

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

DEPARTMENT: City Manager's Office

AGENDA DATE: March 12, 2013

CONTACT PERSON NAME AND PHONE NUMBER: John Neal, Special Projects (X4285)

DISTRICT(S) AFFECTED: All

SUBJECT:

An ORDINANCE authorizing the City Manager to sign a lease with the El Paso Employees City Pension Fund for the lease of approximately 1,934 square feet of land located on 51 feet on Leon Street x 120 feet on San Antonio Street, more particularly being a portion of Block 46, Mills Addition, El Paso, El Paso County, Texas, being municipally known and numbered as 400 W. San Antonio Street, El Paso, Texas., for an initial five-year term and initial rental amount of \$36,588.00 per annum and two five-year options to extend with annual 2% rental increases, the cost for the initial year to be paid by the City.

BACKGROUND / DISCUSSION:

The relocation of the present City Hall necessitates the movement of the El Paso Employees City Pension Fund currently housed on the 6th floor. Through discussions with the Executive Director and the Board it was determined that leasing renovated space in the UPTT was desirable. The first three years of the term are at \$6.00 a square foot escalating to \$10.00 following five years and exercise of the first extension. The City is paying the first year's rental in consideration of an existing Memorandum of Understanding terms and conditions. The Pension Board will also approve the lease.

PRIOR COUNCIL ACTION:

N/A.

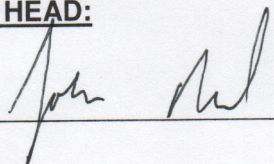
AMOUNT AND SOURCE OF FUNDING:

First year rental from General Funds approved September 18, 2012 for City Hall relocation.

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD:



ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE WITH THE EL PASO CITY EMPLOYEES PENSION FUND FOR THE LEASE OF APPROXIMATELY 1,934 SQUARE FEET OF OFFICE SPACE IN THE BUILDING LOCATED ON 51 FEET ON LEON STREET X 120 FEET ON SAN ANTONIO STREET, MORE PARTICULARLY BEING A PORTION OF BLOCK 46, MILLS ADDITION, EL PASO, EL PASO COUNTY, TEXAS, BEING MUNICIPALLY KNOWN AND NUMBERED AS 400 W. SAN ANTONIO STREET, EL PASO, TEXAS., FOR AN INITIAL FIVE-YEAR TERM AND INITIAL RENTAL AMOUNT OF \$11,604.00 PER ANNUM, INCREASING TO \$15,472.00 IN YEARS 4-5 AND TWO FIVE-YEAR OPTIONS TO EXTEND WITH ANNUAL 2% RENTAL INCREASES, THE COST FOR THE INITIAL YEAR TO BE PAID BY THE CITY

WHEREAS, Lessor owns the property located on 51 feet on Leon Street x 120 feet on San Antonio Street, more particularly being a portion of Block 46, Mills Addition, El Paso, El Paso County, Texas, being municipally known and numbered as 400 W. San Antonio Street, El Paso, Texas, which contains the building in which Lessee seeks to lease approximately 1,934 square feet of space; and

WHEREAS, Lessee has previously used property at City Hall for the purpose of office space operating the pension fund, however due to the relocation, desires to enter into this lease; and

WHEREAS, Lessee has indicated a desire to lease the property and has the willingness and ability to use the property accordance with the terms of this Lease and to properly keep, maintain and improve said grounds and improvements in accordance with standards established by Lessor and Lessor has determined that it is in the City's interest to enter into this Lease.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease with the El Paso City Employees Pension Fund for the lease of 1,934 square feet of office space in the building located on 51 feet on Leon Street x 120 feet on San Antonio Street, more particularly being a portion of Block 46, Mills Addition, El Paso, El Paso County, Texas, being municipally known and numbered as 400 W. San Antonio Street, El Paso, Texas, for an initial five-year term and initial rental amount of \$11,604.00 per annum, increasing to \$15,472.00 in years 4-5, and two five-year options to extend with annual 2% rental increases and City Manager is further authorized to sign all documents necessary to effectuate this transaction.

PASSED AND APPROVED on this the ____ day of _____, 2013.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Hamilton
Assistant City Attorney

John Neal
Special Projects OCM

LEASE

By and between

CITY OF EL PASO

Lessor

and

THE EL PASO CITY EMPLOYEES PENSION FUND

Lessee

for a portion of the Premises located at
400 W. San Antonio Ave.

