

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND AUSTIN HWY
PROPERTIES LLC FOR A TERM OF TWO AND A HALF YEARS IN
THE AMOUNT OF \$1,750.00 PER MONTH AND NOT TO EXCEED
\$52,500.00 TOTAL OVER THE TERM OF THE LEASE, TO ACCESS
APPROXIMATELY 9,000 SQUARE FEET FOR INGRESS AND
EGRESS ADJACENT TO FIRE STATION 24 LOCATED AT 1940
AUSTIN HIGHWAY.**

* * * * *

WHEREAS, on May 6, 2017, the voters approved the 2017-2022 Bond Program which included \$10,000,000.00 for the Fire Station 24 Replacement Project; and

WHEREAS, personnel currently housed in the existing Fire Station 24 facility (“Fire Station”) located at 1940 Austin Highway will remain there until the construction of the replacement for Fire Station 24 at 2265 Austin Highway, described and incorporated as **Exhibit A**, is completed in 2021; and

WHEREAS, since the existing Fire Station 24 facility has been in operation, personnel have been using the adjacent private driveway owned by Austin Hwy Properties LLC to access the Fire Station and the facility’s parking area; and

WHEREAS, a lease agreement will allow the continued use of the private driveway for ingress and egress access to the Fire Station and facility’s parking area until the construction of the new Fire Station 24 is complete.

NOW THEREFORE,

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

SECTION 1. As an exercise of its discretion, the City Council authorizes the execution of lease agreement substantially in the form shown in **Exhibit B** between the City of San Antonio and Austin Hwy Properties LLC for a term of two and a half years in the amount of \$1,750.00 per month and not to exceed \$52,000.00 total over the term of the lease.

SECTION 2. Funding in the amount of \$21,000.00 is available in Fund 11001000, Cost Center 2015040002 and General Ledger 5206010 as part of the FY2019 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Austin Hwy Properties LLC and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this _____ day of _____, 2018.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney

Exhibit A



Exhibit “B”

Ingress-Egress Lease (“Lease”) (FS 24)

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1. Basic Information, Definitions.

Authorizing Ordinance: [TBD]

Landlord: Austin Hwy Properties LLC

Landlord’s Address: 1948 Austin Highway, San Antonio, Texas 78218

Tenant: City of San Antonio

Tenant’s Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: Chief, Fire Department)

Premises: 5.808 acres of real property described as Lot 4, New City Block 12172, (1948 Austin Highway) situated in San Antonio, Bexar County, Texas further described as **Exhibit A** attached and incorporated hereto.

Permitted Use: Municipal fire station ingress, egress, and all uses ancillary to those purposes.

Commencement Date: The Binding Date as defined below.

Ingress-Egress Lease (“Lease”)
(FS 24)

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I. Basic Information, Definitions.

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Permitted Use: Municipal fire station ingress, egress, and all uses ancillary to those purposes.

Commencement Date: The Binding Date as defined below.

Initial Term: 2.5 years beginning on the Commencement Date.

Rent: A total rent amount not to exceed **FIFTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$52,500)**, paid in monthly installments due on the first of each month in the amount of **ONE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$1,750)**.

2. Grant.

Landlord grants a nonexclusive lease of the Premises to Tenant for purposes of ingress and egress to the abutting Fire Station, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

3. Rent.

On or before the first day of each month during the Initial Term of the Lease of ONE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$1,750). Landlord agrees that consideration being paid on a monthly basis shall be used to maintain, repair, or improve any damaged areas, and to resolve the storm water ponding issues where the driveway and parking lot meet as shown in **Exhibit B**. Landlord is required to finish the said construction work by the end of the lease term.

4. Term, Termination, and Renewal.

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease. Either Landlord or Tenant may terminate this lease at any time for cause by delivering ninety (90) prior written notice to the other party. The effective date of termination shall be ninety (90) days from the date of delivery of the written notice, subject to Section 16 herein.

4.02. Tenant may renew this Lease for two 1-year terms by giving Landlord six-months written notice before expiration of the previous term, whether initial or renewal. All renewals must be approved by City Council or the Director of TCI.

4.03. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions set forth above.

4.04. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant must not abate Rent.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Premises reasonably adopted by Landlord.

5.03. Acknowledge that the relationship between Landlord and Tenant is an agency, partnership, or joint venture.

5.04. Tenant assumes all risks of losses resulting from the Lease.

6. Tenant's Negative Promises.

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Permit waste.

6.04. Allow a lien to be placed on the Premises.

6.05. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

7. Landlord's Affirmative Promises.

Landlord promises that it:

7.01. Agrees that consideration being paid by Tenant on a monthly basis shall be used to maintain, repair, or improve any damaged areas, and to resolve the storm water ponding issues where the driveway and parking lot meet as shown in **Exhibit B**. Landlord is required to finish the said construction work by the end of the lease term.

7.02. Acknowledge that the relationship between Landlord and Tenant is an shall at all times remain solely that of landlord and tenant and will not be deemed an agency, partnership, or joint venture.

8. Landlord's Negative Promises.

Landlord promises that it will not interfere with Tenant's possession of the Premises (other than for maintenance or repair of the Premises) as long as Tenant is not in default.

9. Alterations.

Tenant may not make any improvements to the Premises without Landlord's prior written approval. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

10. Insurance.

Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

11. Casualty/Total or Partial Destruction.

All risk of loss is allocated to Tenant. If the property is materially damaged and Landlord fails to repair such damaged property within a commercially reasonable time, then Tenant may elect to cancel the lease or repair and rebuild. It has no obligation to Landlord to do so.

12. Condemnation/Substantial or Partial Taking.

Tenant will have no claim to a condemnation award or proceeds in lieu of condemnation.

13. Default.

13.01. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice.

13.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages.

13.03. *Default by Tenant/Events.* Defaults by Tenant are failing to pay timely Rent or failing to comply within ten days after written notice with any provision of this lease other than payment of rent.

13.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to sue for damages or to enjoin further defaults.

13.05. *Waiver of Liens.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

14. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

15. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability

16. Dispute Resolution.

16.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

16.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

16.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

16.06. Mediator fees must be borne equally.

16.07. The parties need not mediate before going to court (1) for either party to seek injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

17. Prohibited Interests in Contracts.

17.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

17.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor

employees of the City.

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

17.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

18. Miscellaneous.

18.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

18.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

18.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

18.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

18.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

18.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

18.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly

addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

18.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

18.09. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

18.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

18.11. *Administrative Agreements.* The Director of Transportation and Capital Improvements ("TCI") may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Landlord defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

18.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way and there is a conflict, the lowest number controls.

18.13. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

18.14. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

19. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

Landlord

City of San Antonio, a Texas
municipal corporation

Austin Hwy Properties LLC

By: _____

By:  _____

Printed
Name: _____

Printed
Name: Kim Carmack

Title: _____

Title: Owner

Date: _____

Date: 10/15/18

Approved as to Form:

City Attorney

Exhibit A: Description of Premises



Exhibit B:

