

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

DEPARTMENT: Economic & International Development Department

AGENDA DATE: CCA Consent August 9, 2016

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

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL: Goal 8 – Nurture and Promote a Healthy, Sustainable Community

SUBJECT:

That the City Manager be authorized to sign the lease between the County of El Paso, Texas and the City of El Paso for office and laboratory use by City's Department of Public Health at 4505 Alberta, El Paso, Texas, from August 9, 2016 to September 30, 2018, with the City's option to renew the lease for a one (1) year period, for a monthly rent of TEN THOUSAND ONE HUNDRED TWENTY-FIVE AND 501100 DOLLARS (\$10,125.50).

BACKGROUND / DISCUSSION:

The Health Department operates a health lab out of the County's Medical Examiner's office building located on 4505 Alberta. The Health Department wishes to continue operating in the space. This is a 2 year term extension. Health Department will also be increasing their square footage from 5,276 to 6,934.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? Yes. 1/7/2014 and 9/25/2015

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Yes. Has the item been budgeted? Yes. If so, identify funding source by account numbers and description of account. 341-1000-41130-522150-P4118 Does it require a budget transfer? 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

RESOLUTION

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

That the City Manager be authorized to sign the lease between the County of El Paso, Texas and the City of El Paso for office and laboratory use by City's Department of Public Health at 4505 Alberta, El Paso, Texas, from August 9, 2016 to September 30, 2018, with the City's option to renew the lease for a one (1) year period, for a monthly rent of TEN THOUSAND ONE HUNDRED TWENTY-FIVE AND 50/100 DOLLARS (\$10,125.50).

PASSED AND APPROVED this _____ day of _____ 2016.

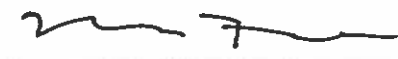
CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT

Cary S. Westin, Director
Economic & International Development
Department

LEASE AGREEMENT BETWEEN THE COUNTY OF EL PASO
AND THE CITY OF EL PASO
FOR 4505 ALBERTA, EL PASO TEXAS

LANDLORD: County of El Paso Texas
c/o County Judge
500 East San Antonio, Ste. 301
El Paso, Texas 79901

TENANT: City of El Paso, Texas

FOR: City of El Paso Department of Public Health

PREMISES: Specified portions of the Property located at 4505 Alberta El Paso, Texas,
79905

APPROXIMATE TOTAL SQUARE FEET RENTED TO TENANT:

Approximately Six Thousand Nine Hundred Thirty Four (6,934)
Square Feet

COMMENCEMENT DATE: Upon receipt of payment of funds required in paragraph
9(h) below

ENDING DATE: September 30, 2018, subject to the Option to Renew
provided for in Paragraph 17.

MONTHLY RENT: **Ten Thousand One Hundred Twenty Five Dollars and
Fifty Cents (\$10,125.50) (\$17.52per square foot)**
(Effective September 1, 2016)

UTILITIES TO BE PAID BY TENANT: Gas, electricity, water, telephone, and waste disposal
as described below.

1. PREMISES:

The County of El Paso, Texas, ("Landlord" or "County"), a political subdivision of the State of Texas, for and in consideration of the rents, covenants, and agreements contained in this Lease Agreement to be kept and performed by the parties, hereby leases to the City of El Paso Texas ("Tenant" or "City"), a home-rule municipality, a portion of the property located at 4505 Alberta, El Paso Texas to include the use of specified parking areas, hallways, and other common areas (the "Premises") as more specifically described in **Attachment A** to have and to hold for the duration of the term described above.

