

By City Clerk's Office at 2:29 pm, Jan 25, 2022

LEASE AGREEMENT

SECTION 2. TERM.

- A. The initial term of this Agreement is 5 years commencing on the Effective Date ("Initial Term").
- B. RENEWAL. On the condition that the Tenant has not defaulted on any term of the lease, the Tenant may extend the Initial Term of this Agreement for two periods of 5 years each period ("Renewal Period"). If the Tenant wishes to extend the Term of this Agreement, then the Tenant will notify the Landlord in writing that the Tenant wishes to extend the term at least 90 days before the expiration of the Initial Term of this Agreement or first Renewal Period. The extension of the Term will be subject to the provisions of this Agreement.

SECTION 3. RENT AMOUNTS.

- A. BASE RENT. Commencing on the Effective Date, the Tenant will pay an annual base rent of \$63,000 ("Base Rent"). The Tenant will pay the Base Rent in monthly installments of \$5,250 ("Installments"). The Tenant will pay the Base Rent on the first day of each month for the Term of this Agreement. If the Initial Term begins or ends on a day that is neither for first or the last day of the month, then the Base Rent Installment for that month will be prorated.
- B. BASE RENT DURING RENEWAL PERIOD. The Base Rent will automatically be adjusted at every Renewal Period as follows: the Base Rent for the first Renewal Period will be an annual rent of \$65,835 commencing on the first day of the Renewal Period, payable in 12 monthly installments of \$5,486.25 per month. The Base Rent for the Second Option Period will be an annual rent of \$68,798 commencing on the first day of the Renewal Period and payable in 12 monthly installments of \$5,733.17 per month. Once calculated, the rent for the Renewal Period will remain the same for all years in the Renewal Period until another Renewal Period is exercised, if available. If the Renewal Period(s) starts or ends on any day that is not the beginning or end of the month, then the Base Rent Installment(s) for the Renewal Period(s) will be prorated.
- C. HOLDOVER. If there is any holdover of the Premises by the Tenant at the expiration of this Agreement, then this Agreement will function as a month-to-month tenancy. During any holdover the Tenant will pay the Landlord the amount of the most recent Base Rent. The Tenant will be liable to the Landlord for any loss or damage caused by the Tenant's holdover of the Premises. The Landlord may retake possession of the Premises during any holdover after providing a 30-day notice of such to the Tenant. The Tenant will not construe action or lack thereof on the part of the Landlord as waiver of the right of the Landlord to

retake the possession of the Premises or as a reinstatement or extension of this Agreement. Both parties will be subject to the terms of this Agreement during any holdover period.

SECTION 4. OPERATION AND OPERATION COSTS FOR COMMON AREAS.

- A. The Landlord will operate, repair, and maintain all common areas of the Building. For purposes of this Agreement, the term "Common Areas" refers to the non-exclusive areas of the Building including parking lots (if any) not including the Premises.

SECTION 5. LANDLORD'S OBLIGATIONS, RIGHTS, AND WARRANTIES REGARDING THE PREMISES.

A. OBLIGATIONS.

1. The Landlord will provide the Tenant the services described in Attachment "B" at no additional cost to the Tenant.
2. The Landlord will maintain, repair, and/or replace all Structural elements of the Premises. "Structural" elements of the Premises are limited to the roof, windows, doors, foundation, load bearing walls, exterior walls, heating and cooling systems, electrical systems, water systems, wastewater systems and exterior paint and all other utility systems not including fixtures installed by the Tenant and exterior paint. In the event the Premises need Structural repairs, maintenance, or replacement the City will give notice to the Landlord and the Landlord will arrange for the repairs during normal business hours. Landlord will initiate and complete the request with due speed and without delay. Landlord remains responsible for the maintenance, operation, and repair of the Building and the lot where the Building is located. The Landlord will maintain the Building and the lot where the Building is located in compliance with all government requirements and regulations at all times. The Landlord will maintain the Building and the lot where the Building is located in a clean and good state of repair condition at all times.
3. Intentionally Deleted.
4. Landlord will maintain general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury and wrongful death and \$1,000,000 per occurrence for property damage. In addition, the Landlord will maintain property insurance ("all risk" insurance) covering the full replacement cost of the Building, including the Premises, against risk of loss from events like fire, storm, vandalism, and theft.

5. The Landlord will indemnify, defend, and hold harmless, the City and its employees from any claims or lawsuits for bodily injury, death, property damage, property loss, arising out of the Landlord's activities in leasing and operating the Building. This obligation includes the obligation to cover all costs related to the claims or lawsuits including but not limited to attorneys fees and court costs. The Landlord will also indemnify, defend, and hold harmless, the City from any third party claims asserting ownership over the Premises, the Building, or the lots or property where the Building and the Premises are located. This obligation includes the obligation to cover all costs related to the claims or lawsuits including but not limited to attorneys fees and court costs.

