and all applicable endorsements, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

6.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

6.3 LESSEE's financial integrity is of interest to the City; therefore, subject to LESSEE's right to maintain reasonable deductibles in such amounts as are approved by the City, LESSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LESSEE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

	<u>Type</u>	<u>Amount</u>
(1)	Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
** (2)	Broad Form Commercial General Liability Aviation Policy to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence or its equivalent with an aggregate of not less than \$5,000,000
	(A) Premises Operations	
	* (B) Independent Contractors	
	(C) Products/Completed Operations	
	(D) Personal Injury	
	(E) Contractual Liability	
	(F) Damage to Rented Premises	
(3)	Property Insurance for physical damage to the property of Lessee, including improvements and betterments the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Lessee's property
* (4)	Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence or its equivalent.
* (5)	Above Ground and/or Underground Storage Tank Storage Tank Liability	\$10,000,000 per claim
* (6)	Aircraft Liability	\$10,000,000 per occurrence, Combined single limit, written on an occurrence form

* If applicable

** In the event third party aircraft are stored/maintained on the Leased Premises, a Hangar Keeper's Liability Endorsement will be required.

6.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LESSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. LESSEE shall pay any costs incurred resulting from said changes.

Aviation Director
CITY OF SAN ANTONIO
9800 Airport Blvd.
San Antonio, Texas 78216-9990

6.5 LESSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

6.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LESSEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend LESSEE's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

6.7 Nothing herein contained shall be construed as limiting in any way the extent to which LESSEE may be held responsible for payments of damages to persons or property resulting from LESSEE's or its subcontractors' performance of the work covered under this Agreement.

6.8 It is agreed that LESSEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

6.9 All personal property placed in the Leased Premises shall be at the sole risk of LESSEE. CITY shall not be liable, and LESSEE waives all claims for any damage either to the person or property of LESSEE or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of CITY or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. LESSEE shall save and hold harmless CITY from any claims arising out of damage to LESSEE'S property or damage to LESSEE'S business, including subrogation claims by LESSEE'S insurers.

6.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

VII. PERFORMANCE GUARANTEE

Lessee shall deliver to the Aviation Director, on or before the execution of this Lease, and shall keep in force throughout the term hereof, either an irrevocable letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor, or a surety bond, payable to Lessor. The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company, authorized to do business in Texas. The initial amount of the irrevocable letter of credit or surety bond shall be at least **THIRTY EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$38,500.00)**. Said amount shall be adjusted, as necessary, so that it shall at all times equal at least one-half (1/2) of the total annual rental payable by Lessee to Lessor hereunder.

VIII. STANDARD PROVISIONS AND COVENANTS

The Standard Provisions and Covenants, attached to this document as Exhibit 1, are incorporated into this Lease and made a part hereof for all purposes.

IX. SPECIAL PROVISIONS

9.1 "As Is" Acceptance. Lessee understands, recognizes and agrees that Lessee takes the ground and building premises on an "As Is" basis. Further, Lessor is not responsible for any improvements of the ground and buildings area, and that Lessor does not warrant any of the ground, buildings, concrete, asphalt, or any other pavement thereupon.

9.2. Certificates of Occupancy. It is the express agreement of the parties that Lessee at Lessee's sole cost and expense will obtain and deliver to the Director any required Certificates of Occupancy within 180 days after the Commencement Date of this Lease Agreement and any required building permits prior to any construction unless otherwise agreed to in writing by the Aviation Director.

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9.3 The parties agree that this Lease is granted by Lessor, at Lessee's request, and that the Leased Premises were formerly leased to Lessee.

EXECUTED THIS THE ____ day of _____ 2009.

LESSEE: ZACHRY INDUSTRIAL, INC.

LESSOR: CITY OF SAN ANTONIO

By: _____
Signature

By: _____
Sheryl L. Sculley, City Manager

Printed Name/ Title

APPROVED AS TO FORM

Mailing Address

City Attorney

City, State, Zip

