

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

DEPARTMENT:           Engineering & Construction Management

AGENDA DATE:         Regular Agenda March 20, 2012

CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer

DISTRICT AFFECTED: 2

**SUBJECT:**

A Resolution that, the El Paso City Council authorizes the City Manager to execute the Ground Lease (Wainwright) with El Paso Independent School District for the City's lease of a 110,808 square foot property depicted in Exhibit "A" that is adjacent to Wainwright Elementary School in Northeast El Paso for 99 years for the development of a park and related recreation facilities, in exchange and in consideration of the City's lease to the District of 85,400 square foot Memorial/Crockett properties. And, that, the City Council directs the City Manager to work with the staff of the El Paso Independent School District to identify appropriate property which the City may lease or purchase in exchange for a lease or sale of the Schuster Property to the District and negotiate and submit such appropriate documents for the City Council's consideration within 90 days.

**BACKGROUND / DISCUSSION:**

The City of El Paso and El Paso Independent School District (EPISD) have been working closely to identify properties on their respective inventory that were underutilized, and opportunities to put those areas identified back to productive use. During the analysis, it was discovered that Crockett School was encroaching onto a portion of Memorial Park. On December 13, 2011, City Council approved the intent to enter into a lease for a portion of Memorial Park and a portion of Wainwright school for use of a public park. The terms of the lease are:

- Lease to EPISD- .9743 acres of a parkland and a portion of Wheeling street for the proposed expansion of Crockett School
  - All utilities, maintenance, etc. will be paid by EPISD
- As consideration the City will lease from EPISD- a portion of Wainwright School for use of a public park
  - All utilities, maintenance ,etc. will be paid by City of El Paso

The Fair market value of the property is not equal; therefore, the difference will be applied to a pending transaction for a lease at El Paso High School.

Approval of the lease will provide the community a park site in an underserved area.

**PRIOR COUNCIL ACTION:**

December 13, 2011-Approved a resolution stating the intent of the City entering into a lease for properties at Memorial Park, Wainwright, and El Paso High School

January 31, 2012- Approved use of parkland by EPISD for the expansion of Crockett Elementary

**AMOUNT AND SOURCE OF FUNDING:**

**BOARD / COMMISSION ACTION:**

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

DEPARTMENT HEAD: \_\_\_\_\_



*Information copy to appropriate Deputy City Manager*

## **RESOLUTION**

**WHEREAS**, the El Paso Independent School District (“District”) and the City of El Paso (“City”) 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 or sale to the other party in order to develop the properties for such recreation and educational purposes;

**WHEREAS**, the City seeks the use of a 110,808 square foot property, the boundaries of which are attached as Exhibit “A” (“the Wainwright Site”), that is adjacent to Wainwright Elementary School in Northeast El Paso to construct facilities for park and recreational uses in an underserved area;

**WHEREAS**, the District will lease a 42,440 square foot portion of Memorial Park and a 42,960 square foot portion of the vacated right-of-way on Wheeling proposed to be concurrently vacated (collectively, the “Memorial/Crockett Site”) to construct certain school and related facilities for Crockett Elementary School;

**WHEREAS**, City staff has recommended that the City lease the Wainwright Site from the District in exchange and in consideration for the lease to the District of the Memorial/Crockett Site; and

**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; and

**WHEREAS**, City staff recommends that the City enter into the 99 year lease for the 110,808 square foot Wainwright Site owned by the District for City’s park and recreational uses.

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

That the City Manager is authorized to execute the Ground Lease (Wainwright) with El Paso Independent School District for the City’s lease of a 110,808 square foot property depicted in Exhibit “A” that is adjacent to Wainwright Elementary School in Northeast El Paso for 99 years for

the development of a park and related recreation facilities, in exchange and in consideration of the City's lease to the District of 85,400 square foot Memorial/Crockett properties and that the City Manager is authorized to sign any necessary documents to accomplish the intent of this Resolution.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2012

THE CITY OF EL PASO

ATTEST:

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

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



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

APPROVED AS TO CONTENT:



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



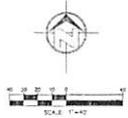
\_\_\_\_\_  
Nanette Smejkal, Director  
Parks and Recreation Department

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**



VICINITY MAP  
Scale = 1" = 50'



METES AND BOUNDS

The parcel of and herein described is portion of Lot 8 and a portion of Lot 9, Block 1, Sierra Vista Acres, an addition to the City of El Paso, El Paso County, Texas.

Commencing at an existing city monument lying on the centerline intersection of Arlen Avenue and Roberts Drive (80' public right-of-way); thence South 29° 30' 33" West, along the centerline of Roberts Drive, a distance of 1,042.71 feet to a set nail and stake on Lawrence Avenue; thence South 01° 03' 02" West, a distance of 38.38 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998"; thence on the southerly right-of-way line of Lawrence Avenue (80' public right-of-way); thence thence North 89° 51' 00" East, a distance of 30.99 feet; TRUE POINT OF BEGINNING of this description;

THENCE North 89° 51' 00" East, continuing along said right-of-way line, a distance of 123.22 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE South 29° 28' 00" West, a distance of 454.34 feet to a fixed 1/2" rebar lying on the northerly right-of-way line of Sierra Drive;

THENCE South 89° 51' 00" West, along said right-of-way line, a distance of 148.07 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 01° 02' 01" West, along said right-of-way line, a distance of 205.04 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 01° 13' 40" West, a distance of 116.19 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 89° 42' 41" East, a distance of 242.64 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 03° 04' 11" East, a distance of 23.80 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE South 89° 45' 03" East, a distance of 10.80 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

