CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **El Paso Police Department, Internal Affairs Division**

AGENDA DATE: **February 2, 2010**

CONTACT PERSON/PHONE: **Laura Garcia, Administrative Services Bureau for EPPD (564-7000)**

DISTRICT(S) AFFECTED: All

SUBJECT:
Approve a Resolution authorizing the City Manager to sign a lease agreement between DLB Properties JV ("Landlord") and the City of El Paso ("Tenant") regarding the El Paso Police Department, Internal Affairs Division's rental of office space in the Compass Bank Building located at 6044 Gateway Blvd East, El Paso, Texas for a term of 10 years.

BACKGROUND / DISCUSSION:
The Internal Affairs Division of the El Paso Police Department has been renting office space at 2211 E. Missouri, El Paso, Texas for numerous years. This location is no longer sufficient in size for the unit and has various negative environmental issues that impact the employees and general public that come into the current office space. The lease for the current office space expires on September 1, 2010 and the cost to continue the lease agreement has been deemed to not be economically prudent.

The new office space located at 6044 Gateway Blvd. East will have more square footage and the base rental rate will be less than what is currently being paid by the City of El Paso.

PRIOR COUNCIL ACTION:
None on the pending lease agreement.

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:
The CARE committee reviewed and considered the pending lease agreement on October 23, 2009.

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a lease agreement between DLB Properties JV ("Landlord") and the City of El Paso ("Tenant") regarding the El Paso Police Department, Internal Affairs Division's rental of office space in the Compass Bank Building located at 6044 Gateway Blvd East, El Paso, Texas for a term of 10 years.

ADOPTED this the _____ day of _____, 2010.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

_____
John Batoon
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Greg Allen
Chief of Police

POLICE/Reso/Lease Agreement/DLB Properties JV
Document #: 54011/JBAT

CITY CLERK DEPT.
10 FEB -1 PM 1:23

LEASE AGREEMENT

STATE OF TEXAS

COUNTY OF EL PASO

THIS LEASE AGREEMENT is made and entered into as of this _____ day of February **2010** by and between **DLB PROPERTIES JV**, 6044 Gateway Blvd. East, Suite 900, El Paso, Texas, 79905, as **Landlord**, and the **CITY OF EL PASO**, as Tenant(s).

1. **LEASED PREMISES.** The Leased Premises shall consist of **the eighth (8) floor** containing approximately 5,625 square feet of the building at 6044 Gateway Blvd. East, El Paso, Texas, 79905 (the "Building"). Tenant is also provided a secured storage area on the tenth floor of approximately 650 square feet. This lease is subject to Tenant's approval of the space no later than **March 15, 2010**. Site plan, legal description, and eighth floor plan attached as Exhibits "A" hereto.

2. **TERM.** The term of this Lease ("Initial Lease Term") shall be for **120 Months** commencing on **September 1, 2010** (the "Commencement Date") and terminate August 31, 2020, unless terminated earlier as hereinafter provided. In the event Tenant elects to occupy the space prior to this date, Tenant will notify Landlord of the early occupancy date in writing sixty (60) days prior to occupancy.

3. **BASE RENTAL.** Tenant hereby agrees to pay a base annual rental (herein called "Base Rental") of $79,000.00 for the first year payable in advance in monthly installments of $ 6,583.34, beginning September 1, 2010. Annual rental for years two and three to be $82,968.75 payable in monthly installments of $6,914.07 per month. Base rental payments in subsequent years to increase by three percent (3%) every year thereafter. Rent will be due on the first of each month of the lease agreement. If the Tenant pays the full amount of the annual rent on September 1 of each lease year, then said annual rent will be reduced by three percent (3%).

3.1 **RENEWAL TERM.** Providing that Tenant has not defaulted in respect to any provision of this Lease, Tenant shall have the right to extend the term of this Lease for **four (4)** consecutive additional periods of **60** months each ("Option Lease Term"), commencing on the expiration of the prior term, provided, however, that written notice is given the Landlord of each such intention to extend the Lease 180 days prior to the applicable expiration date and further provided that all provisions of the Lease shall continue in full force and effect for the period of such extension and rent to increase by three percent (3%) during each year of all option periods.

3.2 **BASE RENTAL AT OPTION PERIOD**. After the Initial Term of this lease term, the Base Rent and any additional amounts due shall be adjusted as stipulated herein or as otherwise agreed.

