

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

DEPARTMENT: City Manager - Quality of Life Services

AGENDA DATE: June 15, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Deborah Hamlyn, Deputy City Manager 541-4686

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign the Third Amendment to the 1970 Lease Agreement between the City of El Paso and the Greater El Paso Chamber of Commerce.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City of El Paso has negotiated the terms of the Third Lease Agreement between the City of El Paso and the Greater El Paso Chamber of Commerce (GEPC). The purpose of the Third Amendment is to segregate the two primary tenants of the City's building located at 10 Civic Center Plaza, El Paso, TX 79901-1153. The GEPC will occupy the upper level of the building and SMG/CPAC will occupy the lower level. This will provide a more efficient use of the space for both parties.

Primary changes are as follows:

GEPC agrees to vacate the space it is using on the lower level of the building on the leased premises and will relocate all its personnel, operations, and equipment to the upper level of the building. GEPC will be responsible for payment of all applicable utilities as well as maintenance of the upper level of the building. SMG will do the same with the lower level space it will occupy.

GEPC will continue to pay the City one dollar (\$1.00) annually in exchange for specific services agreed upon by both parties

The City will pay all reasonable costs to relocate GEPC data lines, servers and other electronic equipment currently located on the lower level to the upper level as well as the relocation of items in the GEPC storage space on the lower level to the GEPC Lomaland location.

There is no extension of the lease term and all other terms of the original lease and its previous amendments remain the same.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On May 21, 1970, the Council approved a Lease Agreement with GEPC for a portion of the City Property located at 10 Civic Center Plaza, El Paso, TX 79901-1153. On May 31, 1973, the City amended the 1970 Lease Agreement to include additional property and clarify the GEPC consideration for the lease. On March 16, 1993, the City and GEPC extended the term of the Lease until Dec. 1, 2021.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

CVB/CPAC operating account retained earnings

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

n/a

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, on May 21, 1970, the City of El Paso (the City) and the Greater El Paso Chamber of Commerce, formerly known as The El Paso Chamber of Commerce, (the Chamber) entered into a Lease Agreement for a portion of City property; and

WHEREAS, on May 31, 1973, the City and the Chamber amended the May 21, 1970 Lease Agreement to include additional property and to clarify the Chamber's consideration for the lease; and

WHEREAS, on March 16, 1993, the City and the Chamber extended the term of the Lease for an additional twenty (20) year period; and

WHEREAS, because through the years, the services provided as consideration for this lease have been modified and the City and the Chamber desire to clarify and restate the services the Chamber will provide as consideration for the lease and to also redefine the leased premises,

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

That the City Manager be authorized to sign the Third Amendment to the 1970 Lease Agreement between the City of El Paso and the Greater El Paso Chamber of Commerce.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

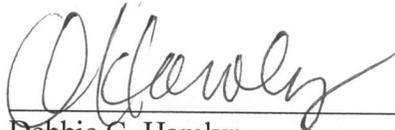
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Debbie G. Hamlyn
Deputy City Manager, Quality of Life

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

THIRD LEASE AMENDMENT

This Third Lease Amendment is made this _____ day of _____, 2010, between the **CITY OF EL PASO**, a home rule municipal corporation (the "Lessor"), and the **GREATER EL PASO CHAMBER OF COMMERCE**, formerly known as The El Paso Chamber of Commerce (the "Lessee").

WHEREAS, on May 21, 1970, the Lessor and the Lessee entered into a Lease Agreement for a portion of City property, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes; and

WHEREAS, on May 31, 1973, the Lessor and the Lessee amended the May 21, 1970 Lease Agreement to include additional property, and to clarify the Lessee's consideration for the lease, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes; and

WHEREAS, on March 16, 1993 the Lessor and the Lessee extended the term of the Lease for an additional twenty (20) year period, a copy of which is attached hereto as Exhibit "C" and made a part hereof for all purposes; and

WHEREAS, because through the years, the services provided as consideration for this lease have been modified and the Lessor and the Lessee desire to clarify and restate the services the Lessee will provide as consideration for the lease and to also redefine the area of the building of the Leased Premises which will be occupied by the Lessee,

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration,

1. The Lessor and the Lessee agree that the Lessee will occupy the upper level of the building of the Leased Premises, which will be designated as the Chamber of Commerce Area and identified more particularly in Attachment "1" attached hereto and made a part hereof by reference. The Lessee agrees to relocate (the "Lessee's Relocation") its operations, personnel and equipment, including, without limitation, the relocation of data lines, servers and other electronic equipment, currently located on the lower level of the building to the upper level of the building no later than April 9, 2010. The Lessor shall pay for the reasonable and actual costs of the Lessee's Relocation. Additionally, the Lessor shall pay for the actual and reasonable costs to move to an off-site location all of the items in the Lessee's storage space currently located on the lower level of the building. The total amount of the Lessor's responsibility for paying for these identified costs shall not exceed \$24,000.00, and the Lessor shall reimburse the Lessee for the actual and reasonable costs within thirty days of the Lessee's submittal of invoices from the Lessee's contractors.