B. RIGHTS.

1. The Landlord reserves the right to enter the Premises for the purpose of inspecting the condition of the Premises, perform any maintenance or repairs under this Agreement, and/or show the Premises to other prospective tenants. Prior to entering the Premises, the Landlord will provide the Tenant a 24 hours prior notice. The exercise of Landlord's right to enter the Premises for the purposes under this Section do not constitute an eviction or disturbance of the Tenant's rights under this Agreement.

C. WARRANTIES.

1. The Landlord represents and warrants that the Landlord is the owner of the Building, the Premises, and the lot or property where the Building and the Premises are located.
2. Provided that the Tenant performs all obligations under this Agreement, the Landlord warrants that the Tenant may have quiet enjoyment of the Premises.

SECTION 6. TENANT'S RIGHTS AND OBLIGATIONS REGARDING THE PREMISES.

A. OBLIGATIONS. The Tenant will abide by all of the following:

1. Pay all ad valorem taxes on all improvements made by the Tenant (if applicable) on the Premises and all personal property of the Tenant that is located on the Premises.
2. Maintain the Premises and Improvements, for the term of this Agreement, in a clean and attractive condition.
3. The Tenant is responsible for maintaining, repairing, and/or replacing all Non-Structural elements of the Premises. "Non-Structural" elements of the Premises are

all those elements of the Premises that are not considered Structural under this Agreement.

4. Tenant will not place any signs without the advance written approval of the Landlord.
5. Tenant will comply with all environmental laws as outlined by this Agreement.
6. Tenant will not encumber the Building or Premises with any lien. If there is a lien that is filed, the Tenant will promptly discharge of the lien.
7. In addition to the obligations above, the Tenant will provide the items listed in **Attachment "C"** attached to this Agreement.

B. RIGHTS.

1. The Tenant may perform improvements to the Premises. The Tenant may use its own contractors to perform such improvements. The Tenant will provide notice to the Landlord prior to the start of constructing any improvements. The Tenant will follow all federal, state, and local laws when performing any improvements to the Premises, including the ADA accommodations. The Tenant will obtain all building permits as required by law. For purposes of this Agreement, the term **"Improvements"** refers to any improvements on the Premises made by the Tenant.

SECTION 7. TERMINATION AND OTHER REMEDIES.

- A.** This Agreement may be terminated as provided by this Section.

1. **TERMINATION BY TENANT.** The Tenant may terminate this Agreement for any of the following reasons: (i) the federal or state funding source for this Agreement is terminated or reduced by 50% or more, (ii) the City budget does not appropriate enough funds to cover the costs of this Agreement, (iii) the City Council, in its sole discretion, determines that the termination of this Agreement is necessary to secure efficiency of public service at a reasonable rate or that it is necessary terminate the services provided by the community at this location, or (iv) the City Council, in its sole discretion, determines that the services at this location are no longer needed or that the services need to be relocated to another location. The City will provide the Landlord at least 90 day notice prior to the termination of this Agreement under this paragraph. All obligations of the parties will cease at the termination date included in the notice provided by the City. The City will only be obligated to pay the Base Rent due and other expenses under this Agreement, if any, up to the date of termination.

2. **TERMINATION BY EITHER PARTY FOR CAUSE.** Either party may terminate this Agreement if one party fails to fulfill the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision, the terminating party will provide written notice of the intent to terminate enumerating the failure for which the termination is being sought and provide at least 30 calendar days to the non-terminating party to cure such failure. If the Landlord terminates this Agreement pursuant to this provision, then the Tenant will surrender the Premises to the Landlord immediately after being provided 30 calendar days to cure the default.
 - a. If the Landlord terminates the lease for the fault of the Tenant, then the Tenant will owe the Landlord the Base Rent up to the date of termination plus 6 months of Base Rent as the sole remedy under this Agreement.
 - b. If the Tenant terminates the lease for the fault of the Landlord, then the Tenant will only be responsible for paying the Base Rent until the date of termination.
3. **AFTER TERMINATION OR EXPIRATION.** Regardless of which party and of which of the abovementioned methods is used to terminate this Agreement the following conditions apply:
 - a. Upon termination or expiration of this Agreement, the Tenant will surrender the Premises to the Landlord no later than the date of the termination or expiration of this Agreement. The Tenant will remove all personal property and surrender the Premises in a clean condition subject to normal wear and tear. The Tenant will not remove any Improvements made to the Premises, and such Improvements will become the property of the Landlord at the termination or expiration of this Agreement.
 - b. If the Tenant does not surrender the Premises over to the Landlord after the time enumerated in the provisions above, then the Landlord may take possession of the Premises. The Tenant will be responsible for any costs incurred by the Landlord in retaking possession of the Premises.