Effective Date

LEASE

THIS LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 2013 by and between the **City of El Paso**, a home rule municipal corporation ("Lessor") and the **The El Paso City Employees Pension Fund** ("Lessee").

WHEREAS, Lessor owns the property located at 400 W. San Antonio, El Paso, Texas 79901; and further described in this Lease as the leased Premises (as defined in Section 1.01 below); and

WHEREAS, Lessee is a City of El Paso Pension Plan under Section 401 (a) of the United States Internal Revenue Code; and

WHEREAS, Lessee has indicated a desire to lease space in the property, using the portion further described in this Lease as the leased Premises (as defined in Section 1.01 below) to provide administrative offices for its staff and a customer service location for Pension Fund participants; and

WHEREAS, Lessee has the willingness and ability to use the property accordance with the terms of this Lease and to properly keep and maintain said grounds and improvements in accordance with standards established by Lessor;

WHEREAS, Lessor has determined that public purpose of providing space for the administration of a government sanctioned pension fund for City retirees and employees will be served by leasing the property to Lessee in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

ARTICLE I - PREMISES AND PRIVILEGES

1.01 Description of Premises Demised. Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas, more fully depicted in Exhibit "A":

Approximately 1,934 square feet of usable space in the building located upon 51 feet on Leon Street x 120 feet on San Antonio Street, more particularly being a portion of Block 46, Mills Addition, El Paso, El Paso County, Texas, being municipally known and numbered as 400 W. San Antonio Street, El Paso, Texas.

1.02 Restriction of Privileges, Uses and Rights. The rights and privileges granted Lessee hereunder are subject and expressly limited to the use as administrative offices and a customer service center for Pension Fund participants. Any change of use will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for any purpose other than the purposes set forth herein shall constitute an event of default and may result in termination of the Lease.

1.03 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.
- B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

1.04 Parking. Lessor shall provide seven (7) parking passes for parking spaces in the parking structure adjacent to the Premises, and Lessee shall pay to Lessor the amount of THIRTY ONE AND 50/100 DOLLARS (\$31.50) per space per month, and this amount shall increase by 2% each year on the anniversary of the Effective Date

ARTICLE II - OBLIGATIONS OF LESSOR

2.01 Quiet Enjoyment. Lessor agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

2.02 Utilities. Lessor shall pay for all costs for utility services during the term hereof, for existing facilities of the leased Premises.

2.03 Trash, Garbage, and Other Refuse. Lessor shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the leased premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises.

2.04 No Cost to Lessor. Except the for Lessor's obligation in this Article II, this Lease shall be without any cost whatsoever to Lessor, including but not limited to any

cost for construction, maintenance, or improvement of the property.

ARTICLE III - OBLIGATIONS OF LESSEE

3.01 Net Lease. This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article II. Lessee shall:

- A. Keep and maintain the leased premises and improvements located thereon in a good state of repair at all times; and
- B. Pay any and all taxes assessed as applicable against the Premises, improvements located on the Premises, Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

3.02 Condition of Premises. Lessor shall build out the space to specifications mutually agreed upon by the parties prior to the Lessee taking possession of the Premises, in substantial conformity with the floor plan attached hereto as Exhibit "C" and incorporated as if fully set forth herein. Lessee accepts the Premises in the condition on the date Lessee takes possession and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Lessee accepts the Premises "As Is", with all faults, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

3.03 Annual Inspection. At least once each calendar year during the term of this lease, Lessor may conduct an inspection of the Premises and improvements in order to insure they are being properly maintained. Upon completion of the inspections, Lessor shall provide written notice of any repairs or maintenance which Lessor in its sole discretion determines must be made to the Premises and improvements in order to ensure compliance with all federal, state and local laws and regulations and maintain the property to the standard set forth in Section 3.01. Failure of Lessee to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney's fees for the collection action.

3.04 Compliance With Laws. Lessee, at Lessee's expense, agrees that it will operate and maintain, and to the extent applicable, construct, improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance

with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon. Lessee will comply with all applicable Federal Transportation Administration ("FTA") clauses as described and set forth in Exhibit "B".

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and

from the Premises, by Lessee, its sublessees, agents, employees, volunteers, contractors, invitees, or a third party in violation of any Environmental Law.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 3.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

3.05 Lessor's Approval of Plans. Lessor's approval of any plans, specifications and working drawings for Lessee's construction or alterations of improvements shall create no responsibility or liability on the part of Lessor for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. It is specifically understood that the Sun Metro Department is only one of numerous departments of the Lessor and that, in addition to obtaining approval of the Sun Metro Department, Lessee may be required to obtain the approval of other departments as well, such as Engineering and Construction Management Department or the Real Estate Coordinator, City Development Department.

