



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE WITH EL PASO INDEPENDENT SCHOOL DISTRICT FOR 85,400 SQUARE FEET OF PROPERTY AT MEMORIAL PARK (INCLUDING A PORTION OF A VACATED STREET) FOR A 99 YEAR TERM. CONSIDERATION WILL BE A 99 YEAR LEASE OF DISTRICT PROPERTY IN NORTHEAST EL PASO FOR CITY’S USE AS A PUBLIC PARK.**

**WHEREAS**, the City of El Paso (“City”) and the El Paso Independent School District (“District”) are political subdivisions of the State of Texas, and are authorized to provide recreational and education services;

**WHEREAS**, the District and the City are interested in exchanging properties by lease to the other party in order to develop the properties for such governmental recreation and educational purposes;

**WHEREAS**, the District seeks the lease a 42,440 square foot portion of Memorial Park and a 42,960 square foot portion of the right-of-way known as Wheeling Street (near the intersection with Luna Street) which is owned by the City in fee and proposed to be concurrently vacated (collectively, the “Memorial/Crockett Site”), the boundaries of which project site are attached as Exhibit “A”, so that the District may construct certain school and related facilities for the adjacent Crockett Elementary School;

**WHEREAS**, City staff has recommended that the City lease the Memorial/Crockett Site to the District in exchange and in consideration for the District’s concurrent lease to the City of a 110,808 square foot property that is adjacent to Wainwright Elementary School in Northeast El Paso (“Wainwright Site”) so that the City may construct facilities for park and recreational uses in an underserved area;

**WHEREAS**, the City and District also contemplate the a future lease of City property and vacation of City right-of-way to the District for facilities at El Paso High School (“Shuster Property”);

**WHEREAS**, the parties acknowledge that the value of the Wainwright Site exceeds the value of the Memorial/Crockett site and have proposed that the City give a credit to the District which can be used in a contemplated future transaction between the City and District;

**WHEREAS**, on January 31, 2012, the City Council adopted a resolution approving the lease of a portion of Memorial Park to the District for the school expansion and determined that there is no feasible and prudent alternative to the use of the park land and the proposed plans for the school

expansion include all reasonable planning to minimize harm to the land as a park resulting from the use; and

**WHEREAS**, City staff recommends that the City enter into the 99 year lease to the District for the combined 85,400 square foot Memorial Park/vacated street land for the District’s school and related program facilities.

**THEREFORE, 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 Lease with El Paso Independent School District for 85,400 square feet of property at Memorial Park (including a portion of a vacated street) for a 99 year term, which consideration shall be a 99 year lease of property in Northeast El Paso from El Paso Independent School District for City’s use as a park, and City Manager is further authorized to sign all documents necessary to effectuate this transaction.

**PASSED AND APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2012.

**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook  
Mayor

\_\_\_\_\_  
Richarda Duffy Momsen,  
City Clerk

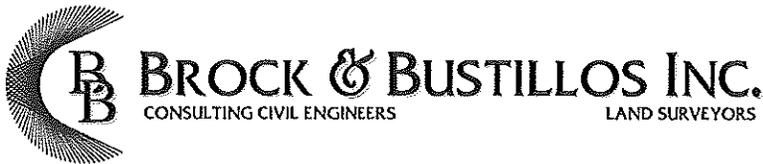
**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

\_\_\_\_\_  
R. Alan Shubert, P.E., City Engineer  
Engineering & Construction Management Dept.

\_\_\_\_\_  
Nanette Smejkal, Director  
Parks and Recreation Department



ROMAN BUSTILLOS, P.E.  
President

RANDY P. BROCK, P.E.  
Executive Vice President

SERGIO J. ADAME, P.E.  
Vice President - Engineering

OSCAR V. PEREZ  
Vice President - Operations

ISAAC CAMACHO, R.P.L.S.  
Survey Manager

TBPE Reg No. F-737

## METES AND BOUNDS DESCRIPTION "LEASE AREA"

*A 0.9743 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Block 13, Manhattan Heights Addition and a portion of un-platted land in Memorial Park and being more particularly described by metes and bounds as follows.*

