

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

DEPARTMENT: Parks and Recreation
AGENDA DATE: July 29, 2008 (Introduction)
August 5, 2008 (Public Hearing)
CONTACT PERSON/PHONE: Nanette Smejkal, (915) 541-4331
DISTRICT(S) AFFECTED: District 6

CITY CLERK DEPT.
08 JUL 21 PM 2:50

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.
Approve an Ordinance of City Council authorizing the City Manager to sign a lease with the Ysleta Independent School District for a 7.8662 acre portion of Blackie Chesher Park.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?
Staff recommends entering into a Lease with Ysleta Independent School District (YISD) for an elementary school on park property. The lease of park property will be for 99 years.

The leased acreage impacts one of the two existing soccer fields at Blackie Chesher Park. However, YISD will construct two new soccer fields on YISD property across the street, and there will be a total of three fields available, yielding a net gain of one field.

PRIOR COUNCIL ACTION:

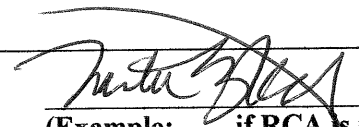
Has the Council previously considered this item or a closely related one?
Council approved the conceptual plan for this action at their meeting of January 2, 2008. Council will hold a public hearing on this matter on August 5, 2008 per the requirements of Chapter 26 of the Texas Parks and Wildlife Code.

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?
The Ysleta Independent School District will pay the full cost of the school improvements on the leased land as well as the cost of constructing two lit soccer fields on YISD land across Escobar Street, immediately south of the leased park area. The lease payment to the City will be \$1.00 per year.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  7/21/08
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND THE YSLETA INDEPENDENT SCHOOL DISTRICT, FOR THE LEASE OF A 7.8662 ACRE PORTION OF BLACKIE CHESHER PARK, FOR A TERM OF NINETY-NINE (99) YEARS.

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

That the City Manager is hereby authorized to sign, on behalf of the CITY OF EL PASO ("City"), a new lease upon the following terms to the YSLETA INDEPENDENT SCHOOL DISTRICT ("District"):

(1) The area to be leased is a 7.8662 portion of Blackie Chesher Park, El Paso, El Paso County, Texas, as further described in the Lease Agreement ("Agreement") attached hereto as Exhibit "A" and known as the "Facility".

(2) The lease period shall be for a term of ninety-nine (99) years, for ONE DOLLAR AND NO/100 (\$1.00) per year, with non-monetary consideration of certain additional in-kind public benefit consideration received, as outlined in greater detail in the attached Agreement.

(3) Said lease from the City of El Paso to the District shall be in the form that is attached as Exhibit "A" and incorporated herein by reference for all purposes as if set forth verbatim.

PASSED AND APPROVED on this the _____ day of _____, 2008.

CITY OF EL PASO


ATTEST:

John F. Cook
Mayor

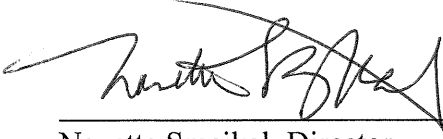
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Josette Flores
Assistant City Attorney



Nanette Smejkal, Director
Parks and Recreation Department

CITY CLERK DEPT.
08 JUL 21 PM 2:50

GROUND LEASE AGREEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

THIS GROUND LEASE AGREEMENT (the “Lease”) made and entered into as of this _____ day of _____, 2008, by and between the City of El Paso, Texas, a home-rule municipality (“Landlord”), and Ysleta Independent School District, a Texas independent school district (“Tenant”), pursuant to the Texas Government Code Section 791.001 et seq.;

WITNESSETH

- A. Landlord is the owner of a tract of land located in the City of El Paso, El Paso County, Texas, containing 7.8662 acres, more particularly described in Exhibit “A” attached hereto and on the boundary survey, which is attached as Exhibit “B” made apart hereof for all purposes (the “Land”). Landlord and Tenant are political subdivisions of the State of Texas, and are authorized to provide recreational and education services.

- B. Tenant desires to lease the Land from Landlord upon the terms and conditions set forth herein.

- C. Landlord and Tenant agree that this Lease will be of mutual benefit through enhancing each party’s ability to deliver governmental functions and services by allowing Tenant to use the Land to construct facilities for the education of its students and by permitting Landlord to use the facilities constructed by Tenant for recreational services to its citizens and that the rent and other terms and conditions of this Lease reflect a fair value to Landlord and Tenant for the lease of the Land considering the facilities investment by Tenant and facilities, including two (2) NCAA regulation soccer fields constructed on Tenant’s property pursuant to the Interlocal Agreement between the parties, which is approved on the same date as this Ground Lease Agreement.

NOW, THEREFORE, Landlord and Tenant agree as follows:

ARTICLE I

Defined Terms

Section 1.01. Definitions. For all purposes of this Lease, unless the context otherwise requires the following capitalized terms shall have the meaning indicated below:

“Base Rental” shall mean ONE DOLLAR AND NO 00/100THS (\$1.00) payable to City annually as hereinafter provided from current revenues available to Tenant.