The Lessor and the Lessee agree that the Lessee's Relocation does not include the relocation of the Lessee's existing Dmark (AT&T) equipment which will be allowed to remain in its present location on the Lower Level. The parties agree that if the Lessor requests the relocation of the present Dmark equipment to another location, it will be at the Lessor's sole expense. The Lessee agrees not to expand the footprint of the existing equipment without the Lessor's prior written approval.

In addition, the Lessor, at its expense, will construct a wall with a locking door on the Upper Level near the stairwell on the westerly side of the building within thirty (30) days of the date of this Third Lease Amendment. The Lessee will be provided with a key for the door. The purpose of the wall is to secure the Lessee's use of the Upper Level from the Lessor's use of the stairway and Lessor's access to the exit door on the westerly side of the building.

2. That Paragraph 2 of Exhibits "A," "B" and "C" is hereby deleted in their entirety and replaced with the following:

The Lessee agrees to pay the Lessor as rent the sum of One and 00/100ths Dollar (\$1.00) annually, in advance on the first day of October of each successive year throughout the term of the Lease. As part of the consideration for this Lease, Lessee further agrees to use reasonable efforts to be prioritized by and recognizing Lessee's then existing budget and personnel to provide the Lessor, when requested in writing by Lessor, with the following public services:

Chamber Advocacy: Lobbying Efforts with the State and Federal Government:

- Promote Community Legislative agenda in Austin and Washington, D.C. except any portion of said agenda to which the Lessee is opposed or neutral.
- Coordinate with the Pentagon on regional military issues and funding needs.
- Promote Healthcare access.
- Promote Transportation issues.
- Promote Mental Health access.
- Promote Infrastructure and Development issues.
- Educate the electorate through "Vote El Paso."

Business Development:

- Provide training of small business owners to access contracts, for a reasonable fee.
- Assist small business in obtaining SBA loans, 8(A) and HUB certifications, for a reasonable fee.
- Counsel small and start up business in partnership with SCORE, for a reasonable fee.
- Provide business seminars, for a reasonable fee.

Host Annual Events in Conjunction with Convention and Visitors Bureau (CVB); provided, however, (i) the parties acknowledge that the location of the following events is not within the control of Lessee and (ii) the Lessee shall not be in default under the Lease Agreement, as amended herein, if a party other than Lessee elects to cancel any of the foregoing events:

- Mayor's Annual State of the City Address
- Commanding General's State of the Military Address
- State of the School Districts (creating scholarship funding)
- State of Higher Education (creating scholarship funding)

BRAC:

- Promote growth of Fort Bliss.

Coordination with SMG:

- Actively coordinate with the CVB and the Convention and Performing Arts Centers (CPAC) to reach out to the Lessee's members to participate in the "Spirit of Amigo Program."

The Lessee shall submit an annual written report to the Lessor providing a status on each of the above activities.

3. As of the date this amendment is executed by all parties, the lower level of the building (the "Reduction Space") shall be deemed surrendered by the Lessee to the Lessor, the Lease Agreement shall be deemed terminated with respect to the Reduction Space, and references to the "leased premises" or the "premises" in the Lease Agreement and this amendment shall be deemed to exclude the Reduction Space. The Chamber shall deliver and the City shall accept the Reduction Space on an "as-is", "where-is" basis without any representations or warranties of any kind, including any representations regarding habitability or fitness for a particular purpose.

4. The Lessee shall pay for the water and electricity serving the upper level, which is currently metered separately, waste disposal fees for the dumpster serving the Lessee and the Lessee's share of the heating, ventilating, and air conditioning costs. For purposes of the preceding sentence, the Lessee's share of the heating, ventilating, and air conditioning costs shall be the percentage of usable square feet of the building consisting of the upper level. The parties shall cooperate in good faith to determine the allocation of the heating, ventilating, and air conditioning costs. The Lessee shall have the right from time-to-time to audit and review the records relating to the costs charged to Lessee hereunder during normal business hours. The Lessee's obligation to pay for taxes and other governmental charges shall be limited to amounts relating and fairly allocated to the upper level.

