

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

DEPARTMENT: Financial Services

AGENDA DATE: Consent Agenda February 23, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Liza Ramirez-Tobias (915) 541-4074

DISTRICT(S) AFFECTED: All

SUBJECT:

A resolution authorizing the City Manager or her designee be authorized to sign a three year lease agreement, to allow the Police Department to continue using space they occupied since 1992.

BACKGROUND / DISCUSSION:

This is a three year lease to continue to utilize space which the Police Department has occupied continuously since 1992. Terms are \$5814.00 per month or \$9.30 sq. ft.

PRIOR COUNCIL ACTION:

2004
1999
1992

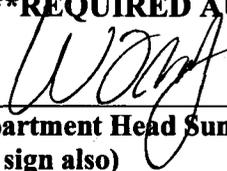
AMOUNT AND SOURCE OF FUNDING:

21010071-502400-01101- Police Department

BOARD / COMMISSION ACTION:

*****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 or her designee be authorized to sign a three year Lease Agreement between the City of El Paso and Larry Boaz, to allow by the Police Department to continue using space they have occupied since 1992.

ADOPTED this ____ day of _____, 2010.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

LEASE

This Lease is made on the ____ day of _____, 2010 by and between LARRY BOAZ (hereinafter called "Landlord") and CITY OF EL PASO (hereinafter called "Tenant" for space located at _____, El Paso, Texas .

WITNESSETH

1. **PREMISES.** Landlord leased to Tenant and Tenant hereby leases from Landlord those premises on a portion of _____, commonly known as _____, Building _____ in El Paso Texas _____, containing approximately SEVEN THOUSAND FIVE HUNDRED (7,500) square feet of rentable space further described on the attached Space Plan (Attachment A) and referred to throughout this lease agreement as the "Premises".
2. **TERM.** The term of this Lease shall be THIRTY SIX (36) months commencing on the _____ day of _____ 2010, and terminating on the _____ day of _____, 2012. Tenant may terminate this lease at any time if the tenant believes their safety is compromised due to the location becoming public knowledge, without penalty.
3. **USE OF PREMISES.** The Premises shall be used only for the purpose of offices and storage areas and such other lawful purposes as may be incidental thereto. Tenant shall, at its own expense, obtain any and all licenses and permits necessary for any such use. Tenants shall comply with all laws, ordinances and regulations applicable to the use of the Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's expense. Without Landlord's prior written consent, Tenant shall not receive, store or otherwise handle any product, material or merchandise which is explosive or highly flammable. Tenant will not permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous.
4. **RENT.** Tenant shall pay as minimum rent, without deduction or set-off, the following: FIVE THOUSAND EIGHT HUNDRED FOURTEEN AND NO/100THS DOLLARS (\$5,814.00) per month. Such rent is due and payable beginning the first day or the first month as set forth above in the amount(s) indicated above, and a monthly installment shall be due and payable without demand on or before the first (1st) day of each succeeding month during the term hereof. Rent is considered paid on the postmarked date.

5. **LATE CHARGES.** In the event Tenant fails to pay any installment of rent, or other payment due hereunder, when such installment or other payment is due, Tenant shall pay to Landlord a late charge in an amount equal to five percent (5%) of such installment or other payment. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law.

6. **INSURANCE.**

6.1 **Liability.** Landlord acknowledges that Tenant self-insures for most types of risks that it may face and Tenant is not required under this Lease to otherwise obtain any liability insurance coverage protection for itself or for the benefit of Landlord.

6.2 **Fire and Extended Coverage.** Landlord shall throughout the term of this Lease keep the building in which the Premises are located insured against loss or "extended coverage" and against fire, vandalism and malicious mischief. Tenant assumes the responsibility to provide any insurance coverage for physical damage or loss to Tenant's personal property, contents, inventory or goods of others in Tenant's care, custody and control. Tenant acknowledges that Landlord does not provide insurance coverage and is not responsible for physical damage or loss to Tenant's personal property, inventory or good of others in Tenant's care, custody or control unless such damage or loss is caused by or due to the negligence of Landlord, his agents or employees.

