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

DEPARTMENT: **Parks and Recreation**

AGENDA DATE: **January 13, 2009 (Introduction) January 20, 2009 (Hearing and Action)**

CONTACT PERSON/PHONE: **Nanette Smejkal (915) 541-4331**

DISTRICT(S) AFFECTED: **District 6**

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 authorizing the City Manager to sign a Lease Agreement between the City of El Paso and Teens In Action for the facility commonly known as the Ysleta Park Recreation Building located at 9068 Socorro Road, El Paso, Texas.

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?
The new lease supersedes and replaces a lease approved on December 6, 2005. The primary difference allows Teens in Action to charge fees for private facility rental, specialized instruction and special events. The revenues generated from the fees for private facility rental, specialized instruction, and special events will be used to defray Teens in Action's operating expenses, such as utilities.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
City Council approved a lease with Teens in Action on December 6, 2005.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
No funds are required from the City; the tenant is responsible for the costs of operating and maintaining the building.

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A
N/A

CITY CLERK DEPT.
09 JAN -5 PM 3:08

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

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

DEPARTMENT HEAD: _____
(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:** _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND TEENS IN ACTION, FOR THE LEASE OF A PORTION OF 43 YSLETA, TRACT-1C, EL PASO, TEXAS, FOR A TERM OF FIVE (5) YEARS, WITH ONE RENEWAL OPTION FOR AN ADDITIONAL FIVE YEARS AND CANCELING THE LEASE AGREEMENT APPROVED BY ORDINANCE #16227.

WHEREAS, TEENS IN ACTION desires to enter into a lease agreement with the CITY for the use of a portion of 43 Ysleta, Tract-1C (1.00 Acre), such property further referenced in the attached Exhibit "A," and commonly known as the Ysleta Park Recreation Building, at 9068 Socorro Road, El Paso Texas 79907, (hereinafter "Premises") to provide educational workshops directed to parents and youths, to enhance community youth's communication and computer access, and offer various recreational and sports activities to any teenagers in the City of El Paso; and

WHEREAS, CITY believes that the proposed use of the Premises by TEENS IN ACTION would serve the public purpose of increasing the availability of alternatives to youth delinquency and provide recreational and academic type facilities, which are of benefit to all area teens and of general benefit to the citizens of El Paso; and

WHEREAS, the City Council desires to cancel the Lease Agreement authorized on December 6, 2005, through Ordinance #16227.

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, a new lease upon the following terms to TEENS IN ACTION of El Paso, Texas:

(1) The area to be leased is located at a portion of 43 Ysleta, Tract-1C, El Paso, El Paso County, Texas, as further identified in Exhibit "A" and known as ("Premises").

(2) The lease period shall be for a primary term of five (5) years, at a rate of $1.00 (ONE AND NO/100 DOLLARS) per year for certain additional in-kind public benefit consideration received, as outlined in greater detail in the attached Agreement, and may be extended for one additional five (5) year period under the same price, terms and conditions, upon mutual agreement of TEENS IN ACTION and CITY, by and through its City Manager. This lease agreement supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by TEENS IN ACTION.

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

(4) Further, the prior Lease Agreement authorized by the City of El Paso by way of Ordinance #16227 is hereby canceled and replaced by Exhibit "B" hereto.

PASSED AND APPROVED on this the _____ day of _____, 2009.

THE CITY OF EL PASO

ATTEST:

_____
John F. Cook,
Mayor

_____
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

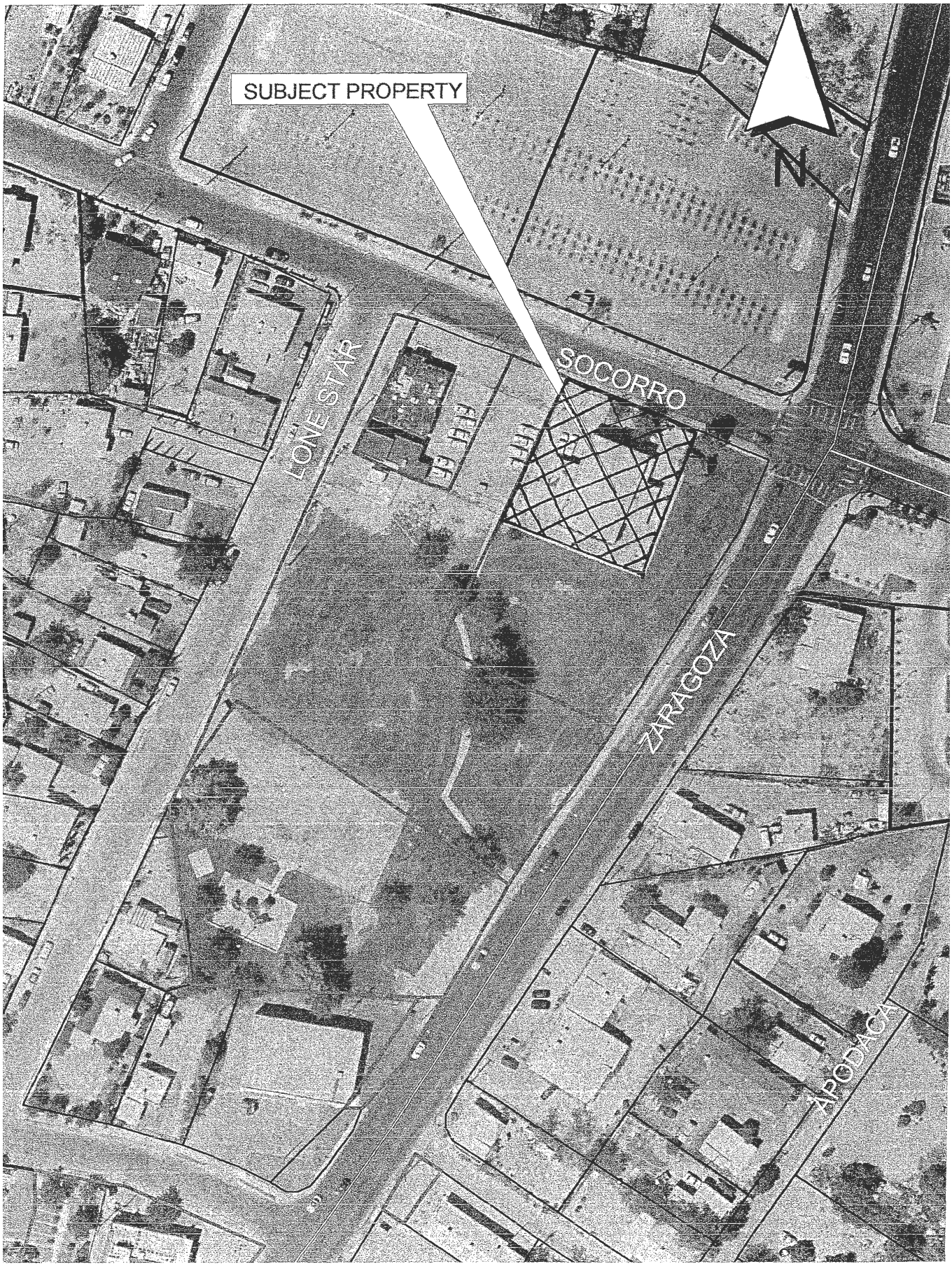
APPROVED AS TO CONTENT:

_____
Nanette L. Smejkal, Director
Department of Parks and Recreation

CITY CLERK DEPT.
09 JAN -5 PM 3:08

ORDINANCE NO._____

EXHIBIT “A”



THE STATE OF TEXAS §
§ **LEASE AGREEMENT**
COUNTY OF EL PASO §

This Lease Agreement ("Agreement"), made this the _____ day of _____, 2009, between the CITY OF EL PASO, a home rule municipal corporation ("CITY"), and TEENS IN ACTION FOR A HEALTHY COMMUNITY, a non-profit corporation ("TEENS IN ACTION").

WHEREAS, TEENS IN ACTION desires to enter into a lease agreement with the CITY for the use of a portion of 43 Ysleta, Tract-1C (1.00 Acre), such property further referenced in the attached Exhibit "A," and commonly known as the Ysleta Park Recreation Building, at 9068 Socorro Road, El Paso TX 79907 (hereinafter "Premises"); and

WHEREAS, TEENS IN ACTION intends to use the Premises to provide educational workshops directed to both parents and youth concerning various topics regarding the health and development of area teens and their relationships with their community and family, to provide for the production of a teen newsletter, provide open use computer facilities, and offer various recreational and sports activities to include but not to be limited to assorted game room activities, all open to any teenagers in and around the City of El Paso; and

WHEREAS, CITY believes that the activities contemplated herein and the agenda set forth by TEENS IN ACTION would further the objectives of all parties by increasing the availability of alternatives to youth delinquency and provide recreational and academic type facilities, which are of benefit to all area teens and of general benefit to the citizens of El Paso; and

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants a non-assignable right to TEENS IN ACTION to lease a portion of 43 Ysleta, Tract-1C (1.00 Acre), commonly known as the Ysleta Park Recreation Building, and further referenced as the paved and hatched portion of Exhibit "A" and referred to throughout the remainder of this lease agreement as ("Premises").

1.0 TERM AND RENT

1.1 Term of Agreement. This Agreement shall become effective as of the date first listed above and shall be for a primary term of five (5) years from that date. Said Agreement may be extended for one additional five (5) year extension under the same price, terms and conditions as approved jointly by TEENS IN ACTION and CITY by and through its City Manager, unless terminated as hereinafter provided in Section 6.0, *et seq.*, of this Agreement.

1.2 Rent. As monetary consideration for this Agreement TEENS IN ACTION will deliver to the Department of Parks and Recreation the payment to CITY of ONE AND NO/100 DOLLARS ($1.00) per year for the lease term of this Agreement, as stated in Section 1.1 above. Rent is due and payable upon execution and for each extension, prior to the start of such

extension. Additional consideration is non-monetary, and consists of the public benefit activities that will be provided by TEENS IN ACTION as well as renovations to the Premises (demolition of two walls, doors, flooring, partitions, foundation) in order to accommodate a 544 square foot exercise and fitness room which TEENS IN ACTION shall construct.

2.0 USE OF PREMISES

2.1 Premises. The Premises shall be under the control of TEENS IN ACTION during the lease term of this Agreement, as stated in Section 1.1 above. TEENS IN ACTION understands and agrees that the Premises are to be free and open to the public on a non-discriminatory basis, yet that general admission and activities may be limited to teenagers with all participants to be supervised at all times by an adult. However, TEENS IN ACTION may impose reasonable restrictions on admission consistent with the need to preserve and protect the Premises or the safety and welfare of any occupants therein.

2.1.1 It is understood that TEENS IN ACTION intends to use the premises to provide educational workshops directed to both parents and youth concerning various topics of value, interest and concern to area teens and proper development of their relationships with family, each other and the greater community, to provide for the production of a teen newsletter, provide open use computer facilities, and offer recreational activities to include but not be limited to assorted game room activities, all open to any teenagers in and around the City of El Paso. The use herein provided serves as the consideration provided to CITY for this Agreement. TEENS IN ACTION expressly agrees to use the facility only for such public purposes of benefit to area teens, a use that provides area youth a safe and adult monitored afternoon alternative.

2.1.2 Admission to Events at Facilities. TEENS IN ACTION shall not charge a fee for admission to educational workshops regarding the health and development of area teens and their relationship with their community and family, the production of a teen newsletter, use of computer facilities, various recreational and sports activities, and other standard TEENS IN ACTION programs ("Standard Activities") held at the Premises as such Premises are to be open to the general public as provided herein. However, TEENS IN ACTION may charge for specialized instruction and for private rentals celebrating families (to include but not be limited to youth birthday parties and family reunions), and for special events to include supervised concerts and dances for youth.

2.1.3 The proceeds from the specialized instruction, private rentals and special events allowed in Subsection 2.1.2 shall be used by TEENS IN ACTION solely and exclusively to pay the utilities due at the Premises pursuant to this Agreement, for the costs to operate the Standard Activities allowed in this Agreement (but not for the costs to operate the specialized instruction, private rentals and special events described in Subsection 2.1.2) and for building improvements. TEENS IN ACTION shall strictly abide by the terms of Subsection 7.17 below.

2.1.4 Alcoholic beverages shall not be permitted for private rentals discussed in Subsection 2.1.2 above, or for any other purpose or activity at the Premises.

2.1.5 TEENS IN ACTION, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination. Admission to a public function held on the Premises and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.2 Landscaping. TEENS IN ACTION acknowledges that the exterior of the premises contains impervious ground cover (concrete). TEENS IN ACTION may provide planters and may plant and maintain same on any part of the exterior portion of the Premises that TEENS IN ACTION determines to be in need of such improvement and that are appropriate for such improvement. TEENS IN ACTION shall obtain written permission from the CITY, by and through its Director of Parks and Recreation or designee, prior to installing such landscaping on the Premises.

2.2.1 TEENS IN ACTION understands and agrees that it shall water, trim and maintain any such improvements so that the same is kept in a neat, orderly and attractive condition at all times.

2.3 Repairs. TEENS IN ACTION shall keep the facilities, improvements and property on the Premises in good condition and repair during the lease term of this Agreement, as stated in Section 1.1 above. TEENS IN ACTION shall be solely responsible for any repairs needed during the lease term. TEENS IN ACTION shall at all times during the term of this Agreement keep the Premises clean, orderly and in an attractive condition. In the event of damage or destruction by fire or other casualty to the Premises, TEENS IN ACTION shall promptly restore or replace the same in a reasonable time. Further, TEENS IN ACTION shall submit a detailed listing of any and all defects to the interior or exterior of the Premises within ten (10) days of the start of the lease term. Should Premises not be in substantially the same condition as same were at the beginning of the term of this Agreement, TEENS IN ACTION shall make any necessary repairs to restore Premises to its pre-lease condition, except that the interior of the Premises shall be cleaned prior to vacating the Premises. At the conclusion of the lease, and at the discretion of the Director of Parks and Recreation ("Director"), a payment in the amount of such repairs, in an amount determined appropriate by the sole discretion of the Director may be accepted in lieu of completion of said repairs, cleaning, or painting.

2.3.1 TEENS IN ACTION acknowledges that the Premises are leased "AS-IS." TEENS IN ACTION shall not request and CITY shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to TEENS IN ACTION'S stated purpose, agenda or mission or believed necessary for the continuance of the facility. This AS-IS condition shall specifically include, but shall not be limited to plumbing, electrical, carpentry, Americans with Disabilities Act, and heating, ventilation, and air conditioning problems that may or may not exist. TEENS IN ACTION has been and is herein placed on notice that the leased premises were built in the 1960's and that CITY neither has knowledge of, nor can it warrant against ADA noncompliance issues or the existence of asbestos, either of which may or may not exist on the leased premises. Should

TEENS IN ACTION determine that asbestos exists or that ADA compliance issues are present, it may rescind lease without further obligation.

2.4 Maintenance of Grounds. All other maintenance and upkeep of the Premises shall be the responsibility of TEENS IN ACTION.

2.4.1 Garbage and Trash. TEENS IN ACTION shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Premises, of all trash, garbage and other refuse caused by the operations of the Premises.

2.4.1.1 TEENS IN ACTION shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse throughout the Premises. Piling of boxes, cartons, trash or similar items on the Premises, including the building, facilities, improvements and park, shall not be permitted at any time. Additionally, the placement of trash receptacles shall be at locations approved by the Director or that person's designee.

2.5 Earth Work. No moving of earth abutting the recreational center shall be performed unless such work is as authorized by the Director of Parks and Recreation and necessary permits have been requested and authorized by the CITY.

2.6 Utilities. TEENS IN ACTION shall be responsible for the payment of all utilities at the Premises. TEENS IN ACTION further agrees that the use of outdoor recreational lighting will be done in accordance with Section 13.24.040 and 18.18.020 of the El Paso Municipal Code.

2.7 Improper Use. TEENS IN ACTION shall not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations.

2.8 Non-Profit Use/Zoning. TEENS IN ACTION expressly agrees that the premises will only be used for non-profit community outreach activities which are in compliance with municipal regulations to include zoning regulations.

2.9 Safety and Security. TEENS IN ACTION is responsible for ensuring that its employees, agents, contractors, invitees, guests and licensees comply with all applicable laws, ordinances and regulations. TEENS IN ACTION shall exercise every precaution for the safety of public and private property and persons.

2.9.1 TEENS IN ACTION understands and agrees that the CITY is not and will not be responsible for the safety or security of any items associated with the use of the Premises by TEENS IN ACTION or by the latter's licensee nor will the CITY be responsible for and damage(s) to any items or materials used in connection with TEENS IN ACTION or the latter's licensees.

3.0 CONTRACTUAL RELATIONSHIP

3.1 TEENS IN ACTION is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with CITY. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

3.1.1 As an independent contractor, TEENS IN ACTION understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to TEENS IN ACTION's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

3.1.2 TEENS IN ACTION shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of TEENS IN ACTION.

3.2 TEENS IN ACTION shall not receive any compensation or benefits from the CITY.

3.3 TEENS IN ACTION understands and expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Agreement as a governmental entity for the purpose of performing a governmental function.

4.0 INSURANCE AND INDEMNIFICATION PROVISIONS. TEENS IN ACTION agrees to provide the following as a condition of the Agreement:

4.1 **LIABILITY INSURANCE**. TEENS IN ACTION 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.

4.1.1 TEENS IN ACTION 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 contractors, alleged or asserted by any individual, in connection with the performance of this Agreement. Certificate of Insurance should be on behalf of the City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901.

4.1.2 TEENS IN ACTION 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 contractors, its officers, agents, servants or employees.

4.1.3 Immediately upon execution of this Agreement TEENS IN ACTION shall file a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the Department of Parks and Recreation of the City. 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.

4.2 **FIRE AND CASUALTY INSURANCE**. TEENS IN ACTION shall keep the Premises insured with a solvent insurance company that is authorized to do business in Texas, to the full amount of insurance procurable, for the benefit of TEENS IN ACTION and the City, as their interests may appear. A Certificate of Insurance indicating such coverage will be provided to the City within ten (10) days of the execution of this Agreement. Failure to provide the required proof of insurance, naming the City as an additional insured, shall result in the TEENS IN ACTION default in the terms of this Agreement.

4.3 **INDEMNITY**. **As a condition of this Agreement, TEENS IN ACTION or its insurer shall INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to TEENS IN ACTION every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. TEENS IN ACTION shall 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as**

TEENS IN ACTION may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. TEENS IN ACTION shall pay all judgments in actions defended by TEENS IN ACTION pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by TEENS IN ACTION, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to Teens in Action's property from any cause.

5.0 RISK ALLOCATION – LIMITATION OF LIABILITY

5.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, the CITY shall not be liable to TEENS IN ACTION nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. The CITY shall not be liable to TEENS IN ACTION or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by TEENS IN ACTION regardless of whether the party receiving said information from TEENS IN ACTION was advised, had other reason to know, or in fact knew thereof.

5.1.2 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL THE CITY'S AGGREGATE LIABILITY TO TEENS IN ACTION (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY TEENS IN ACTION), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE UNDER THE TERMS OF THIS AGREEMENT.**

5.1.3 Intentional Risk Allocation. The CITY and TEENS IN ACTION each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

5.1.4 No Indemnification. The Parties expressly agree that TEENS IN ACTION shall not have the right to seek indemnification or contribution from the CITY for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

6.0 TERMINATION. This Agreement may be terminated as provided herein.

6.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

6.2 Termination by Either Party. It is further understood and agreed by TEENS IN ACTION and the CITY that either party may terminate this Agreement, in whole or in part, upon thirty (30) days written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach.

6.3 Termination by CITY. If TEENS IN ACTION ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than two (2) continuous months, or if TEENS IN ACTION defaults in any of its obligations under this Agreement and fails to correct such default within thirty (30) days written notice, CITY may cancel said Agreement and take possession of the property. In such an event, all rights of TEENS IN ACTION in the Premises, including buildings, facilities and improvements, shall then terminate. Any waiver by the CITY of any breach of any of TEENS IN ACTION's obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of TEENS IN ACTION.

6.4 Time of Performance Termination – Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

6.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

6.5.1 Upon termination of this Agreement for any reason, ownership of all improvements done by TEENS IN ACTION on the Premises shall revert to the CITY.

7.0 GENERAL PROVISIONS

7.1 Taxes and Assessments. TEENS IN ACTION will promptly pay all taxes and assessments lawfully levied on TEENS IN ACTION's leasehold interest, on the buildings and structures on the property as well as on TEENS IN ACTION's personal property.

7.2 Assignments and Subletting. TEENS IN ACTION shall not assign this Agreement nor sublet the Premises or any part thereof without the prior written consent of the CITY, except that TEENS IN ACTION may grant permission, in the nature of licenses (as the term is used in real property law), but not in the nature of leases or subleases, for the use of the property for the purposes contemplated by this Agreement, but such permission shall not impair or diminish the rights of the CITY hereunder. The CITY shall have the right to refuse any license when such license authorizes a use not contemplated within this Agreement.

7.3 Liens and Encumbrances. TEENS IN ACTION shall not give nor permit any liens or encumbrances on the Premises, including but not limited the facilities, buildings, improvements, and park. Upon termination of this Agreement, TEENS IN ACTION shall peacefully surrender such Premises to the CITY free of all such liens or encumbrances. **TEENS IN ACTION shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Premises, including facilities, buildings, improvements and park, together with reasonable attorney's fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.**

7.4 Inspections. The CITY shall have the right to enter the Premises at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

7.5 Outside Lighting. Outside lighting, except security lighting, on the property shall be operated during the established park hours, as set forth in El Paso City Code Section 13.24.040. Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other property in the neighborhood or otherwise violate Chapter 18.18 (Outdoor Lighting) of the El Paso Municipal Code. If this provision is violated, the CITY may require any such lighting to be extinguished, changed or removed at TEENS IN ACTION's expense.

7.6 Signs. All signs on the Premises, including building, facilities and improvements, shall comply with the El Paso Building Code, El Paso Zoning Code, and other relevant ordinances of the CITY. The size, design and location of all signs shall additionally be subject to the approval of the Director or designee prior to installation.

7.7 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

7.8 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

7.9 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and TEENS IN ACTION. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.10 Attorney's Fees. In any action brought by either party for the enforcement of any provision of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees.

7.11 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

7.12 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

7.13 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.14 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

7.15 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY:	City of El Paso Attention: City Manager Two Civic Center Plaza, 10th Floor El Paso, Texas 79901-1196
COPY TO:	Parks and Recreation Department Attention: Director Two Civic Center Plaza, 6th Floor El Paso, Texas 79901-1196
LESSEE:	TEENS IN ACTION FOR A HEALTHY COMMUNITY, INC. Attention: Barbara S. Rios, Executive Director 8749 Coloma Circle El Paso, Texas 79907 (915) 859-1500

7.16 Warranty of Capacity to Execute Agreement. The person signing this Agreement on behalf of TEENS IN ACTION warrants that he/she has the authority to do so and to bind TEENS IN ACTION to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

7.17 Financial Statement, Right to Audit, and Annual Activity Reports. TEENS IN ACTION shall submit a financial report, to the Director, detailing all financial activity related to the Premises for the prior year each year at the anniversary of the execution of this Agreement. The City Manager or designee shall have the right at all times to audit TEENS IN ACTION'S books and other records related to monies derived from all uses of the leased premises permitted pursuant to Subsection 2.1.2. Any proceeds from the use of the Premises shall be used solely for the maintenance and upkeep of the leased premises, improvements thereto, or for capital improvements to benefit TEENS IN ACTION at the Premises.

As consideration for this Agreement and as part of the terms and conditions of this Agreement, TEENS IN ACTION shall provide an annual report outlining the nature and scope of all public purpose activities completed, the numbers of participants, and the dates and times when such activities were provided. TEENS IN ACTION must also include in the annual report the number of each kind of activity that has taken place at the leased premises, the charge (if any) for and the revenue generated from each activity at the leased premises. It is understood that City would not have entered into this Agreement without the Section 2.1 public purpose projects and activities promised. As such, this annual report should demonstrate compliance with both the letter and spirit of this lease. It shall be forwarded to the Director.

(Signatures to follow on next page)

THE CITY OF EL PASO

Joyce Wilson,
City Manager

TEENS IN ACTION FOR A HEALTHY COMMUNITY, INC.

Barbara S. Rios,
Executive Director

APPROVED AS TO FORM:

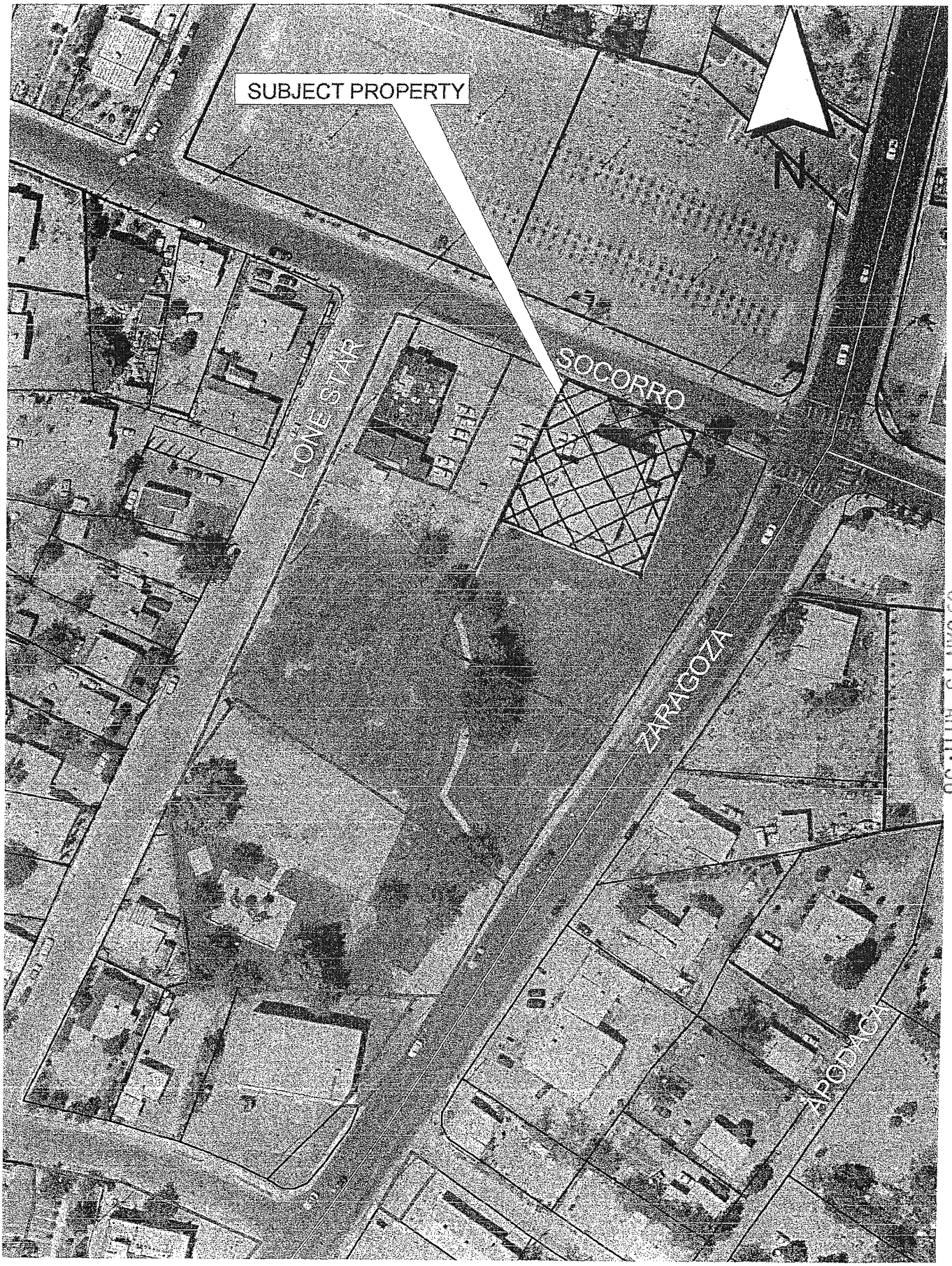
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Nanette L. Smejkal, Director
Department of Parks and Recreation

CITY CLERK DEPT.
09 JAN -5 PM 4:30

EXHIBIT "A"



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