5. The Lessee shall, at its sole cost and expense, repair and maintain the following fixtures or equipment in a good state of repair, normal wear and tear excepted.

- A. The roof of the building, excluding any equipment, fixtures or other items installed or maintained or required to be installed or maintained by the Lessor.
 - B. The exterior windows for the upper level and the exterior door for the upper level.
 - C. The portions of the utilities inside the building serving the building that are located in the upper level, regardless of whether those utilities ultimately serve the upper level or the lower level.
 - D. Exterior lights located on the upper level; provided that any replacement or new lights shall utilize the same type of fixtures as the current fixtures.
 - E. Parking lot lights; provided that any replacement or new lights shall utilize the same type of fixtures as the current fixtures.
 - F. The parking lot and the entrance to the parking lot.
6. The Lessor shall, at its sole cost and expense, repair and maintain the following and any related fixtures or equipment in a good state of repair, normal wear and tear excepted:
- A. The outside wall of the building and the exterior windows for the lower level.
 - B. The exterior protective wall not physically connected to the building.
 - C. The foundation of the building.
 - D. Landscaping, the entryway to the lower level, and all exterior portions of the property except those items specifically described in Paragraph 5 above.
 - E. Any stairways to the upper level and the exterior entrance to the upper level (excluding the exterior door).
 - F. The portions of the utilities inside the building that are located in the lower level, regardless of whether those utilities ultimately serve the upper level or the lower level.
 - G. Exterior lights located on the lower level; provided that any replacement or new lights shall utilize the same fixtures as the current fixtures.
 - H. The HVAC system for the entire building.
7. Notwithstanding anything herein or in Exhibits "A", "B" and "C" to the contrary, to the extent that any of the items described in Paragraphs 5 and 6 above need to be replaced, repaired or otherwise modified due to the actions of the party not required to maintain same (the "Damaging Party") or any of its employees, agents, contractors, subcontractors, partners or invitees, the Damaging Party shall promptly reimburse the other party for the applicable replacement, repair or modification costs.

**THE GREATER EL PASO CHAMBER
OF COMMERCE**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2010,
by _____, as _____ of **THE GREATER
EL PASO CHAMBER OF COMMERCE.**

My Commission Expires

Notary Public, State of Texas

EXHIBIT A

ORIGINAL LEASE

LEASE

THIS LEASE made this 21st day of May, 1970, by and between The City of El Paso, Lessor, and The El Paso Chamber of Commerce, Lessee, witnesseth:

That Lessor, in consideration of the rents and covenants hereinafter contained, and by said Lessee to be paid and performed, does by these presents lease unto Lessee and its successors the following described property situated in El Paso County, Texas, being more particularly described as follows:

Beginning at a point which is the intersection of the westerly right-of-way line of Santa Fe Street and the southerly right-of-way line of the Southern Pacific Railroad, said point bears North 37° 37' West, 136.85' and South 52° 23' West, 45.00' from a city monument located 10' north and east of the intersection of the center-line of West Main Street and Santa Fe Street;

Thence South 37° 37' East, along the westerly right-of-way line of Santa Fe Street, a distance of 205.20 feet to a point; thence South 52° 23' West, a distance of 90.44 feet to a point; thence South 74° 26' 15" West, a distance of 96.00 feet to a point; thence North 60° 33' 45" West, a distance of 183.68 feet to a point in the southerly right-of-way line of the Southern Pacific Railroad; thence along the southerly right-of-way line of the Southern Pacific Railroad, North 52° 23' East, a distance of 251.03 feet to the place of beginning and containing 0.947 acres of land more or less, together with all improvements located or to be located thereon;

upon all of the following terms and conditions:

1. This lease is for a term of thirty years commencing December, 1971 and terminating December, 2001.
2. Lessee agrees to pay Lessor as rent the sum of one dollar annually in advance on the 1st day of December, of each successive year throughout the term of said lease. As part of the consideration for this lease, Lessee further agrees to provide Civic Center services (as far as possible on said leased premises) which

will include:

(a) Promotion and advertising of the Civic Center for convention and commercial use;

(b) Direct solicitation and sales of conventions for the Civic Center;

(c) Assistance in providing personnel for operation of convention registration, and in providing facilities for handling of tickets for such Civic Center functions as may be requested by Lessor.