SECTION 8. GENERAL PROVISIONS

- A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.

- B. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not create an employee-employer relationship between the Tenant and the Landlord. As such, the Landlord is not subject to the liabilities or obligations the Tenant obtains under the performance of this Agreement.
- C. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement “**business days**” means Monday through Friday excluding City of El Paso holidays and “**calendar days**” means Monday through Sunday excluding City of El Paso holidays.
- D. **NOTICES.** The parties will send all notices required by this Agreement either in person, e-mail, or in writing postmarked and delivered by certified mail. All notices that are mailed are considered received 3 business days after the postmark date. All notices that are delivered in person or by e-mail are considered received on the date sent to the addresses or persons listed below. Parties may change their addresses or designated persons by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the Landlord:

Robert Malooly
ATTN: Robert Malooly
920 N. Stanton
El Paso, Texas 79902
Email: bobhymalooly@yahoo.com
Mal920@yahoo.com

To the City:

Capital Improvement Department
Attn: Real Estate Division
218 N. Campbell
El Paso, Texas 79901
Email: rcalstate@elpasotexas.gov

With a Copy to: The City of El Paso
 Attn: City Engineer
 P. O. Box 1890
 El Paso, Texas 79950-1890

- E. **CONFIDENTIALITY.** The Tenant acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- F. **GOVERNING LAW.** This Agreement is governed by Texas law.
- G. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. **GOVERNMENTAL FUNCTIONS.** The parties agree that the Landlord is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- K. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Tenant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- L. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- M. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the Landlord and the Tenant, and the Tenant's successors and assigns. Neither party may assign, sublet, or

transfer its interest or obligations in this Agreement without the written consent of the other.

- N. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- O. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- P. **REPRESENTATIONS AND WARRANTIES.** The Tenant warrants to the Landlord that the Tenant has all required licenses, permits, and expertise to perform the Purpose of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- Q. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.

[Signatures begin on the following page]

RECEIVED

By City Clerk's Office at 2:29 pm, Jan 25, 2022

CITY OF EL PASO

Samuel Rodriguez

Samuel Rodriguez
Chief Transportation and Operations Officer

for Tomas Gonzalez, City Manager

APPROVED AS TO CONTENT:

Leslie B. Jean-Pierre
Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Mary Lou Espinoza
Mary Lou Espinoza, Capital Assets Mgr.
Capital Improvement Department

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the 25th day of January, 2022, by Samuel Rodriguez, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 25th day of January, 2022.



Maria T Chacon
Notary Public in and for the State of Texas
My Commission expires: 9/14/2023

RECEIVED

By City Clerk's Office at 2:28 pm, Jan 25, 2022

Landlord:

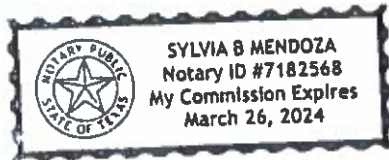
Robert Malady
Name: Robert Malady
Title: Managing Partner

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the 21 day of January, 2022, by
Robert Malady on behalf of Landlord.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 21 day of
January, 2022.



Sylvia B. Mendoza
Notary Public in and for the State of Texas
My Commission expires: 3/26/24

Attachment "A"

Floor Plans

No floor plan available. Leased Premises description is as follows: Approximately 5,510 square feet of building space and the parking area, Lots 1-7, Block 127, East El Paso Addition, City of El Paso, El Paso County, Texas, located at 3707 Pershing, El Paso, Texas 79903.

Attachment "B"

Landlord Obligations

1. Heating and cooling to the Premises
2. Connection points for water, sewer, and electrical
3. Landlord will provide an off street parking area at the same address as the Premises to accommodate a minimum of 40 to 50 cars throughout the term of this Agreement.
4. The Landlord will provide maintenance and repair of the parking area.
5. The Landlord is responsible for the payment of utilities that are not separately metered.
6. The Landlord will provide at least 1 parking space located near the entrance of the Premises to be used exclusively by the Tenant. The Tenant vehicle is allowed to remain there at all times. The Landlord allows the City to install signage to notify that the parking space is reserved for the Tenant purposes only.

Attachment "C"
Tenant Obligations

1. The City will pay for all separately metered utilities used at the Leased Premises.
2. The City will be responsible for keeping the Premises free of pest infestation.
3. The City will be responsible for trash removal and medical waste disposal.
4. The City agrees to take good care of the Premises and fixtures and suffer no waste. At the end of the term and any extension thereof, the City will leave the Premises in good order and condition, except for ordinary wear and tear.
5. If the City requires security, then the City will be responsible for providing security for the Premises.