3.3 PARAGRAPH INTENTIONALLY DELETED.

4. **PERMITTED USE.** Tenant shall use and occupy the Leased Premises as professional office space, and no other purpose without prior written consent of Landlord. Tenant shall not use the Leased Premises for any other use. Tenant shall not sublease any space without written permission of the Landlord.

5. PARAGRAPH INTENTIONALLY DELETED.

6. **GRANTING CLAUSE.** In consideration of the obligation of Tenant to pay rent and other charges as herein provided and in consideration of other terms, covenants and conditions hereof and subject thereto, Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord the Leased Premises as described in Paragraph 1 TO HAVE AND TO HOLD said premises for the lease term specified in Paragraph 2, all upon the terms and conditions set forth in this lease.

7. **DELIVERY AND POSSESSION.** This lease shall not be rendered void or voidable by Landlord's failure or inability to deliver possession on the Commencement Date. If Landlord is unable to deliver possession on the commencement date, this Lease shall be deemed to commence on the date Landlord tenders possession.

8. **PAYMENT OF BASE RENTAL.** The Base Rental, together with any adjustment of rent provided for herein, shall be due and payable in equal monthly installments on the first day of each calendar month and are considered **past due after the tenth (10th) of each calendar month** during the term of this Lease, beginning on the Commencement Date, and Tenant hereby agrees to so pay such rent to Landlord at Landlord's address as provided herein (or such other address as may be designated by Landlord from time to time) monthly in advance without demand, counterclaim or setoff. If the term of this Lease as heretofore described commences on other than the first day of a calendar month or terminates on other than the last day of a calendar month, then the installment or installments of Base Rental for such month or months shall be prorated and the installment or installments so prorated shall be paid in advance.

9. **CPI ADJUSTMENT.** THIS PARAGRAPH INTENTIONALLY DELETED.

9.1 **DELINQUENT PAYMENTS AND LATE FEES.** Landlord may charge Tenant, as additional Rent hereunder, **a fee equal to five (5) percent of the delinquency payment** to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. In no event, however, shall the charges permitted under this Section 9.1 or elsewhere in this Lease, to the extent the same are considered to be interest under applicable law, exceed the maximum rate of interest allowable under applicable law.

10. **SPECIFICALLY PROHIBITED USES.** Tenant will not (a) use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner which is or may be, directly or indirectly, violative of any legal requirement. (b) keep, or permit to be kept, any substance in or conduct, or permit to be conducted, any operation from the Leased Premises which might emit offensive odors or conditions into other portions of the Building, or make

undue noise or create undue vibrations, (c) commit or permit to remain any waste to the Leased Premises, (d) **<deleted>**, (e) install any food, soft drink or other vending machine, or (f) commit, or permit to be committed, any action or circumstance in or about the Building which, directly or indirectly, would or might justify any insurance carrier in canceling or increasing the premium on the fire and extended coverage insurance policy maintained by Landlord on the Building or contents, and if any increase results from any act of Tenant, then Tenant shall pay such increase promptly upon demand therefore by landlord. Tenant will install security systems, security hardware, and all other improvements as it deems necessary in addition to any items described in exhibit C and will return the premises to its original condition upon lease termination.

11. **HAZARDS.** Tenant shall not, without Landlord's prior written consent, place anything within the Leased Premises, or perform any act or omission whatsoever which shall invalidate any insurance policy carried on the Leased Premises. All property kept, stored or maintained on the premises by Tenant shall be at Tenant's sole risk. Landlord acknowledges and consents to Tenant's right to use and store firearms in the normal course of its operations.

12. **MAINTENANCE AND REPAIR OF PREMISES.** Tenant shall, during the term of this Lease, maintain the Leased Premises in a condition fit for its intended use, reasonable wear and tear excepted. Landlord shall provide, at its sole cost and expense, janitorial service that Landlord deems necessary and reasonable. Consistent with janitorial services appropriate to Tenant's use and performed during working hours only.

12.1 **TENANT'S ADDITIONAL OBLIGATIONS.** In addition to Tenant's obligations pursuant to Paragraph 12, which obligations are not to be limited by this Paragraph, Tenant shall not allow any person on the premises with its permission to destroy, deface, damage, impair, or remove any part of the Leased Premises or appurtenances thereto. Tenant shall advise Landlord in writing of all repairs or maintenance, which are necessary.

