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

DEPARTMENT: Parks and Recreation

AGENDA DATE: January 15, 2008 (Introduction) January 22, 2008 (Public Hearing)

CONTACT PERSON/PHONE: Nanette Smejkal, Director (541-4283)

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 Mayor to sign a Lease Agreement between the City of El Paso and the University of Texas at El Paso (UTEP) for their management of the Rio Bosque Wetland Park located at 10716 Socorro Road.

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 and management agreement provides for a comprehensive and updated agreement. The 1996 agreement was amended in 1999 and extended by resolution three times (04/03/01, 07/24/01, 05/21/02) to allow UTEP to apply for grants and complete capital projects. UTEP has completed the projects identified under the old agreement and the City would like to solidify the future projects identified for implementation.

The City, through the Department of Parks and Recreation, has agreed to contribute $10,000 annually to partially defray utility costs associated with the continuing development and management of the facility.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
City Council amended the 1996 agreement in 1999 and also approved three subsequent resolutions that extended the agreement.

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 Department of Parks and Recreation will expend $10,000 of its annual operating budget to fulfill this agreement. UTEP will fund any projects associated with their updated Management and Development Plans.

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

**********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 OF EL PASO TO ENTER INTO A LICENSE AGREEMENT WITH THE UNIVERSITY OF TEXAS AT EL PASO FOR THE DEVELOPMENT AND MAINTENANCE OF RIO BOSQUE PARK; SUPERCEDING ORDINANCES 12982 AND 014251; AND CANCELING THE LICENSE AGREEMENT APPROVED BY ORDINANCE #12982

WHEREAS, the El Paso County Water Improvement District No. 1 (EPCWID) operates and maintains an irrigation system within its boundaries which includes the Riverside Interceptor Drain, into which effluent is discharged from the Roberto R. Bustamante Waste Water Treatment Plant; and

WHEREAS, the City owns the Rio Bosque Park, which includes two real property transfers from the Department of the Interior, National Park Service's Federal Lands-to-Parks Program, for public park and recreation purposes, and which land is adjacent to the Roberto Bustamante Waste Water Treatment Plant; and

WHEREAS, pursuant to Ordinance No. 12982, the City approved a License Agreement on November 5, 1996 ("1996 License Agreement"), so that UTEP could develop and maintain a public park and a wetland habitat for migratory water fowl by diverting and allowing effluent from the Roberto R. Bustamante Waste Water Treatment Plant to flow through the Rio Bosque Park (hereinafter the "Premises") and then back into the Riverside Interceptor Drain; and

WHEREAS, the 1996 License Agreement was amended via Ordinance No. 014251 in 1999 to allow for the City to participate in grant applications for funding for the Premises and for the City to agree to a Memorandum for Services setting forth the work program of the U.S. EPA Assistance Agreement No. CD-986224-01-0; and

WHEREAS, the expiration date of said Memorandum for Services was extended by way of Resolution on April 3, 2001, July 24, 2001 and on May 21, 2002; and

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WHEREAS, the City Council desires to cancel the 1996 License Agreement authorized through Ordinance No. 12982 on November 5, 1996, to which action UTEP consents, due to changed circumstances, such as the addition of a well on the Premises and increased visitors and a related increase in utility costs, requiring an adjustment to the parties' responsibilities; and

WHEREAS, the City Council finds that the execution of a new license agreement ("Agreement") for the development and maintenance of the Premises, upon the terms and conditions set forth in Attachment "A" would be in the public interest, and that such Agreement supercedes any prior agreement between the parties related to the referenced subject matter;

WHEREAS, the present ordinance supercedes Ordinance No. 12982 and 014251 and any related Resolutions to those superceded ordinances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor is hereby authorized to execute, on behalf of the City of El Paso ("City"), the attached License Agreement for the development and maintenance of Rio Bosque Park, upon the following terms to the University of Texas at El Paso ("UTEP"):

(1) The area to be developed and maintained by UTEP is the Rio Bosque Park, located at 10716 Socorro Road, in El Paso, El Paso County, Texas, as further described in the License Agreement ("Agreement") attached hereto as Attachment "A" and known as the "Premises".

(2) The license period shall be for a primary term of thirty (30) years, with the possibility for two (2) extensions of five (5) years each, which extensions may be authorized by the City Manager or designee as long as UTEP is not in default of any portion of the Agreement.

(3) As consideration for the Agreement, UTEP shall provide both monetary and non-monetary consideration of certain additional in-kind public benefit consideration received, as outlined in greater detail in the attached Agreement. Although primary funding responsibility rests with UTEP, during the term of the Agreement, the City shall pay to UTEP $10,000 towards UTEP's development and maintenance of the Premises, as long as such funds are appropriated by City Council, on the dates described in the Agreement. In addition, the City may apply for, receive and contribute grant funding for the Agreement's purposes, as outlined in greater detail in Attachment

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"A". The City is contributing the Premises but retains the prior right to use the Premises as stated in the Agreement.

(4) Said Agreement from the City of El Paso to UTEP shall be in the form that is attached as Attachment "A" and incorporated herein by reference for all purposes as if set forth verbatim. The 1996 License Agreement authorized by the City by way of Ordinance No. 12982 is hereby cancelled and replaced by Attachment "A" hereto.

(5) The present ordinance supercedes Ordinance No. 12982 and 014251, and any Resolutions related to those superceded ordinances.

PASSED AND APPROVED this _____ day of _____, 2008.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS CONTENT:

_____
Nanette Smejkal, Director
Parks and Recreation Department

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ORDINANCE NO. _____
Document Name: Parks/UTEP-RIO BOSQUE ORDINANCE
Document #: 34352
Author_Id: JFLO

ATTACHMENT A

CITY CLERK DEPT.
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STATE OF TEXAS §
§
COUNTY OF EL PASO §

LICENSE AGREEMENT

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This Agreement is made this _____ day of _____, 2008, by and between the CITY OF EL PASO, hereinafter referred to as "City", and the UNIVERSITY OF TEXAS AT EL PASO, an agency of the State of Texas, hereinafter referred to as "UTEP".

WHEREAS, the El Paso County Water Improvement District No. 1 (EPCWID) operates and maintains an irrigation system within its boundaries which includes the Riverside Interceptor Drain, into which effluent is discharged from the Roberto R. Bustamante Waste Water Treatment Plant; and

WHEREAS, the City owns the Rio Bosque Park, which includes two real property transfers from the Department of the Interior, National Park Service's Federal Lands-to-Parks Program, for public park and recreation purposes, and which land is adjacent to the Roberto Bustamante Waste Water Treatment Plant; and

WHEREAS, the City approved a License Agreement on November 5, 1996 ("1996 License Agreement"), so that UTEP could develop and maintain a public park and a wetland habitat for migratory water fowl by diverting and allowing effluent from the Roberto R. Bustamante Waste Water Treatment Plant to flow through the Rio Bosque Park (hereinafter the "Premises") and then back into the Riverside Interceptor Drain; and

WHEREAS, the 1996 License Agreement was amended in 1999 to allow for the City to participate in grant applications for funding for the Premises and for the City to agree to a Memorandum for Services setting forth the work program of the U.S. EPA Assistance Agreement No. CD-986224-01-0; and

WHEREAS, the expiration date of said Memorandum for Services was extended by way of Resolution on April 3, 2001, July 24, 2001 and on May 21, 2002; and

WHEREAS, the 1996 License Agreement was terminated by mutual consent by the parties due to changed circumstances, such as the addition of a well on the Premises and increased visitors and related increase in utility costs, requiring an adjustment to the parties' responsibilities; and

WHEREAS, the City Council finds that the execution of a new license agreement ("Agreement") upon the terms and conditions hereinafter set forth would be in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and the Premises, the parties hereto agree and covenant as follows:

1. **Description.** The City grants UTEP permission to use the following described property situated at 10716 Socorro Road, El Paso, El Paso County, Texas, more particularly described as:

> 372 acres, more or less, being a portion of Tracts 13, 15A and 18 and Tracts 10B, 13B, 14A, 15B, 16, 17, and 19, Block 24, Socorro Grant Surveys and Tracts 6, 7, and 8A, Block 25, Socorro Grant Surveys, El Paso County, Texas as platted by the County of El Paso, Texas in November, 1927 and July, 1928 and U.S. Parcel No. 18 of the Rio Grande Rectification Project and the Desagua Drain in Tract 18, Block 24, Socorro Grant Surveys, the riverbed area between U.S. Parcel No. 18 and the Blocks 24, and 25, Socorro Grant Surveys, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof, and 0.45 acres, more or less, being a portion of Socorro Grant, Block 24, Tract 3, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds in Exhibit A-1 attached hereto and made a part hereof, and hereinafter referred to as the "Premises".

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2. **Term.** The term of this Agreement shall be thirty (30) years from the date hereof.

3. **Purpose.** The parties have entered into this Agreement with the mutual intention of allowing UTEP to develop and manage the Premises as a public park and recreational facility. It is anticipated by the parties to this Agreement that migratory water fowl and other wetland wildlife will inhabit the Premises on a seasonal basis and compatible outdoor recreation facilities will be developed by UTEP as funding and utilization become available.

4. **Consideration.**
   A. UTEP agrees to raise private and public funds and to use such funds to develop and maintain a wetland habitat for migratory water fowl in accordance with the

conceptual drawing attached hereto as Exhibit "B" and the Development Plan attached hereto as Exhibit "C" and made a part hereof.

B. UTEP agrees to develop and improve the Premises by making the following minimum improvements thereon:

1. Installation of a well capable of flooding a significant portion of the Premises' main water channel intermittently during the growing season; and
2. Installation of two windmills at two locations near the Premises' wetland cells to provide water and two small permanent wetlands at strategic locations;
3. Development of an access bridge crossing the Riverside Canal near the Premises' southeast corner that can provide convenient, direct access to the Premises from Socorro Road; and
4. Development of a parking area for the Park near the access bridge site.

In addition, UTEP contemplates a number of future projects and developed facilities on the Premises, as more particularly described in the Development Plan attached hereto and made a part hereof for all purposes.

C. UTEP agrees to have personnel present during any construction contemplated by the Development Plan and/or the Management Plan, which is attached hereto as Exhibit "D" and made a part hereof for all purposes, and to oversee the construction of all improvements in accordance with approved plans and specifications.

D. UTEP shall maintain the Premises upon completion of construction as outlined in the Management Plan. Although UTEP agrees to maintain the Premises as outlined in the Management Plan, UTEP reserves the right to modify said Management Plan with the prior approval of the City, which approval the City agrees not to unreasonably withhold, in order to effectively manage the Premises.

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E. UTEP's obligations for funding, water availability, and access are outlined in the Development and Management Plans. Should UTEP encounter difficulties with funding, water availability and access as described in the Development and Management Plans, UTEP will make the necessary modifications to the Development and Management Plans, in accordance with the terms and conditions of this License Agreement, in a good faith effort to develop and manage the Premises as a public park and a wetland habitat for migratory water fowl.

F. During the term of this Agreement, the City shall provide to UTEP funding in the amount of TEN THOUSAND DOLLARS AND NO/100 ($10,000.00) for UTEP's development and management of the Premises as a public park and recreational facility, during each fiscal year in accordance with the City's budget cycle. The City shall provide UTEP the first payment on or before February 1, 2008, the second payment on September 1, 2008, and each subsequent payment on September 1st of each subsequent calendar year. The awarding and performance of this payment from the City is dependent upon the availability of funding to the City. In the event that funds relating to this paragraph 4.F. do not become available, such as by City Council not appropriating the funds, the City

shall have no obligation to pay UTEP for the City's fiscal year during which time such funding is not available or appropriated. Should the City experience a funding unavailability, the parties may mutually determine if the Agreement will be terminated or whether an amendment of the parties' obligations is possible. Termination or cancellation shall be as provided herein, and there shall be no penalty charges incurred by the City for such termination or cancellation.

G. While the parties recognize that UTEP has primary fundraising responsibilities in accordance with paragraph 4.A. hereinabove, the City may participate in the application for and receipt of grant funding to fulfill the purposes of the Agreement.

5. **Improvements.** All facilities at the Premises will be constructed in accordance with the Development Plan. All structures and other improvements shall be of substantial construction and good architectural design. The architectural design and the plans and specifications for all structures and other improvements shall be subject to approval by the City, said approval not to be unreasonably withheld. All plans, drawings, surveys and specifications must comply with all federal, state and local laws, rules and regulations. UTEP will be responsible for obtaining all required licenses and permits. The City agrees to assist UTEP in acquiring any such licenses and permits.

In addition, UTEP shall not construct any additional improvements, or make any additions or alterations without first obtaining the written permission of the City. UTEP shall submit to the City the plans and specifications for any proposed improvements, additions, alterations or changes and no work thereon shall be commenced until the City has given its approval, which permission the City agrees not to unreasonably withhold.

All improvements and structures shall remain the property of UTEP until termination of the Agreement, whether by expiration of the term or otherwise, and shall then become the property of the City.

Except for the financial contribution described hereinabove in 4.F. and grant monies available to the City through 4.G.., this Agreement in every sense shall be without cost to the City for the development, maintenance or improvement of the Premises unless the City is specifically made responsible for such development, maintenance or improvement of the Premises by the terms hereof or by grant agreements related to the Premises. It shall be the sole responsibility of UTEP to

keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at UTEP's sole cost and expense.

In addition, UTEP agrees to not work contrary to the terms and conditions of the August 18, 1987 Memorandum of Agreement between the City Council and the Public Service Board of the City of El Paso, in it present form or as it may be revised in the future with respect to the legal description or any other terms, in relation to the development of a parking area, a copy of which is attached hereto as Exhibit "E" and incorporated herein for all purposes.

6. **Reports.** UTEP shall provide the City with a written annual report of its fund raising activities. UTEP shall actively pursue all avenues to acquire necessary funding and promote outdoor utilization. In addition, UTEP will provide a project status update to the City in two (2) years from execution of this Agreement and every two (2) years thereafter.

7. **Use of Premises.** All improvements to be placed on the Premises shall be under the control of UTEP. UTEP agrees, however, to make all facilities on the Premises open to the public on a non-discriminatory basis.

As an incident to such use, UTEP may from time to time generate revenue from the use of the Premises or for functions which are suitable public park and a wetland habitat for migratory water fowl, with the revenues from such uses to be used for the purpose of constructing and maintaining the Premises. All such revenue generating uses shall be non-discriminatory and the amount thereof shall be subject to approval by the City Council of the City, such approval not to be unreasonably withheld.

8. **Books and Records.** UTEP will keep adequate books and records, in a form to be approved by the City, to show at all times the amount of the receipts and expenditures on the Premises, in UTEP's operations under the Agreement, and in activities and functions conducted on the Premises. The City's authorized representative may examine such books and records at all reasonable times.

9. **Improper Use.** UTEP shall not permit on the Premises any entertainment, amusement or other activity which violates any federal or state statute or City ordinance, including but not limited to the serving or possession of alcoholic beverages. In addition, UTEP shall prohibit the possession

of firearms on the Premises and shall prohibit hunting on the Premises. UTEP shall use its best efforts to prevent disorder and conduct amounting to nuisance. The Premises shall not be used for any purpose except as contemplated by this Agreement, unless written permission of the City Council is first obtained. UTEP may make reasonable rules for use of the Premises to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon. Such rules shall be subject to approval by the City Council, such approval not to be unreasonably withheld.

10. **Environmental Assessment and Archaeological Clearance.** UTEP will be responsible for obtaining any required environmental assessment, including without limitation the assessment as it relates to archaeological, cultural and historic properties, and providing the City with a copy of the environmental assessment in relation to any future projects on the Premises.

11. **Water.** The City does not in any manner guarantee, warrant or make any representations regarding the quantity, quality or appropriateness of the water which is discharged from the Roberto R. Bustamante Waste Water Treatment Plan, which will be used as water flowing through the Rio Bosque Park. UTEP shall be responsible for obtaining all permits and licenses from the appropriate governmental agencies for the use of reclaimed water, including but not limited to all requirements of 30 TAC Chapter 310, and its successors.

12. **Access.** UTEP shall obtain the necessary permits, provide, construct and maintain access to the Premises as shown on Exhibit "F" which is attached hereto and incorporated herein for all purposes.

13. **Repairs.** UTEP will keep the Premises and all improvements in good condition and repair, and in the case of damage or destruction by fire or other casualty will promptly restore or replace the improvements. UTEP will at all times keep the Premises and all improvements in clean, orderly and attractive condition.

14. **Cancellation.** If UTEP should cease to use or occupy the Premises for the purposes herein contemplated for a time period of more than twelve (12) continuous months, or if UTEP defaults in any of its obligations under this Agreement and fails to correct such default within sixty (60) days

after written notice to do so, the City Council may cancel this Agreement and take possession of the Premises; and all rights of UTEP in the Premises shall then terminate. Any waiver by the City of any breach of any of UTEP'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 UTEP. The parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.

15. **Assignment and Subletting.** UTEP shall not assign this Agreement without the prior written consent of the City Council, except that UTEP may grant permission, in the nature of licenses as that term is used in real property law, but not in the nature of agreements or subagreements, for the use of the Premises 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 of first refusal on all licenses.

16. **Liens and Encumbrances.** UTEP shall not give or permit any liens or encumbrances on the Premises or any of the improvements thereon, and upon termination of the Agreement shall peacefully surrender such Premises and improvements to the City free of all such liens or encumbrances. In addition, to the extent allowed by State law, UTEP shall defend and indemnify and hold harmless the City against any liability and loss of any type arising from any such lien or encumbrance on the Premises or improvements, together with reasonable attorney's fees (to the extent allowed by state law), costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.

17. **Disputes.** This project is a cooperative effort by the parties, and the parties commit to resolve any disputes that may arise in a cooperative manner.

18. **Independent Contractor Status.** All parties to this Agreement are independent contractors, and nothing in this Agreement is intended, nor shall be construed to create, between the parties, an employer/employee relationship. The sole interest is that services covered by this Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner.

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19. **Indemnification and Hold Harmless.** To the extent allowed by state law, UTEP shall defend and indemnify and hold the City harmless from any and all claims of any nature whatsoever arising out the rights granted under this Agreement and the development of the Premises, together with reasonable attorney's fees (to the extent allowed by state law), costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such claims. In addition, to the extent allowed by state law, UTEP will further defend, hold the City harmless from and indemnify it against any claim for damages for personal injury or property arising out of the condition of the Premises or the use of the same, together with reasonable attorney's fees (to the extent allowed by state law), costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against such claims.

20. **Discrimination.** UTEP, its officers, agents, servants, employees, volunteers, and third parties will not on account of race, color, religion, sex, or national origin, permit or allow any discrimination in the work done pursuant to this Agreement.

21. **Miscellaneous.**

A. **Right of Entry and Inspection.** The City's authorized representative shall have the right to enter upon the Premises and the improvements constructed thereon at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

B. **Laws and Ordinances.** UTEP shall comply with all applicable statutes, laws, codes and ordinances applicable to UTEP's use or occupancy of the Premises or any improvements thereon. In addition, UTEP shall obtain all required permits and inspections and pay the necessary permit fees.

C. **Outside Lighting.** Outside lighting will be operated in a manner consistent with a public park and a wetland habitat for migratory water fowl and will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other Premises in the neighborhood. If this provision is violated, the City Council may require any such lighting to be extinguished, changed or removed at UTEP's expense.

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D. **Cutting or Filling.** No cuts or fills shall be done on the Premises nor any grubbing, grading or moving of earth performed, unless such work has received the prior written approval of the City Engineer of the City of El Paso and a grading permit obtained, if required by the City's grading ordinance.

E. **Garbage and Trash.** UTEP 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 operations on the Premises. UTEP shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, trash or similar items on the Premises shall not be permitted.

F. **Utilities.** UTEP shall pay the cost of extending water, sewer, gas and electric lines to the Premises, and shall assume and promptly pay for all other costs or charges for utility services furnished to the Premises during the term of this Agreement, including the cost of extending utility lines within the boundaries of the Premises, connecting to such lines and setting meters. The City's $10,000.00 annual contribution shall be used to partly defray the utility costs for the development and management of the Premises.

G. **Signs.** All signs on the Premises shall comply with all City building codes and the City's sign ordinance, as well as, other regulations of other governmental entities.

H. **Time of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

I. **Successors and Assigns.** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

J. **Notices.** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid addressed to the proper parties at the following addresses:

City: City of El Paso
City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

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Copy to: City of El Paso
Director of Parks and Recreation
2 Civic Center Plaza
El Paso, Texas 79901-1196

UTEP: Office of the President
Richard Adauto, III
Executive Vice President
University of Texas at El Paso
500 West University Avenue
El Paso, Texas 79968

or to such other addresses as the parties may designate to each other in writing from time to time.

K. **Attorney's Fees.** In any action brought by either party for the enforcement of the provisions of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees, to the extent allowed by state law.

L. **Law Governing.** The laws of the State of Texas shall govern the validity, performance and enforcement of this Agreement.

M. **Entire Agreement.** This document contains all of the agreements between the parties and may not be modified except by an agreement in writing signed by both parties.

N. **Severability.** The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

22. **Restrictions and Reservations.** This Agreement is subject to the following restrictions, reservations, exceptions and conditions:

A. All rights of way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land.

B. All terms and conditions of a Quitclaim Deed from the United States Department of the Interior to the City on November 16, 1973, and a Quitclaim Deed from the United States Department of the Interior to the City on July 28, 1977, which contain restrictions including but not limited to the use of the properties for park or recreational purposes, which obligations, conditions, covenants and agreements, UTEP hereby agrees, by execution of the Agreement, to assume and be

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bound by. Copies of such quitclaims are attached hereto, marked Exhibit "G" and made a part hereof for all purposes.

C. There is reserved to the City and its assigns the prior right to use any of the Premises described to construct, operate and maintain structures and facilities including but not limited to canals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, telephone and telegraph lines, communication facilities and other public structures and facilities, without any payment made by the City or its successors for such right.

D. UTEP and all persons and legal entities who, through contractual or other arrangements, are authorized to operate on the Premises or to provide services or benefits thereon, covenant and agree to comply with all regulations of the Department of the Interior in effect on the date hereof (43 CFR Part 17) issued under Title VI of the Civil Rights Act of 1964.

WITNESS the following signatures and seal:

(signatures to follow on next page)

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CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Nanette L. Smejkal, Director
Parks and Recreation Department

UNIVERSITY OF TEXAS AT EL PASO:

By: _____
Diana S. Natalicio
President