“Demised Premises” means the Land and the Improvements to be constructed thereon.

“Improvements” means all buildings, structures, and other improvements hereafter constructed or placed upon the Land by Tenant.

“Interlocal Agreement” means the Interlocal Agreement between the City and the District for the Lease of Municipal Park Property and Construction and Management of School and Related Facilities of even date herewith.

“Land” means that certain 7.8662 acres of real property described on Exhibit “A”.

“Lease Term” means the period commencing on the Rent Commencement Date, and terminating at midnight on the day prior to the ninety-nine (99th) anniversary of the Rent Commencement Date, unless the Lease Term shall sooner terminate.

“Permitted Use” means the use and occupancy of the Demised Premises for an instructional facility owned and operated by the Ysleta Independent School District which portions of the instructional facility can be used for educational and recreational programs offered by Landlord.

ARTICLE II

Grant and Term of Lease, Rental; Use

Section 2.01. Leasing Clause; Term. In consideration of the obligation of Tenant to pay rent herein provided and in consideration of the other terms, covenants, and conditions of this Lease, Landlord does hereby lease, demise, and let unto Tenant, and Tenant does hereby take and lease from Landlord, the Demised Premises, TO HAVE AND TO HOLD the Demised Premises, together with all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Demised Premises for the Lease Term, upon and subject to the terms, conditions, and agreements hereinafter contained.

Section 2.02. Base Rental. As rent for the Demised Premises, Tenant hereby agrees to pay to Landlord, without deduction, set-off, prior notice or demand, Base Rental of ONE DOLLAR AND NO/100 (\$1.00) per year. The Base Rental shall be paid annually, with the first payment due and payable within ten (10) days of the execution of this Lease, and with the due

date to fall thereafter on the anniversary of the execution of this Lease. As additional compensation for this Lease, Tenant has agreed to construct soccer fields on land owned by Tenant as described in the Interlocal Agreement.

Section 2.03. “Net” Rental. This is an absolutely net lease, and except as is otherwise expressly herein provided, all taxes, utilities, costs of improvements, maintenance, repairs, alterations, additions, replacements, and insurance relating to the Demised Premises shall be at the sole cost and expense of Tenant; and Landlord shall not be obligated to make any improvements, repairs, alterations, additions, or replacements whatsoever to the Demised Premises. Throughout the term of this Lease Tenant, at Tenant’s own cost and expense, shall keep the Improvements, and all appurtenances thereunto belonging, in good and safe condition, order, and repair; and Tenant shall conform to and comply with all valid ordinances, regulations or laws (federal, state or municipal) affecting the Demised Premises, and Tenant shall be responsible for all penalties, damages, or charges imposed or incurred for any violation by Tenant of such ordinances, regulations, or laws whether occasioned by the neglect of Tenant or by Tenant’s agent, contractor, or licensee then upon or using the Demised Premises. Tenant shall also be responsible for any and all costs arising out of any accident or other occurrence causing injury to or death of persons, or damage to property, due to the condition of the Demised Premises, or of any buildings or other Improvements now or hereafter situated thereon, or the fixtures or personal property thereon or therein, or due to the use or neglect thereof by Tenant or any other persons holding under Tenant. It is not Tenant’s intent, nor should this provision be construed otherwise, to waive Tenant’s governmental immunities against premises defects or any legal defenses to any suits or claims for damages.

Section 2.04. Use.

A. The Demised Premises may be used only for the construction of buildings and improvements for instructional facilities and related facilities owned, maintained and operated by the Ysleta Independent School District which instructional facilities can be used for recreational programs offered by Landlord (the “Permitted Use”).

B. In no event may all or any portion of the Demised Premises be used for any unlawful use or any use other than the Permitted Use.

ARTICLE III

Conditions; Construction of Improvements

Section 3.01. Inspection Period. Notwithstanding anything herein to the contrary, it is expressly understood and agreed that Tenant shall be entitled to terminate this Lease by written

notice delivered to Landlord on or prior to 1 October 2008 (the “**Inspection Period**”) in the event any of the following conditions shall remain unsatisfied, in Tenant’s sole discretion:

A. Tenant shall have received evidence satisfactory to it that the Land is or will be zoned for use as an instructional facility;

B. The results of a soil and engineering test to be conducted by Tenant on the Land shall be acceptable to it in light of the nature of the Improvements to be constructed thereon;

C. Tenant shall have received evidence satisfactory to it that all utility service connections, including, without limitations, gas, electricity, water, sanitary sewer, purple pipe and telephone, are or will be available for hook-up at locations within five (5) feet of the boundary of the Land with capacities sufficient for Tenant’s intended use thereof. City will not pay to extend utilities for Tenant’s access to utilities;

D. Tenant shall have received evidence satisfactory to it that Tenant shall have sufficient ingress and egress to and from the Premises on Landlord’s land adjoining the Premises.

E. Tenant shall have obtained, or received evidence satisfactory to it that it will be able to obtain, from the appropriate governmental authorities all permits and licenses necessary for the construction and operation of the Improvements;

F. Tenant, at its expense, shall have obtained a current commitment for title insurance for the Demised Premises and a current survey of the Land and delivered same to Landlord, prior to Landlord’s execution of this Lease and such commitment and survey shall be satisfactory to Tenant.

If Tenant fails to terminate this Lease in writing delivered to Landlord prior to the end of such Inspection Period, then such termination right shall be deemed to be waived and all of the foregoing zoning, soil and engineering, availability of utilities, governmental approvals, and title conditions of the Land as shown in the commitment and survey shall be deemed approved by Tenant and this Lease shall remain in full force and effect.

Section 3.02. Construction of Improvements. Landlord shall be entitled to terminate this Lease by delivery of written notice to Tenant if Tenant has not commenced construction of the following Improvements on the Land within thirty-six (36) months and completed

construction within five (5) years with both dates commencing upon the execution of this Lease is signed by Landlord.

A. The Improvements shall consist of one (1) or more buildings containing not less than a total of 80,000 square feet nor more than 84,000 square feet for use as an instructional facility with playground and gymnasium facilities that can be used for Landlord's recreational programs and the drives, landscaping and a parking area with not less than the number of parking spaces required by the ordinances of the City of El Paso, to be constructed on the Land by Tenant substantially in accordance with the plans and specifications prepared by Tenant after consultation with Landlord, which plans and specifications shall be in harmony with the existing structures on Landlord's adjacent property.

B. Tenant shall construct two NCAA regulation soccer fields on Tenant's property pursuant to the Interlocal Agreement. Said new soccer fields shall be complete prior to demolition of any existing fields on leased property.

C. Tenant shall, at Tenant's cost, risk and expense, construct, erect and substantially complete the foregoing Improvements in a good and workmanlike manner in compliance with the building codes, zoning ordinances and other regulations of the City of El Paso, Texas.

D. If commencement of construction of the Improvements has not occurred on or before thirty-six (36) months after the date of this Lease, Landlord may treat such event as an event of default under this Lease. After commencement of construction, Tenant covenants and agrees to complete construction of the Improvements with reasonable diligence. The date on which construction of the Improvements is completed (the "**Completion Date**") shall be earlier of (i) the date on which Tenant obtains a certificate of occupancy for the Improvements or (ii) the date on which Tenant begins conducting classes in more than half of the air-conditioned space actually constructed as part of the Improvements.

Section 3.03. Ownership of the Improvements. The Improvements and any modifications, additions, restorations, repairs and replacements thereof hereafter placed or constructed by Tenant, at Tenant's expense, upon the Demised Premises shall be owned by Tenant, its successors and assigns, until the expiration of the Lease Term and any extensions thereof; provided that (i) the terms and provisions of this Lease shall apply to the Improvements; and (ii) the Improvements (with the exception only of movable trade fixtures, furniture, books, computer connections but excluding computer cabling, educational equipment but excluding HVAC, plumbing, electrical, and mechanical equipment, and personalty) shall be surrendered to and become the absolute property of Landlord upon the termination of the Lease Term, whether by expiration of time or otherwise.

Section 3.04. Outside Completion Date. Landlord reserves the right to terminate and cancel this Lease by delivery of written notice to Tenant in the event the Completion Date does not occur on or before five (5) years after the date of this Lease, which notice shall be delivered

to Tenant within sixty (60) days after the expiration of the five (5) year period or otherwise such termination right shall be waived by Landlord.

Section 3.05. Liens. It is expressly acknowledged and understood that Landlord does not consent, and has not by the execution and delivery of this Lease consented, to the imposition of any liens upon the Landlord's interest in the Demised Premises by any party whomsoever. Tenant covenants and agrees that all Improvements at any time constructed upon the Demised Premises will be completed free and clear of all valid liens and claims of contractors, subcontractors, mechanics, laborers and materialmen, and other claimants related to the Improvements. Tenant further covenants and agrees to protect, indemnify, defend and hold harmless Landlord from and against all bills and claims, liens and right to liens for labor and materials and architects', contractors' and subcontractor's claims, and all fees, claims and expenses incurred by Tenant incident to the construction and completion of any Improvements, including without limitation any attorney's fees and court costs, which may be incurred by Landlord in connection therewith.

ARTICLE IV

No Leasehold Mortgage

Tenant shall not be entitled to and shall not place any leasehold mortgage or other lien on the Demised Premises.

ARTICLE V

Assignment and Subletting

Section 5.01. Assignment. Assignment is prohibited.

Section 5.02. No Release of Tenant. Notwithstanding anything contained in this Lease to the contrary, no sublease entered into by Tenant, whether voluntary, by operation of law or otherwise, shall release, discharge or in any way diminish the debts, duties and obligation of Tenant under the term of this Lease, including without limitation the obligation to pay any sums due to Landlord under this Lease.

ARTICLE VI

Maintenance and Repair; Insurance

Section 6.01. Operating Expenses. Tenant agrees to pay promptly any and all expenses of operation of the Demised Premises including, but not being limited to, electricity, water, gas, sewer, and telephone. The amounts payable to Landlord hereunder as rent shall be absolutely net to Landlord, without diminution by reason of any expenses of operation of the Demised Premises.

Section 6.02. Repairs, Compliance with Laws. Tenant shall keep all Improvements from time to time situated on the Land in good repair and condition, and at the end or other expiration of the term of this Lease deliver up the Demised Premises and all Improvements thereon in good condition, reasonable wear and tear and loss or damage by fire or other casualty occurring during the last two (2) years of the Lease Term excepted. Tenant agrees that in case of damage to, or destruction of, any Improvements or the fixtures and equipment thereof, by fire or other casualty prior to the last ten (10) years of the Lease Term, it will promptly, at its own expense, repair, or rebuild the same to the end that upon the completion of such repairs, restoration or rebuilding the value, both physical and economic, of the Improvements shall be at least substantially equal to the physical and economic value of the same immediately prior to the happening of such fire or other casualty. Tenant shall at its sole cost and expense comply with all municipal, state and federal regulations now in force or which may hereafter be in force, pertaining to the Demised Premises and shall faithfully observe in the use of the Demised Premises all municipal, state and federal laws and regulations now in force or which may hereafter be in force. In case of damage to, or destruction of, any Improvements or the fixtures and equipment thereof, by fire or other casualty during the last ten (10) years of the Lease Term, Tenant may, at its option by written notice to Landlord given within sixty (60) days of such casualty, terminate this Lease by delivering to Landlord written notice of such termination, whereupon Tenant shall be responsible for cleaning and clearing the damaged facilities from the Land in compliance with all municipal ordinances.

Section 6.03. Liability Insurance. DISTRICT shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

6.03.1 DISTRICT is required to purchase liability insurance on behalf of the CITY or, alternatively, may name the CITY as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the CITY, its agents, employees or independent groups, alleged or asserted by any individual, in connection with the performance of this Agreement.

6.03.2 DISTRICT shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the CITY, its officers, agents, servants or employees and groups, its officers, agents, servants or employees.

6.03.3 No performance required by this Agreement shall be rendered by the CITY until DISTRICT files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be grounds for cancellation of this Agreement.

Section 6.04. Property Insurance. Tenant agrees to provide and maintain at all times during this Lease at Tenant's own cost and expense, for the benefit of Landlord and Tenant, as their interests may appear, property insurance to include but not limited to perils such as fire, extended coverage, vandalism, malicious mischief, windstorm, hail, etc. in an amount covering the Improvements and any equipment, trade fixtures, furnishings, inventory, or personalty of Tenant at not less than 100% of their full insurable value. Tenant shall also, during the Lease Term, cause the Demised Premises and all Improvements constructed from time to time thereon to be insured against such other risks and in such amounts as Landlord and Tenant shall, from time to time, agree. Tenant agrees to add City of El Paso as an additional insured to any property coverage.

Section 6.05. General Provisions.

A. All insurance required by this Article VII shall be evidenced by policies and issued by insurers reasonably satisfactory to Landlord and Tenant, and shall provide that such insurance, as to the interest of Landlord, shall not be invalidated by any act or omission of Tenant or any occupant of the Demised Premises which might otherwise result in the forfeiture of such insurance. To the extent permitted by law, all such policies shall name Landlord and Tenant as insureds, as their interest may appear, and shall provide that they shall not be canceled unless and until not less than thirty (30) days prior written notice of cancellation has been served upon Landlord and Tenant. All renewal binders or policies (or certificates evidencing the same) shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the policy or policies to be renewed. Certificates evidencing such insurance shall be furnished to Landlord by Tenant. Landlord shall have the right, from time to time during the term of this Lease, to require Tenant to carry greater amounts of such insurance than provided in this Article VII provided, however, that such greater amounts are normally and customarily carried by governmental entities and political subdivisions similar to Tenant.

B. If, at any time, Tenant's insurance carriers refuse to name Landlord as an additional insured on policies written for Tenant, then Tenant shall immediately so advise Landlord in writing and Landlord shall have the option to request that Tenant change insurance carriers or to immediately terminate this Lease if Tenant does not immediately change carriers.

C. Landlord hereby releases Tenant, and Tenant hereby releases Landlord, and their respective officers, agents, employees and servants, from any and all claims or demands for damages, loss, expense or injury to the Demised Premises, or to the furnishings and fixtures and equipment, or inventory or other property of either Landlord or Tenant in, about or upon the Demised Premises, as the case may be, which are caused by or result from perils, events or happenings which are the subject of insurance carried or to be carried under this Lease by the respective parties; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby or the expense of such insurance is not thereby increased. Landlord and Tenant hereby agree to request waivers of subrogation endorsements from their respective insurance carriers, which waivers shall be for the benefit of Landlord or Tenant, as appropriate.

D. During times of Landlord/Tenant usage their respective insurance coverage will apply.

Section 6.06. Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provisions of any policies of casualty insurance shall be collected and held by Tenant in an account designated for the following purposes, which account shall be promptly identified to Landlord and Landlord shall be regularly apprised of the amount of funds in such account, and such funds shall be applied for the following purposes:

A. All proceeds shall first be used, subject to any other conditions contained in this Lease, as a fund for the restoration and repair of any and all buildings, improvements and equipment comprising a part of the Demised Premises which have become destroyed or damaged. Such proceeds in such event shall be used and applied in satisfaction and discharge of the cost of the restoration of the destroyed or damaged buildings, improvements and equipment.

B. Such funds shall be paid out from time to time to persons furnishing labor or materials, or both, including architects' fees and contractors' compensation in the construction work, on vouchers approved by a licensed architect or engineer employed by Tenant to superintend work.

C. Any funds not disbursed and remaining after the completion of the restoration of the repair work and the payment and discharge of the cost thereof shall be applied to any sums due hereunder and the balance shall be delivered to or retained by Tenant.

Section 6.07. Premiums. All premiums and charges for all of said insurance policies shall be paid by Tenant when due. If Tenant shall fail and neglect to make any payment when due, Landlord may, but shall not be obligated to, make such payment or carry such policy, and the amount of any premium paid therefore shall forthwith be repaid by Tenant.

Section 6.08. Renewal Policies. At least thirty (30) days prior to the expiration of each such insurance policy, Tenant shall deliver to Landlord copies of a renewal policy or binder which shall comply with the foregoing provision with respect to prior notice of cancellation thereof being given by the insurance company to Landlord. In the event of the failure of Tenant to procure and deliver such renewal policy or policies or binder or binders therefore within the time prescribed above, Landlord shall be permitted to do so and the premiums charged therefore shall be borne and forthwith paid by Tenant.

Section 6.09. Loss Adjustments. Landlord and Tenant shall have the right to participate in all negotiations relating to loss adjustments for the Demised Premises.

ARTICLE VII

Utility Charges, Liability

Section 7.01. Utility Charges. Tenant shall pay or cause to be paid promptly when due all charges for water, electricity, gas, sewer, telephone, cable or any other services furnished to the Demised Premises. Tenant expressly agrees that Landlord is not, nor shall it be, required to furnish to Tenant or any other occupant of the Demised Premises any water, sewer, gas, heat, electricity, light, power, cable, or any other facilities, equipment, labor, materials or services of any kind whatsoever. Landlord shall not be responsible for the payment of utilities for the property covered by this Lease.

Section 7.02. Liability.

Section 7.02.1. As primary insurance, the Tenant shall be responsible for all claims, damages, liability and court awards including costs, expenses and attorney's fees incurred as a result of any action or omission of the Tenant or its officers, employees, and agents in connection with the performance of this Agreement.

Section 7.02.2. Secondly, the Landlord shall be responsible for all claims, damages, liability and court awards including costs, expenses and attorney's fees incurred as a result of any action or omission of the Landlord or its officers, employees, and agents in connection with the performance of this Agreement to the extent any such loss is not covered by Tenant's insurance coverage.

Section 7.02.3. Nothing in this Article or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Landlord or Tenant may have under Texas law. The provisions in this Article are solely for the benefit of the parties to this Agreement and are not intended to create or grant any rights, contractually or otherwise, to any third party.

ARTICLE VIII

Condemnation

Section 8.01. Definitions. Wherever used in this Article, the following words shall have the definitions and meaning hereinafter set forth:

- A. **“Condemnation proceedings”** means any action or proceedings brought for the purpose of any taking of the fee of the Demised Premises or any part thereof or any other property interest therein by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.
- B. **“Taking” or “taken”** means the event of vesting of title to the fee of the Demised Premises or any part thereof pursuant to the condemnation proceedings.

Section 8.02. Entire Taking. If substantially all of the Demised Premises shall be taken in condemnation proceedings, this Lease shall terminate as of the taking.

Section 8.03. Partial Taking. If less than substantially all of the Demised Premises shall be taken in condemnation proceedings, and Tenant shall determine in its reasonable business judgment, within ninety (90) days after such taking, that the remaining building or buildings cannot be economically and feasibly used by Tenant, Landlord or Tenant, at their election, may terminate this Lease on thirty (30) days notice to the other party to such effect.

Section 8.04. Application of Award. If this Lease shall terminate pursuant to the provisions of Section 9.02 or Section 9.03 of this Article, Landlord’s share of the condemnation award together with any separate award to Tenant shall be apportioned and paid in the following order of priority:

- A. There shall be first paid any and all reasonable expenses, charges and fees, including reasonable attorney’s fees, in collecting the award.
- B. Landlord shall then be entitled to receive an amount equal to the reasonable market value of the Land constituting part of the Demised Premises.
- C. The balance of the award, if any, shall be paid to Tenant and Landlord shall have no obligation to refund any of the Base Rental.

Section 8.05. Application of Award in Partial Taking. If it is determined pursuant to the provisions of Section 8.03, that the remaining Improvements after a partial condemnation can be used economically by Tenant, (i) this Lease shall not terminate but shall continue in full force and effect as to the portion of the Demised Premises not taken, and (ii) Tenant shall commence and proceed with reasonable diligence to repair or reconstruct the remaining building or buildings on the Demised Premises to a complete architectural unit or units to the extent proceeds of the condemnation award are available therefore. Landlord’s share of the award in

condemnation proceedings for any partial taking where repair or reconstruction is undertaken, together with any separate award to Tenant, shall be apportioned and paid in the following order of priority:

A. There shall first be paid any and all reasonable expenses, charges and fees, including reasonable attorney's fees, in collecting the awards;

B. The proceeds of the awards shall next be used as a fund for the restoration and repair of the building, improvements and equipment situated on the Demised Premises to a complete architectural unit or units. Such proceeds shall be held by Landlord and Tenant jointly and shall be paid out from time to time to persons furnishing labor or materials, or both, including architects' fees and contractors' compensation in such restoration work on vouchers approved by a licensed architect or engineer approved by Landlord and contracted or employed by Tenant to monitor and supervise the work;

C. Landlord shall then be entitled to an amount equal to the reasonable market value of the Land taken; and

D. The balance of the award shall be paid to Tenant and Landlord shall have no obligation to refund any of the Base Rental.

Section 8.06. Consent to Settlement by Landlord. Tenant shall have primary responsibility for dealing with the condemning authority in the condemnation proceedings but Tenant shall not make any settlement with the condemning authority nor convey or agree to convey the whole or any portion of the Demised Premises to such authority in lieu of condemnation without first obtaining the written consent of Landlord thereto, provided that Landlord receives (i) not less than the fair market value of the Land taken at the time and (ii) a reasonable amount for any diminution in value of the remaining portion of any adjacent land owned by Landlord.

ARTICLE IX

Default

Section 9.01. Events of Default. The following events ("**Events of Default**") shall be deemed to be events of default by Tenant under this Lease:

A. If Tenant shall fail to pay any sum of money payable hereunder on the date the same is due and such failure shall continue for a period of thirty (30) days after due written notice to Tenant.

B. If Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent or other sums of money, and shall not cure such failure within thirty (30) days after due written notice thereof to Tenant; or if such failure cannot reasonably be

cured within the said thirty (30) days and Tenant shall not have commenced to cure such failure within such thirty (30) day period and shall not thereafter with all due diligence and good faith proceed to cure such failure as soon as reasonably practicable.

C. If a decree or order by a court of competent jurisdiction shall have been entered adjudging Tenant bankrupt or insolvent or appointing a receiver or trustee or assignee in bankruptcy or insolvency of all or substantially all of its property, and any such decree or order shall have continued in force undischarged or unstayed for a period of ninety (90) days.

D. If Tenant shall do or permit to be done anything that creates a lien upon Landlord's interest in the Demised Premises, and any such lien is not discharged or bonded within ninety (90) days after filing.

E. If Tenant (i) abandons the Demised Premises for two (2) consecutive years by failing to use same as an instructional facility that can be used for educating students.

Section 9.02. Remedies. Upon the occurrence of any such event of default, Landlord shall have the right, at Landlord's election to pursue, in addition to and cumulative of any other rights Landlord may have, at law or in equity, any one or more the following remedies without any notice or demand whatsoever:

A. Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails so to do, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying such premises or any part thereof, without being liable for prosecution or any claim of damages therefore.

B. With an appropriate court order, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying such premises or any part thereof without being liable for prosecution of any claim for damages therefore.

Section 9.03. Cumulative Rights. Pursuit of any of the foregoing remedies shall not preclude Landlord's pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided, upon any event of default, shall not be deemed or construed to constitute a waiver of such default or of any other violations or breach of any of the terms, provisions and covenants herein contained. In determining the amount of loss or damage which Landlord may suffer by reason of termination of this Lease or the deficiency arising by reason of the reletting by Landlord as above provided, allowance shall be made for the

expense of repossession and any repairs reasonably undertaken by Landlord following repossession in order to return the Demised Premises to substantially the same condition as at the time of default, normal wear and tear expected.

Section 9.04. Re-Entry of Landlord. No re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant. Landlord, at its option, may make such alterations, repairs and/or decorations to the Improvements as it, in its reasonable judgment, considers advisable and necessary upon the occurrence of an Event of Default, at the cost of Tenant, and the making of such alterations, repairs and decoration shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises and the Improvements or, in the event the Demised Premises and the Improvements are relet, for failure to collect rent thereof under such reletting; and in no event shall Tenant be entitled to receive any excess of such rent over the sums payable by Tenant to Landlord hereunder.

Section 9.05 Effect of Waiver or Forbearance. No waiver by Landlord of any breach by Tenant of any of its obligations, agreements, or covenants hereunder shall be a waiver of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of its rights and remedies with respect to such subsequent breach.

ARTICLE X

Attorney's Fees

If on account of any breach or default by either party hereunder, it shall become necessary for the other party hereto to employ an attorney to enforce or defend any of such party's right or remedies hereunder, and should such party prevail in a final judgment, the party against whom enforcement was sought shall pay to the other party any reasonable attorney's fees incurred by reason of such proceedings.

ARTICLE XI

Miscellaneous

Section 11.01. Inspection. Tenant shall permit Landlord and its agents to enter into and upon Demised Premises at all reasonable times and upon reasonable notice for the purpose of inspecting the same or undertaking any rights of Landlord under this Lease.

Section 11.02. Release. If requested by Landlord, Tenant shall upon termination of this Lease, execute and deliver to Landlord an appropriate release, in recordable form, of all Tenant's interest in the Demised Premises, and upon request of Tenant, Landlord will execute and deliver a written cancellation and termination of Lease in recordable form; provided, that in no event

shall any such release, cancellation or termination constitute a release or relinquishment by either party of his or its rights against the other party for any amounts payable by such other party under the terms of this Lease or any damages to which such party is entitled as a result of any default by the other party hereunder.

Section 11.03. Landlord's Right to Perform Tenant's Covenants. If Tenant shall default in the performance of any of its covenants, obligations or agreements contained in this Lease, Landlord, after ten (10) days notice to Tenant, specifying such default (or shorter notice of any emergency exists), may (but without any obligation so to do) perform the same for the account and at the expense of Tenant, and the amount of any payment made or other reasonable expenses, including reasonable attorney's fees incurred by Landlord for curing such default, with interest thereon at the highest lawful rate per annum, shall be payable by Tenant to Landlord on demand.

Section 11.04. Non-Merger. There shall be no merger of this Lease, the leasehold estate created hereby or the Improvements with the fee estate in and to the Demised Premises by reason of the fact that this Lease, the leasehold estate created thereby or the Improvements, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Demised Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease, the leasehold estate or the Improvements, shall join in a written instrument affecting such merger.

Section 11.05. Notices. Any notice required or permitted to be delivered hereunder or by law shall be delivered to the parties hereto at the respective addresses set out below:

If to Landlord: City of El Paso
ATTN: City Manager
2 Civic Center Plaza
El Paso, TX 79901

and also: City of El Paso
ATTN: Parks and Recreation Department, Director
2 Civic Center Plaza
El Paso, TX 79901

If to Tenant: Ysleta Independent School District
ATTN: Superintendent
9600 Sims
El Paso, TX 79925

Each party hereto shall have the right, by giving not less than ten (10) days prior written notice to the other party hereto, to change any address of such party for the purpose of notices under this Section 13.06.

Section 11.06. Successors and Assigns. The word “Landlord” as used in this instrument shall extend to and include each entity succeeding to Landlord’s rights under law as well as any and all persons, whether natural or artificial, who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the Demised Premises; and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of and are binding upon Landlord shall also inure to the benefit of and shall be, jointly and severally binding upon the successors and grantees of Landlord, and each of them and any and all persons who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the real estate and property hereby demised. The word “Tenant” as used in this instrument shall extend to and include each entity succeeding to Tenant’s rights under law, as well as any and all persons, whether natural or artificial, who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Tenant hereunder and all of the covenants, agreements, conditions and stipulations herein contained which inure to the benefit of and be jointly and severally binding upon the successors or other representatives of Tenant, and of any and all persons who shall at any time or from time to time during the term of this Lease succeed to the interest and estate of Tenant hereby created in the Demised Premises.

Section 11.07. Modifications. This Lease may be modified only by written agreement signed by the Landlord and Tenant.

Section 11.08. Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

Section 11.09. No Joint Venture. The relationship between Landlord and Tenant at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.

Section 11.10. Landlord’s Right of Use. After Tenant has constructed the buildings and improvements on the Property, Landlord shall have the right to use gymnasium and office space in the school buildings owned and operated by Tenant for purposes of Landlord’s recreational and related undertakings. Landlord agrees to cooperate with Tenant to assure that school facilities are available for educating Tenant’s students during school hours and for any scheduled after hours school function.

Section 11.11. Recording of Lease. Landlord and Tenant agree that they shall, at any time at the request of the other, promptly execute a memorandum or short form of this Lease, in recordable form, setting forth a description of the Demised Premises, the term of this Lease, and any other provisions herein, or the substance thereof, as either party desires. This memorandum or short form lease may be filed among the land records of El Paso County, Texas.

Section 11.12. Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to any person or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and be in force to the fullest extent permitted by law.

Section 11.13. Holding Over. Any holding over by Tenant of the Demised Premises after the expiration of the Lease Term shall operate and be construed as a tenancy from month to month at a monthly rental equal to the rental payable during the term of the Lease. Tenant agrees to surrender the Demised Premises after the termination of the Lease Term immediately upon demand by Landlord.

Section 11.14. No Commissions. Landlord and Tenant each represent to the other that it has not incurred and will not incur any liability for brokerage fees or agents commissions in connection with this Lease and Landlord and Tenant.


WITNESS the signatures of the parties hereto in duplicate originals this the _____ day of _____, 2008.

(signatures on next page)

CITY OF EL PASO


Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette Smejkal, Director
Parks and Recreation Department

YSLETA INDEPENDENT SCHOOL DISTRICT

Carmen G. Munoz
President, YISD Board of Trustees

Roger G. Parks
Interim Superintendent, YISD

CITY CLERK DEPT.
08 JUL 21 PM 2:51

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARMEN G. MUNOZ, known to me the President of the Board of Trustees of the Ysleta Independent School District, a Texas Political Subdivision, and the person whose name is subscribed to the foregoing Ground Lease, and who acknowledged to me that she executed the instrument for the purposes and considerations therein expressed and on behalf of the Ysleta Independent School District.

Given under my hand and seal of office on the _____ day of _____, 2008.

NOTARY PUBLIC in and for the
State of Texas

My Commission Expires:

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

BEFORE ME, the undersigned Notary Public, on this day personally appeared JOYCE A. WILSON, known to me City Manager of the City of El Paso, a Texas Political Subdivision, and the person whose name is subscribed to the foregoing Ground Lease, and who acknowledged to me that she executed the instrument for the purposes and considerations therein expressed and on behalf of the City of El Paso, Texas.

Given under my hand and seal of office on the _____ day of _____, 2008.

NOTARY PUBLIC in and for the
State of Texas

My Commission Expires:

EXHIBIT "A"
LEGAL DESCRIPTION OF LAND

PREPARED FOR: W.H. PACIFIC
BEING A PORTION OF TRACTS 15B AND 16, BLOCK 55, YSLETA GRANT
CITY OF EL PASO,
EL PASO COUNTY, TEXAS
APRIL 22, 2008
W.O. # 041008-5

METES AND BOUNDS DESCRIPTION

Description of a 7.8662 acre parcel of land being a Portion of Tracts 15B and 16, Block 55, Ysleta Grant, City of El Paso, El Paso County, Texas, being more particularly described by Metes and Bounds attached hereto:

Starting at an existing city monument located at the center line of Escobar Road @ a p.c., leaving this point North 32°17'21" East at a distance of 45.00' to a set 5/8" diameter rebar with Yellow Plastic Cap Stamped T.X. 2449, Roe Engr.; L.C. with said point being along the northerly right-of-way line and being the "True Point of Beginning";

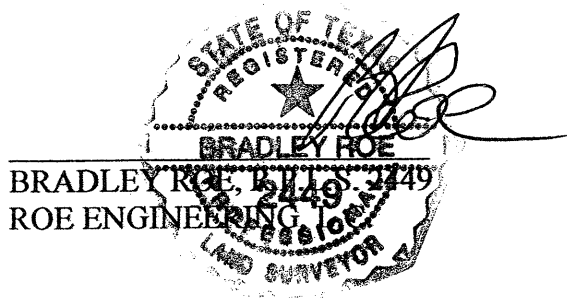
Thence, along said northerly right-of-way of Escobar Road North 57°41'00" West a distance of 182.88 feet to set chiseled "X" on concrete;

Thence, North 32°20'40" East a distance of 664.05 feet to set 5/8" diameter rebar with Yellow Plastic Cap Stamped T.X. 2449, Roe Engr. L.C.;

Thence 407.41 feet along the arc of a curve to the left, whose radius is 2020.28 feet, whose interior angle is 11°33'16" whose bearing bears South 58°02'03" East a distance of 406.72 feet to a set 5/8" diameter rebar with Yellow Plastic Cap Stamped T.X. 2449, Roe Engr. L.C.;

Thence South 15°57'00" West a distance of 768.04 feet to a set 5/8" diameter rebar with Yellow Plastic Cap Stamped T.X. 2449, Roe Engr. L.C. lying along the northerly right-of-way line of Escobar Road;

Thence continuing along said north right-of-way of Escobar Road along a curve to the left 448.03 feet along the arc of a curve to the left, whose radius is 1414.31 feet, whose interior angle is 18°09'02" whose chord bears North 48°36'29" West a distance of 446.16 feet back to the "True Point of Beginning," and containing in all 342,651.48 square feet, or 7.8662 acres of land more or less.



CITY CLERK DEPT.
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EXHIBIT "B"
BOUNDARY SURVEY