13. **ALTERATIONS.** No alternation, addition, or improvement to the Leased Premises shall be made by the Tenant without written consent of the Landlord. Any alteration, addition or improvement made by the Tenant after such consent shall have been given, and any fixtures, will belong to Landlord without compensation to Tenant at the expiration or termination of this Lease. Tenant hereby agrees to indemnify and hold Landlord harmless from any claims that may be made against Landlord or the Leased Premises arising from such alterations, additions, improvements, and fixtures.

13.1 **REMOVAL.** All alterations, additions, improvements and fixtures which may be made or installed by either party upon the Leased Premises shall remain upon and be surrendered with the Leased Premises and become the Property of Landlord at the termination of this Lease, unless Landlord requests their removal in which event Tenant shall promptly remove the same and restore the Leased Premises to the original condition at Tenant's expense.

13.2 **NO LIENS.** Tenant shall permit no liens or encumbrances to attach to the Leased Premises in connection with work or materials furnished on behalf of Tenant. If any such liens do attach, Tenant will do all acts necessary to discharge such liens within thirty (30) days; or if Tenant desires to contest said liens, then Tenant will deposit with Landlord an adequate and

reasonable security to insure the payment of the lien claims. In the event Tenant fails to pay any lien claims when due, or fails to deposit the security with the Landlord, the Landlord will have the right to expend all sums necessary to discharge the lien claims and Tenant will pay within thirty (30) days after written demand all sums expended by Landlord in discharging any liens including attorney's fees and costs. Tenant's delay in payment of such amounts when due will incur an additional late charge computed at the rate of fifteen percent (15%) per annum until paid.

13.3 **RIGHT OF ENTRY AND INSPECTION.** Tenant will permit Landlord or Landlord's duly authorized agent, employee or representative, to enter upon the Leased Premises at all reasonable times with Tenant's prior notice and approval for the purpose, in Landlord's sole discretion, of inspecting same or of making such repairs as it deems necessary for the safety and preservation of the premises. Any such repairs, however, will not be deemed to be a waiver of Tenant's obligations as set forth in Paragraph 12 and 12.1. Tenant has the option to escort and observe anyone entering the space for the purposes described above.

14. **SERVICES BY LANDLORD.** Landlord shall be responsible for payment of all Direct Costs in the maintenance and repair, management and operation of the premises, and promptly pay prior to delinquency, all charges for gas, electricity, sewer, water, or other utility installed, used or consumed in the Leased Premises, except telephone service, which shall be the responsibility of the Tenant. Landlord shall provide the following services, in the event disruption of these services take place Landlord shall promptly make reasonable effort to reinstate services as soon as possible. Any disruption shall not relieve Tenant from any obligation detailed herein and Landlord shall not be held liable in any respect for any damages to person, property or business
for any disruption.

(a) air conditioning and heating as reasonably required for comfortable use and occupancy during normal business hours;
(b) water for drinking, lavatory, toilet purposes, and sanitary sewer in common areas or other areas determined by Landlord;
(c) janitorial and cleaning services, as needed, for the building;
(d) electricity for standard office equipment and building standard lighting;
(e) trash collection services (dumpsters or garbage cans);
(f) pest control services as needed in the reasonable judgment of Landlord;
(g) landscaping and parking lot maintenance services;
(h) repair and maintenance which Landlord deems necessary and reasonable.
(i) elevator service.
(j) building management, repairs, maintenance and supervision.

14.1 **EXTRA ELECTRICITY.** N/A

14.2 **EXTRA HEATING OR AIR CONDITIONING.** Tenant is permitted to utilize heating or air conditioning on an overtime basis without additional charge.

14.3 **UTILITY INTERRUPTION.** Landlord shall not be liable for any interruption or failure whatsoever in utility services, and shall be held harmless from any liability, regardless of cause.

15. **PARKING AND USE OF COMMON AREA AND FACILITIES.** Tenant shall use parking lot and park in areas as designated by the Landlord. Landlord assumes no liability for any damage or loss to property or vehicles of Tenant or Tenants visitors while parked in Parking Lot.

15.1 **COMMON AREA.** All parking areas, access roads, and other facilities furnished, made available or maintained by Landlord in or near the Building, provided by Landlord for the general use in common of tenants and their customers in the building (all herein collectively called the "Common Area") shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to the Common Area. Landlord shall have the right from time to time, to perform any acts in the Common Area or promulgate any rules, which Landlord, in its sole discretion, deems advisable for the use thereof by Tenants and their customers.