**COMMENCING** for reference at an existing City Monument found at the monument line intersection of Aurora Street (70.00 feet wide) and Luna Street (70.00 feet wide), said monument line intersection located 10.00 feet north and 10.00 feet east of the centerline intersection of Aurora Street and Luna Street and whence an existing City Monument found at the monument line intersection of Aurora Street and Copia Street (right-of-way varies), said monument line intersection located at 10.00 feet north and 35.69 feet east of the centerline intersection of Aurora Street and Copia Street, bears North 90°00'00" East, a distance of 668.69 feet and whence an existing City Monument found at the monument line intersection of Aurora Street and San Marcial Street (70.00 feet wide), said monument line intersection located at 10.00 feet north and 10.00 feet east of the centerline intersection of Aurora Street and San Marcial Street, bears South 90°00'00" West, a distance of 695.00 feet; **THENCE**, leaving the monument line of Aurora Street and following the monument line of Luna Street, South 00°00'00" East, a distance of 305.00 feet; **THENCE**, leaving the monument line of Luna Street, North 90°00'00" East, at a distance of 25.00 feet to the intersection of the east right-of-way line of Luna Street and the north right-of-way line of Wheeling Street (70.00 feet wide); **THENCE**, leaving the north-right-of-way line of Wheeling Street and following the east right-of-way of Luna Street, South 00°00'00" East, a distance of 70.00 feet to the intersection of the east right-of-way line of Luna Street and the south right-of-way line of Wheeling Street (70.00 feet wide); **THENCE**, leaving the east right-of-way of Luna Street and following the south-right-of-way line of Wheeling Street, North 90°00'00" East, a distance of 227.32 feet to the **POINT OF BEGINNING** of the parcel herein described;

**THENCE**, continuing along the south right-of-way line of Wheeling Street, North 90°00'00" East, a distance of 386.40 feet to the east boundary line of Manhattan Heights Addition for the northeast corner of said Block 13 and an angle point of the parcel herein described;

**THENCE**, leaving the south right-of-way line of Wheeling and following the east boundary line of Manhattan Heights Addition, North 00°00'00" West, a distance of 330.00 feet to the west right-of-way line of Copia Street for the northeast corner of Block 12, Manhattan Heights Addition and the most northerly corner of the parcel herein described;

**THENCE**, leaving the east boundary line of Manhattan Heights Addition and following the west right-of-way line of Copia Street, South 12°35'53" East, a distance of 90.77 feet to a point of curvature;

**THENCE**, continuing along the west right-of-way line of Copia Street and following a curve to the right having a radius of 1,400.40 feet, a central angle of 08°40'00", an arc length of 211.83 feet and whose long chord bears South 08°15'53" East, a distance of 211.62 feet to a point of tangency;

**THENCE**, continuing along the west right-of-way line of Copia Street, South 03°55'53" East, a distance of 131.43 feet to the southeast corner of the parcel herein described;

**THENCE**, leaving the west right-of-way line of Copia Street, South 89°01'40" West, at a distance of 59.24 feet pass the east boundary line of said Block 13 and at a total distance of 286.95 feet to the southwest corner of the parcel herein described;

**THENCE**, North 00°00'00" West, a distance of 81.13 feet to an angle point;

**THENCE**, South 90°00'00" West, a distance of 122.81 feet to an angle point;

**THENCE**, North 57°30'00" West, a distance of 42.57 feet to the **POINT OF BEGINNING**.

*Said parcel containing 0.9743 acres (42,439.8 square feet), more or less, and being subject to easements of record.*



Isaac Camacho

TX R.P.L.S. No. 5337

Date: February 17, 2010

05687-057 Revised Lease Area.doc



STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

**GROUND LEASE AGREEMENT**  
**(MEMORIAL/CROCKETT)**

THIS GROUND LEASE AGREEMENT (the “Lease”) made and entered into as of this \_\_\_\_\_ of March, 2012, by and between the City of El Paso, Texas, a home-rule municipality (“Landlord” or “City”), and El Paso Independent School District, a Texas independent school district pursuant to the Texas Government Code Section 791.001 et seq. (“Tenant” or “EPISD”).

**WITNESSETH**

- A. Landlord and Tenant are political subdivisions of the State of Texas, and are authorized to provide recreational and education services.
- B. Landlord is the owner of two tracts of land located in the City of El Paso, El Paso County, Texas, containing nine thousand seven hundred forty-three one-thousandths (0.9743) acres, more particularly described in Exhibit “A” attached hereto and shown on the boundary survey as Parcels A and B, which is attached as Exhibit “B” made apart hereof for all purposes (collectively, the “Land”).
- C. A portion of the Land (described as Parcel A herein) was previously a portion of Wheeling Street, a city street that has been vacated by the City pursuant to state and local law, while the remaining portion of the Land (described as Parcel B herein) is currently designated by the City as a public park commonly known as Memorial Park, and is adjacent to EPISD’s Crockett Elementary School (“Crockett ES”).
- D. As the adjacent property owner, EPISD has a fee interest in one-half of the vacated Wheeling Street and, concurrent herewith, City has agreed to convey to its rights this portion of the vacated right-of-way to EPISD pursuant to Local Government Code Section 272.001(l) for an amount that is less than fair market value since the vacated street will be used for construction of additional educational facilities and the City has a right to use such facilities under the terms and conditions of an Interlocal Agreement between the City and EPISD dated August 9, 2005.
- E. Tenant desires to lease the Land from Landlord for the purposes of constructing educational facilities in conjunction with Crockett ES upon the terms and conditions set forth herein.
- F. Concurrent hereto, the City and EPISD have entered into that certain Ground Lease (Wainwright) for property owned by EPISD adjacent to Wainwright Elementary School and leased to City as Tenant, for the purposes of constructing and operating a public park in substitution of the parkland leased herein.
- G. The parties agree to pay for the performance of governmental functions and services from current revenues available to the paying party at the date of execution of this Agreement.

