

**CITY OF EL PASO, TEXAS
AGENDA ITEM**

CITY CLERK DEPT.
2018 MAY 10 PM12:35

DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Economic Development

AGENDA DATE: May 15, 2018

CONTACT PERSON NAME AND PHONE NUMBER: Jose Carlos Villalva (915) 504-5880

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a sub-lease agreement between the City of El Paso as the sub-lessee and The Borderplex Alliance as the sub-lessor pertaining to the property located on 123 Pioneer Plaza, Suite 111, El Paso, Texas, to be used for offices for the Economic Development Department.

BACKGROUND / DISCUSSION:

The City will Sub-lease 5,107 square feet of net rentable area and 4,729 usable square feet located at 123 Pioneer Plaza, Suite 111, El Paso, Texas. The Sub-lessor signed a Lease Agreement dated as of January 6, 2014 (the "Original Lease") between Mills Plaza Properties III, LP, as landlord, and The Borderplex Alliance, as tenant, The Borderplex Alliance will sub-lease the space to the City in order to house the Economic Development Department.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

CITY CLERK DEPT.
2018 MAY 10 PM2:07

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the Sublease by and between The Borderplex Alliance ("Sublessor"), and the City of El Paso ("Sublessee") for the property at 123 Pioneer Plaza, Suite 111, El Paso, Texas, for use as office space by the Economic and International Development.

Dated this ____ day of _____ 2018.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Jessica Herrera, Director
Economic and International
Development Department

Sublease

Basic Information

Date: May __, 2018

Sublessor: The Borderplex Alliance

Sublessor's Address: 123 W. Mills Ave., Suite ____
El Paso, Texas 79901

Sublessee: The City of El Paso, Texas
Economic and International Development Department

Sublessee's Address: P.O. Box 1890
El Paso, Texas 79950-1890

Subleased Premises: 5,107 square feet of net rentable area and 4,729 usable square feet located at 123 Pioneer Plaza, Suite 111, El Paso, Texas, and leased to Sublessor under that certain Office Lease Agreement dated as of January 6, 2014 (the "**Original Lease**") between Mills Plaza Properties III, LP, as landlord, and Sublessee, as tenant, as amended by that certain First Amendment to Office Lease Agreement dated as of April 21, 2014 (the "**First Amendment**"), as amended by that certain Second Amendment to Office Lease Agreement dated as of _____, 2017 (the "**Second Amendment**" and together with the Original Lease and the First Amendment, the "**Base Lease**") between Mills Plaza Properties III, LP, as landlord, and Sublessee, as tenant. The Subleased Premises is shown on the floor plan attached to the Second Amendment as Exhibit B-2 (a) and designated in the Second Amendment as the "**First Floor Space**".

Sublease Commencement Date: June 1, 2018 Initial Sublease Termination Date: August 31, 2024

Initial Sublease Term: June 1, 2018 through August 31, 2024

Renewal Term: Five years commencing on the first day after the expiration of the Initial Sublease Term; provided Sublessee has properly and timely exercised its rights under Paragraph C (Renewal Option). Time is of the essence in the exercise of Sublessee's rights under Paragraph C (Renewal Option).

Sublease Rent:

	Rate/PSF	
Period	Monthly Rent	(Annualized)
6/1/18 - 8/31/18	\$ 6,774.49	\$ 15.92
9/1/18 - 8/31/19	\$ 6,909.98	\$ 16.24
9/1/19 - 8/31/20	\$ 7,048.18	\$ 16.56
9/1/20 - 8/31/21	\$ 7,189.14	\$ 16.89
9/1/21 - 8/31/22	\$ 7,332.92	\$ 17.23
9/1/22 - 8/31/23	\$ 7,479.58	\$ 17.57
9/1/23 - 8/31/24	\$ 7,629.17	\$ 17.93

In addition to the rent set forth above, Sublease Rent includes all Excess Basic Costs, as that phrase is defined in the Base Lease (the “**Excess Basic Costs**”), payable by Sublessor under the Base Lease. The Excess Basic Costs shall be paid by Sublessee in accordance with the terms of the Base Lease.