15.2 **USE OF COMMON AREA.** Tenant and Tenant's business invitees, employees and customers shall have the nonexclusive rights, in common with Landlord and all others to whom Landlord has granted to or may hereafter grant rights, to use the Common Area, subject to such reasonable regulations as Landlord may from time to time impose and the rights of Landlord set forth above. Tenant shall abide by all reasonable rules and regulations established by Landlord and delivered to Tenant, and cause its officers, employees, agents, customers, and invitees to abide thereby. Landlord may at any time close temporarily all or any part of the Common Area to make repairs or changes to prevent the acquisition of the public rights therein, to discourage non-customer parking, or for any other reasonable purpose. Tenant shall furnish Landlord license numbers and descriptions of cars used by Tenant and its officers and employees. Tenant shall not interfere with the other Tenant's rights to use any part of the Common Area.

16. **INDEMNITY AND PUBLIC LIABILITY INSURANCE.**

16.1 **INDEMNITY.** INTENTIONALLY DELETED

16.2 **PUBLIC LIABILITY INSURANCE.** Tenant will be self insured. No Liability insurance policy is required.

17. **PROPERTY TAXES**. Landlord agrees to pay, before the due date, all taxes, assessments and governmental charges of any kind and nature whatsoever (hereinafter collectively referred to as the "Taxes"), levied or assessed against the Leased Premises. Tenant shall timely pay all ad valorem or other personal property tax.

18. **ASSIGNMENT, SUBLETTING AND TRANSFER OF INTEREST.** Tenant shall **not**, without the prior written consent of Landlord first endorsed thereon: (i) assign or in any manner transfer this Lease or any estate or interest therein, or (ii) permit any assignment of this

Lease or any estate or interest therein by operation of law, or (iii) sublet the Leased Premises or any part hereof, or (iv) grant any license, concession or other right of occupancy of any portion of the Leased Premises, or (v) permit the use of the Leased Premises by any parties other than Tenant, its agents and employees.

18.1 **CONSENT.** Landlord agrees that the consent to an assignment or sublease shall not be unreasonably withheld, providing the following conditions are met:

(a) Tenants shall remain responsible for the performance of all duties and obligations imposed upon Tenant under the terms and provisions of this Lease.

(b) Tenant has on the date of such proposed assignment or sublease fulfilled all of its obligations under this Lease.

(c) The assignee or sub lessee expressly assumes in writing all the obligations of Tenant under this Lease, however original Tenant shall not be relieved of any obligation of the Lease.

19. **CONDEMNATION.** If any part of the Leased Premises shall be taken by any public or private authority under the power of eminent domain, and a part thereof remains which is susceptible to occupation for Tenant's business hereunder, this Lease shall, as to the part so taken, terminate as of the date title vests in the condemnor, and the rent payable hereunder shall be adjusted so that the Tenant shall be required to pay for the remainder of the term only such portion of such rent as the value of the part remaining after condemnation bears to the value of the entire premises at the date when title to the part so condemned vest in the condemnor. If all the Leased Premises is taken, or such a large part thereof is taken that there does not remain any portion susceptible of occupation for Tenant's business hereunder, this entire Lease shall thereupon terminate. In the event of condemnation of the whole or any part of the Leased Premises, all compensation awarded for diminution in value of the Leasehold shall belong to Landlord, except that compensation awarded for diminution in value of the Leasehold shall belong to Tenant, and the Lease shall be considered to have terminated prior to the taking; provided however, that Landlord shall have interest in any award made to Tenant for loss of business or depreciation to and cost of removal of Tenant's stock and fixtures and other property, if a separate award for such items is made to Tenant. Tenant hereby irrevocably assigns the interest, if any, it shall have in the compensation awarded or to be paid to the Landlord under the provisions of this Paragraph.

20. **OTHER.**

21. **HOLDING OVER.** Upon termination or expiration of this Lease, or any extension thereof, Tenant shall surrender the Leased Premises in good condition and repair, reasonable wear and tear excepted. In the event that Tenant remains in possession of the Leased Premises after the termination or expiration of this Lease, and without the execution of a new Lease, it shall be deemed to be occupying the Leased Premises as a Tenant from month to month, subject to all the conditions, provisions and obligations of this Lease, insofar as the same are applicable to a month-to-month tenancy.