H. Landlord and Tenant agree that the two ground leases will be of mutual benefit through enhancing each party's ability to deliver governmental functions and services by allowing Tenant to use the Land to construct facilities for the education of its students and by permitting Landlord to use the parks and recreation facilities to be constructed by Landlord adjacent to Wainwright ES for the benefit of its citizens and that the rent and other consideration, including the terms and conditions of the leases, reflect a fair value to Landlord and Tenant for the lease of the each party's land.

**NOW, THEREFORE,** in consideration of the covenants, conditions and provisions set forth herein, the parties hereto agree as follows:

## ARTICLE I

### Defined Terms

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

**“Base Rental”** shall mean ONE DOLLAR AND NO 00/100THS (\$1.00) per year.

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

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

**“Land”** means the real property described in Exhibit “A”.

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

**“Permitted Use”** means the use and occupancy of the Demised Premises for operation of a school and related purposes.

## ARTICLE II

### Grant and Term of Lease, Rental; Use

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

**Section 2.02. Base Rental.** As rent for the Demised Premises, Tenant hereby agrees to pay to Landlord, without deduction, set-off, prior notice or demand, Base Rental. The Base Rental for the entire Lease Term shall be paid upon execution of the Lease. As additional consideration for this Lease, Tenant has leased to the Landlord that certain land owned by Tenant adjacent to Wainwright ES for new park facilities, as described in that certain Ground Lease (Wainwright) dated March \_\_\_\_\_, 2012.

**Section 2.03 Offsetting Consideration/Property Values.** The parties hereto agree that, the fair market value of the Land is One Hundred Two Thousand and No/100 Dollars (\$102,000.00) and the fair market value of the real property subject to the Ground Lease (Wainwright) is One Hundred Seventy-Nine Thousand Forty-Eight and No/100 Dollars (\$179,048.00). The parties acknowledge that that pursuant to Government Code Section 272.001(l), the City is concurrently vacating a portion of the right-of-way on Wheeling Street and conveying its interest in such right-of-way in an amount of Three Thousand Four Hundred Thirty-Six and No/100 Dollars (\$3,436.00) which is part of the City's consideration for this transaction. The parties acknowledge and agree that the difference in value of Seventy-Three Thousand Six Hundred Twelve and No/100 Dollars (\$73,612.00) (the "EPISD Credit") shall be applied as a credit against any amounts that become due and owing from the EPISD to the City for the City's vacation of Virginia Street or any other acquisition of real property by EPISD from the City by lease or by deed.

**Section 2.04. Additional Consideration.** As additional consideration for this Lease, Landlord and Tenant agree that the parties may use the facilities constructed on the leased properties under the terms and conditions of an Interlocal Agreement between the City and EPISD dated August 9, 2005, as it may be amended from time to time by the parties. During the use of such facilities, the obligation of the parties for insurance, repair and liability shall be governed by the terms of such Interlocal Agreement.

**Section 2.05. "Net" Rental.** This is an absolutely net lease, and except as is otherwise expressly herein provided, all taxes, utilities, costs of improvements, maintenance, repairs, alterations, additions, replacements, and insurance relating to the Demised Premises shall be at the sole cost and expense of Tenant; and Landlord shall not be obligated to make any improvements, repairs, alterations, additions, or replacements whatsoever to the Demised Premises. Throughout the term of this Lease, Tenant, at Tenant's own cost and expense, shall keep the Improvements, and all appurtenances thereunto belonging, in good and safe condition, order, and repair; and Tenant shall conform to and comply with all valid ordinances, regulations or laws (federal, state or municipal) affecting the Demised Premises, and Tenant shall be responsible for all penalties, damages, or charges imposed or incurred for any violation by Tenant of such ordinances, regulations, or laws whether occasioned by the neglect of Tenant or by Tenant's agent, contractor, or licensee then upon or using the Demised Premises. Tenant shall also be responsible for any and all costs arising out of any accident or other occurrence causing injury to or death of persons, or damage to property, due to the condition of the Demised Premises, or of any buildings or other Improvements now or hereafter situated thereon, or the fixtures or personal property thereon or therein, or due to the use or neglect thereof by Tenant or any other persons holding under Tenant. It is not Tenant's intent, nor

should this provision be construed otherwise, to waive Tenant's governmental immunities against premises defects or any legal defenses to any suits or claims for damages.