3.06 Signs. All signs on the Premises shall comply with all building codes and other ordinances of the City of El Paso. The size, design and location of all signs shall be subject to approval by the Lessor prior to installation. No outdoor advertising signs, billboards or flashing lighting shall be permitted. Signs on the property shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

3.07 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work has received prior written approval of the City Engineer and a grading permit obtained if required by the grading ordinance of the City of El Paso.

3.08 Permitted Uses. Lessee will not enter into any activity on the Premises other than those permitted in Paragraph 1.02. The Lessee shall not permit on the Premises any entertainment, amusement or other activity which violates any statute or ordinance, and will use Lessee's best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained.

ARTICLE IV - TERM OF LEASEHOLD

4.01 Term. This Lease shall be for a term of five (5) years, commencing on the Effective Date, subject to the terms of paragraph 10.02 herein, as defined in Section 11.17. This shall hereinafter be referred to as the "Initial Term".

4.02 Option to Extend. In the event Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional five (5) year terms. Lessee may exercise each option ("Option Period") by notifying Lessor in writing of Lessee's election at least ninety (90) days prior to the expiration of the previous term. Upon City Manager's approval of the Option Period, the Lease shall be extended for five years (the "Extended Term") on the same terms and conditions, however the rental cost shall be as outlined herein.

4.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent payable as defined in Section V, and Lessee

shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of payment after expiration or cancellation of this Lease or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

4.04 National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of time of such suspension.

ARTICLE V - CONSIDERATION

5.01 Rent. As monetary consideration for this Lease, Lessee will deliver to the City the amounts listed below in advance on the first day of each month of the initial term of this Lease and each month of any extended terms in which the Lessee has exercised its option to extend pursuant to Section 4.02.

A. Initial Term:

Years 1-3 =	\$11,604 annual;	\$967.00 monthly
Years 4-5 =	\$15,472.00 annual;	\$1289.33 monthly

B First Extension:

Year One =	\$19,340.00 annual;	\$1611.67 monthly
Year Two =	\$19726.80 annual;	\$1643.90 monthly
Year Three =	\$20,121.34 annual;	\$1676.78 monthly
Year Four =	\$20523.76 annual;	\$1710.31 monthly
Year Five =	\$20,934.24 annual;	\$1744.52 monthly

C. Second Extension:

Year One =	\$21,352.92;	\$1779.41 monthly
Year Two =	\$21,779.98;	\$1814.00 monthly
Year Three =	\$22,215.58;	\$1851.30 monthly
Year Four =	\$22,659.89;	\$888.32 monthly
Year Five =	\$23,113.08;	\$1926.09 monthly

5.02 Place of Payment. All rent payments provided herein shall be paid to Lessor at the following address:

City of El Paso
P.O. BOX 2037
El Paso, TX 79950-2037
ATTN: SUN METRO DEPARTMENT

5.04 City to pay cost for first year. The City hereby confirms the agreement to amend the September 1, 2009 Memorandum of Understanding between the Parties that the Lessee shall not be under the obligation to pay the City for office space nor utilities, excluding telephone services as consideration for the Lessee's staffing and service to the City. Therefore, due to the City's relocation of the Lessee, the City agrees to pay the rental amount due under the lease by allocating and administering necessary budget transfers through February 28, 2014.

ARTICLE VI – INSURANCE AND RISK ALLOCATION

6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this Section. Should the appraiser Lessee selects be unsatisfactory to Lessor, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

6.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is lesser. Any insurance covering the Premises held by the Lessor shall be subordinate to the insurance required by this term.

6.03 Performance Bonds. In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any 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 Lessor against any losses and liability, damages, expenses, 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 any 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.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated by the construction contract.

6.04 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Lessor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to Lessor.

6.05 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to any party by law.

- A. Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, no party shall be liable to any other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. No party hereto shall be liable to any other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.
- B. Intentional Risk Allocation. The parties each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.
- C. No Indemnification. The parties expressly agree that, except as provided herein, no Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

- D. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that party's actions, except as may be specifically provided by law.

6.06 Waiver of Liability. Lessor shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, office equipment, vehicles, inventory, etc. By signing this Lease, Lessor acknowledges that the Lessor, its agents, employees and invitees will be on Premises and agrees to accept whatever risks come from the use of the Premises.

