

AGENDA



Thursday, July 23, 2009

**Contract and Land Management
RECOMMENDATION FOR COUNCIL ACTION**
Item No. 15

Subject: Authorize the City Manager to negotiate and execute the First Amendment to the Lease Agreement between the City and the Travis County Healthcare District for the East Austin Clinic to provide for the construction of leasehold improvements to be funded by an American Recovery and Reinvestment Act grant and to negotiate and execute a Notice of Federal Interest with respect to the East Austin Clinic and the federal interest in the property under the grant. Related to Item #16.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

For More Information: Lauraine Rizer 974-7078; Gordon Bowman 974-3695; April Thedford 974-7141

Prior Council Action: February 26, 2006 - Council approved lease agreement.

The City and the District entered into a Lease under which the City leases the District the South Austin Clinic effective as of March 1, 2009. The District has applied for and received approval of a federal stimulus grant for capital improvements to certain of its Federally Qualified Health Center properties, including the South Austin Clinic. The City and the District will be required to amend the Lease to address the requirements of the Grant. The City, as the owner of the Property, agrees to the scope of the Project.

The Parties will acknowledge that the Lease, as amended, provides the District reasonable control of the Premises and Project site for at least ten years from the District's receipt of the Grant funds. Subject to the review and approval of the plans and specifications for the construction of the Project, the City will consent to such construction. The City will also execute and file a Notice of Federal Interest in substantially the form attached hereto as Exhibit "A" and incorporated herein in the Official Public Records of Travis County, Texas.

To the extent feasible, the Grant requirements will be construed in harmony with and be considered supplementary to the requirements in the Lease. To the extent the Grant specifically addresses an issue or establishes a requirement that conflicts with the requirements in the Lease, the requirement in the Grant will prevail. To the extent the Grant does not specifically address an issue or establish a requirement, the language in the Lease will apply. In the construction of the Project, the following federal requirements will apply in lieu of the requirements in the Lease:

- a. Federal Disadvantaged Business Enterprise requirements will apply in lieu of Landlord's M/WBE Program; and
- b. Davis-Bacon Act Wage Rate requirements will apply in lieu of Chapter 2258 of the Texas Government Code.

However, the bonding, professional services procurement, and prompt payment provisions set forth in the Lease and the Texas Government Code will continue to apply to the Lease, as directed by Section 92.36 of Title 45 of the Code of Federal Regulations. In addition, the insurance provisions set forth in the Lease, specifically including but not limited to Workers Compensation coverage to be provided by the District's contractors, will continue to apply to this Lease as provided by the Grant and Section 92.36 of Title 45 of

the Code of Federal Regulations. Also, the Americans with Disabilities Act will continue to apply and be administered through the Texas Department of Licensing and Regulation in accordance with its promulgated Texas Accessibility Standards. The parties will coordinate and cooperate in defining the scope of the Project's participation in the City's LEED Program consistent with the directives and recommendations regarding "Green and Sustainable" design practices, materials, and equipment set forth in the Grant.

The City will agree not to transfer ownership of the Premises to a third party until after June 30, 2019, without the consent of the Health Resources and Services Administration and any transfer prior to June 30, 2019, will require the consent of the Health Resources and Services Administration and be subject to the terms and conditions of the amended Lease. Similarly, the City's right to relocate the District into comparable Premises during the term of the Lease is modified and amended to commence on June 30, 2019. The District also will agree that it will not exercise its right to a termination of the Lease for convenience under Sections 15.3 until after June 30, 2019, and that, if it does so, it will be responsible, to the exclusion of any responsibility of the City, for compliance with the terms and conditions of the Grant and applicable federal regulations specifically including but not limited to Section 92.31 of Title 45 of the Code of Federal Regulations. The Parties agree that the Permitted Use under the Lease for the delivery of health care to residents of Travis County and for purposes and other uses incidental and related thereto, specifically including but not limited to administrative offices and support purposes is consistent with the purposes of and conditions in the Grant and that any change in the Permitted Use will be a default under the Program Regulations of the Grant, Section 92.31 of Title 45 of the Code of Federal Regulations, and Section 2.1 of the Lease.