7. **OPERATION AND MAINTENANCE.**

7.1 **Utilities.** Landlord, at its expense, shall provide all water, sewer, electricity, gas and electric light bulbs and tubes used by Tenant on the Premises. Tenant, at its expense, shall pay all charge incurred for telephone services used by Tenant on the Premises. Landlord shall not be liable for any interruption or failure of utility services to the Premises unless such interruption or failure was proximately cause by the Landlord's failure to pay any charges for utility service which Landlord has elected to pay.

7.2 **Non-Structural Maintenance and Repairs.** Landlord shall at its expense, maintain the interior of the Premises in a safe, clean, neat and sanitary condition.

7.3 **Common Area Maintenance.** Landlord shall, for the benefit or Tenant, as well as the other tenants of the Premises, maintain the exterior of the Premises and all common areas, including landscaping and parking and perform all the necessary functions for the day-to-day management of the Premises.

8. **ALTERATIONS.** Tenant shall not make any alteration, additions or improvements to the Premises without the prior written consent of Landlord.

9. **LIENS.** Tenant shall have no authority to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind the interest of Landlord in the Premises, or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant shall pay all amounts due and payable by Tenant on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can validly and legally asserted against its leasehold interest in the Premises or the improvement thereon. Tenant shall be responsible for disposing of any lien filed on account of any act or omission of Tenant in a prompt manner.

10. **SIGNS.** Tenant shall have the right to install and, at its expense, to maintain signs upon the exterior of the Premises, or inside the Premises but visible from the exterior, only when first approved in writing by Landlord. Landlord may not install any directional or identification signs indicating Tenant's occupancy of the Premises, except as may be approved in writing by Tenant's authorized employees.

11. **LANDSCAPING AND EXTERIOR IMPROVEMENTS.** Tenant shall not add any landscaping or exterior improvements to the Premises without the prior written consent of the Landlord. The Landlord will not consent to any such landscaping or exterior improvements unless such are comparable in design, material and installation with the surrounding which Landlord has, or intends to put in and maintain and are compatible with the surroundings.

12. **PARKING.** Landlord shall provide a sufficient number of adjacent parking spaces to comply with all applicable building codes and zoning ordinances.

13. **SURRENDER OF PREMISES.** Upon the termination of this Lease, Tenant shall peacefully surrender the Premises in good order, condition and repair, broom clean; fire, other unavoidable casualty, reasonable wear and tear only expected. On or before the termination of this Lease at Landlord's option, Tenant shall, at its expense, remove its leasehold improvements, trade fixtures, signs and movable equipment from the Premises and any such items not removed shall be deemed abandoned. Tenant shall, at its expense, promptly repair, in good and workmanlike manner, any damage occasioned by the removal of any such items. Tenant shall promptly surrender all keys for the Premises to Landlord at the place of payment of rent and shall inform Landlord of combination of any locks or safes on the Premises.

14. **FIRE AND CASUALTY DAMAGE.** If the Premises should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to Landlord. If the Premises should be totally destroyed by fire, tornado or other casualty, or if Premises should be so damaged that rebuilding or repairs cannot be completed within one hundred twenty (120) days after the date upon which Landlord, using reasonable diligence, has received all necessary governmental approvals and permits for reconstruction, this Lease shall, at the option of Tenant, terminate and the rent shall be abated during the unexpired portion of the this Lease, effective upon the date of occurrence of such damage. However, if the Premises should be damaged by fire, tornado or other casualty, but only to such extent that rebuilding or

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repairs can be completed within one hundred twenty (120) days after the aforementioned date, this Lease shall not terminate and the Landlord shall, at its expense, proceed with reasonable diligence to rebuild and repair the Premises in substantially the condition in which the Premises existed prior to such damage, except that Landlord shall not be required to rebuild, repair or replace and leasehold improvements which may have been placed on the Premises by the Tenant. If the Premises are untenable in whole or in part following such damage, the rent payable hereunder during the period in which the Premises are untenable shall be prorated to such extent as shall be fair and reasonable under all the circumstances. Should Landlord elect to rebuild or repair the Premises as aforesaid and should the actual construction or repair work go beyond one hundred twenty (120) days after the receipt by Landlord of notice of such casualty or damage by Tenant diligently prosecuting such rebuilding or repairing to completion. Notwithstanding anything herein to the contrary, if the holder of any indebtedness secured by mortgage or deed of trust covering the Premises requires that the insurance proceed by applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant.

15. EMINENT DOMAIN. If the whole or more than twenty-five percent (25%) of the Premises should be taken for any public or quasi-public use under governmental law ordinances or regulation, or by right of eminent domain, or by the private purchase in lieu thereof, this Lease shall terminate. But, if less than twenty-five (25%) of the Premises should be taken or purchased, this Lease shall not terminate and the rent payable hereunder during the unexpired portion of this Lease shall be prorated to such extent as shall be fair and reasonable under all of the circumstances. Any award received shall be the sole property of the Landlord. Tenant, however, shall be entitled to any award for its trade fixtures.

16. CHANGES AND ADDITION TO PROPERTY. Landlord may at any time make alteration or addition to the building in which Premises are located or to the Premises or build adjoining the same. Landlord may construct other building or improvements in the property and make alteration and additions thereto, provided that if such changed or additions substantially interrupt Tenant's use of the Premises, the rent shall be reduced to such extent as shall be fair and reasonable under all of the circumstances. If such substantial interruption of Tenant's use of the Premises continues beyond 30 consecutive days, Tenant shall have the option to terminate this Lease without suffering any penalties or default upon giving written notice to Landlord.

17. MORTGAGES. Tenant accepts this Lease subject and subordinate to any first mortgage or first deed of trust now or at any time hereafter constituting a lien or charge upon the Premises. Tenant shall at any time hereafter on demand by Landlord or first mortgagor execute any instruments, releases or other documents which may be required by any mortgagee for the purpose of subjecting and subordinating this Lease to the lien or any mortgage. With respect to any mortgage or deed of trust at any time hereafter created which constitutes a lien or share upon the Premises, Landlord, at its option, shall have the right to waive the applicability of this paragraph so that this Lease would not be subject and subordinate to such mortgage or deed of trust.

18. LENDER APPROVAL. The obligations of Landlord and Tenants under this Lease are conditioned of Landlord obtaining approval of the terms of this Lease by any and all lenders which may provide financing. If any such lender shall require, as a condition to financing required by Landlord, any reasonable modification of the provisions of this Lease, and if tenant shall refuse to approve and execute any such modification, then Landlord may, by written notice to Tenant, cancel this Lease and neither party shall have any further obligations under the terms of this Lease. However, in no event shall the Tenant be required, pursuant to this paragraph, to approve any change in the amount of rent, the amount of other payments due hereunder or the terms hereof.

19. SALE BY LANDLORD. In the event of a sale or conveyance by Landlord of the Premises, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser of the Premises.

20. ESTOPPEL CERTIFICATE. Tenant shall at any time, upon the request of Landlord, execute acknowledge and deliver to Landlord a statement in writing certifying that: (a) this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease as modified is in full force and effect); (b) the dates to which rent and other charges are paid in advance, if any; (c) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord here under, or specifying such defaults if any are claimed; and (d) any other reasonable information requested by Landlord's first mortgagee. The parties hereto agree that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the building in which the Landlord's request for the same shall be conclusive upon Tenant that: (a) this Lease is in full force and effect; (b) there are no uncured defaults in Landlord's performance; and (c) not more than one (1) month's rent or other charges has been paid in advance.

21. INDEMNIFICATION. Landlord shall not be liable to Tenant's employees, agents, patrons or visitors, or to any person whomsoever, for any injury to person or damages to property on or about the premises caused by the negligence or misconduct of Tenant, its agents, servants or employees, or any other person entering upon the Premises under express or implied invitation of Tenant. The City of El Paso, however, does not waive its sovereign immunity nor any rights or defenses available to it under the Texas Tort Claims Act. Any injury to person or damage to property caused by the negligence of Landlord or by the failure of Landlord to repair and maintain that part of the Premises which Landlord has elected to repair and maintain or is obligated to repair or maintain after the receipt of written notice from Tenant of needed repairs shall be the liability of Landlord and not of Tenant, and Landlord agrees to indemnify Tenant and hold Tenant harmless from any and all loss, expense or claims, including attorney's fees arising out of such damage or injury.

22. HOLDING OVER. Should Tenant, without Landlord's written consent, hold over after the termination of this Lease by lapse of time or otherwise, Tenant shall become a Tenant from month-to-month only upon the terms herein provided as may be applicable to such month-to-month tenancy and any such holding over shall not constitute an extension of this Lease. During

such holding over, Tenant shall pay, as monthly rent, an amount equal to one hundred twenty percent (120%) of the monthly rent as of the last month of the term of this Lease.

23. EVENTS OF DEFAULT. The following are events of default by Tenant under this Lease: (a) Tenant's failure to pay and installment of rent when due; (b) the desertion or vacation by Tenant of a substantial portion of the Premises; and (c) the failure of Tenant to comply with any term, provision or covenant of this Lease, except for rent or other payment to Landlord or any third party; if any such failures shall continue for twenty (20) days after written notice thereof to Tenant.

24. REMEDIES. Upon the occurrence of any event of default as described in Paragraph 24, Landlord may do any one or more of the following without any notice or demand whatsoever:

24.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which he may have, enter upon and take possession of the Premises and expel or remove Tenant and any other person(s) who may be occupying such Premises, without being liable for prosecution or any claim of damages thereof. Tenant agrees to pay to Landlord on demand the amount of all loss and damage including attorney's fees, other than the costs of reletting the Premises, which Landlord may suffer by reason of such termination

24.2 Enter upon and take possession of the Premises and expel or remove Tenant and any other person(s) who may be occupying such Premises and relet the Premises and receive the rent therefore. Tenant agrees to pay to Landlord on demand any deficiency in an amount not to exceed the sum of \$5,000.00 that may arise by reason of such reletting.

24.3 Enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to reimburse Landlord for any expense Landlord may incur to effect compliance with Tenant's obligation under this Lease.

25. WAIVER. No waiver by Landlord of any violation or breach of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Landlord's acceptance of rent or any other payments due hereunder after the due date shall be construed as a waiver of such default. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

26. INABILITY TO PERFORM. This Lease and the obligations of Tenant hereunder shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or to supply or is delayed in supplying any service, expressed or implied to be supplied or is unable to make or is delayed in making any restorations, repairs,

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additions, alterations or decorations, or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of strike or labor troubles or an outside cause whatsoever, including but not limited to civil disturbances, or governmental pre-emption in connection with a national emergency or by reason of any rule, order, regulation of any department or subdivision of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

27. ASSIGNMENT OF SUBLEASE. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage or encumber this Lease nor sublet the Premises or any portion thereof without the prior written consent of the Landlord, which consent will not be unreasonably withheld. Consent to an assignment, subletting, occupation or use by any other person shall not release Tenant from any of Tenant's obligations hereunder or be deemed to be consent to any subsequent assignment, subletting, occupation or use.

28. BUILDINGS. The building in which the Premises are located and the Premises shall in every respect comply with all governmental laws, ordinances, regulations and other requirements which may govern construction of the same, including the Americans With Disabilities Act and City Ordinance No. 9779 regarding handicap accessibility. Landlord shall bear all responsibilities and costs for such compliance. The failure of Landlord to comply with the accessibility requirements of the Americans With Disabilities Act within a reasonable time upon receipt of notice of non-compliance from an source shall constitute a material breach of the Lease and Tenant shall have the option to terminate this Lease without suffering any penalties or default by giving written notice to terminate to Landlord.

29. ACCEPTANCE OF PREMISES. Tenant acknowledges that no representations, warranties, covenants or agreements, express or implied, have been made to or with Tenant respecting the condition or suitability of the Premises, other than as expressly set forth herein. By taking possession of the Premises, Tenant accepts the Premises as being in satisfactory order, condition and repair and in compliance with this Lease.

30. QUIET ENJOYMENT. Landlord covenants and agrees that upon compliance with its obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term hereof.

31. NOTICES. Each provision of this Lease which refers to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord shall be deemed to have been complied with when and if the following steps are taken:

31.1 All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address herein below set forth or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith.

31.2 All Payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address herein below set forth or at such other address

within the continental United States as Tenant may specify from time to time by written notice to be delivered in accordance herewith.

31.3 Any notice of document required or permitted to be delivered hereunder shall be deemed to be delivered when deposited in the United States mail, postage prepaid, via certified or registered mail, return receipt requested, addressed to the appropriate party hereto at the address set forth below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith

Landlord: Larry Boaz

Tenant: City Manager
City of El Paso
#2 Civic Center Plaza
El Paso, TX 79901-1196

With a copy to Chief of Police
El Paso Police Department
911 N. Raynor St
El Paso, TX 79903

With a copy to City Hall
Capital Assets
7th floor
#2 Civic Center Plaza
El Paso, TX 79901

32. NON-DISCLOSURE OF THE USE OF PREMISES. Landlord, its agents, servants, employees and legal representatives shall be prohibited from discussing or giving information about the nature of the office use of the Premises by Tenant unless such discussion or giving of information is required by law, is necessary for Landlord to enforce the terms of this Lease, or permission to do so has been granted by Tenant or its authorized employees. The failure of Landlord to comply with this requirement shall be a material breach of this Lease and Tenant may terminate this Lease without suffering any penalties or default upon giving written notice to Landlord.

33. GENERAL PROVISIONS.

33.1 Successors and Assigns. Subject to the provisions of Paragraph 29 hereof, all covenants, promises, conditions, representations and agreements herein contained shall be binding upon, apply and inure to the benefit or the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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33.2 Access. Landlord and its agents, with the prior approval of Tenant and in the company of a peace officer or authorized employee of Tenant except in the event of an emergency, shall have the right to enter the Premises at all reasonable times for the purpose of examining or inspecting the same, showing the same to prospective purchasers or tenants of the Premises and, as necessary to perform its obligations hereunder. Landlord may erect, use and maintain scaffolding pipes, conduits and other necessary structures in and through the Premises where reasonably required by the character of the work performed, provided that the business of Tenant shall not be unreasonably interfered with or interrupted.

33.3 Time. Time is of the essence of this Lease and each and all of its provisions.

33.4 Exhibits. All exhibits, attachments and addenda attached to this Lease at the signing of same or attached thereafter and initialed or signed by both parties are made a part hereof for all purposes.

33.5 No Joint Venture or Partnership Nothing herein shall be construed so as to constitute a joint venture or partnership between Landlord and Tenant.

33.6 Gender. Words of any gender used in this lease shall be held and construed to include and other gender, and words on the singular number shall be held to include the plural, unless context otherwise requires.

33.7 Captions. The captions are inserted in this Lease for convenience only and in no way define, list or describe the scope or intent of this Lease, or any provision hereof, nor in any way affect the interpretation of this Lease.

33.8 Amendment. This Lease may not be altered, changed or amended except by an instrument in writing signed by both Landlord and Tenant.

33.9 Applicable Laws. The laws of the State of Texas shall govern the validity, performance and enforcement of this Lease.

33.10 This Lease Agreement shall not be in force until both parties have fully executed same.

34. MODIFICATIONS AND/OR ADDITIONAL PROVISIONS.

Attachments to Lease

Space Plan

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the month, day and year first written above.

LANDLORD:

TENANT: CITY OF EL PASO

LARRY BOAZ
Address:
El Paso, TX
El Paso, TX

JOYCE A. WILSON
City Manager
#2 Civic Center Plaza
El Paso, TX 79901-1196

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Gregory K. Allen
Chief of Police

Liza Ramirez-Tobias
Capital Assets Manager