**Section 2.06. Permitted Use.**

A. The Demised Premises may be used only for the Permitted Use.

B. In no event may all or any portion of the Demised Premises be used for any unlawful use or any use other than the Permitted Use, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

**Section 2.07. Hazardous Materials.** No goods, merchandise or materials shall be kept, stored or sold in or on said Demised Premises which are explosive or hazardous and which are not in customary use in the businesses herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. All herbicides and pesticides applied to the Demised Premises by the Tenant should conform to the requirements of the Texas Occupations Code and the Tenant's Integrated Pest Management Plan, as such may hereafter be amended, a copy of which has been provided to and approved by the Landlord.

**ARTICLE III**

**Construction of Improvements**

**Section 3.01. Construction of Improvements.** Tenant shall have the right to construct Improvements on the Property.

**Section 3.02. Procurement/Bonds.** In the event of any construction on the Demised Premises, the Tenant shall select a Contractor to complete the construction. Tenant shall cause its contractor, at its own cost and expense, to make, execute, and deliver to Tenant and Landlord two (2) separate bonds, as follows:

A. Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of cost of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.

B. Prior to the date of commencement of any construction, a payment bond with Tenant's contractor or contractors as principal, in a sum equal to the full amount of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.

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

but excluding HVAC, plumbing, electrical, and mechanical equipment, and personalty) shall be surrendered to and become the absolute property of Landlord upon the termination of the Lease Term, whether by expiration of time or otherwise.

**Section 3.04. Liens.** It is expressly acknowledged and understood that Landlord does not consent, and has not by the execution and delivery of this Lease consented, to the imposition of any liens upon the Landlord's interest in the Demised Premises by any party whomsoever. Tenant covenants and agrees that all Improvements at any time constructed upon the Demised Premises will be completed free and clear of all valid liens and claims of contractors, subcontractors, mechanics, laborers and materialmen, and other claimants related to the Improvements.

#### ARTICLE IV

##### **No Leasehold Mortgage**

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

#### ARTICLE V

##### **Assignment and Subletting**

**Section 5.01. Assignment.** Assignment is prohibited.

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

#### ARTICLE VI

##### **Maintenance and Repair**

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

**Section 6.02. Repairs, Compliance with Laws.** Tenant shall keep all Improvements from time to time situated on the Land in good repair and condition, and at the end or other expiration of the term of this Lease deliver up the Demised Premises and all Improvements thereon in good condition, reasonable wear and tear and loss or damage by fire or other casualty occurring during the last two (2) years of the Lease Term excepted. Tenant agrees that in case of damage to, or destruction of, any Improvements or the fixtures and equipment thereof, by fire or other casualty prior to the last ten (10) years of the Lease Term, it will promptly, at its own expense, repair, or rebuild the same to the end that upon the completion of such repairs, restoration or rebuilding the value, both physical and economic, of the Improvements shall be at

least substantially equal to the physical and economic value of the same immediately prior to the happening of such fire or other casualty. Tenant shall at its sole cost and expense comply with all municipal, state and federal regulations now in force or which may hereafter be in force, pertaining to the Demised Premises and shall faithfully observe in the use of the Demised Premises all municipal, state and federal laws and regulations now in force or which may hereafter be in force. In case of damage to, or destruction of, any Improvements or the fixtures and equipment thereof, by fire or other casualty during the last ten (10) years of the Lease Term, Tenant may, at its option by written notice to Landlord given within sixty (60) days of such casualty, terminate this Lease by delivering to Landlord written notice of such termination, whereupon Tenant shall be responsible for cleaning and clearing the damaged facilities from the Land in compliance with all municipal ordinances.

## ARTICLE VII

### Insurance

**Section 7.01. Liability Insurance.** Tenant shall provide commercial general 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 Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage growing out of any one accident or other cause.

**Section 7.02. Property Insurance.** Tenant agrees to provide and maintain at all times during this Lease at Tenant's own cost and expense, for the benefit of Landlord and Tenant, as their interests may appear, property insurance to include but not limited to perils such as fire, extended coverage, vandalism, malicious mischief, windstorm, hail, etc. in an amount covering the Improvements and any equipment, trade fixtures, furnishings, inventory, or personalty of Tenant at not less than 100% of their full insurable value. Tenant agrees to add City of El Paso as an additional insured to any property coverage.