22. **QUIET POSSESSION.** Landlord will, on the Commencement Date of this Lease, place Tenant in quiet possession of the Leased Premises and will secure it in the quiet possession thereof against all persons lawfully claiming the same during the entire Lease Term and any extension thereof.

23. **SUBORDINATION.** Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other liens presently existing or hereafter created upon the Leased Premises or improvements located thereon, and to any renewals and extensions thereon. Such subordination shall apply to each and every advance made or hereafter to be made under any mortgage or deed of trust. This section shall be self-operating and no further instrument of subordination will be required. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or to the lien hereafter placed upon the Leased Premises or improvements located thereon, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request.

24. **ESTOPPEL CERTIFICATE.** Landlord and Tenant agree, at any time, and from time to time, upon not less than ten (10) days prior notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying that this lease is unmodified and in full force and effect (or, if there have been modifications that same is in full force and effect as modified and stating the modifications), setting forth the dates to which rental, additional rental, and any other charges have been paid, and stating whether or not to the best of knowledge of the person subscribing such Estoppel Certificate, there exists any default in the performance of any covenant, agreement, term, provision or condition contained in this Lease, and if so, specifying each such default of which the Landlord or Tenant may have knowledge. Failure of Tenant to do so shall result in Tenant being deemed to have assented to the foregoing and waived any defenses.

25. **DEFAULT BY TENANT.** The following events shall be deemed to be events of default by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of rental and such failure shall continue for a period of thirty (30) days after the due date.

(b) Tenant shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rental, or other payment to Landlord or any third party, as provided in this Lease, and shall not remedy such failure within thirty (30) days after written notice to Tenant.

(c) Tenant shall fail to pay any obligation by this Lease, other than rent, and such failure shall continue for a period of thirty (30) or more days.

25.1 **RETURN CHECK CHARGE:** INTENTIONALLY DELETED.

25.2 **LOCKOUT PROVISIONS.** INTENTIONALLY DELETED.

25.3. **REMEDIES.** The exercise by Landlord of any one or more remedies hereunder granted or otherwise permitted by law shall not be deemed to be an acceptance or surrender of the Leased Premises by Tenant, whether by agreement or by operation of Law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. No re-entry or taking possession of the premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Tenant. Notwithstanding any such reletting, or re-entry or taking possession, Landlord may at any time elect to terminate this Lease for previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Landlord's acceptance of rent following an event of default hereunder shall not be construed as Landlord's waiver of such event of default. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. A loss or damage that Landlord may suffer by reason of termination of this Lease for deficiency from any reletting as provided for above shall include the expense of repossession and any necessary repairs or remodeling undertaken by Landlord following repossession. Should Landlord at any time terminate this Lease for any default, in addition to any other remedy Landlord may have, Landlord may recover from Tenant all damages Landlord may incur by reason of such default, including cost of recovering the premises and the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the said term, all of which amounts will be immediately payable by Tenant to Landlord.

25.4 **LANDLORD'S LIEN.** INTENTIONALLY DELETED.

26. **INTEGRATION CLAUSE.** This Lease Agreement constitutes the entire contract between the parties and there are no prior representations, agreements or understandings not contained herein. This Lease may not be amended except as may be done in writing signed by each party hereto.

27. **MISCELLANEOUS.**

28. **CAPTIONS.** The captions used herein are for convenience and do not limit or amplify the provisions hereof.

29. **WAIVER.** Except as otherwise herein provided, no covenant, term or condition of this Lease shall be waived except by written waiver of Landlord, and the forbearance or indulgence by Landlord in any regard whatsoever shall not constitute a waiver of the covenant, term or condition to be performed by the other party to which the same shall apply, and until complete performance by Tenant of such covenant, term or condition, Landlord shall be entitled to invoke

any remedy available under this Lease or by law despite such forbearance or indulgence. The waiver by Landlord of any breach or term, covenant or condition hereof shall apply to and be limited to the specific instance involved and shall not be deemed to apply to any other instance or to any subsequent breach of the same or any other term covenant or condition hereof.

30. **GOVERNING LAW.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Lease. Exclusive venue for any litigation arising out of the interpretation, validity, performance or enforcement of this Lease shall be El Paso County, Texas.

31. **BINDING EFFECT.** The terms, provisions and covenants contained in this Lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, respective successors in interest, legal representatives and assigns, except as otherwise herein expressly provided.

32. **ATTORNEY'S FEES.** If any action shall be brought to recover any rent or for any other payment under this Lease, or on account of any breach thereof, or to enforce or interpret any of the terms, covenants and conditions of this Lease, or the recovery of possession of the premises, the Landlord shall be entitled to recover from Tenant, in addition to any other relief awarded, a reasonable attorney's fee, and the amount of which shall be fixed by the Court and shall be made a part of judgment rendered.

33. **TIME.** Time is of the essence of this Lease and each of all of its provisions.

34. **NUISANCE.** Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to disturb other Tenants or Landlord in the management of the Premises, and Tenant will not perform any act that may injure the premises. Included specifically but not limited to are noises and sounds of any kind that may come from voices, music, hammering, stumping, and the use or result of the use of alcohol and other drugs.

35. **SAVINGS CLAUSE.** If any clause or provision in this Lease is illegal, invalid or unenforceable under present or future law as effective during the term of this Lease, then in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease, that in lieu of such clause or provision that is illegal, invalid or unenforceable, there will be added as a part of this Lease a clause or provision that is as similar to the terms of such illegal, invalid or unenforceable clause or provision as may be possible, and yet be legal, valid and enforceable.

36. **AMENDMENT.** There shall be no amendment, modification, or alteration of the terms and conditions of this Lease, or any extension of the terms of this Lease, unless the same be in writing and duly approved and executed by the Landlord and Tenant.

37. **RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies provided by this Lease agreement are cumulative and the use of any right or remedy shall not preclude or waive the right of a party to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

38. **GENDER AND NUMBER.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in a singular number shall be held to include the plural, unless the context otherwise require

39. **LEASE CONTINGENCY.** This lease is contingent upon approval of city council no later than February 28th, 2010, or upon agreement of both parties.

40. **SIGNS AND BUILDING NAME.** There shall be no signs, symbols, or identifying marks on or in the building, halls, elevators, staircases, entrances, parking areas, landscape areas, doors, walls, or windows without prior written approval of Landlord. All signs or lettering shall conform to the sign and lettering criteria established by Landlord. Unless otherwise stated in the rules and regulations, suite signage and building directory changes shall be done exclusively by Landlord and at Tenant's expense. Landlord may remove all unapproved signs without prior notice to Tenant and at Tenant's expense.

41. **FIRE EXTINGUISHERS.** Landlord agrees to supply and maintain at its expense, any fire extinguisher or other fire prevention equipment required by law, rules, orders, ordinances and regulations of any city, county, or state in which the Leased Premises are located and/or required by any underwriters association, bureau, or other similar body having jurisdiction over the Leased Premises.

42. **RULES AND REGULATIONS.** Tenant shall faithfully observe and comply with any rules and regulations as may be put into effect by Landlord. Landlord shall not be responsible to Tenant for the nonperformance or breach by another tenant or occupant of the Building of any of the rules and regulations.

43. **SALE OF PREMISES BY LANDLORD.** In the event of any sale of the Leased Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring before or after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties or their successors in interest or between the parties and such purchaser, at Purchaser's option, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease excluding the rental schedule and the lease terms.

44. **LIABILITY LIMITATION.** Tenant specifically agrees to look solely to Landlord's interest in the Property for the recovery of any judgment from Landlord, it being agreed that Landlord shall never be personally liable for any such judgment. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any other action not involving the personal liability of Landlord or Landlord to respond in monetary damages from assets other than Landlord's interest in the Property or any suit or action in connection with enforcement or collection of amounts which may become owing or payable under or on account of insurance maintained by Landlord. The obligations of Landlord under

this Lease do not constitute personal obligations of the individual partners, trustees, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease.

45. PARAGRAPH INTENTIONALLY DELETED.

46. **ACCORD AND SATISFACTION.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

47. PARAGRAPH INTENTIONALLY DELETED.

48. PARAGRAPH INTENTIONALLY DELETED.

49. **BROKERS.** Tenant is not utilizing the services of any Real Estate Broker or company in conjunction with this lease.

50. **HAZARDOUS MATERIALS.** Tenant and its agents, employees or others, shall not allow any toxic or hazardous materials or substances on, in, or about the Leased Premises, Building or land on which the same are situated, other than items used in Tenants normal course of operations.

51. **NOTICES.** Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when personally delivered or deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses set forth in herein, or at such other address as either party may have specified to the other party by written notice delivered in accordance herewith.