ARTICLE VII - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

7.01 Obligations of Lessee. During the term hereof, except as provided in Section 7.03 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to Lessor, and Lessor shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessor as aforesaid and Lessor shall bill Lessee for the repairs, replacements or rebuilding.

7.02 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

7.03 Cancellation of Lease. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Lease by giving Lessor written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by Lessor, unless Lessor has elected to have the Premises returned to it clear of all improvements in accordance with Section 10.06 herein below, in which case Lessee shall be entitled to such insurance proceeds.

All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by Lessor will relieve Lessee from any responsibility to restore the Premises to their former condition.

ARTICLE VIII – CONDEMNATION

8.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired;
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

8.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

8.03 Rights of Parties During Condemnation Proceeding. Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

8.04 Taking of Leasehold. Upon a Total Taking, Lessee's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Lessee's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken,

except that the Rent payable hereunder by Lessee shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

8.05 Total Taking. All of Lessee's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by any Lessee-owned improvements, but subject to the Lease, shall be disbursed to Lessor.

8.06 Partial Taking. Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises, as unencumbered by the Lessee-owned improvements but subject to the Lease.

8.07 Obligations of Lessee Under Partial Taking. Promptly after any such Partial Taking, Lessee, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect; provided however, that all sums awarded for Lessee owned improvements and the Leasehold estate shall be disbursed to Lessor.

8.08 Taking of Temporary Use of Premises and Improvements. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Lessee shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

ARTICLE IX – ENCUMBRANCES

9.01 Encumbrance. Lessee may not permit any liens or encumbrances upon its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises, except as may be approved by the Lessor.

ARTICLE X - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

10.01 Expiration. This Lease shall expire five (5) years from the Effective Date of this Lease, unless as extended pursuant to paragraph 4.02 above. Upon expiration or any termination of the Lease pursuant to the terms and conditions herein, Lessee shall peacefully surrender such Premises and improvements to the City free of all such liens or encumbrances. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises or improvements, together with reasonable attorney's fees, costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.

10.02 Termination. The Lessor and Lessee agree that at any time during the Term of the Lease, the Lessor or the Lessee may terminate this Lease for any reason. The terminating party will provide written notice to the other party at least ninety (90) days in advance of the date of termination. Upon such termination, at the sole option of Lessor, the Premises and all the improvements thereon will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee. On the date stated in the notice, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

10.03 Cancellation. Subject to the provisions of Article IX above, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Fail to maintain the Premises and the improvements for a period of thirty (30) days after Lessor has notified Lessee that repairs are needed;
- B. Fail to maintain insurance and provide proof of said insurance;
- C. Fail to use the Premises for the purpose identified in paragraph 1.03;
- D. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.

- E. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- F. Make any general assignment for the benefit of creditors;
- G. Abandon the Premises;
- H. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Lessee, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- I. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- J. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises. Any such payments shall be credited to Lessee's account

10.04 Repossessing and Reletting. In the event of default by Lessee hereunder that remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee

(which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and

- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

10.05 Assignment, Subletting and Transfer.

- A. Lessee shall not assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise, and shall not sublet the Premises or any part thereof, except upon receipt of prior written permission and consent of Lessor. Any attempt to assign, sublet or otherwise transfer any interest in this Lease shall be void and shall be an event of default which may result in immediate termination of the Lease. Consent of Lessor to any such assignment or subletting shall not be permitted if: (i) at the time of such assignment or subletting, Lessee is in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee, sublessee, or Lessee will not expressly assume in writing all of Lessee's obligations hereunder; and (iii) Lessee's provision of proof to Lessor that the assignee's or sublessee's financial condition is not satisfactory to Lessor.
- B. Any such assignment or subleasing, even with the approval of Lessor shall not relieve Lessee from liability for payment of all forms of rental, fees, and other charges herein provided or from the obligations to keep and be bound by the Initial Term, conditions, and covenants of this Lease. Lessor's acceptance of rent, fees, or other charges from any person or entity other than Lessee shall not be deemed to be a waiver of any of the provisions of this Lease, or a consent in the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed a consent to any further assignment or subletting. Any merger, consolidation, or transfer of corporate shares of Lessee, if Lessee is a

corporation, so as to result in a change in the present voting control of Lessee by the person or persons owning a majority of said corporate shares on the date of this Lease.

10.06 Rights Upon Expiration. At the expiration of this Lease, at the sole option of Lessor, the Premises and all the improvements thereon will either be returned to its prior condition, reasonable wear and tear excepted or Lessor will agree to accept the improvements placed on the Premises by Lessee. Lessee shall peacefully surrender such Premises and improvements to the City.