(d) Design, publication and distribution of brochures setting forth design and capabilities of Civic Center facilities, hotel and motel accommodations, recreational facilities and other El Paso attractions;

(e) Design, publication and distribution of an annual convention and tourist issue of El Paso Today, promoting the Civic Center and El Paso as a convention and tourist site;

(f) Assistance in the planning and programming of service for conventions;

(g) Assistance in attracting theatrical, musical and cultural programming for the Civic Center;

(h) Operation of a tourist and convention bureau;

(i) General promotion and advertising of El Paso; and

(j) Providing the Civic Center Board with information concerning prospective conventions and cooperating with the Board in the coordination of programs designed to implement the use of the Civic Center facilities.

3. In further consideration of the execution of this lease, Lessee agrees to construct a building on the above described premises which building and premises shall be used and occupied by the El Paso Chamber of Commerce, and its sublessees. Said building shall be constructed at Lessee's cost in good and workmanlike manner in accordance with plans and specifications approved by the City of El Paso. Lessee agrees to complete the construction of said building on or before January 1, 1973. Lessee agrees to transfer and convey title to said building to the City of

El Paso free and clear of any liens and encumbrances on or before July 1, 1973.

4. Lessee will not use, or permit any sublessee to use, the leased premises for any purpose in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the premises nor shall Lessee commit, or allow to be committed, any waste on the premises or create or allow any nuisance to exist on the premises.

5. Lessor agrees to deliver to Lessee's building all utilities, including water, electricity, gas, and cold and hot air for cooling and heating, as required and specified by Lessee and in accordance with Lessee's plans and specifications. Lessee will reimburse Lessor for the actual amount paid by Lessor to its Department of Water Utilities for such water and sewer service; and for the actual cost to Lessor of steam and chilled water delivered to the building, which actual cost will be determined by metering Lessee's steam and chilled water and allocating to it its proportionate part of the cost of producing and distributing the steam and chilled water for the whole Civic Center. Costs of other utilities shall be paid by the Lessee directly to the supplier.

6. No property taxes shall be paid by Lessee to Lessor on said permanent improvements or said premises. Lessee agrees to make all repairs, including, but not limited to, the replacement or repair of any plate glass, and to maintain and repair the roof, foundations and outside walls of the building in good order and repair. Lessee shall be entitled to make such alterations, additions and improvements to the premises as may be required for Lessee's, its successors, and sublessee use and enjoyment of said premises. At the end of the lease term, Lessee may remove its own personal property, fixtures and other improvements not permanently attached to the leased premises.

Lessee further agrees to maintain the parking area located on the leased premises and to keep said parking area free of debris. Lessor a

to provide and maintain all landscaping on said leased premises and to maintain and repair all facilities and improvements required for delivery of utilities, as above enumerated, to Lessee's building.

7. Lessee shall have the right to sublet portions of the demised premises, but only to nonprofit organizations which provide services pertinent to the Civic Center operation and community betterment, and only with the prior written consent of Lessor.

8. Lessee agrees to procure and maintain a policy or policies of insurance, at its own cost and expense, insuring Lessor and Lessee from all claims, demands or actions for injury to or death of any one person in an amount of not less than Five Hundred Thousand Dollars, or for injury to or death of more than one person in any one accident to the limit of not less than One Million Dollars, and for damage to property in an amount of not less than Fifty Thousand Dollars, made by or on behalf of any person or persons, firm or corporation arising from, related to or connected with the conduct and operation of Lessee's business in the leased premises. Said insurance shall not be subject to cancellation except after at least ten days' prior written notice to Lessor, which written notice shall be filed with the City Clerk. If Lessee fails to comply with such requirement, Lessor may obtain such insurance and keep the same in effect, and Lessee shall pay Lessor the premium cost thereof upon demand as additional rent.

Lessee further agrees to keep the leased premises insured in the name of Lessor, and Lessee throughout the term of this lease, at Lessee's cost, against loss or damage by fire and other perils, extended coverage, vandalism and malicious mischief, in an amount equal to 80 per cent of the full replacement cost of the building and the building service equipment. Such policy shall not be subject to cancellation except after at least ten days' prior written notice to Lessor, which notice shall be filed with the City Clerk. If Lessee fails to comply with such requirement, Lessor may obtain such insurance and keep the same in effect, and Lessee shall pay Lessor the premium

costs thereof upon demand as additional rent. In the event of damage to or destruction of the leased property by fire or other casualty, Lessee shall have the option to either utilize all insurance proceeds received by it in restoring the leased property as nearly as possible to its condition prior to such damage or destruction or terminate the lease and pay over to Lessor all insurance proceeds received by Lessee as a result of such damage or destruction.