LANDLORD: **DLB PROPERTIES J/V**
6044 Gateway Blvd. East, Suite 900
El Paso, Texas 79905

TENANT: **EL PASO POLICE DEPARTMENT**
Attention: Chief's Office
911 N. Raynor
El Paso, Texas 79903

COPY TO: **Internal Affairs**
6044 Gateway Blvd. East, Suite 800
El Paso, Texas 79905

COPY TO: **City Of El Paso**
Attention: Deputy City Manager (Bill Studer)
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

EXECUTED as of this _____ day of February, 2010.

TENANT:

By:_____
Joyce Wilson, City Manager

Approved as to form:

By:_____
John Batoon, Asst. City Attorney

Approved as to content:

By:_____
Greg Allen, Chief of Police

LANDLORD: DLB PROPERTIES, JV

By:_____
Signature

_____
Title

EXHIBIT "A"

Legal Description

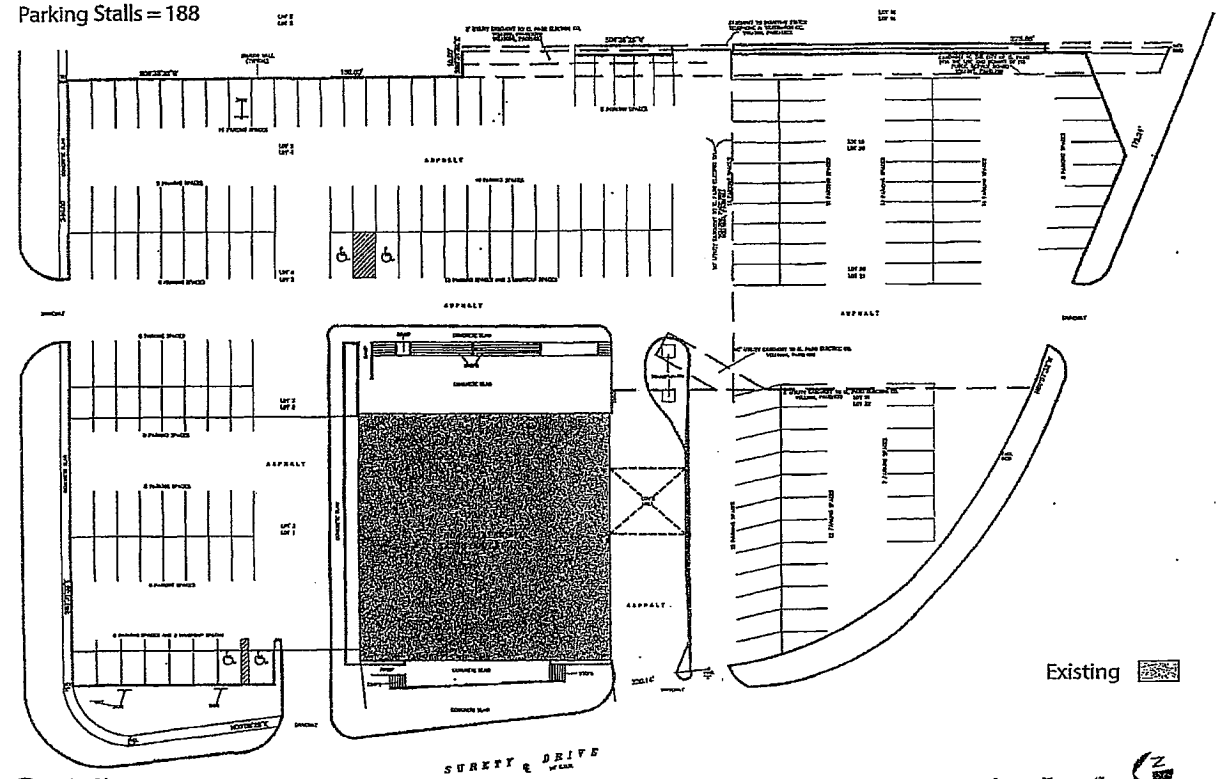
2 COMMERCE PARK 1 TO 4, 20 TO 22, W 37.26 FT OF 5 & 19, EXC W 10 FT OF 22.74 FT OF N 155 FT OF 5 (93276.79 SQFT)

CITY AND COUNTY OF EL PASO

EXHIBIT "A-1"

