

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Airport Lease Assignment – Pacific Management & Development
DATE: October 16, 2003

NEEDS: For the City Council to consider a request by Pacific Management & Development Corporation to assign a property lease on Parcel 14-B in the Airport Industrial Park.

FACTS:

1. On April 1, 1988, the City entered into a long-term lease agreement with Pacific Management & Development Corp. for Parcel 14-B (3003 Rollie Gates Drive) at the Municipal Airport.
2. On October 8, 2003 Pacific Management & Development Corporation requested the City approve a lease assignment to KMBG limited partnership (also doing business as Scientific Drilling International, and Applied Technologies Corporation).
3. The Lessee and Assignee represent that the leased premises shall continue to be used in accordance with the allowed uses for the site (generally industrial/warehouse with office).

**ANALYSIS
AND**

CONCLUSION: The lease assignment from Pacific Management & Development to KMBG is consistent with the provisions of the approved lease agreement. The intended use and occupancy of the premises is allowed and encouraged, and provides for business expansion by a successful, local industry. The assignment has been reviewed by legal counsel and is approved as to form.

POLICY

REFERENCE: Airport Lease Policy, Airport Minimum Standards

FISCAL

IMPACT: None. The established rental rates in the lease agreement remain unchanged.

OPTIONS:

- A. Adopt Resolution No. 03-xx approving the subject lease assignment and authorizing the required execution thereof.
- B. Amend, modify, or reject the above option.

Attachments: (3)

- 1) Resolution
- 2) Lease Assignment
- 3) Memorandum of Lease Assignment

**Recording Requested by and
When Recorded Return to:**

**City of Paso Robles
Department of Public Works
1000 Spring Street
Paso Robles, CA 93446**

For Recorder Use Only

**MEMORANDUM OF ASSIGNMENT OF LEASE
PARCEL 14-B OF Parcel Map PRAL 80-53**

Pacific Management & Development Corp., KMBG, Ltd. and the City of El Paso De Robles enter into this Memorandum of Assignment of Lease of Parcel 14-B of PRAL 80-53, commonly known as 3003 Rollie Gates Drive, Paso Robles, California (herein the Property) with reference to the following:

1. Landlord/Tenant

On or about April 1, 1988, the City of El Paso de Robles entered into a Non-subordinated Airport Ground Lease (hereinafter, lease) for property within the Airport Industrial Park with Pacific Management & Development Corp. as Tenants of the Property and the City of El Paso de Robles as Landlord.

2. Term of Lease

Section I (Term) of the Lease states in relevant part:

“The term of this Lease shall consist of 50 years commencing on April 1, 1988, and expiring on March 31, 2038

3. Assignment

Section XXVI (Lease Assignment) of the Lease states in relevant part:

“...Lessee shall not assign or sub-lease said lease without the written consent of City, provided that if Lessee assigns or sub-leases said lease without the written consent of City that said Lease shall, at the option of the City, immediately cease and terminate. Consent to assignment and /or sub-lease shall not be unreasonably withheld...”

4. Assignment to KMBG, Ltd.:

Pursuant to Section XXVI of the Lease, Pacific Management & Development Corp., Tenants, requested the City's consent to the Assignment of the Lease to KMBG, Ltd.

5. Landlord's Consent

On October 16, 2003, the City of El Paso de Robles adopted Resolution 03-XX approving the Assignment, with findings. A certified copy of said Resolution is attached hereto as Exhibit A.

6. Incorporation of the Lease

The terms and conditions of the Lease are incorporated herein by reference.

7. Successors and Assigns

This Memorandum of Assignment of Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

8. Governing Law

This Memorandum and the Lease are governed by California law.

Executed as of the ____ day of _____, 2003, at the City of El Paso de Robles, County of San Luis Obispo, State of California.

ASSIGNOR:
Pacific Management & Development Corp.

ASSIGNEE:
KMBG, Ltd.

James R. Saunders, President

Donald H. Van Steenwyk, Managing Partner

Elizabeth A. Van Steenwyk, Managing Partner

LANDLORD:
City of Paso Robles

James L. App, City Manager

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING THE ASSIGNMENT OF A LONG-TERM PROPERTY LEASE OF
PARCEL 14-B IN THE AIRPORT INDUSTRIAL PARK
FROM PACIFIC MANAGEMENT & DEVELOPMENT CORP. TO KMBG
AND AUTHORIZING THE EXECUTION OF SAID ASSIGNMENT

WHEREAS, the City of Paso Robles (herein "City") entered into a long-term lease agreement with Pacific Management & Development Corp. on April 1, 1988 for premises on the Municipal Airport; and

WHEREAS, Pacific Management & Development Corporation requests an assignment of the lease agreement to KMBG; and

WHEREAS, provisions within the lease agreement allow for City approval of the requested assignment; and

WHEREAS, the lease agreement is currently found to be in full force and compliance; and

WHEREAS, the proposed Assignee has proven to be a responsible and qualified Lessee.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City Council of the City of Paso Robles does hereby approve the Assignment of Lease of Parcel 14-B, and the terms and conditions therein stated.