**Section 7.03. Workers Compensation.** At its sole cost and expense and throughout the Term of this Lease and any extensions thereto, Tenant shall maintain Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employer's liability. The coverage shall include a waiver of subrogation in favor of the City of El Paso.

Landlord agrees that Tenant may self-insure against the risks described in this Section 7.03 to the extent permitted by state law, providing that Tenant shall provide evidence of such compliance with state law. Tenant hereby waives its right of recovery against Landlord and its officers, employees or agents of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws.

### **Section 7.04. General Provisions.**

A. Tenant may maintain all insurance required by this Article VII through an interlocal cooperative.

B. All insurance required by this Article VII shall (1) provide that such insurance, as to the interest of Landlord, shall not be invalidated by any act or omission of Tenant or any occupant of the Demised Premises which might otherwise result in the forfeiture of such insurance; (2) provide that they shall not be canceled or the amount of coverage changed unless and until not less than thirty (30) days prior written notice has been served upon Landlord and Tenant; (3) certificates evidencing such insurance shall be furnished to Landlord by Tenant.

C. No performance required by this Agreement shall be rendered by the Landlord until Tenant files a copy of the policy or certificate of liability insurance with the City Clerk and the Parks Department. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be constitute an Event of Default.

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

**Section 7.05. Application of Proceeds of Property Insurance.** All proceeds payable pursuant to the provisions of any policies of casualty insurance shall be collected and held by Tenant in an account designated for the following purposes, which account shall be promptly identified to Landlord and Landlord shall be regularly apprised of the amount of funds in such account, and such funds shall be applied for the following purposes:

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

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

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

**Section 7.06. Premiums.** All premiums and charges for all of said insurance policies shall be paid by Tenant when due. If Tenant shall fail and neglect to make any payment when due, Landlord may, but shall not be obligated to, make such payment or carry such policy, and the amount of any premium paid therefor shall forthwith be repaid by Tenant.

**Section 7.07. Renewal Policies.** At least thirty (30) days prior to the expiration of each such insurance policy, Tenant shall deliver to Landlord copies of a renewal policy, binder or certificate of insurance which shall comply with the foregoing provision with respect to prior notice of cancellation thereof being given by the insurance company to Landlord. In the event of the failure of Tenant to procure and deliver such renewal policy or policies, binder or binders, or certificates therefor within the time prescribed above, Landlord shall be permitted to do so and the premiums charged therefor shall be borne and forthwith paid by Tenant.

**Section 7.08. Loss Adjustments.** Landlord and Tenant shall have the right to participate in all negotiations relating to loss adjustments for the Demised Premises.

## ARTICLE VIII

### Utility Charges, Liability

**Section 8.01. Utility Charges.** Tenant shall pay or cause to be paid promptly when due all charges for water, electricity, gas, sewer, telephone, cable or any other services furnished to the Demised Premises. Tenant expressly agrees that Landlord is not, nor shall it be, required to furnish to Tenant or any other occupant of the Demised Premises any water, sewer, gas, heat, electricity, light, power, cable, or any other facilities, equipment, labor, materials or services of any kind whatsoever. Landlord shall not be responsible for the payment of utilities for the property covered by this Lease.

#### **Section 8.02. Liability.**

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

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

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

## ARTICLE IX

### Condemnation

**Section 9.01. Definitions.** Wherever used in this Article, the following words shall have the definitions and meaning hereinafter set forth:

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

**Section 9.02. Entire Taking.** If substantially all of the Demised Premises shall be taken in condemnation proceedings, this Lease shall terminate as of the taking.

**Section 9.03. Partial Taking.** If less than substantially all of the Demised Premises shall be taken in condemnation proceedings, and Tenant shall determine in its reasonable business judgment, within ninety (90) days after such taking, that the remaining building or buildings cannot be economically and feasibly used by Tenant, Landlord or Tenant, at their election, may terminate this Lease on thirty (30) days notice to the other party to such effect.

**Section 9.04. Application of Award.** If this Lease shall terminate pursuant to the provisions of Section 9.02 or Section 9.03 of this Article, the condemnation award shall be apportioned and paid in the following order of priority:

- A. There shall be first paid any and all reasonable expenses, charges and fees, including reasonable attorney’s fees, in collecting the award.
- B. Landlord shall then be entitled to receive an amount equal to the fair market value of the Land (but not the Improvements) constituting part of the Demised Premises.
- C. The balance of the award, if any, shall be paid to Tenant and Landlord shall have no obligation to refund any of the Base Rental.