2. RENT:

Tenant shall pay the rent to Landlord in advance no later than the tenth (10) day of each calendar month of the term of the Lease. This amount includes Tenant's share towards any operating costs of the Premises including those further described in this Lease. If the commencement date is not the first day of a month, a pro-rated monthly installment shall be paid for the fraction of the month during which the Lease commences, computed as a 30 day month and a 360 day year. Rent is payable by Tenant without notice, demand, abatement, deduction, or setoff except as expressly specified in this Lease. Tenant's obligation to pay rent is independent of any obligation of Landlord under this lease. Payments shall be made to:

El Paso County Texas
Office of the County Auditor
800 East Overland Room 406
El Paso, Texas 79901

If any installment of rent is not paid within 30 days after it is due, the payment is considered overdue commencing the 31st day after the initial due date. Tenant must pay a late charge in an amount equal to the rates described in the Texas Prompt Payment Act contained within Chapter 2251 of the Texas Government Code, unless Landlord agrees otherwise.

All payments by Tenant under this Lease are payable only out of current City of El Paso revenues. In the event that funds relating to this Agreement do not become available by actions of the City, such as by El Paso City Council not appropriating the funds, Tenant shall have no obligation to pay to Landlord, or perform any related services for Tenant's fiscal year during which time such funding is not available or appropriated. Should Tenant experience a funding unavailability as described in this paragraph, either party may choose to terminate the Agreement subject to the terms of this Lease.

3. USE:

Tenant has inspected the Premises and acknowledges that the same are suitable for Tenant's intended purposes as stated in this paragraph. Tenant shall use the Premises exclusively for offices and laboratories for the City of El Paso Department of Public Health Laboratory, and for no other purposes without express prior written consent of the Landlord. Tenant shall not use the Premises or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, zoning restriction, or any ordinance or governmental rule, regulation or requirement. Failure to comply with this requirement is a breach of the lease terms. By execution of this Lease, Tenant represents that the use of the property for the described purposes, and all equipment and devices possessed, used, owned, maintained or otherwise utilized by Tenant currently and in the course of this Lease shall comply with all local, state, and federal regulations, and are properly licensed and/or permitted as may be required. Upon request by Landlord, Tenant shall, within 3 business days of such request, provide written confirmation of current and on-going compliance.

4. TAXATION:

Landlord pays no taxes as it is a tax-exempt entity. Tenant pays no taxes as it is a tax exempt entity. In the event Tenant should be required to pay any tax, fee, penalty or similar assessment related to its use and occupancy of the premises, Tenant shall be solely liable for such payment and shall promptly pay it on or before the due date.

5. UTILITIES:

- a. Tenant shall pay for its own telephone, internet, or similar electronic communication utilities and connection charges. Additionally, Tenant shall pay for a separate commercial trash receptacle or receptacles to be used by Tenant to dispose of all trash generated by Tenant. Placement of the receptacle shall be done in coordination with Landlord, and Tenant shall be responsible for maintaining the area around its receptacles in a clean and safe manner. Tenant shall not use any trash receptacles paid for or managed by Landlord.
- b. Landlord agrees to pay the gas, electric, and water utility charges on a monthly basis. Tenant covenants and agrees to reimburse Landlord the apportioned cost of the utilities within 30 days of receipt of request for payment by Landlord. Landlord shall provide Tenant copies of actual bills for water and natural gas and electricity.
- c. In order to more accurately allocate the actual costs of utilities and operations, Landlord has installed a separate meter to measure electric usage by the Tenant. Landlord shall review the electric sub-meter on a monthly basis, determine the portion of the electric utility charges used by Tenant on the second floor of the premises, and apportion said charges accordingly. Apportionment of the natural gas and water bills shall be based on thirty-five percent (35%) of the total monthly charges for each respective utility indicated on Landlord's monthly bill for the premises. Monthly charges shall include any and all charges imposed by the utility including but not limited to fuel surcharges, customer charges, water replacement, storm water, franchise, energy and similar type charges.
- d. Tenant has previously installed a separate gas meter to measure natural gas usage for an emergency generator. Tenant shall be responsible for all costs associated with the gas usage indicated on the meter as well as customer charges, fuel charges, similar type charges, and any costs associated with installation, use, repair, maintenance, or removal of said meter.
- e. Except for any interruption in utility service caused by the Landlord's negligence or gross negligence, in no event will Landlord be liable to Tenant for any interruption in the service of any such utilities to the Premises, however such interruption may be caused, and this Lease shall continue in full force and effect despite any such interruptions.

6. INSURANCE:

Premises Insurance: Landlord shall, at Landlord's expense and as Landlord deems appropriate, maintain at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises in the amount of the full replacement value (exclusive of Tenant's trade fixtures, furnishings, equipment and contents), providing protection against perils included within the classification of fire, extended coverage, vandalism, mischief, sprinkler leakage and special extended peril (all-risk insurance). Landlord may self-insure. Tenant shall self-insure or carry, at Tenant's expense, general liability insurance.

7. FIRE EQUIPMENT:

Tenant agrees to supply and maintain at its own expense any fire extinguishers, or other fire prevention equipment required by law, rules, orders, ordinances and regulations of the City of El Paso, the State of Texas, and/or any required by any insurance carrier, underwriters association or other similar body having jurisdiction involving the use and/or occupancy of the Premises; Tenant shall be responsible for any fines, penalties, or similar assessments which are assessed for malfunctioning of or non-compliance of Tenant's equipment. Landlord shall provide and maintain a fire protection system, including sprinkler and smoke detectors in accordance with the applicable requirements for such fire safety equipment. Landlord shall be responsible for any fines, or penalties assessed for malfunctioning of or non-compliance of Landlord's fire safety equipment referenced in this paragraph.

8. SECURITY

Nothing in this Lease shall obligate the Landlord to maintain or provide any security services or system for the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or other criminal or willful acts of third parties, unless such loss, theft, or damage is caused by intentional acts by Landlord or Landlord's employees or agent.

9. MAINTENANCE AND REPAIRS, ALTERATIONS AND ADDITIONS:

a. Landlord's Obligations: Except for damage caused by negligent or intentional act or omission of Tenant and Tenant's agents, employees or invitees, Landlord, at Landlord's expense, shall keep in good condition and repair: all interior and exterior heating, ventilation, air-conditioning equipment, glass, parking areas, driveways, sidewalks, fences, landscaped areas, roof, foundation, and exterior plumbing up to the point plumbing lines enter the building. Fixed equipment such as air conditioning, heating, and water heaters which have been installed and are owned by Landlord are to be maintained by Landlord, along with electrical power sources, except for public power lines. Other equipment shall be maintained at Tenant's own expense.

b. Landlord shall commence required repairs as soon as reasonably practical after

receiving written notice from Tenant. With respect to interior plumbing such as ruptured lines or stoppage, if it is determined that such stoppage was caused by Tenant's actions, Landlord shall repair the stoppage as soon as reasonable and, upon receipt of invoice, Tenant shall on the next rental payment due date reimburse Landlord for the expense of such repairs and any damage caused by the stoppage.

- c. Tenant shall reasonably and properly maintain and repair any equipment which Tenant installs or has previously installed, or which has been installed on behalf of the Tenant. Tenant shall keep and maintain the interior of the leased Premises, including hallways, elevators, and stairwells of the second floor, in a good and clean order at Tenant's own expense. Tenant shall at all times keep all parts of the Premises not required to be maintained by Landlord, in good order, condition and repair and keep them in a clean, orderly, sanitary and safe condition. If Tenant neglects to reasonably maintain the leased Premises, Landlord may, but is not required to, repair or correct the damages or conditions caused by such failure upon 15 days notice to Tenant. Any costs incurred by Landlord for repair or corrections for which Tenant is responsible under this section are payable by Tenant to Landlord as additional rental on the next rental installment date.
- d. Upon request Tenant shall furnish to Landlord copies of any records or manifests demonstrating that Tenant has properly maintained and inspected any systems, generators, incinerators, or other equipment used or installed by or on behalf of Tenant, including assurance that the use or installation of such does not impair or threaten the soundness or safety of the Premises in any way.
- e. Alterations and Additions: Landlord shall not make any changes to the Premises which materially impair the size or dimensions of the demised Premises without prior notice to the Tenant. Landlord shall consult with Tenant as to the potential effect of newly installed equipment and renovated areas, allowing Tenant to comment, provide feedback, and make any necessary adjustments in its use of the Premises. If Tenant's square footage is reduced from that set forth in this Lease, Tenant shall have the option to either accept a reduced rental rate adjusted in proportion to the reduction in the square footage of the leased Premises, or terminate this Lease with sixty (60) days written notice to Landlord.
- f. Tenant shall not, without Landlord's prior written consent, make any alterations, additions, improvements, or utility installations in, on or about the Premises, except for non-structural alterations. Any alterations, additions, or improvements made to the structure by the Tenant may be done only after written consent by Landlord. All alterations must be made in a professional and workmanlike manner and become the property of the Landlord at the termination of this Lease, except for unattached movable fixtures; provided however that Landlord may reject such alterations, additions, or improvements in which case Tenant shall restore the premises to their original or similar condition as determined by the Landlord.

- g. Upon expiration of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear, and damage by fire, earthquake, act of God, unavoidable casualty, or the elements alone excepted. Tenant, at its sole cost and expense, agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery equipment, cabinetwork, furniture, movable partition, or permanent improvements or additions made by or on behalf of Tenant, including repairing the floor, roof, or ceiling, and patching and painting the walls where required to Landlord's reasonable satisfaction. At Landlord's discretion, the work may be performed by Landlord at Tenant's expense.
- h. Tenant has requested modifications to the Premises to accommodate additional Tenant personnel. An additional Rider is attached to and made a part of this agreement and describes the work to be done, the cost of labor and materials, responsibility for payment, and related matters. By execution of this agreement, Tenant and Landlord agree to the terms and conditions of the Rider and to be bound by it. In accordance with the lease Rider, Tenant will pay Landlord for any and all expenses incurred by Landlord in connection with the materials and work performed. Tenant must pay to the Landlord the full estimated amount of expenses within fifteen (15) County business days of execution of this agreement by Tenant. No work will be performed by Landlord until the required payment is received from Tenant. No portion of the estimated costs shall be refundable once work has commenced. Once payment is received, the Landlord will, within 5 County business days, develop and submit to Tenant a construction schedule, including consideration of work to be performed, available resources, materials acquisition, and procurement processes. Landlord shall endeavor to substantially complete agreed upon work within 120 County business days after submission of the construction schedule to the Tenant. In the event Landlord fails to substantially complete the work within the described 120 days, Landlord agrees to temporarily reduce the rent rate by \$20 per day for each day beyond the 120 days which, in the Landlord's sole discretion, substantial completion is not achieved. The temporary rent reduction will end on the date the County determines that there is substantial completion of work.
- i. If the actual costs of the modifications exceed the estimated amount of expenses, Landlord shall notify Tenant in writing with documentation and payment is due within seven (7) days of the notice. If additional modifications are requested by Tenant and agreed upon by Landlord, payment by Tenant is due within seven (7) days of reaching agreement on the additional modifications with the Landlord. Tenant must pay Landlord for all costs of the additional modifications before additional work is commenced. If Tenant fails to provide payment within the required times provided for in this section, Landlord in its sole discretion may either extend the time for payment for an additional 3 days, or cancel this agreement, or refuse to perform the requested modifications, or any combination of the alternatives. Landlord is not excluded from exercising any other remedies

which it may have in law or equity.

- j. Tenant has requested to modify the current Premises landscaping to add parking spaces. Landlord agrees to allow the conversion of a portion of the landscaped areas to parking spaces, subject to the terms of the attached Rider and **Attachment B** showing the proposed modifications.

10. DAMAGE AND DESTRUCTION:

- a. Tenant is solely responsible for moving and installing any and all of Tenant's equipment, furniture, and other property to be used on the Premises. Tenant and its agents shall move and install any equipment in a manner that does not damage any of Landlord's property. Landlord shall not be responsible for loss or damage to Tenant's fixtures, equipment or other property so installed or placed by Tenant on the Premises, except where such damage is due to Landlord's willful failure to make repairs required to be made under this Lease.
- b. Partial Damage-Insured: In the event improvements on the Premises are damaged by any casualty covered under an insurance policy maintained by Landlord, then Landlord shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. For purposes of this provision, Landlord will make all reasonable efforts to complete minor repairs within thirty (30) days notice of damage to Landlord and to complete major repairs within ninety (90) days of notice of the damage.
- c. Total Destruction: If during the term of this lease, the demised Premises shall be damaged or destroyed from any cause, whether or not covered by insurance under this Lease, so as to render un-tenantable more than fifty percent (50%) of the leased floor area, Tenant reserves the right to automatically terminate the Lease as of the date of such total destruction.

11. HAZARDOUS MATERIALS

- a. Hazardous Material. As used in this Lease, "Hazardous Material" shall be defined as pollutants, toxic substances, regulated substances, oil, hydrocarbons, asbestos, or similar materials as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the federal Clean Water Act, as amended, the Texas Water Code, as amended, the Texas Solid Waste Disposal Act, as amended, and any other federal, state, or local environmental or health and safety related law, or regulation. All the provisions of paragraph 11 specifically shall survive the expiration or termination of this Lease.
- b. Use of Hazardous materials. Landlord hereby acknowledges that Tenant's intended use of the premises as stated in Paragraph 3 above, may require

that Tenant to utilize Hazardous Materials. Tenant shall not cause or permit any Hazardous Material to escape or be released in the Premises, be brought upon, kept, or used in or about the premises by Tenant, its agents, or invitees without the prior written consent of Landlord, which Landlord shall not unreasonably withhold, provided Tenant demonstrates to Landlord's satisfaction that such Hazardous Material is necessary or useful to Tenant's operations and will be kept, stored, and used in a manner that complies with the laws regulating such Hazardous Materials so used, kept, or brought upon the Premises by Tenant. Prior to execution of this Lease, Tenant has provided Landlord with information as to the Hazardous Materials to be used. Tenant affirmatively states that all such Hazardous Materials will be kept, stored, and used in a manner that complies with all laws regulating such Hazardous Materials. By execution of this Lease, Landlord hereby consents to the storage and usage of such Hazardous Materials consistent with the provisions of this Paragraph. Tenant shall remove all such Hazardous Material upon the expiration or termination of this Lease and restore the Premises to pre-lease existing conditions, normal wear and tear excluded.

- c. Notice of violations. Tenant shall immediately advise Landlord of (a) any government or regulatory actions instituted or threatened under any environmental law listed above affecting Tenant or the Premises; and (b) all claims threatened or made by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from Tenant's use or storage of Hazardous Material, (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be classified in a manner which may support a claim under any environmental laws, and (d) the discovery of a occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject landlord or the Premises under any environmental laws. Landlord may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions initiated in connection with any claims under any environmental laws and to have its reasonable attorney's fees paid by Tenant. At its sole and expense, Tenant agrees to promptly and completely cure and remedy each and every violation of an environmental law caused by Tenant, its agents, employees, contractors, or invitees.

12. ENTRY BY LANDLORD:

Landlord shall have the right at reasonable times to enter the Premises to inspect the same or to maintain or repair, make alterations or additions to the Premises on any portion of the Premises or to show the Premises to prospective tenants, purchasers and other persons. Landlord shall make reasonable efforts to notify Tenant of the need to enter upon the premises prior to entering upon the premises. Rent shall not abate during such

entry. Additionally, during any apparent emergency Landlord, its employees, and/or agents may enter the Premises forcibly without liability and without in any manner affecting Tenant's obligations under this Lease. Prior to entering the premises for emergency purposes, Landlord will endeavor to contact Tenant to advise Tenant of the emergency with such notice as is reasonable under the circumstances, to coordinate with Tenant and allow Tenant the opportunity to resolve the emergency. Tenant will provide to the Landlord and keep updated contact information for City personnel who may be contacted in the event of an emergency.

13. MOVE-OUT REQUIREMENTS, HOLDOVER:

Except as otherwise provided in this Lease, if Tenant intends to vacate the Premises or terminate the lease, Tenant shall provide a **ninety (90)** day written notice to the Landlord. If Tenant remains in possession of all or any part of the Premises after the expiration of any term as stated in this agreement, this Lease shall continue on a month-to-month basis, subject to all the terms and conditions of this Lease except that the revised month-to-month monthly rent shall be 110% of the rent for the last month of the term of this Lease or the extended Lease as determined by the Landlord. Rent and other obligations under this agreement will continue until all keys to the Premises are turned over to Landlord. No payments of money by Tenant to the Landlord after the termination of this Lease shall reinstate, continue, or extend this Lease term and no extension of this Lease after termination or expiration is valid unless it is reduced to writing and signed by both the Landlord and the Tenant. Nothing in this Lease may be construed to give Tenant the right to hold over beyond any expiration date or any earlier termination of this Lease or preclude Landlord from having the right to dispossess or otherwise terminate Tenant's right of possession. Any month-to-month tenancy is terminable upon notice from the Landlord.

14. NOTICES:

All notices or demands to be given by Landlord or Tenant under this agreement shall be in writing and shall be deemed delivered a) the date of actual hand-delivery; or b) two (2) days after depositing the notice or demand in the U.S. mail, certified or registered, postage pre-paid, addressed to the party at the addresses listed on the final page of this Agreement.

15. CONDEMNATION:

If the Premises or any part of the Premises are condemned for any public purpose to the extent that the remainder of the Premises is, in Landlord's opinion, not reasonably suitable for occupancy and Tenant's specific use, the Landlord may at its election terminate the Lease. All proceeds from any taking or condemnation of the Premises shall belong solely to the Landlord, except that Landlord shall not be entitled to any award made to Tenant for loss of business, depreciation to or cost of removal of Tenant's personal property.

16. LIENS:

Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant.

17. OPTION TO RENEW:

This Lease and all obligations and responsibilities to be performed under it shall become effective upon receipt by Landlord of the payment for the full estimated amount of expenses as required by Paragraph 9(h) of this Lease. The adjustment in monthly rate shall be effective September 1, 2016. Tenant is granted an initial term commencing on September 1, 2016 and which will end on September 30, 2018. Tenant is granted the option of three (3) separate one-year extensions of this Lease pursuant to the same terms and conditions. Each one-year extension is subject to the approval of Landlord at the time the request for extension is made. In order to exercise the option to renew for one year, **no less than ninety (90) days** prior to the expiration of the initial term or the then current term, the Tenant must provide a written notice to the Landlord of the Tenant's desire to exercise the option to renew. Within thirty (30) days after receipt of the request, Landlord shall deliver to Tenant a notice of confirmation or denial of the lease renewal. Failure by Landlord to deliver notice of confirmation to Tenant **does not** act as an automatic approval of the renewal.

18. DEFAULT:

In the event that Tenant defaults in the timely payment of rent, or violates or fails to perform any of the provisions of this Lease, Landlord shall send written notice of the default, violation or omission to the Tenant. Tenant must completely cure or remove the default within thirty (30) days after receiving the notice from Landlord, or upon a reasonable cure time as the parties mutually agree upon. If Tenant fails to do so, Landlord may re-enter the Premises, by summary proceedings or take possession of the Premises and remove all persons and property, and may elect to either cancel this Lease or re-let the Premises as agent for the Tenant or otherwise, and receive rent, applying the rent to the payment of the Tenant's rent balance under this Lease and the fulfillment of Tenant's covenants and the balance (if any) to be paid by Tenant, who shall remain liable for any deficiency.

If Landlord breaches this Lease, Tenant may exercise its rights and remedies as it may be entitled to under law or equity.

19. AMERICANS WITH DISABILITIES ACT:

- a. Landlord shall make necessary interior and exterior modifications to the Premises agreed upon to make the Premises accessible for disabled persons. Tenant and Landlord covenant to make reasonable, mutual efforts to make accommodation for matters on the Premises related to the Americans with Disabilities Act (ADA).
- b. Tenant and Landlord shall comply with all laws, ordinances, orders, rules and

regulations of governmental bodies (municipal, state and federal) applicable to, or having jurisdiction over the use, occupancy, operation, and maintenance of the Premises and the non-leased parts of Landlord's building located at the address of the Premises, including without limitation, all applicable environmental and hazardous materials/substance laws.

20. MISCELLANEOUS:

- a. This Lease and all obligations and responsibilities to be performed under it shall become effective upon receipt by Landlord of the payment for the full estimated amount of expenses as required by Paragraph 9(h) of this Lease. The adjustment in monthly rate shall be effective September 1, 2016.
- b. Signs: Tenant may, at Tenant's expense, and after consultation with Landlord, install signs approved by the Landlord. All signs shall be removed at the termination of this lease. Sign work shall be done in such a manner to avoid injury, defacement, or overloading of the building.
- c. Parking: Tenant's employees and visitors must use the parking spaces in the adjacent parking lots and garage. Tenant's employees shall not use spaces specifically designated for Landlord's employees and visitors.
- d. Severability: If any provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected, and each term and provision of this Lease shall be valid and be enforceable to the extent permitted by law.
- e. Assignment and Subletting: Tenant shall not assign, sublet, transfer, pledge, or encumber this Lease or any interest in this Lease or the Property without the prior written consent of Landlord.
- e. Amendment: No amendment, modification, or alteration of the terms of this Lease will be binding unless it is in writing, dated subsequent to the date of execution of this Lease and be executed by both parties.
- f. Landlord covenants and agrees that, upon payment by Tenant of the rent and upon Tenant's observance of the covenants and agreements provided for in this Lease, Tenant shall at all times have peaceable and quiet enjoyment and possession of the demised premises.
- g. Neither Landlord nor Tenant is required to perform any term or covenant of this Lease so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lookouts, civil riot, floods, acts of terrorism, and any other causes not reasonably within Landlord's or Tenant's control and that Landlord or Tenant, by exercising due diligence and paying money, cannot prevent or overcome if the building housing the Premises and/or the Premises

become so damaged as to render the Premises unfit for occupancy. Then, and from the date of such damage, this Lease shall terminate and the rent and other obligations due under this Lease shall be due and payable only to the date of such damage.

- h. This Lease shall be construed under the laws of the State of Texas and venue for all legal matters is in El Paso County, Texas. All obligations of the parties created by this Lease are performable in El Paso County, Texas.
- i. Entire Agreement: This instrument, and any attachments to it, constitutes the entire Agreement between Landlord and Tenant relative to the Premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant.
- j. Without regard to the date actually executed this lease shall be considered effective as of _____, 2016.

Veronica Escobar
El Paso County Judge

Tommy Gonzalez
El Paso City Manager

APPROVED AS TO CONTENT

Pat Adatao
Public Works Director

City Development Dept.

Robert Resendes, Director
Public Health Department

Approved as to Form

Attest:

Erich A. Morales
Assistant County Attorney

Richarda Duffy Momsen
El Paso City Clerk

Marvin Foust
Senior Assistant City Attorney

Attachments Included

NOTICES TO BE DELIVERED UNDER THIS LEASE

County Judge
El Paso County, Texas
500 E. San Antonio, Suite 301
El Paso, Texas 79901

El Paso County Attorney's Office
General Counsel Section
500 E. San Antonio, Room 503
El Paso, Texas 79901

Public Works Director
El Paso County, Texas
800 E. Overland Avenue, Room 407
El Paso, Texas 79901

IMPROVEMENTS RIDER TO LEASE AGREEMENT BETWEEN THE
COUNTY OF EL PASO
AND THE CITY OF EL PASO
FOR A PORTION OF 4505 ALBERTA, EL PASO TEXAS

The County of El Paso Texas as “Landlord” and the City of El Paso Texas as “Tenant”, have agreed to enter into a Lease Agreement (the “Lease”) for a portion of the County’s building located at 4504 Alberta Drive, El Paso Texas; (the “Premises”); and

A copy of the Lease Agreement is attached to this Rider and the Rider and the Lease are referenced and made a part of each other; and

The City has requested that modifications be made to the Premises as described in the Lease in order to better accommodate additional City personnel to be housed and services to be performed at the Premises; and

The County has agreed to the modifications (the “Work” or “Improvements”) which are described in the attached **List of Improvements**. The County will be responsible for completing the Work, and the City will pay the County for all the Work as described in this Rider; and

This Rider shall be considered a part of the Lease and is incorporated into and made a part of the Lease.

Therefore in consideration of the promises and covenants contained in the Lease Agreement between the County of El Paso Texas and the City of El Paso Texas for A Portion of 4505 Alberta, the City and the County (the “Parties”) agree as follows:

A. Preparation of Plans

The County and the City have previously conferred and agreed upon the plans and specification of the proposed modifications. The agreed upon plans, specifications, and estimated costs of improvements are attached to and made a part of this Rider and Lease (**Attachment B- List of Improvements and Estimated Costs**). It is understood that the estimate of costs is a good faith estimate only provided by the Landlord. Final costs may change due to changes in Plans approved by the Parties, unanticipated conditions, or other conditions or factors affecting the final outcome and cost of the Work. Tenant shall pay Landlord for all costs of the Work, including labor and materials in accordance with this Agreement.

B. Performance of and Payment for the Work

1. Landlord will be responsible for having the Work performed unless otherwise specified. The Work will be performed by County employees or contractors selected by the Landlord. After approval of the Plans, Work will be performed in accordance with the Plans and applicable laws.

2. The initial project budget, for the Project is set forth in **Attachment B** to this Agreement (“Project Budget”). Tenant will pay one hundred percent (100%) of the estimated costs of Work within fifteen (15) days after execution of the Lease and this Rider. Upon substantial completion of the improvements, Landlord will determine the final cost of the Work and notify Tenant in writing. Tenant will pay any additional remaining costs within 30 days of receipt of notice from Landlord. In no event shall a refund of any portion of the estimated costs be required.

C. Schedule of Work

1. Landlord in its sole discretion will develop an estimated schedule of when the Work will begin and when the Work will be completed. Tenant acknowledges that due to the fact that Landlord will be using its own staff and employees to complete the Work, all work will have to be scheduled in accordance with Landlord’s other pending work and projects and therefore may not begin immediately upon execution of this Agreement or payment of the estimated costs.
2. The Tenant acknowledges that Landlord has a limited number of employees who can perform the Work. In the event of an emergency requiring County employees who would otherwise perform the work to be temporarily re-assigned to other work, Landlord will notify Tenant of the emergency and a good faith estimate as to when the employees may return to performing the Work and any changes in the Completion Date. For purposes of this provision, an “emergency” will include an unanticipated event, condition, or circumstance which may endanger the health, safety or welfare of the public or which may cause or threaten a damage to County property, or cause a significant impairment of the County’s ability to provide services to the public.

- D. Changes in Work. Any changes in the Plans or Work after initial approval will require approval of Landlord and Tenant. As part of the approval, the Parties must mutually agree on any changes to the construction schedule.

E. Governmental Immunity

Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

Veronica Escobar
El Paso County Judge

Tommy Gonzalez
El Paso City Manager

APPROVED AS TO CONTENT

Pat Adatao
Public Works Director

APPROVED AS TO FORM

Erich A. Morales
Assistant County Attorney

APPROVED AS TO CONTENT

City Development Dept.

Robert Resendes, Director
Public Health Department

Attest:

Richarda Duffy Momsen
El Paso City Clerk

APPROVED AS TO FORM

Marvin Foust
Senior Assistant City Attorney

ATTACHMENT "A"