Copies of all insurance policies carried by Lessee in accordance with this lease shall be filed with the City Clerk.

9. Lessor reserves the right to enter upon, or have Lessor's agents enter upon, the leased premises at all reasonable times for the purpose of inspecting the premises or any other lawful purpose.

10. Lessee shall have the right to provide parking on the demised premises for approximately twenty-five automobiles for use by Lessee, sublessees, customers and visitors and to make such charges for use of said parking facilities as Lessee deems proper.

11. Lessor agrees to coordinate its construction of the Civic Center facilities with Lessee's construction of its facilities and to cooperate with Lessee in order to avoid causing Lessee any undue delay in construction and completion of its building.

12. Lessor warrants and represents unto Lessee that it has good title to the above described property and that Lessor has authority to enter into and execute this lease.

13. If Lessee shall abandon or vacate the leased premises before the end of the leased term, or shall be in default under any other condition of this lease, or should any other person than Lessee secure possession of the premises, or any part thereof, by reason of any receivership, bankruptcy proceedings, writ of attachment or execution, or other operation of law in any manner whatsoever, Lessor may, at its option, upon twenty days' written notice to Lessee (if Lessee has not cured such default within such time) terminate

this lease, or, in the alternative, Lessor may re-enter and take possession of said premises and remove all persons and property therefrom without being deemed guilty of any manner of trespass, and relet the premises, or any part thereof, for all or any part of the remainder of said term, to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure. In the event of any such re-entry or possession by Lessor pursuant to the provisions hereof, said lease shall be considered terminated and Lessee shall have no further obligation hereunder.

14. Upon termination and expiration of this lease, or any renewal thereof, Lessee shall surrender the premises in good condition and repair, reasonable wear and tear and loss by fire, explosion, windstorm or other casualty excepted. In the event Lessee remains in possession of the leased premises after the expiration of the leased term, or any renewal thereof, and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month, subject to all of the conditions, provisions and obligations of this lease insofar as the same are applicable to month-to-month tenancy. Upon the termination or expiration of the lease, or any renewal thereof, if Lessor so requests in writing, Lessee shall promptly remove all of its personal property and any additions, fixtures, and installations placed in the leased premises by Lessee, and repair any damage occasioned by such removal, at Lessee's expense, and in default thereof Lessor may effect such removal and repairs, and Lessee shall pay Lessor the cost thereof with interest at the rate of 6 per cent per annum, from the date of payment by Lessor.

15. This lease shall be binding upon and inure to the benefit of the parties hereto and to Lessee's successors, and sublessees.

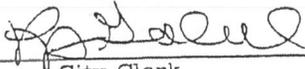
EXECUTED in duplicate originals this 21st day of May, 1970.

THE CITY OF EL PASO

by _____

Mayor

ATTEST:



City Clerk

THE EL PASO CHAMBER OF COMMERCE

by _____
President

ATTEST:

Secretary

EXHIBIT B
FIRST AMENDMENT

by City, services (as far as possible on said leased premises) which will include:

(a) Designing, publishing and distributing an annual convention and tourist issue of "El Paso Today", promoting the Civic Center and El Paso as a convention and tourist site;

(b) Providing and maintaining a tourist information center to answer inquiries of conventioner utilizing the El Paso Civic Center and to further provide answers to all correspondence regarding the City of El Paso and its attractions;

(c) Distributing literature, brochures, and publications prepared by the El Paso Civic Center to tourists and other interested parties. It is specifically understood, however, that City will bear all costs of printing and publication and it is further understood that distribution of such material will be made at the Chamber of Commerce building only;

(d) Doing general promotion work in advertising for the City of El Paso, provided that such activities are to be coordinated with the Convention Bureau of El Paso to eliminate conflicts;

(e) Immediately forwarding to the Director of El Paso Civic Center all inquiries made to the Chamber of Commerce concerning use of Civic Center facilities.

3. In further consideration of the execution of this lease, Lessee agrees to construct a building on the above described premises which building and premises shall be used and occupied by the El Paso Chamber of Commerce with its sublessees. The first floor of the said building shall be used and occupied by Lessor, SAVE AND EXCEPT the existing and completed print shop and supply room located therein, which facilities and space shall be used and occupied by the Chamber of Commerce, Lessee. These facilities and space they occupy are designated as Chamber of Commerce area in Exhibit "A" attached hereto and made a part of this Amendment and likewise designated as Chamber of Commerce area in the basic lease from the City of El Paso to the Chamber of Commerce.