10.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

ARTICLE XI - GENERAL PROVISIONS

11.01 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.02 Notices. All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: City Manager

Copy to: City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: Real Estate Coordinator,
City Development Department

City of El Paso
P.O. Box 2037
El Paso, Texas 79950-2037
Attn: Sun Metro Department

LESSEE: El Paso City Employees Pension Fund
Attention Administrator
400 W. San Antonio, Suite B
El Paso, Texas 79901

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

11.03 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.04 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

11.05 Nondiscrimination Covenant. Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds

of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27. D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

11.06 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.07 Interpretation. Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.08 Agreement Made in Writing. This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

11.09 Paragraph Headings. The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.10 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such

illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.11 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.12 Taxes and Other Charges. The Lessee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property, inventory thereon or Lessee's use and/or occupancy of the Premises 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.

11.13 Waiver of Warranty of Suitability. Lessor disclaims any warranty of suitability that may arise by operation of law. Lessee leases the Premises as is and Lessor does not warrant that there are no latent defects that are vital to Lessee's use of the Premises for their intended commercial purpose.

11.14 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 3.03 and 6.05.

11.15 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

11.16 Authorization To Enter Lease. If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is

a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.17 Effective Date. This Lease shall be effective on the date executed by the City Manager for the City of El Paso.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2013.

LESSOR:

CITY OF EL PASO

Joyce A. Wilson
City Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Hamilton
Assistant City Attorney

Jay Banasiak, Director
Sun Metro Department

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

 This instrument was acknowledged before me on this ____ day of
_____, 2013, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**,
Texas.

Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE:

El Paso City Employees Pension Fund

Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this day ____ of _____, 2013, by _____ of El Paso City Employees Pension Fund.

Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

EXHIBIT A
LEASED PREMISES
SHELL SPACE “B”