**Section 9.05. Application of Award in Partial Taking.** If it is determined pursuant to the provisions of Section 9.03, that the remaining Improvements after a partial condemnation can be used economically by Tenant, (i) this Lease shall not terminate but shall continue in full force and effect as to the portion of the Demised Premises not taken, and (ii) Tenant shall commence and proceed with reasonable diligence to repair or reconstruct the remaining building or buildings on the Demised Premises to a complete architectural unit or units to the extent proceeds of the condemnation award are available therefor. Landlord’s share of the award in condemnation proceedings for any partial taking where repair or reconstruction is undertaken shall be apportioned and paid in the following order of priority:

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

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

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

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

**Section 9.06. Consent to Settlement by Landlord.** Tenant shall have primary responsibility for dealing with the condemning authority in the condemnation proceedings but Tenant shall not make any settlement with the condemning authority nor convey or agree to convey the whole or any portion of the Demised Premises to such authority in lieu of condemnation without first obtaining the written consent of Landlord thereto.

## ARTICLE X

### Default

**Section 10.01. Events of Default.** The following events ("**Events of Default**") shall be deemed to be events of default by Tenant under this Lease:

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

B. If Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent or other sums of money, and shall not cure such failure within thirty (30) days after due written notice thereof to Tenant; or if such failure cannot reasonably be cured within the said thirty (30) days and Tenant shall not have commenced to cure such failure within such thirty (30) day period and shall not thereafter with all due diligence and good faith proceed to cure such failure as soon as reasonably practicable.

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

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

E. If Tenant abandons the Demised Premises for two (2) consecutive years by failing to use same for operation of a public school and related programs.

**Section 10.02. Remedies.** Upon the occurrence of any such Event of Default, Landlord shall have the right, at Landlord's election to pursue, in addition to and cumulative of any other rights Landlord may have, at law or in equity, any one or more the following remedies without any notice or demand whatsoever:

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

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

**Section 10.03. Cumulative Rights.** Pursuit of any of the foregoing remedies shall not preclude Landlord's pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided, upon any event of default, shall not be deemed or construed to constitute a waiver of such default or of any other violations or breach of any of the terms, provisions and covenants herein contained. In determining the amount of loss or damage which Landlord may suffer by reason of termination of this Lease or the deficiency arising by reason of the reletting by Landlord as above provided, allowance shall be made for the expense of repossession and any repairs reasonably undertaken by Landlord following repossession in order to return the Demised Premises to substantially the same condition as at the time of default, normal wear and tear expected.

**Section 10.04. Re-Entry of Landlord.** No re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant. Landlord, at its option, may make such alterations, repairs and/or decorations to the Improvements as it, in its reasonable judgment, considers advisable and necessary upon the occurrence of an Event of Default, at the cost of Tenant, and the making of such alterations, repairs and decoration shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises and the Improvements or, in the event the Demised Premises and the Improvements are relet, for failure to collect rent thereof under such reletting; and in no event shall Tenant be entitled to receive any excess of such rent over the sums payable by Tenant to Landlord hereunder.

**Section 10.05. Effect of Waiver or Forbearance.** No waiver by Landlord of any breach by Tenant of any of its obligations, agreements, or covenants hereunder shall be a waiver

of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of its rights and remedies with respect to such subsequent breach.

## ARTICLE XI

### Attorney's Fees

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

## ARTICLE XII

### Miscellaneous

**Section 12.01. Inspection.** Tenant shall permit Landlord and its agents to enter into and upon Demised Premises at all reasonable times and upon reasonable notice for the purpose of inspecting the same or undertaking any rights of Landlord under this Lease.

**Section 12.02. Release.** If requested by Landlord, Tenant shall upon termination of this Lease, execute and deliver to Landlord an appropriate release, in recordable form, of all Tenant's interest in the Demised Premises, and upon request of Tenant, Landlord will execute and deliver a written cancellation and termination of Lease in recordable form; provided, that in no event shall any such release, cancellation or termination constitute a release or relinquishment by either party of his or its rights against the other party for any amounts payable by such other party under the terms of this Lease or any damages to which such party is entitled as a result of any default by the other party hereunder.

**Section 12.03. Landlord's Right to Perform Tenant's Covenants.** If Tenant shall default in the performance of any of its covenants, obligations or agreements contained in this Lease and shall not have cured the default within the time limitations set forth in Section 10.01, Landlord, after ten (10) days notice to Tenant, specifying such default (or shorter notice of any emergency exists), may (but without any obligation so to do) perform the same for the account and at the expense of Tenant, and the amount of any payment made or other reasonable expenses, including reasonable attorney's fees incurred by Landlord for curing such default, with interest thereon at the highest lawful rate per annum, shall be payable by Tenant to Landlord on demand.

