



**Lease Agreement/Renewal
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 17
AGENDA DATE: Thu 06/09/2005
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SUBJECT: Authorize negotiation and execution of a five year lease with three options to extend for an additional five years each, with WIRELESS TOYZ, for the use of a City-owned 0.48 acre of land and a 2,400 square foot free-standing retail building located at 5700 North Lamar Boulevard, to operate a retail business.

AMOUNT & SOURCE OF FUNDING:

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

DIRECTOR'S
AUTHORIZATION: Sondra Creighton

FOR MORE INFORMATION CONTACT: Dean Harris, 974-7061; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: March 30, 1978, and December 16, 1999, which were lease approvals.

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

This City-owned property located at the northwest corner of Koenig Lane and North Lamar Boulevard is anticipated to be vacated July 31, 2005. It is improved with a 7-11 convenience store. Surrounding City uses include a water storage facility and pump station, an electric utility substation, and an EMS station.

In March 1978, an agreement was entered into for the Southland Corporation to build a new 7-11 convenience store, which has operated on the parcel since that time. The current lease is \$3,750 per month for the five-year term, which will expire July 31, 2005. It is not anticipated that the Southland Corporation will exercise its remaining five (5) year extension option by May 1 because they ceased retail operations at the site approximately two years ago. In addition, they have been using the facility intermittently as a training store.

In order to minimize the City's vacancy loss, the space was made available on a first right of refusal basis. This allowed the actions necessary to find a possible new tenant to proceed, subject to the Southland Corporation not exercising their extension option.

The general terms under which responders submitted proposals to the City included the following:

1. The lease term is five (5) years from Rent Commencement at a minimum of \$5,000 per month "triple net" (plus all operating expenses such as taxes and insurance) and up to three (3) five (5) year options to extend the Lease. (This equates to \$25 per square foot annually for the 2,400 square foot building.) Options would have rate increases or reflect current market at that time.
2. After lease commencement, Tenant will pay for all expenses except the roof, foundation, and exterior walls, which are the City's responsibility. Those costs will also be paid for by the tenant and rent abatements will be allowed to recover tenant's costs.



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3. Improvements to be made by the City prior to lease commencement include the repair of the existing roof or to install a new roof on the property, and ensure the building systems are functioning as designed, in good working order with a one-year repair agreement, including any needed glass replacement as of lease commencement.

4. The property may require approximately \$50,000 in repairs and improvements to be made by the City or through rent abatement, primarily for the roof and building systems, which will be determined after the Southland Corporation vacates the property. The finishout allowance provided to the tenant will not exceed \$20,000 in rent abatement to modernize the building façade.

5. A security deposit equal to one month's rent will be required.

6. Any changes to the building and/or site must be pre-approved by City, but will not be unreasonably withheld.

7. Any contractors working on the site must meet the City's insurance requirements.

8. There is a restriction against adding any underground utilities.

9. No fuel sales will be allowed on the property.

10. Assuming a July 31, 2005 termination and the Southland Corporation immediately vacating the facility, it is anticipated the new Lease would commence not later than October 1, 2005.

11. Financial statements of company and principals are to be provided to City.

12. Proposals are subject to a due diligence review of the structure after the Southland Corporation vacates the premises.

A 4% real estate commission will be paid to the Lessee's broker for the primary term. Commission for extension option renewals are under negotiation, but will not exceed 3%. These funds will come in lieu of, or partially in lieu of the initial rental income. The tenant will also request a zoning change from P (Public) to LR (Neighborhood Commercial) for the site.

Staff's review indicated that the proposals received met the criteria stated above, and were substantially similar except with respect to: a) the company and principal's financial strength, and b) the principal's willingness to personally guarantee the full lease. In these categories Wireless Toyz is materially stronger, with the two owners willing to fully personally guarantee the full lease term. The company also presents a track record of doing business in Austin, as well as the development of attractive locations. Therefore, Wireless Toyz is staff's recommendation.