The City of El Paso agrees to pay to Lessee the sum of \$130,000.00 for the cost of the first floor (plaza level) of said building, the receipt of which is hereby acknowledged by Lessee. Lessee agrees to complete the construction of said building on or before January 1, 1973. Lessee agrees to transfer and convey title to said building to the City of El Paso free and clear of any liens and encumbrances on or before July 1, 1973.

Should the City of El Paso determine that the plaza level space set forth in Exhibit "A" attached hereto is in excess of its needs, the El Paso Chamber of Commerce shall be given the right of first refusal to regain possession of such space on payment of \$130,000.00 to the City plus costs incurred by the City of finishing said space. Allowance for construction costs incurred by the City are to be determined by negotiations between the City and the Chamber of Commerce and will consider and allow for depreciation of materials utilized in the finished construction. In the event that the El Paso Chamber of Commerce does not take action to regain the space within sixty days of its availability, then such right of first refusal herein granted shall terminate.

EXECUTED in duplicate, this 31st day of May, 1973.

THE CITY OF EL PASO

ATTEST:

By [Signature]
Mayor

[Signature]
City Clerk

EL PASO-CHAMBER OF COMMERCE

ATTEST:

By [Signature]
President

[Signature]
Secretary

EXHIBIT C

SECOND AMENDMENT

STATE OF TEXAS)
) SECOND AMENDMENT TO LEASE
COUNTY OF EL PASO)

This Second Amendment is entered into this 16th day of March, 1993, by and between the CITY OF EL PASO, hereinafter referred to as the "Lessor," and the GREATER EL PASO CHAMBER OF COMMERCE, formerly known as The El Paso Chamber of Commerce, hereinafter referred to as the "Lessee."

WHEREAS, on May 21, 1970, the Lessor and Lessee entered into a Lease Agreement for a portion of City property, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, and

WHEREAS, on May 31, 1973, the Lessor and Lessee amended the May 21, 1970 Lease Agreement to include additional property, and to clarify the Lessee's consideration for the lease, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes, and

WHEREAS, the Lessor and the Lessee now desire to extend the term of the Lease for an additional twenty year period,

NOW, THEREFORE, IT IS AGREED:

1. That Paragraph 1 of Exhibit "A" is hereby amended to read as follows:

1. The term of this Lease is hereby extended for an additional twenty (20) year period, terminating on December 1, 2021.

2. That Paragraph 2 of Exhibits "A" and "B" is hereby amended to read as follows:

2. Lessee agrees to pay Lessor as rent the sum of ONE AND 00/100THS DOLLAR (\$1.00) annually, in advance on the first day of October of each successive year throughout the term of this Lease. Additionally, Lessee agrees to expend not less than \$250,000.00 for the improvements described in paragraph 3.1 (a), (b), (c), (d). As part of the consideration for this Lease, Lessee further agrees to provide the Lessor's Civic, Convention and Tourism Department, hereinafter referred to as the "CVB", when requested in writing by Lessor, with the following public services:

a. Publishing and maintaining a community calendar in cooperation with the CVB,

b. Those printing services requested by CVB which can be provided by Lessee's existing staff and equipment at times consistent with Lessee's printing schedules, all costs of printing materials associated with such requests to be borne by Lessor.

c. Coordinating marketing and recruiting trips between the Lessee and the CVB's sales/tourism/film sections, as well as the Lessor's Economic Development Department.

d. Providing and maintaining CVB tourist information to answer inquiries of conventioners utilizing the CVB and to further provide answers to all correspondence regarding the City of El Paso and its attractions.

e. Distributing literature, brochures and publications prepared by the CVB to tourists and other interested

parties. The distribution of such materials will be made at the Premises referred herein and at Lessee's other approved scheduled functions, including but not limited to the Lessee's area council meetings.

f. Providing general promotion work in advertising for the City of El Paso, provided that such activities are to be coordinated with the CVB to eliminate conflicts and duplication.

g. Forwarding immediately all inquiries concerning the use of CVB facilities to the CVB Executive Director.

