

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

DEPARTMENT: Parks and Recreation
AGENDA DATE: February 5, 2008
CONTACT PERSON/PHONE: Barry Russell (915) 541-4292
DISTRICT(S) AFFECTED: District 4

CITY CLERK DEPT.
08 JAN 28 PM 1:42

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.

A resolution authorizing the City Manager to sign a Lease Agreement between the City and the Tobin Park United Methodist Church for the use of the land for Student Memorial Park located at 9425 Vicksburg Drive.

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?

On March 9, 1972, the City entered into an agreement with the Tobin Park United Methodist Church to lease a 2.334 acre part of their property as a park. The original term of the lease was for ten (10) years. The terms of the lease allowed for the City to improve the park at the will of the City.

Last year the City became aware that the lease had expired in 1982. Discussions with the President of the Board of Trustees for the Church resulted in consensus to continue the arrangement. The new lease agreement will be for a period of fifty (50) years with the option to renew for two additional terms of five (5) years.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes. City Council approved the original agreement on March 9, 1972.

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?

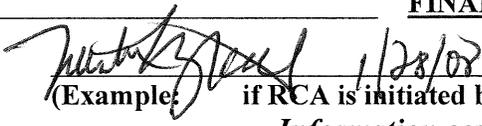
The agreement calls for an annual payment of One and no/100 Dollars (\$1.00) to be paid on the 1st day of April in each year during the term of the agreement. Funds are available in the Parks and Recreation operating budget.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

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

DEPARTMENT HEAD:  1/28/08
(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:** _____

RESOLUTION

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

THAT, the City Manager be authorized to sign a Lease Agreement with Tobin Park United Methodist Church, for that certain real property (“the Property”) consisting of 2.334 acres in Section 1, Block 81, Township 2, Texas and Pacific Railroad Survey, El Paso, El Paso County, Texas, for an initial term of fifty (50) years with two five-year extension options and a purchase option available to the City, so that the City may continue to utilize the Property as a park for the benefit of the citizens of El Paso, Texas; and

THAT, the City Council of the City of El Paso finds that the execution of such Lease Agreement, upon the terms and conditions set forth therein, serves a public purpose and is in the public interest;

APPROVED this _____ day of _____, 2008.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

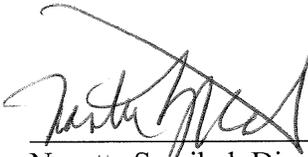
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APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette Smejkal, Director
Parks & Recreation Department

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STATE OF TEXAS

)

LEASE AGREEMENT

COUNTY OF EL PASO

)

THIS LEASE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2008 (the “Effective Date”), by and between the TOBIN PARK UNITED METHODIST CHURCH, a corporation formed under the Texas Non-Profit Corporation Act (“Lessor”), and THE CITY OF EL PASO, a municipal corporation existing under the laws of the State of Texas (“Lessee”).

WITNESSETH:

WHEREAS, the Lessor owns the real property more particularly described by metes and bounds in Exhibit “A” (“Property”), on which signage, an irrigation system, grass, trees, play equipment and a drinking fountain and related amenities (herein the “Facilities”) have been installed or constructed, and which property will be operated as a public park for the benefit of the citizens of El Paso, Texas; and

WHEREAS, the parties desire to bind themselves in the interest of the maintenance and operation of said Facilities in a manner best suited to meet the public needs and interest.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants herein contained, the parties agree as follows:

SECTION 1: LEASED PREMISES

1.1 DEMISE OF REAL PROPERTY. For and in consideration of the mutual covenants hereof, Lessor hereby leases to Lessee and Lessee hereby agrees to lease from Lessor the real property known as Student Memorial Park (“Leased Premises”), containing 2.334 acres in Section 1, Block 381, Township 2, Texas and Pacific Railroad Survey, El Paso, El Paso County, Texas, and more specifically described by metes and bounds in Exhibit “A” attached hereto and by this reference incorporated herein and made a part hereof.

SECTION 2: TERM

2.1 INITIAL TERM. The term of this Agreement shall be for a period of fifty (50) years commencing on the Effective Date and expiring on the last day of the month fifty years thereafter.

2.2. EXTENSION. Lessee shall have the option, if Lessee is not then in default, to extend this Agreement for two (2) additional terms of five (5) years each (“Extension”). To receive an Extension, Lessee must notify Lessor in writing of Lessee’s request to exercise the option at least ninety (90) days prior to the expiration of the then existing term (including any Extension).

2.3. PURCHASE OPTION. Lessee shall have the option during the initial term, if Lessee is not then in default, to negotiate the purchase of the Leased Premises with and purchase same from Lessor. To exercise this purchase option, Lessee must notify Lessor in writing of Lessee’s request to exercise the purchase option at least one hundred twenty (120) days prior to the desired purchase date.

SECTION 3: CONSIDERATION

Lessee shall pay to the Lessor as rent the sum of One and no/100 Dollars (\$1.00) in advance on the first day of April in each year during the term or any Extension thereof. The awarding and performance of this payment from the Lessee is dependent upon the availability of funding to the City. In the event that funds relating to this Section 3 do not become available, such as by City Council not appropriating the funds, the City shall have no obligation to pay Lessor 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 Lessee for such termination or cancellation. The Facilities shall be open to the public. Fifteen (15) days of each calendar year, Lessee shall make the Facilities available to Lessor free of charge.

SECTION 4:

USES, PRIVILEGES AND OBLIGATIONS OF THE LESSEE

4.1 USE. Lessee shall use the Leased Premises as a site for a public park and will keep it in suitable condition for this purpose. Lessee will maintain and operate a public park at the Leased Premises at its sole expense during the term hereof. Lessee shall not use the Leased Premises or any portion thereof for any other purpose than that hereinabove set forth without first having obtained the written approval of Lessor, which consent shall not be unreasonably withheld. Lessee agrees that, in the use and operation of the Leased Premises, it shall comply with all present or future City ordinances, state and federal laws, and respective rules and regulation.

4.2 CONSTRUCTION ADDENDUM. Notwithstanding anything in this Agreement to the contrary, either party may begin construction or installation of any agreed upon additional park amenities, pursuant to the terms of an addendum to this Agreement addressing the type, quantity and location of such construction and installation of improvements. The party constructing or installing such improvements shall diligently prosecute same to completion. All construction plans and specifications and proposed improvements to the Leased Premises must be approved by Lessor, the Director or the City's Parks and Recreation Department and the City Engineer prior to commencement of such construction or installation. Subsequent to such approval, the party responsible for such construction or improvement shall install improvements in accordance with such plans and specifications within a reasonable time after their approval. Any and all buildings, improvements, fixtures, machinery and equipment of whatever nature at any time constructed, placed or maintained on any part of the Leased Premises are and remain the property of the party constructing such improvements during the term of this Agreement. Upon the expiration of the term or earlier termination of this Agreement, all improvements to the Leased Premises constructed or installed by Lessee shall be owned by the Lessee. The Facilities constructed shall meet or exceed all standards for facilities constructed in City parks.

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4.2.1 In addition, the party proposing the construction shall provide the City Engineer with a grading and drainage plan and a geological study to demonstrate that the development of the Leased Premises will not result in flooding problems or destabilization of any slope. Construction oversight shall be done by the City of El Paso Engineering Department to assure that the design capacities and storm water run-off flows for the Leased Premises are not materially changed.

4.3 ACCESS AND REPORTS. Lessor agrees to allow Lessee and its agents reasonable access to the Leased Premises during the initial term or Extension or any purchase option negotiation period, and agrees to provide Lessee with complete access to any and all boundary and topographical surveys, soils reports, environmental reports, and other documents in Lessor's possession and control relating to the Leased Premises.

4.4 MAINTENANCE. Lessee expressly agrees that, throughout the lease term, it shall, at its cost, maintain, use and operate the Leased Premises and all improvements, furnishings, fixtures and equipment thereon in a clean, wholesome, and sanitary condition. Lessee will water and maintain all trees, grass and vegetation and keep them in good condition. Authorized agents of Lessor, may at any reasonable time, without notice, enter upon the Leased Premises to determine if satisfactory maintenance is being performed. If it is determined by Lessor's agents qualified or certified in the care and maintenance of parks facilities that maintenance is not being reasonably performed in the judgment of Lessor, Lessor shall notify Lessee in writing specifying Lessor's complaints and, if satisfactory maintenance is not performed or ongoing with due diligence by Lessee within thirty (30) days after receipt of written notice, Lessor or its agents shall have the right to enter upon the Leased Premises and perform the maintenance therefor, and Lessee agrees to promptly reimburse Lessor for the cost thereof.

SECTION 5: FACILITIES

5.1 GENERAL. The parties agree that any lighting installed at the Leased Premises shall be installed in such a manner as to minimize light pollution.

5.2 TRASH AND GARBAGE. Lessee shall provide and pay all costs for a complete and proper arrangement for the adequate, sanitary handling of all trash, garbage and other refuse caused as a result of its operations pursuant hereto and shall provide for its timely removal in accordance with all applicable laws or regulation.

SECTION 6: DAMAGE OR DESTRUCTION OF LEASED PREMISES.

6.1 PARTIAL DAMAGE. If all or a portion of the Leased Premises, developed by Lessee, is partially damaged by flood, fire, explosion, the elements, public enemy, or other casualty, but if none of the Leased Premises is rendered untenable, the same will be repaired with due diligence by Lessee, subject to the limitations of Subsection 6.3.

6.2 EXTENSIVE DAMAGE. If the damage by causes referred to in Subsection 6.1 shall be so extensive as to render a substantial portion of the Leased Premises unusable, the same shall be repaired with due diligence by Lessee subject to the limitation of Subsection 6.3, and the rental payable herein shall abate from the time of such damage until such time as the Leased Premises are fully restored and certified by Lessee as ready for occupancy.

6.3 COMPLETE DESTRUCTION. In the event that the Facilities or structures constructed during the initial period or extension thereof is completely destroyed by fire, explosion, the elements, the public enemy or other casualty or so damaged that they are untenable within the last two years of the term or any extension thereof, Lessee shall be under no obligation to repair, replace and reconstruct said premises, and rental payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as such buildings are fully restored, if ever. If within three (3) months after the time of such damage or destruction such portions of the Leased Premises shall not have been repaired or reconstructed, Lessor may cancel this Agreement in its entirety or only as to that portion of the Leased Premises completely destroyed as of the date of such damage or destruction.

6.4 LIMIT OF OBLIGATIONS. It is understood that, in the application of the foregoing Subsections 6.1, 6.2 and 6.3, Lessee's obligations shall be limited to repair or

reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement date hereof.

SECTION 7: TERMINATION

7.1 TERMINATION BY MUTUAL CONSENT. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

7.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Lessee and Lessor that either party may terminate this Agreement in whole or in part under the following circumstances.

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7.2.1 Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **ninety (90) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

7.2.2 Rent due shall be payable only to the date of cancellation.

7.3 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert 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.

7.3.1 Except as otherwise provided herein, all duties and obligations of the Lessee shall cease upon termination or expiration of this Agreement.

7.3.2 Lessor understands and agrees that in the event of public necessity, acts of God, and/or any other circumstances beyond the control of the Lessee, it becomes necessary for the Lessee to cancel this Agreement, the Lessee may do so without liability of any type to Lessor, and Lessor forever releases the Lessee from any and all claims whatsoever occasioned by cancellation of this Agreement pursuant to this paragraph.

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7.3.3 Lessor understands and agrees that if Lessee's use of the Facilities is cancelled by the Lessor due to acts of God, and/or any circumstance, it shall return the contribution made by the Lessee specifically for the Facilities within thirty (30) days of the cancellation.

7.4 RE-ENTRY. Should Lessee fail to cure such default within the time allowed hereinabove, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within ninety (90) days, Lessee shall be deemed to have cured such default if within such ninety (90) day period it shall commence performance and thereafter diligently prosecute the same to completion.

7.5 RIGHT OF ENTRY UPON TERMINATION. In any case in which provision is made herein for the termination or cancellation of this Agreement by Lessor, Lessor in lieu of declaring forfeiture may enter upon the Leased Premises.

SECTION 8: ASSIGNMENT, TRANSFER AND SUBLETTING

Except as provided hereinafter, Lessee shall not lease, sell, assign, transfer or sublet this Agreement or any interest in this Agreement without the prior written consent of Lessor, not to be unreasonably withheld.

SECTION 9: TAXES AND LICENSES

Lessor shall pay, or in good faith contest, all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Lessor with respect to the Leased Premises, and any of Lessor's equipment, furnishings, and fixtures, the leasehold privileges and operations or both hereunder upon the Leased Premises during the term of this Agreement including any extensions or option periods granted thereto. The Lessor shall obtain and pay for all licenses or permits necessary or required by law for the construction of additions or improvements that it undertakes, the installation of its equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder.

SECTION 10: INSPECTION OF PREMISES

Lessor or its duly authorized representatives may enter upon the said Leased Premises at any reasonable time during the term of this Agreement for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of Lessor.

SECTION 11: HOLDING OVER

Should Lessee hold over said Leased Premises after this Agreement has terminated in any manner, during such holding over the Lessee shall be deemed a tenant at sufferance on the same terms and conditions as herein provided.

SECTION 12: QUIET ENJOYMENT

Lessor agrees that Lessee, upon payment of the Rentals and all other payments and charges to be paid by Lessee under the terms of this Agreement and upon observing and keeping each of the covenants of this Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises, equipment, furniture and fixtures during the term of this Agreement.

SECTION 13: HAZARDOUS SUBSTANCE

No goods, merchandise or materials shall be kept, stored or sold in or on said Leased Premises which are explosive or hazardous and which are not in customary use in the businesses herein authorized.

SECTION 14: WAIVERS

No waiver by Lessor or Lessee at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter or the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. It is agreed that each and all of the rights, powers, options, or remedies given to Lessee and to Lessor by this Agreement are cumulative and no one of them shall be exclusive of the other or inclusive of any remedies

provided by law, and that the exercise of one right, power, option, or remedy by Lessee or by Lessor shall not impair its right to any other right, power, option, or remedy.

SECTION 15: UTILITIES; WATER

Lessee shall pay before delinquency all charges for electricity and water, and other utility services used on or serving the Leased Premises during the term of this Agreement.

SECTION 16: SEVERABILITY

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

SECTION 17: EMINENT DOMAIN

If the Leased Premises, or a substantial part thereof, shall be lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, the term of this Agreement shall end upon, and not before, the date of the taking of possession by the condemning authority. Current Rentals shall be apportioned as of the date of such termination, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. If any part of the Leased Premises not constituting a substantial part thereof shall be so taken or condemned or conveyed under threat of such taking or condemnation, or if the grade of any street adjacent to the Leased Premises is changed by any competent authority and such taking or change of grade makes it necessary or desirable substantially to remodel or restore the Leased Premises, Lessee shall have the right to cancel this Agreement, such cancellation to take place not later than the date of this taking of possession by the condemning authority, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. Lessor will give Lessee notice of such intended taking or condemnation within a reasonable time of its receipt of same.

SECTION 18: TERMS BINDING UPON SUCCESSORS

All the terms, conditions and covenants of this Agreement shall inure to the benefit of and by binding upon the successors and assigns of the parties hereto. The provisions of this

Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

SECTION 19: NOTICES

All notices provided for herein shall be in writing. Any notice permitted or required to be given to the parties hereto shall be effective if hand delivered or mailed certified, return receipt requested to the parties at the following addresses:

Lessor: James Morris
President Board of Trustees
Tobin Park United Methodist Church
9410 Roanoke Drive
El Paso, TX 79924

City (Lessee): Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

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

Any of the necessary notices may be sent to the foregoing addresses or another address of the party, provided that notice of change of address has been given to the party to be bound by the notice in writing before hand.

SECTION 20: AGREEMENT MADE IN TEXAS

This Agreement has been made in and shall be construed in accordance with the laws of the State of Texas. All duties obligations, liabilities of the parties with respect to the Leased Premises are expressly set forth herein, and this Agreement can only be amended by an instrument in writing and agreed to by both parties.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

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CITY OF EL PASO

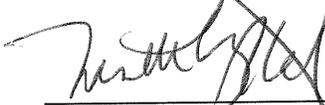
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette Smejkal, Director
Parks & Recreation Department

WITNESS:

TOBIN PARK UNITED METHODIST
CHURCH

Name (printed) _____
Title: _____



James Morris
President Board of Trustees

(Acknowledgments on following page)

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ACKNOWLEDGMENT

THE STATE OF TEXAS }

}

COUNTY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2008,
by _____, as _____ of the CITY OF EL PASO.

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS }

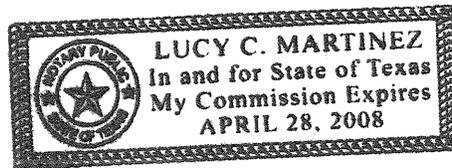
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COUNTY OF EL PASO }

This instrument was acknowledged before me on this 25 day of January, 2008,
by James Morris, as President of Trustees
of TOBIN PARK UNITED METHODIST CHURCH.

Lucy C. Martinez

Notary Public, State of Texas



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EXHIBIT “A”

Property Description

WILLIAMS ENGINEERING COMPANY
CIVIL ENGINEERS • SURVEYORS
CITY CLERK DEPT.

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Telephone (AC 915) 532-8487
104 North Kansas Street
EL PASO, TEXAS 79901

November 29, 1971

PROPERTY DESCRIPTION

Being the description for 2.334 acres of land out of Section 1, Block 81, Township 2, Texas and Pacific Railroad Survey, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a point which bears North $1^{\circ}10'30''$ West a distance of 488.00 feet from the intersection of the centerlines of Vicksburg Drive and Wren Avenue; said point being the Southeast corner of this parcel;

THENCE South $88^{\circ}49'30''$ West a distance of 230.00 feet to a point for the Southwest corner of this parcel;

THENCE North $1^{\circ}10'30''$ West a distance of 442.00 feet along the East right-of-way line of Roanoke Drive to a point for the Northwest corner of this parcel;

THENCE North $88^{\circ}49'30''$ East a distance of 230.00 feet to the Northeast corner of this parcel;

THENCE South $1^{\circ}10'30''$ East a distance of 442.00 feet along the centerline of Vicksburg Drive to the Southeast corner of this parcel the point of beginning.

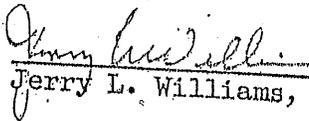
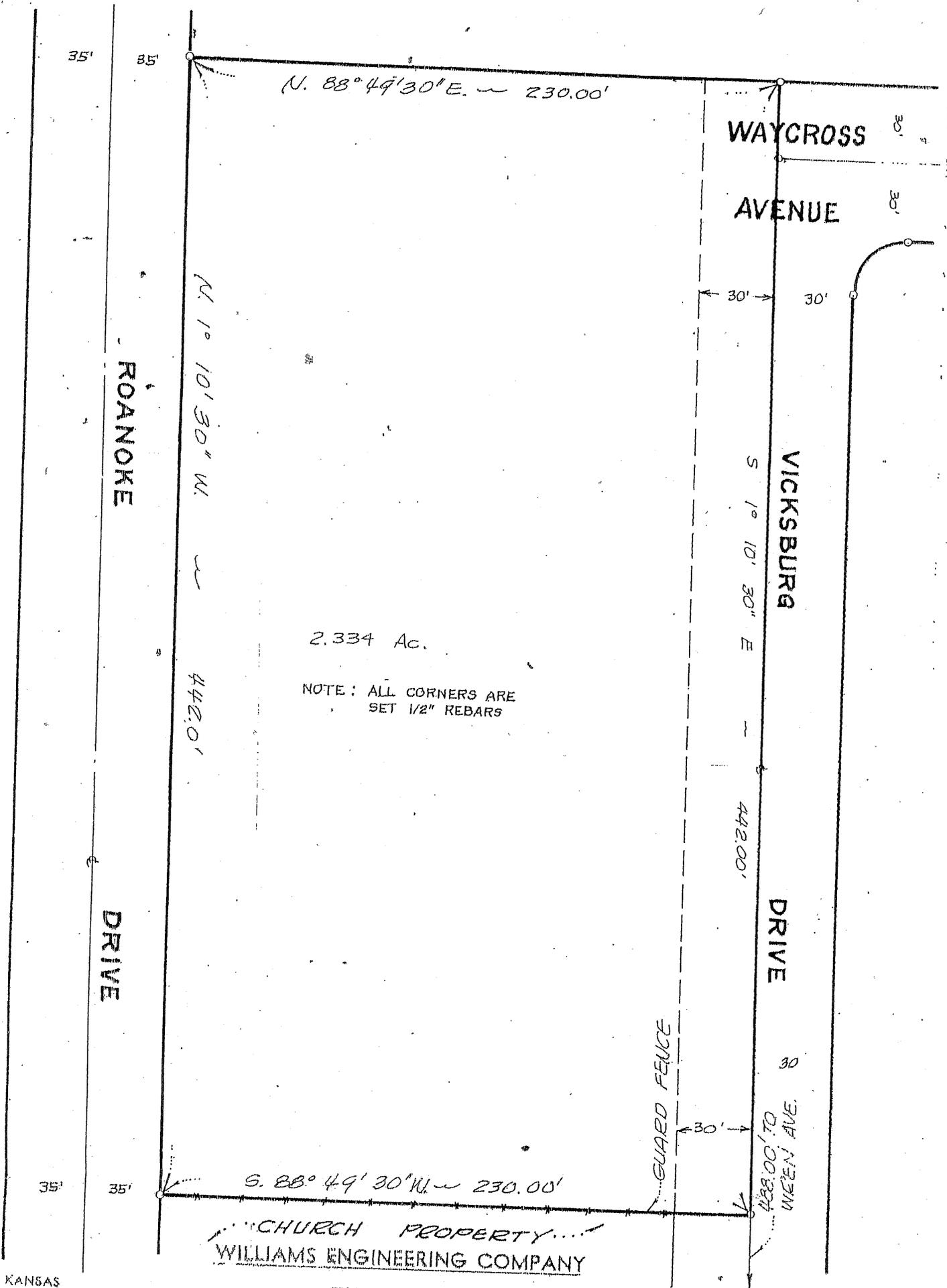

Jerry L. Williams, P.E.

Exhibit "A"

W-2678

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2.334 Ac.

NOTE: ALL CORNERS ARE SET 1/2" REBARS

CHURCH PROPERTY
WILLIAMS ENGINEERING COMPANY

TELEPHONE 532-8487

EL PASO, TEXAS

Revised 11-24-71

DATE 11-23-71

SCALE 1" = 50'

PLATTED BY J.E.L. / J.W.K.

PLAT OF SURVEY - PORTION OF SECTION 1 BLOCK 81 TWS. 2

T & P. RR. SURVEYS

CITY OF EL PASO EL PASO COUNTY, TEXAS

FILE NO. 2678

PLAT RECORDED - EL PASO COUNTY PLAT RECORDS

VOLUME PAGE

I HEREBY CERTIFY THAT ALL STRUCTURES ARE LOCATED UPON SUBJECT PROPERTY AS INDICATED BY THE ACCOMPANYING PLAT TO SCALE AND, EXCEPT AS SHOWN THEREUPON THERE ARE NO ENCROACHMENTS OR VISIBLE VIOLATIONS:

Jerry L. Williams
JERRY L. WILLIAMS P.E.