**Section 12.04. Non-Merger.** There shall be no merger of this Lease, the leasehold estate created hereby or the Improvements with the fee estate in and to the Demised Premises by reason of the fact that this Lease, the leasehold estate created thereby or the Improvements, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Demised Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease, the leasehold estate or the Improvements, shall join in a written instrument affecting such merger.

**Section 12.05. Notices.** Any notice required or permitted to be delivered hereunder or by law shall be delivered to the parties hereto at the respective addresses set out below:

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

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

City of El Paso  
ATTN: Capital Assets Manager  
2 Civic Center Plaza  
El Paso, TX 79901

If to Tenant: El Paso Independent School District  
ATTN: Associate Superintendent, Operation  
6531 Boeing  
El Paso, TX 79925

and also: Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
Attn: John S. Birkelbach  
100 N. Stanton Street, Suite 1000  
El Paso, Texas 79901

Each party hereto shall have the right, by giving not less than ten (10) days prior written notice to the other party hereto, to change any address of such party for the purpose of notices under this Section 12.06.

**Section 12.06. Successors and Assigns.** The word "Landlord" as used in this instrument shall extend to and include each entity succeeding to Landlord's rights under law as well as any and all persons, whether natural or artificial, who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the Demised Premises; and all of the covenants, agreements, conditions, and stipulations herein contained which inure to the benefit of and are binding upon Landlord shall also inure to the benefit of and shall be, jointly and severally binding upon the successors and grantees of Landlord, and each of them and any and all persons who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Landlord in the real estate and property hereby demised. The word "Tenant" as used in this instrument shall extend to and include each entity succeeding to Tenant's rights under law, as well as any and all persons, whether natural or artificial, who at any time or from time to time during the term of this Lease shall succeed to the interest and estate of Tenant hereunder and all of the covenants, agreements, conditions and stipulations herein contained which inure to the benefit of and be jointly and severally binding upon the successors or other representatives of Tenant, and of any and all persons who shall at

any time or from time to time during the term of this Lease succeed to the interest and estate of Tenant hereby created in the Demised Premises.

**Section 12.07. Modifications.** This Lease may be modified only by written agreement signed by the Landlord and Tenant.

**Section 12.08. Descriptive Headings.** The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

**Section 12.09. No Joint Venture.** The relationship between Landlord and Tenant at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.

**Section 12.10. Non-Waiver. NOTWITHSTANDING ANY PROVISION CONTAINED HEREINTO TO THE CONTRARY, NEITHER LANDLORD NOR TENANT WAIVES ANY RIGHTS TO GOVERNMENTAL IMMUNITY OR ANY OTHER IMMUNITIES OR DEFENSES BY ITS EXECUTION OR DELIVERY OF THIS LEASE.**

**Section 12.11. Recording of Lease.** Landlord and Tenant agree that they shall, at any time at the request of the other, promptly execute a memorandum or short form of this Lease, in recordable form, setting forth a description of the Demised Premises, the term of this Lease, and any other provisions herein, or the substance thereof, as either party desires. This memorandum or short form lease may be filed among the land records of El Paso County, Texas.

**Section 12.12. Partial Invalidity.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to any person or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and be in force to the fullest extent permitted by law.

**Section 12.13. Holding Over.** Any holding over by Tenant of the Demised Premises after the expiration of the Lease Term shall operate and be construed as a tenancy from month to month at a monthly rental equal to the rental payable during the term of the Lease. Tenant agrees to surrender the Demised Premises after the termination of the Lease Term immediately upon demand by Landlord.

**Section 12.14. No Commissions.** Landlord and Tenant each represent to the other that it has not incurred and will not incur any liability for brokerage fees or agents commissions in connection with this Lease and Landlord and Tenant.

**Section 12.15. Quiet Enjoyment.** Landlord agrees that Tenant, upon payment of the Rentals and all other payments and charges to be paid by Tenant under the terms of this Lease and upon observing and keeping each of the covenants of this Lease on the part of Tenant to be

observed and kept, shall lawfully and quietly hold, occupy and enjoy the Demised Premises, equipment, furniture and fixtures during the Lease Term.

WITNESS the signatures of the parties hereto in duplicate originals this the \_\_\_\_\_ day of March \_\_\_\_\_, 2012.

*(signatures on next page)*

**CITY OF EL PASO**

---

Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

---

Bertha A. Ontiveros  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

---

R. Alan Shubert, P.E., City Engineer  
Engineering and Construction Management

---

Nanette Smejkal, Director  
Parks and Recreation Department

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

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

Given under my hand and seal of office on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Texas

My Commission Expires:  
  
\_\_\_\_\_

*(Signatures Continued on Next Page)*

**EL PASO INDEPENDENT SCHOOL DISTRICT**

ATTEST:

By: \_\_\_\_\_  
Isela Castañon Williams, President  
Board of Trustees

\_\_\_\_\_  
Joel F. Barrios  
Secretary, El Paso Independent School  
District Board of Trustees

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

BEFORE ME, the undersigned authority, in and for said County and State, on this day personally appeared Isela Castañon Williams, President of the Board of Trustees, El Paso Independent School District, El Paso, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said El Paso Independent School District, El Paso, Texas, and that she executed the same as the act of the said El Paso Independent School District, El Paso, Texas, for the purpose and consideration therein expressed, and in the capacity therein stated and as her free act and deed.

GIVEN under my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**



**METES AND BOUNDS DESCRIPTION**  
**"LEASE AREA"**

*A 0.9743 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Block 13, Manhattan Heights Addition and a portion of un-platted land in Memorial Park and being more particularly described by metes and bounds as follows.*

**COMMENCING** for reference at an existing City Monument found at the monument line intersection of Aurora Street (70.00 feet wide) and Luna Street (70.00 feet wide), said monument line intersection located 10.00 feet north and 10.00 feet east of the centerline intersection of Aurora Street and Luna Street and whence an existing City Monument found at the monument line intersection of Aurora Street and Copia Street (right-of-way varies), said monument line intersection located at 10.00 feet north and 35.69 feet east of the centerline intersection of Aurora Street and Copia Street, bears North 90°00'00" East, a distance of 668.69 feet and whence an existing City Monument found at the monument line intersection of Aurora Street and San Marcial Street (70.00 feet wide), said monument line intersection located at 10.00 feet north and 10.00 feet east of the centerline intersection of Aurora Street and San Marcial Street, bears South 90°00'00" West, a distance of 695.00 feet; **THENCE**, leaving the monument line of Aurora Street and following the monument line of Luna Street, South 00°00'00" East, a distance of 305.00 feet; **THENCE**, leaving the monument line of Luna Street, North 90°00'00" East, at a distance of 25.00 feet to the intersection of the east right-of-way line of Luna Street and the north right-of-way line of Wheeling Street (70.00 feet wide); **THENCE**, leaving the north-right-of-way line of Wheeling Street and following the east right-of-way of Luna Street, South 00°00'00" East, a distance of 70.00 feet to the intersection of the east right-of-way line of Luna Street and the south right-of-way line of Wheeling Street (70.00 feet wide); **THENCE**, leaving the east right-of-way of Luna Street and following the south-right-of-way line of Wheeling Street, North 90°00'00" East, a distance of 227.32 feet to the **POINT OF BEGINNING** of the parcel herein described;

**THENCE**, continuing along the south right-of-way line of Wheeling Street, North 90°00'00" East, a distance of 386.40 feet to the east boundary line of Manhattan Heights Addition for the northeast corner of said Block 13 and an angle point of the parcel herein described;

**THENCE**, leaving the south right-of-way line of Wheeling and following the east boundary line of Manhattan Heights Addition, North 00°00'00" West, a distance of 330.00 feet to the west right-of-way line of Copia Street for the northeast corner of Block 12, Manhattan Heights Addition and the most northerly corner of the parcel herein described;

**THENCE**, leaving the east boundary line of Manhattan Heights Addition and following the west right-of-way line of Copia Street, South 12°35'53" East, a distance of 90.77 feet to a point of curvature;

**THENCE**, continuing along the west right-of-way line of Copia Street and following a curve to the right having a radius of 1,400.40 feet, a central angle of 08°40'00", an arc length of 211.83 feet and whose long chord bears South 08°15'53" East, a distance of 211.62 feet to a point of tangency;

**THENCE**, continuing along the west right-of-way line of Copia Street, South 03°55'53" East, a distance of 131.43 feet to the southeast corner of the parcel herein described;

**THENCE**, leaving the west right-of-way line of Copia Street, South 89°01'40" West, at a distance of 59.24 feet pass the east boundary line of said Block 13 and at a total distance of 286.95 feet to the southwest corner of the parcel herein described;

**THENCE**, North 00°00'00" West, a distance of 81.13 feet to an angle point;

**THENCE**, South 90°00'00" West, a distance of 122.81 feet to an angle point;

**THENCE**, North 57°30'00" West, a distance of 42.57 feet to the **POINT OF BEGINNING**.

*Said parcel containing 0.9743 acres (42,439.8 square feet), more or less, and being subject to easements of record.*



Isaac Camacho

TX R.P.L.S. No. 5337

Date: February 17, 2010

05687-057 Revised Lease Area.doc



**EXHIBIT "B"**  
**BOUNDARY SURVEY**



# Memorial Park & Crockett Elementary School