EXHIBIT "A-1"

Parking Stalls = 188

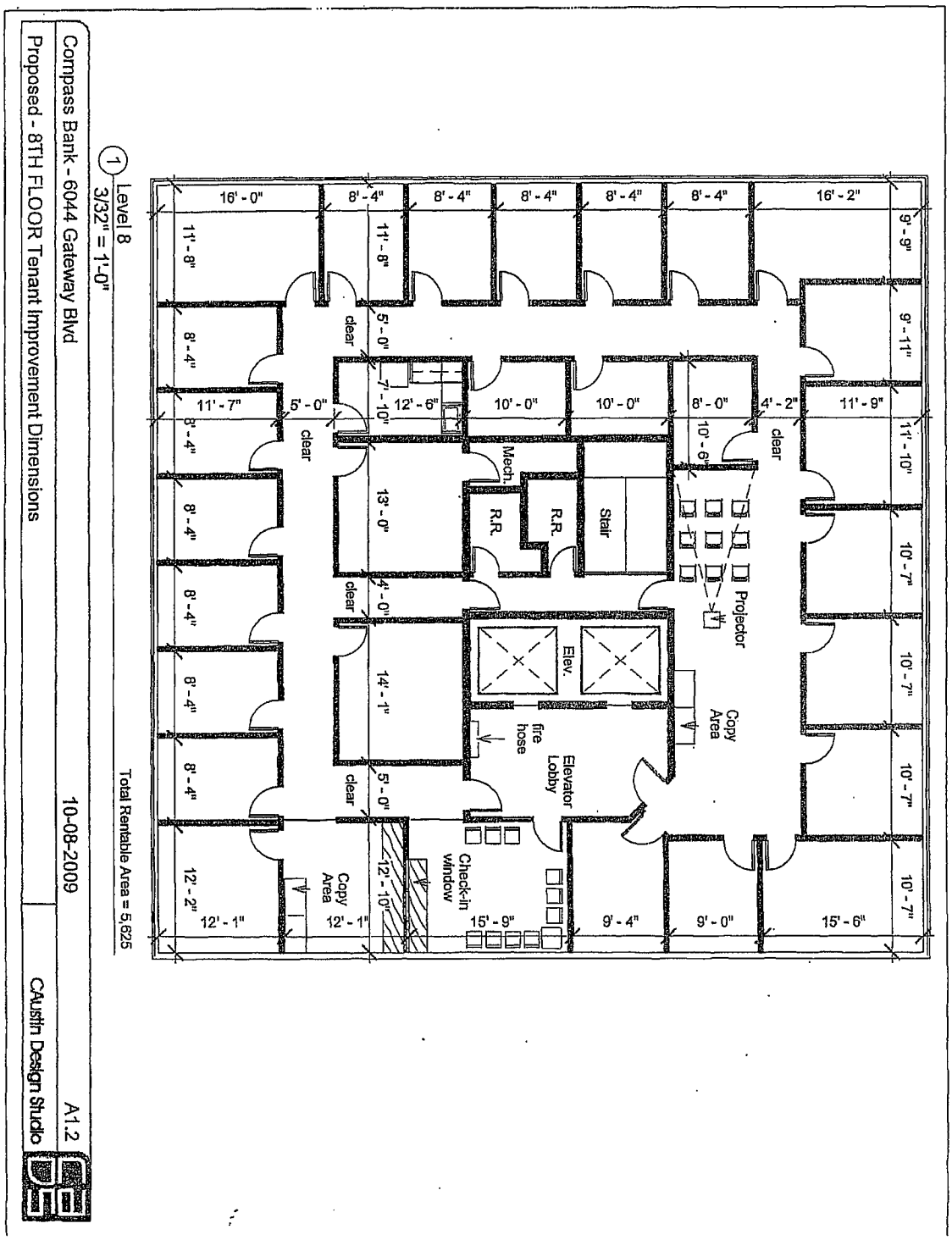


1 Site Plan
SCALE 1:25

Compass Bank_Existing Layout	6.14.09
Site Plan	CAustin Design Studio

EXHIBIT "A-2"

EXHIBIT "A-2"



1 Level 8
3/32" = 1'-0"

Total Rentable Area = 5,625

Compass Bank - 6044 Gateway Blvd | 10-08-2009 | A1.2

Proposed - 8TH FLOOR Tenant Improvement Dimensions | CAustin Design Studio