SECTION 2. That the City Council of the City of Paso Robles does hereby release the current lessees, Pacific Management & Development, from any and all responsibility and obligation under the terms of the lease agreement.

SECTION 3. That the City Council of the City of Paso Robles does hereby recognize KMBG as the Assignees and Tenants under the Lease agreement.

SECTION 4. That the City Council of the City of Paso Robles does hereby authorize the execution and recordation of the documentation of this agreement as required.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of October 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

ASSIGNMENT AND AMENDMENT OF LEASE

This Assignment and Amendment of Lease ("Assignment") is made as of October 16, 2003, by and between **Pacific Management & Development Corp.** ("Assignor") and **KMBG, Ltd.** ("Assignee").

RECITALS

A. The City of El Paso de Robles ("Landlord"), as landlord, and Pacific Management & Development Corp., as lessees, entered into a Non-Subordinated Airport Ground Lease (hereinafter, "Lease"), a copy of which is attached and incorporated by reference as Exhibit B, pursuant to which Lessor leased to Lessee and Lessee leased from Lessor that certain property identified as **Parcel 14-B of Parcel Map PRAL 80-53, and consisting of 3.9 acres, commonly known as 3003 Rollie Gates Drive**, more particularly described on Exhibit "A", attached hereto, and incorporated herein by reference, for a term of 50 years, commencing on April 1, 1988, and ending on March 31, 2038, unless subject to earlier termination as provided in the Lease.

B. Lessee (hereinafter, "Assignor") desires to assign the subject Lease to **KMBG, Ltd., a Texas Limited Partnership**, (hereinafter, "Assignee"), and Assignee desires to accept the assignment of the Lease from the Assignor and assume all responsibilities and obligations of Lessee under the Lease.

C. Assignor desires to be released from the obligations of the subject Lease, and Assignee desires to be substituted as Lessee under the terms and conditions of the lease agreement.

Therefore, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

Section 1. Assignment.

Assignor assigns and transfers to Assignee all right, title, and interest in the Lease and Assignee accepts from Assignor all right, title, and interest, subject to the terms and conditions set forth in this Assignment.

Section 2. Assumption of Lease Obligations

Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as Lessee under the Lease, including the making of all payments due to or payable on behalf of Landlord under the Lease as they become due and payable.

Section 3. Amendments to Lease

The Lease Agreement is amended to read as follows:

As Lessee:	KMBG, Ltd. 3025 Buena Vista Drive, Suite 'A' Paso Robles, CA 93446
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Section 4. Assignor's Covenants

- a. Assignor covenants that the copy of the Lease attached as Exhibit "B" is a true and accurate copy of the Lease as currently in effect and that there exists no other agreement affecting Assignor's tenancy under the Lease.
- b. Assignor covenants that the Lease is in full effect and no default exists under the Lease, nor any acts or events which, with the passage of time or the giving of notice or both, could become defaults.

Section 5. Litigation Costs

If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning of interpretation of this Assignment, the losing party shall pay the prevailing party's costs and expenses of this litigation, including, without limitation, reasonable attorney fees.

Section 6. Indemnification

Assignor indemnifies Assignee from and against any loss, cost, or expense, including attorney fees and court costs relating to the failure of Assignor to fulfill Assignor's obligations under the Lease, and accruing with respect to the period on or prior to the date of this Assignment. Assignee indemnifies Assignor from and against any loss, cost, or expense, including attorney fees and court costs relating to the failure of Assignee to fulfill obligations under the Lease, and accruing with respect to the period subsequent to the date of this Assignment.

Section 7. Successors and Assigns

This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

Section 8. Governing Law

This Assignment shall be governed by and construed in accordance with California law.

The parties have executed this Assignment as of the date first above written.

ASSIGNOR:

Pacific Management & Development Corp.

James R. Saunders, President
Signature to be notarized

ASSIGNEE:

KMBG, Ltd.

Donald H. Van Steenwyk, Managing Partner
Signature to be notarized

Elizabeth A. Van Steenwyk, Managing Partner
Signature to be notarized

Consent of Landlord

The undersigned Lessor, as Landlord under the Lease, hereby approves and gives consent to this Assignment and Amendment of the Lease of Parcel 14-B of Parcel Map PRAL 80-53 to Assignee, KMBG, Ltd., as indicated, and hereby releases Assignor, Pacific Management & Development Corp., as Tenants, from any and all responsibilities and obligations under the terms of the subject agreement.

By this Consent, Landlord hereby accepts Assignee as Tenant under the terms of the subject lease agreement and agrees to his assumption of all rights, responsibilities and obligations of the Tenant, as specified under the terms and conditions contained therein.

Further, Lessor agrees to the amendment referenced in Section 3 of the Assignment.

Landlord covenants that the Lease is in full effect and no default exists under the lease, nor any acts of events which, with the passage of time or the giving of notice or both, could become defaults.

Executed this __ day of _____ 2003, in Paso Robles, California, on behalf of the City of El Paso de Robles.

By: _____
James L. App, City Manager

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk