

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

DEPARTMENT: City Development

AGENDA DATE: November 12, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-541-4583

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a Lease Agreement between the CITY OF EL PASO and Pro-Action, Inc. (Lessee), for approximately 700 square feet in the basement of the building located at 222 South Campbell, to operate "Immunize El Paso", a clinic which provides free or low-cost health services, for an initial term beginning on October 22, 2013 to April 30, 2014 at a rental rate of \$1.00 for the initial term, and the initial term may be extended on a month-to-month basis by the City Manager for a rental rate of \$1.00 per month.

BACKGROUND / DISCUSSION:

Pro-Action, Inc. has been operating and serving the community for many years. This lease will enable "Immunize El Paso" to continue their regular operations under the full protection of a lease. This lease establishes flexibility for the City to terminate the agreement and move the tenant out with 30-day notice. This is especially important due to the unknown future of the Tillman building.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? No.

AMOUNT AND SOURCE OF FUNDING:

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

No financial impact. No income was budgeted for this space.

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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.
2013 NOV -7 AM 11:49

RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement between the City of El Paso (Lessor) and Pro-Action, Inc. (Lessee), for approximately 700 square feet in the basement of the building located at 222 South Campbell, to operate “Immunize El Paso”, a clinic which provides free or low-cost health services, for an initial term beginning on November 12, 2013 to April 30, 2014 at a rental rate of \$1.00 for the initial term, and the initial term may be extended on a month-to-month basis by the City Manager for a rental rate of \$1.00 per month.

ADOPTED THIS _____ DAY OF _____, 2013.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sol M. Cortez
Assistant City Attorney

Mathew McElroy, Director
City Development Department

LEASE

By and between

CITY OF EL PASO

Lessor

and

PRO-ACTION, INC

Tenant

for the Premises located at
222 South Campbell, El Paso, Texas 79901

PRO-ACTION, INC. LEASE AGREEMENT

THIS Lease ("Lease"), made to be effective as of _____, 2013 ("Effective Date") by and between **CITY OF EL PASO**, a Texas municipal corporation hereinafter called the "City," or "Lessor" and **Pro-Action Inc.**, a Texas non-profit corporation, hereinafter called the "Lessee."

WHEREAS, the City owns the property located at 222 South Campbell, El Paso, TX 79901(the "Property"); and

WHEREAS, the Lessee is a non-profit organization that operates the program "Immunize El Paso", which offers immunization and health care prevention services to low-income persons in the City and the County of El Paso; and

WHEREAS, the Lessee has indicated a desire to lease space in Property further described in this Lease as Leased Premises to operate "Immunize El Paso", a clinic which offers free or low-cost health services to the residents of the City of El Paso; and

WHEREAS, Lessor has determined that the public purpose will be served by leasing the Leased Premises in accordance with the terms specified herein, together with certain privileges, right, uses and interests therein, because the availability of free or low-cost health services for the residents of El Paso improves the welfare of the community.

NOW THEREFORE, for and in consideration of the foregoing and in further consideration of the mutual benefits, the Parties hereto agree as follows:

1. **Lease of Premises.** In consideration of the obligation of Lessee to pay rent herein provided and in consideration of the other terms, covenants, and conditions of this Lease, City does hereby demise and lease to Lessee and Lessor does hereby lease as follows:

Approximately 700 square feet of useable space in the basement of the building located upon Lots 1 to 22, Block 199 of the Campbell Addition, located at 222 South Campbell, El Paso, Texas 79901. The leased area described above is hereinafter referred to as the "Leased Premises" as depicted in the floor plan set forth as Exhibit "A".

2. **Term of Lease.** The term of this Lease shall commence on the effective date of this Lease and end on April 30, 2014 ("Initial Term").
3. **Extension of Term.** In the event that the Lessee is not in default of any terms of this Lease, the Parties may extend this Lease month to month until terminated by either party as set forth in Section 20. The Lessee may extend the Initial Term by notifying the Lessor in writing prior to the expiration of the Initial Term and approval by City Manager or Designee. In the event the term is extended ("Month-to-Month Tenancy"), the Lessee shall occupy the Premises on the same terms and conditions as set forth in this Lease.

4. **Rental Rate.** As monetary consideration for this Lease, Lessee will deliver to the City the sum of ONE AND NO/100 DOLLARS (\$1.00) for the Initial Term in advance on the first day of the first day of the month of the effective date of this lease and ONE AND NO/100 DOLLARS (\$1.00) in each month of the Month-to-Month Tenancy of this lease.

5. **Place of Payment.** All rent payments provided herein shall be paid to City at the following address, or at such place as may be designed from time to time by City:

City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: Financial Services Department

6. **End of Term.** Tenant shall surrender the Premises at the end of this Lease in good order and condition except for ordinary wear and tear.

7. **Hold over.** The City and the Lessee agree and understand that any holding over of the Lessee on the Leased Premises at the expiration of the Initial Term or authorized extension of this Lease, pursuant to Section 3, shall operate and be construed as a tenancy from month-to-month at the monthly rental rate of \$350.00, and all provisions of this Lease shall remain effective, so long as the Lessee retains possession of the Leased Premises.

8. **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 Leased Premises or improvements located thereon or functional change in the uses of such Leased Premises shall be made without the prior written consent of City.

B. Lessee shall not in any way interfere with the rights or quiet enjoyment of other tenants of the Property. Lessee shall not use or allow the Leased Premises to be used for any improper, immoral, unlawful or objectionable purpose in accordance with City ordinances and state and federal laws, nor shall Lessee cause, maintain or permit any nuisance in or about the Property.

C. City may make reasonable rules for use of the Property and the common areas to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.

D. That the right to use the Leased 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 City now in force or hereafter prescribed or promulgated by charter authority or by law.

9. **Permitted Uses.** The Lessee agrees to use the Leased Premises for a health clinic and offices used for the purpose of providing free or low-cost health services. The Lessee shall not permit on the Leased 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 Leased Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained.
10. **The City's Responsibilities.** The City is responsible for the following:
- A. **Quiet Enjoyment.** City agrees that upon Lessee's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises. City 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.
 - B. **Utilities.** The City will pay for the utility charges for the water, gas, and electricity services used by the Lessee in the building at the Leased Premises.
 - C. **Trash, Garbage, and Other Refuse.** Lessor shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Property, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Property. City shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse.
 - D. **Repairs and Maintenance.** The City will keep the exterior wall, foundation, roofs, doors, windows, plumbing, cooling and heating systems, and other equipment of the building in good working order and shall maintain the same in compliance with all governmental requirements and regulations. The City shall not be required to repair damages caused by negligence of the Lessee's employees or agents.
11. **The Lessee's Responsibilities.** The Lessee is responsible for the following:
- A. **Signs.** The Lessee shall not place any signs at or about the Leased Premises, except when first approved by the City, such approval not to be unreasonably withheld.
 - B. **Care of Interior.** The Lessee agrees to take good care of the interior of the Leased Premises and fixtures and suffer no waste. At the end of the term and any extension thereof, the Lessee will leave the Leased Premises in good order and condition, ordinary wear and tear and damage by fire and elements only accepted.

- C. Medical Waste Removal. The Lessee will be responsible for the collection and removal of all medical waste as a result of its use and occupancy of the Leased Premises.
- D. Telephone Services. The Lessee shall pay the charges for the telephone services used by the Lessee at the Leased Premises.
- E. Taxes. Pay any and all taxes assessed against the Leased Premises, improvements located on the Leased Premises, Lessee's interest in the Leased Premises and improvements, and all of Lessee's personal property located on the Leased Premises.
12. **Improvements**. No improvements, alterations or additions shall be made in or to the Leased Premises without the prior written of the City, such consent not to be unreasonably withheld. All alterations, additions and improvements installed at the expense of the Lessee shall be done of equal workmanship and materials as in the existing Leased Premises. Such alterations, additions and improvements may be removed by the Lessee, unless to do so would cause permanent damage to the Leased Premises, in which case the alterations, additions or improvements shall become the property of the Lessor, and shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Lease.
13. **Compliance with Laws**. Lessee, at Lessee's expense, agrees that it will operate and to the extent applicable, construct improvements on the Leased 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 City or Lessee, with respect to the use, occupation or alteration of the Leased Premises and any improvements thereon.
14. **Parking Lot**. The parking lot adjacent to the Leased Premises located at 222 South Campbell, El Paso, TX 79901 is available for the use of the Lessee's patrons only. Lessee's employees and staff shall park off-site and Lessee shall notify its employees the City will enforce this parking policy.
15. **Indemnification**. **THE LESSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY, ITS AGENTS, OFFICERS, EMPLOYEES AND VOLUNTEERS FREE AND HARMLESS FROM ANY LIABILITY FOR INJURY OR DAMAGE TO ANY PERSONS OR PROPERTY ARISING OUT OF THE LESSEE'S USE OF THE LEASED PREMISES INCLUDING ALL COSTS, EXPENSES AND ATTORNEY'S FEES INCURRED BY THE CITY IN DEFENSE OF SUCH CLAIMS.**
16. **Insurance**. The Lessee, at his sole cost and expense shall, throughout the term of this Lease, or any extension hereof, provide and keep in force for the benefit of the Lessee and the City, comprehensive general liability insurance in an amount not less than ONE

Lessor: Pro-Action Inc.
Attn: Daniel Acosta, Executive Director
P.O. Box 3898
El Paso, Texas 79923

20. Termination

A. Default. If the Lessee defaults on any of the covenants contained herein, the City may cancel the lease, if, after thirty (30) days written notice, the Lessee has either not cured the default or commenced action to cure the default. Any default which the Lessee begins to cure within ten (10) days after notice there of shall not be deemed cured unless the Lessee completely cures default within a reasonable time thereafter. Upon cancellation of this lease under the terms of this provision the City shall have no further obligation under the terms of the Lease.

B. Termination for Convenience. This Lease may be terminated for convenience and without penalty by either City or Lessee by giving at least thirty (30) days written notice of such termination to the other party at the address set forth in Section 16 herein.

21. Condition of Premises. Lessee accepts the Premises in their present condition 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. City 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 the City.

22. Legal Construction. If any provision of this lease is found by court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected.

23. Waiver. No delay or omission in the exercise of any right or remedy of City on any default by Lessee shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by City of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of City including, without limitation, the acceptance of the keys to the Leased Premises, shall constitute an acceptance of the surrender of the Leased Premises by Lessee before the expiration of this Lease. Only notice from City to Lessee shall constitute acceptance of the surrender of the Leased Premises and accomplish a termination of this Lease. City's consent to or approval of any act by Lessee requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act by Lessee. Any waiver by City of any default must be in writing.

24. **Legal Relationship.** Nothing in this Lease shall be construed or deemed to create any partnership or other relationship between the parties, other than as expressly provided for herein. Subject to the provisions of this Lease, Lessee shall be solely responsible for and shall wholly control the Leased Premises referenced in this Agreement.
25. **NonDiscrimination Covenant.** Lessee, for itself, its representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. 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, Building or Property pursuant to this Lease.
 2. That in the construction of any improvements in the Premises and the furnishing of services therein, 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.
 3. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to cancel this Lease immediately and re-enter and repossess the Premises and hold the same as if said Lease had never been made or issued.
26. **Venue.** Venue shall be in El Paso, El Paso County, Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease.
27. **Complete Agreement.** The covenants and conditions herein are the full and complete terms of this Lease and no alteration, amendments or modifications of said terms and conditions shall be binding unless first reduced to writing and signed by both parties.

WITNESS THE FOLLOWING SIGNATURES ON THE DATE SHOWN BELOW.

PASSED AND APPROVED this ____ day of _____, 2013.

(Signature Begin on the Following Page)

MILLION DOLLARS, (\$1,000,000.00) covering the Lessor and its employees, ONE MILLION DOLLARS (\$1,000,000.00) for protection of the general public and the City per occurrence for bodily injury or wrongful death and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for property damage. All policies of insurance shall be written by insurance companies authorized to do business in Texas. The City, its officers, agents, employees and volunteers shall be carried as co-insureds and a certificate of insurance acknowledging the amounts and persons covered shall be delivered by the Lessee to the City upon execution of this agreement. All insurance policies required by this Lease shall contain a provision that the policy shall not be canceled or reduced in any amount without at least sixty (60) days notice to the City.

The Lessee shall also provide third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged Lessee's work.

17. **Assignment and Subleases.** The Lessee shall not assign this agreement or sublet the Leased Premises, or any part thereof, without obtaining the consent of the City in writing.
18. **Damage and Destruction.** In the event of a full or partial destruction of the Property during the Term, as a result of fire, water, weather, soil condition or other casualty (collectively "**Casualty**"), within thirty (30) days after the Casualty, Lessor may, at Lessor's option, elect to rebuild the Property and restore the improvements to the condition they were in prior to the Casualty or terminate this Lease. Lessee may, at its option, terminate this Lease due to any Casualty or damage to the Property or any portion of the Leased Premises upon written notice to the Landlord.
19. **Notices.** Any notices required or desired shall be sent certified mail, return receipt requested to the following address:

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

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

Director
Department of Public Health
5115 El Paso Drive
El Paso, Texas 79905

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Director
City Development Department

APPROVED AS TO CONTENT:

Robert Resendes, Director
Department of Public Health

LESSOR: Pro-Action, Inc.

By: _____
Name Printed: Daniel Acosta
Title: Executive Director

EXHIBIT "A"