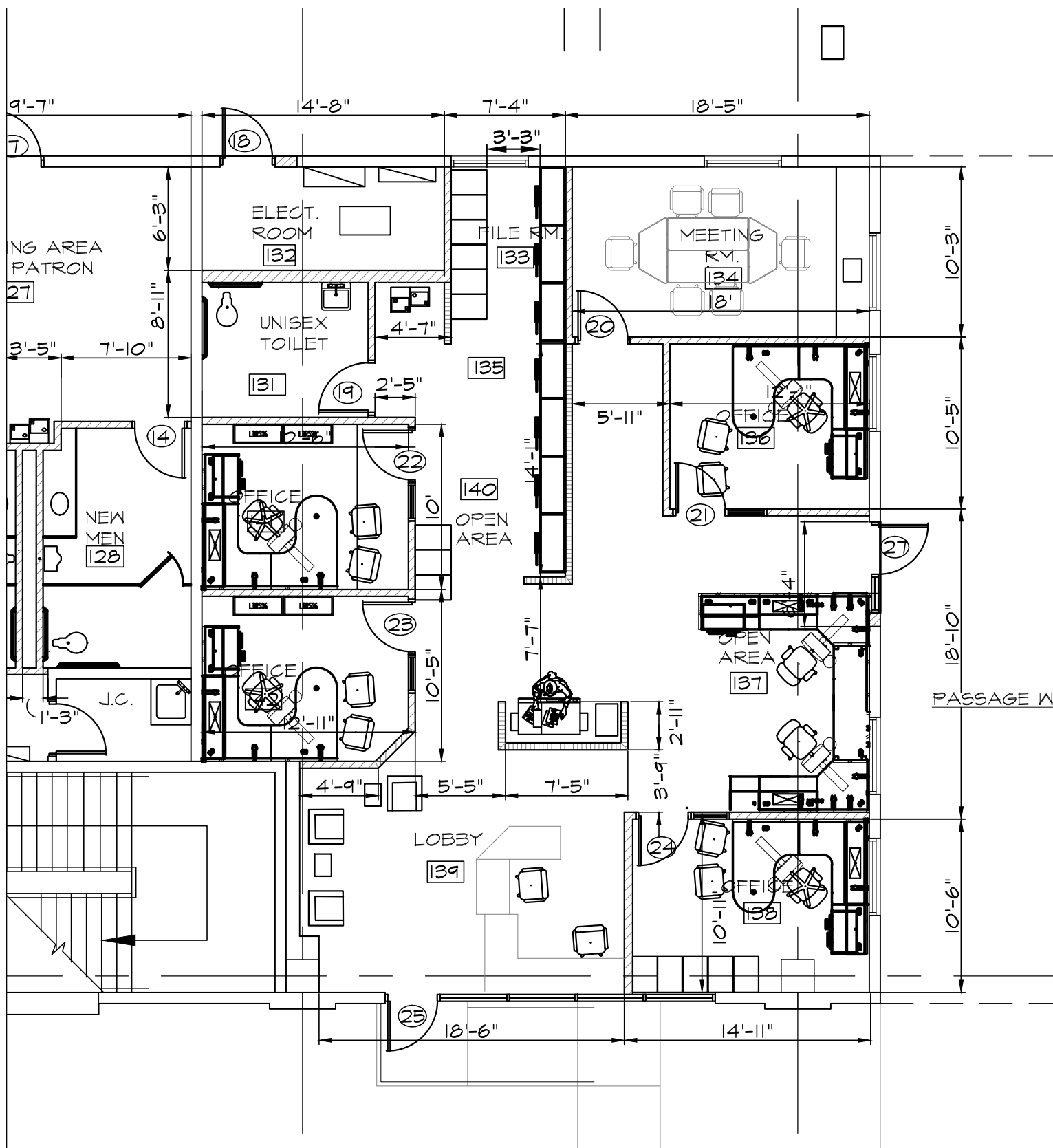


EXHIBIT B

FTA Clauses

EXHIBIT "B"

FEDERAL CLAUSES

The following provisions shall apply throughout the performance of this Agreement because federal funds are involved.

A. Anti-Kickback Rules

Salaries of contractors, architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Disadvantaged Business Enterprise

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 9.1 %.

Policy: It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23, and as amended in Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

- 1. DBE Obligation:** The Contractor or its representative agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor or its representative shall take all the necessary and reasonable steps in accordance with 49 CFR Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 to ensure that DBEs have the maximum opportunity to

compete for and perform contracts. The Contractor shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the award and performance of DOT-assisted contracts.

Part 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

C. Title VI Compliance

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest, hereinafter referred to as the "**Contractor**", agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "**Regulations**") which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement, and in accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act, as amended, 42 U.S.C. §6102 Section of the Americans with Disabilities Act, 42 U.S.C. §12132, and Federal Transit Law at 49 U.S.C. §5332, shall not discriminate on the grounds of race, religion, color, creed, sex, age, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, or supplier, shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, disability, or national origin.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner or the Federal Transit Administration (**FTA**) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required, or the Contractor has knowledge of an employee who fails or refuses to furnish this

information, the Contractor shall so certify to the Owner or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such agreement sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- a) Withholding of payments to the Contractor under the Agreement until the Contractor complies; and/or,
- b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs I through 6 of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Owner or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the Contractor may request the services of the Attorney General in such litigation to protect the interest of the United States.

D. Interest of Members of, or Delegates to, Congress

In accordance with 18 U.S. C., Sec. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share of part of this Agreement or any benefit arising there from.

E. Davis-Bacon Wages

In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Contractor shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected contractor.

F. RECYCLED PRODUCTS

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

G. Reporting, Record Retention and Access

1. **Access to Records:** The Contractor agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
2. **Maintenance of Records:** The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

H. Clean Water Requirements

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in all of its subcontracts.

I. Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in subcontract.

J. Conflict of Interest

No employee, officer, or agent of the Owner shall participate in selection, or in the award or administration of an agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent.
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award.

The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Contractor, potential contractors, or parties of subcontracts.

K. Debarred Bidders

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by The City of El Paso. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to The City of El Paso, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer

is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

L. Termination of Grant

Should this Agreement be terminated as a result of cancellation of federal funding covering this Project, the Owner will promptly notify the Contractor of the cancellation by certified mail-return receipt requested, whereupon the Contractor shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Contractor will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

M. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (12) dated October, 2005) between Owner and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

N. No Obligation by the Federal Government

1. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

O. Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 18 U.S.C. 1001, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and

accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

P. Not interference with satisfactory continuing control of property

Contractor agrees that all rights and privileges granted to Contractor are subject to Owner's use and operation of the property for its primary purpose. Any interference by Contractor with Owners satisfactory continuing control of the property shall result in termination of this Agreement pursuant to the terms set forth in the Agreement.

Q. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated April 14, 2009, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests from Owner which would cause Owner to be in violation of the FTA terms and conditions.

EXHIBIT C

Floor Plan