Security Deposit: None

Permitted Sublease Use: Business Office

Base Lease

Date: January 6, 2014, as amended April 21, 2014, as amended _____, 2017

Landlord: Mills Plaza Properties III LP

Tenant: The Borderplex Alliance

Premises: 5,107 square feet of net rentable area and 4,729 usable square feet leased located at 123 Pioneer Plaza, Suite 111, El Paso, Texas, and leased to Sublessor under the Base Lease. The Premises is shown on the floor plan attached to the Second Amendment as Exhibit B-2 (a) and designated in the Second Amendment as the “First Floor Space”.

A. Sublessee’s Obligations

A.1. Sublessee agrees to—

A.1.a. Sublease the Subleased Premises for the Initial Sublease Term beginning on the Sublease Commencement Date and ending on the Sublease Termination Date.

A.1.b. Pay the Sublease Rent to Sublessor in advance of the first day of each month.

A.1.c. Obey all laws relating to Sublessee's use of the Subleased Premises and terms of the Base Lease as they apply to the Subleased Premises.

A.1.d. Vacate the Subleased Premises and return all keys to the Subleased Premises on termination of this sublease.

A.1.e. TO THE EXTENT ALLOWED BY STATE LAW, INDEMNIFY, DEFEND, AND HOLD SUBLESSOR AND SUBLESSOR'S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE SUBLEASED PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF SUBLESSEE'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE INITIAL SUBLEASE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF SUBLESSOR OR SUBLESSOR'S AGENTS, BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUBLESSOR OR SUBLESSOR'S AGENTS.**

A.1.f. Maintain liability insurance for the Subleased Premises and the conduct of Sublessee's business, with Sublessor named as an additional insured, in the amounts stated in the Base Lease.

A.1.g. Maintain insurance on Sublessee's personal property.

A.1.h. Deliver certificates of insurance to Sublessor before the Sublease Commencement Date and thereafter when requested.

A.1.i. Allow Sublessor and its invitees and guests to use the conference rooms in the Subleased Premises during regular business hours of Sublessor. Sublessor and Sublessee shall cooperate in scheduling the use, clean-up and maintenance of such conference rooms.

A.2. **Sublessee agrees not to—**

A.2.a. Use the Subleased Premises for any purpose other than the Permitted Sublease Use.

A.2.b. Create a nuisance.

A.2.c. Interfere with any other tenant's normal business operations or Landlord's management of the building.

A.2.d. Permit any waste.

A.2.e. Use the Subleased Premises in any way that is extrahazardous, would increase insurance premiums, or would void insurance on the building.

A.2.f. Change Landlord's lock system.

A.2.g. Alter the Subleased Premises except as identified in Attachment 1.

A.2.h. Allow a lien to be placed on the Subleased Premises.

A.2.i. Assign this sublease or sublease any portion of the Subleased Premises without Sublessor's written consent.

B. Sublessor's Obligations

Sublessor agrees to—

B.1. Sublease the Subleased Premises to Sublessee for the Initial Sublease Term.

B.2. Comply with Tenant's obligations under the Base Lease.

B.3. Enforce Landlord's obligations under the Base Lease.

B.4. Make available to the Subleased Premises all services and rights provided under the Base Lease.

B.5. Allow Sublessee to use the furniture and equipment identified in the Attachment 2.

B.6. Obey all laws relating to Sublessor's operation of the Subleased Premises.

C. Renewal Option

Sublessee shall have the right to renew the term of this sublease for one term of five years (the "**Sublease Renewal Option**") upon prior written notice ("**Sublessee's Election Notice**") to Sublessor given not sooner than 17 months nor later than 14 months prior to the expiration of the Initial Sublease Term; provided that at the time Sublessee gives Sublessor the Sublessee's Election Notice and for the remainder of the Initial Sublease Term (a) this sublease has not been assigned and Sublessee continues to occupy the Sublease Premises and (b) Sublessee is not in default hereunder or under the Base Lease. During the Renewal Term, the provisions of the Base Lease and this sublease, as either or both may be amended in writing prior to the date of the commencement of such Renewal Term, shall continue in effect for all purposes except that Sublessee shall occupy the Sublease Premises in its then "as is" condition and there shall be no abatement of rent, nor shall there be credit or allowances given to Sublessee for improvements to the Sublease Premises, and the Sublease Rent will be an amount equal to Adjusted Base Rent, as that phrase is defined in the Base Lease (the "**Adjusted Base Rent**"), plus Excess Basic Costs. It is understood and agreed that Sublessee's submittal of Sublessee's Election Notice shall bind Sublessee to a five-year extension of this sublease. The Adjusted Base Rent and the Excess Basic Costs shall be paid by Sublessee in accordance with the terms of the Base Lease.