3. That Paragraph 3 of Exhibits "A" and "B" is hereby amended to read as follows:

3. This Second Amendment to Lease is subject to Lessee: (1) securing sufficient funds within one year from date hereof to complete the improvements set forth in Lessee's architectural plans and specifications, and (2) securing Lessor's written approval of Lessee's architectural plans and specifications, which approval shall not be unreasonably withheld. As used herein, "Lessor's designated agent" shall be the Director of Public Works or his designee. The Leased Premises shall be used and occupied by Lessee with its sublessees. That portion of the first floor of said building delineated on Exhibit "C" attached hereto and made a part hereof shall be used and occupied by Lessor, and the remaining portion presently occupied by the Lessee and currently devoted to use by the Industrial Development Council, including the print shop and supply room located therein, shall continue to be used and occupied by Lessee.

3.1 As additional consideration for the extension of the lease term, Lessee agrees to expend a sum not less than \$250,000.00 to make the following improvements on the Leased Premises at no cost to the Lessor:

Exterior - provide water saving landscaping.
Interior of Chamber of Commerce Building - (1) replace ceiling; provide new partitions, paint doors, and repair tile floor; (2) provide paint; wallcover; wood refinish, carpeting and new drapes; (3) install a ventilation system in the print shop to provide adequate exhaust of fumes.

c. Electrical System - where deemed necessary by Lessee, replace existing light fixtures, provide new exit lights, provide new emergency lighting, provide new lobby lighting.

Provide internal security system for that portion of the building leased by Lessee.

Lessee will commence construction of such improvements on or before sixty days after Lessor's written approval of Lessee's architectural plans and specifications and after Lessor shall have completed re-roofing the building and modifying existing rest rooms for handicapped accessibility as provided in Paras. 3.2 (a & d). Lessee shall complete construction of such improvements within a reasonable time which shall not exceed one hundred eighty days from the date Lessor completes construction of the improvements described in paragraph 3.2. The construction of such improvements shall be the sole responsibility of the Lessee. The architectural design and the plans and specifications for all improvements shall

be subject to approval by the Lessor's designated agent. The Lessee shall employ qualified and licensed engineers and architects to prepare architectural plans, construction plans and specifications.

The Lessee shall submit to the Lessor's designated agent the plans and specification for any proposed improvements, additions, alterations or changes and no work thereon shall be commenced until the Lessor's designated agent has given his approval. The Lessee shall not construct any additional improvements thereafter without first obtaining the written permission of Lessor. Lessee warrants that no liens or encumbrances will be allowed to attach to the Leased Premises.

Lessee, at its own cost and expense, shall cause to be made, and delivered to Lessor two (2) separate bonds, as follows:

a. Prior to the date of commencement of construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee the Lessor against any losses and liability, damages, expense, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

b. Prior to the date of commencement of construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the

construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

All such bonds shall be written by sureties authorized to do business in the State of Texas and shall be written by companies approved by the City, which approval shall not to be unreasonably withheld.

3.2 Lessor agrees to provide the following improvements which shall be constructed in a good and workmanlike manner in accordance with the architectural plans and specifications approved by Lessor, if applicable, and in compliance with existing Federal, State and City, regulations, laws, and ordinances at no cost to the Lessee:

- a. Re-roof the Chamber of Commerce Building.
- b. Provide handicapped accessibility ramps to the Building.
- c. Repair and refinish exterior walls of the Chamber of Commerce Building.
- d. Modify existing rest rooms for handicapped accessibility in accordance with A.D.A. criteria.
- e. Provide exterior lighting fixtures on the Building at each exterior entrance or exit.
- f. Provide exterior parking lot lighting fixtures at locations to be determined by Lessor.

If Lessor performs any of the improvements to be constructed hereunder with its own employees, Lessor shall maintain worker's compensation insurance with respect to all such employees as required by Texas Statute. If Lessor should enter into a construction contract for the improvements, Lessor shall require the successful bidder to provide a payment bond and a performance bond, in accordance with Article 5160, Texas Revised Civil Statutes Annotated; and, in addition, Lessor shall require the successful bidder to provide Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in amounts which will not be less than the limits of the Texas Tort Claims Act as applied to Texas municipalities, all as more specifically described in Exhibit "D". Such insurance policies shall name Lessor and Lessee as additional insureds and such policies shall provide that they cannot be terminated or cancelled without ten (10) days prior written notice to the Lessor and Lessee.

3.3 To avoid unnecessary delays and expense, Lessor and Lessee agrees to coordinate the construction of the improvements described herein. Once the above-mentioned improvements are completed, Lessee shall be responsible for all costs associated with operation, use, maintenance and repair of such improvements in accordance with the terms and conditions of Exhibits "A" and "B". The Lessor's providing of said improvements will in no way supersede or modify Lessee's responsibilities to provide for these improvements in the future or modify Lessee's responsibilities to

maintain and keep in good order said improvements in accordance with the terms and conditions of Exhibits "A" and "B".

4. That the first sentence of Paragraph 6 of Exhibit "A" is hereby amended to read as follows:

6. The Lessee shall pay all taxes, tax liens, and other governmental charges of any kind whatsoever that may be lawfully assessed or imposed against the Lessee or the Lessor because of Lessee's use of the Lessor's premises, the improvements located on the Leased Premises and the Lessee's leasehold interest, during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of legal counsel satisfactory to the Lessor, such action shall not adversely affect any right or interest of the Lessor. The Lessee shall not permit any mechanic's or materialman's or any other lien to be foreclosed upon the Leased Premises or any part thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

5. That Paragraph 10, of Exhibit "A" is hereby amended to read as follows:

10. Lessee shall have the right to use twenty-five (25) parking spaces on the Leased Premises for use by Lessee, sub-

lessee's, customers and visitors and can make such charge for use of said parking facilities as Lessee deems proper. At Lessee's discretion, and only upon written approval in advance by Lessee, Lessor may be granted the right to use the parking spaces during CVB scheduled events during non-business hours.

6. That Paragraph 11, of Exhibits "A" and "B" is hereby amended to read as follows:

11. Lessor and Lessee agree to coordinate renovation and remodeling.

7. Except as hereby amended, Exhibits "A" and "B" shall remain in full force and effect.

WITNESS the following signatures and seals:

ATTEST:

Carole Hunter
City Clerk

CITY OF EL PASO

GREATER EL PASO CHAMBER OF COMMERCE

By: [Signature]

Title: Chairman of the Board

APPROVED AS TO FORM:

Christa Cullen-Garney
Assistant City Attorney

APPROVED AS TO CONTENT:

[Signature]



LOWER FLOOR PLAN
JANUARY 1917

EL PASO CHAMBER OF COMMERCE BUILDING
CARROLL DUSANG AND BOND A.S.A. GARLAND AND MILLS A.S.A.

EXHIBIT "D"

INDEPENDENT CONTRACTOR/SUBCONTRACTOR INSURANCE

- A. Compensation Insurance. The Contractor shall procure and maintain during the life of this contract Worker's Compensation Insurance as required by applicable state or territorial law for all of his/her employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his/her employees as are not otherwise protected.
- B. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified: an amount not less than \$300,000.00 for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$500,000.00 on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$200,000.00.
- C. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either:
- 1) Require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance in the amounts specified above; or
 - 2) Insure the activities on higher policy, specified in subparagraph B hereof.
- D. Scope of Insurance and Special Hazards. The insurance required under Subparagraphs B and C hereof shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims which may arise from operations under this contract whether such operations are by the insured or by anyone directly or indirectly employed by him/her, and also against any of the special hazards which may be encountered herein.
- E. Builder's Risk Insurance (Fire and Extended Coverage). This insurance shall be required only for building projects, as opposed to street, bridge and drainage projects.

Until the project is completed and accepted by the Owner, the Contractor is required to maintain Builder's Risk Insurance (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor and subcontractor, as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from his/her obligation to complete, according to plans and specification, the project covered by the contract, and the Contractor and his/her Surety shall be obligated to full performance of the Contractor's undertaking.

- F. Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) consecutive calendar days written notice of intent to cancel or materially alter said insurance has been provided to the Owner."

G. Contract Security

In accordance with Article 5160, Vernon's Annotated Civil Statutes, the City of El Paso requires the following for all public works contracts in excess of \$25,000.00:

- 1) The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract.
- 2) A payment bond in an amount not less than one hundred percent (100%) of the contract price, or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract.

The performance bond and the payment bond shall be in a form approved by the Owner. A copy of the payment bond provided for the construction project in accordance with Article 5160, Texas Revised Civil Statutes, including the name, address, and phone number, of the surety company shall be posted at the construction site. The surety company providing the payment bond shall designate an agent resident in the County of El Paso to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of suretyship.

H. Additional or Substitute Bond

If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any Surety or Sureties upon the Performance or Payment Bonds, the Contractor shall within five (5) consecutive calendar days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the Owner. The premiums on such bond (or bonds) shall be paid by the Contractor.

No further payments shall be deemed due nor shall be made until the new Surety or Sureties shall have furnished such an acceptable bond to the Owner.

ATTACHMENT "1"

CHAMBER OF COMMERCE AREA