D. General Provisions

Sublessor and Sublessee agree to the following:

D.1. Defaults by Sublessee are (a) failing to pay timely Sublease Rent, (b) abandoning or vacating a substantial portion of the Subleased Premises, and (c) failing to comply within ten days after written notice with any provision of the Base Lease or sublease other than the defaults set forth in (a) or (b).

D.2. Sublessor's remedies for Sublessee's default are to (a) enter and take possession of the Subleased Premises, after which Sublessor may relet the Subleased Premises on behalf of Sublessee and receive the Sublease Rent directly by reason of the reletting, and Sublessee agrees to reimburse Sublessor for any expenditures made in order to relet, (b) enter the Subleased Premises and perform Sublessee's obligations, and (c) terminate this sublease by written notice and sue for damages.

D.3. Default by Sublessor is failing to comply with any provision of this sublease within thirty days after written notice or for such lesser period provided in the Base Lease.

D.4. Sublessee's remedy for Sublessor's default is to sue for damages and, if the default is the failure to enforce Landlord's obligations under the Base Lease to provide services reasonably necessary for Sublessee to occupy the Subleased Premises, terminate the Sublease.

D.5. This sublease is subordinate to the Base Lease, a copy of which Sublessee acknowledges as received.

D.6. Sublessor may retain, destroy, or dispose of any property left in the Subleased Premises at the end of the Initial Sublease Term.

D.7. Sublessor has all the rights of Landlord under the Base Lease as to Sublessee.

D.8. To the extent allowed by state law, Sublessee has all the obligations of Tenant under the Base Lease as to Sublessor. Towards that end, Sublessee will utilize the Subleased Premises as office space for the City of El Paso Economic and International Development Department, which promotes economic development and benefits the entire community. Moreover, the parties acknowledge that Sublessee is occupying the Subleased Premises under a sublease from Sublessor. Under their arrangement, the parties intend for Sublessee to assume (to the fullest extent allowed by state law) all of Sublessor's rights, duties and obligations with respect to the Subleased Premises under the Base Lease. This Paragraph D.8 is included in furtherance of that intent.

D.9. The obligations of Sublessee to make rent payments and to make any other payments to Sublessor (or to any other person) pursuant to this Sublease are subject to appropriation by the Sublessee of funds that are lawfully available to be applied for such purpose. If Sublessee fails to make such an appropriation prior to a fiscal period of Sublessee for the rent payments scheduled in such a fiscal period, this Sublease shall terminate at the end of the last fiscal period immediately preceding the fiscal period for which funds have not been

appropriated. Sublessee shall deliver notice to Sublessor of such termination at least forty-five (45) days prior to such termination, but failure to give such notice shall not prevent the termination of this Sublease. Upon any such termination of this Sublease, Sublessee will leave the Subleased Premises in good repair, subject to reasonable wear and tear, and all of Sublessee's right, title and interest in and its obligations under this Sublease and to the Subleased Premises shall terminate effective on the last day of the last fiscal period of Sublessee for which such an appropriation was made. Sublessee will pay any delinquent rent for its use prior to the effective termination date.

D.10. If either party retains an attorney to enforce this sublease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

D.11. Neither party has retained or engaged any investment banker, broker, agent, or finder in connection with this sublease.

[Signature Page Follows]

SUBLESSOR:

THE BORDERPLEX ALLIANCE


Jon Barela
Chief Executive Officer

SUBLESSEE:

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Deputy City Attorney

Jessica Herrera
Director Economic & International
Development Department

Consent of Landlord

Landlord consents to this Sublease by Sublessor to Sublessee.

MILLS PLAZA PROPERTIES III, LP, a Texas
limited partnership

By: FML Acquisition GP LLC
Its: General Partner

By: _____
Name: _____
Title: _____
Date: _____