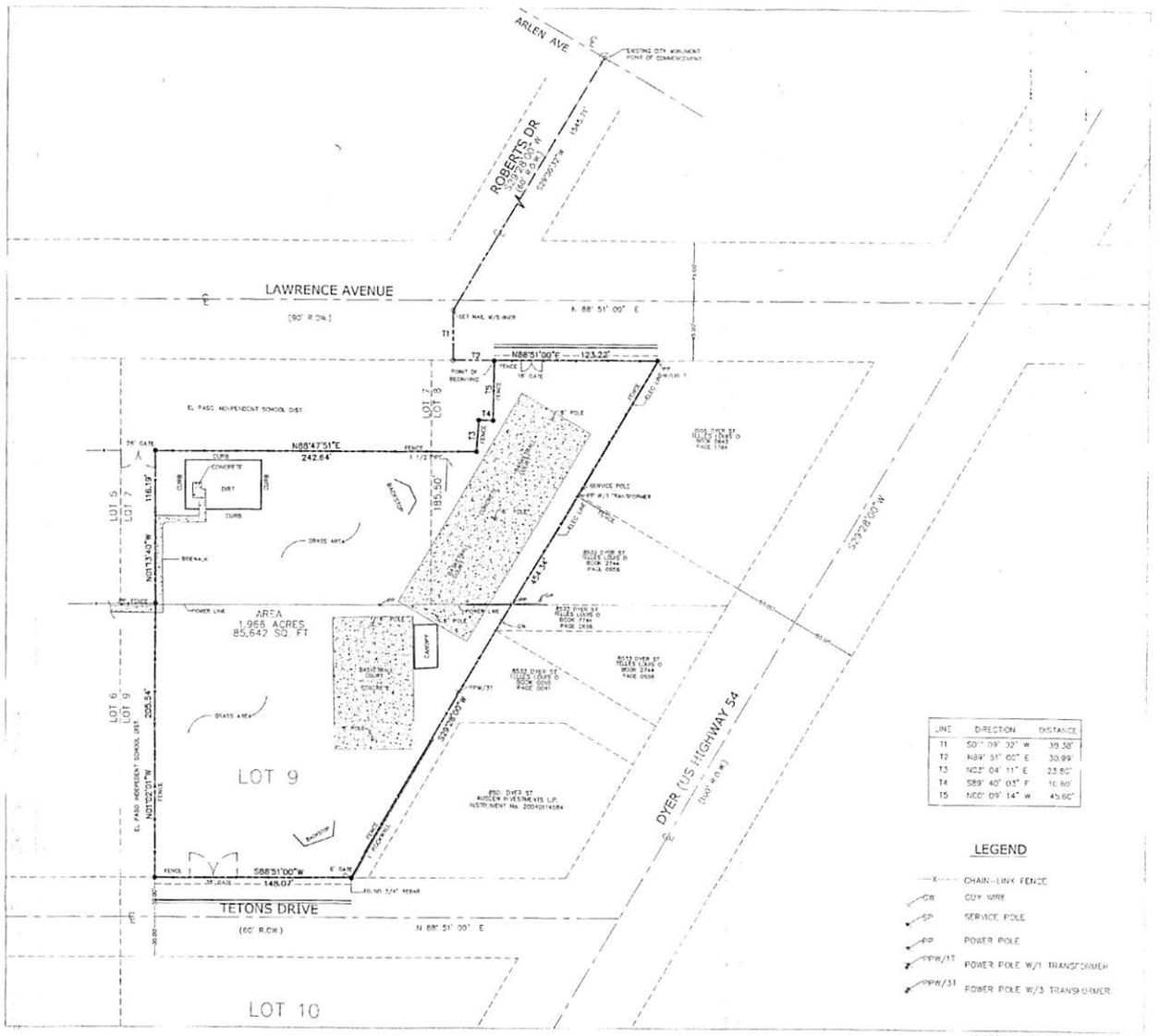
THENCE North 00° 09' 14" West, a distance of 45.00 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land containing 1.956 Acres (85,842 Sq. Ft.) of land more or less.

NOTES:

1. SET 1/2" IRON WITH S.J. CAP'S AMPED 1X2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
2. BASIS OF BEARING: PLAT OF SIERRA VISTA ACRES SUBDIVISION, RECORDED IN VOL. 10, PG. 41.
3. NO BUILDINGS EXIST ON THE PROPERTY.

NOTE:  
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED UNLESS SPECIFICALLY ACCEPTED BY SU ENGINEERING, INC. IN WRITING. SU ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.



| LINE | DIRECTION      | DISTANCE |
|------|----------------|----------|
| 11   | S01° 09' 32" W | 39.38'   |
| 12   | N89° 51' 00" E | 30.99'   |
| 13   | N01° 04' 11" E | 23.80'   |
| 14   | S89° 40' 03" E | 10.80'   |
| 15   | N00° 09' 14" W | 45.00'   |

LEGEND

- X— CHAIN-LINK FENCE
- DB— CUI WIRE
- SP— SERVICE POLE
- PP— POWER POLE
- PPW/T— POWER POLE W/ TRANSFORMER
- PPW/SI— POWER POLE W/ TRANSFORMER

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This map and survey are being provided solely for the use of the CITY OF EL PASO and no license has been created, expressed or implied, to copy the surveys and/or maps, except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon AUGUST 03, 2010.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-FLOOD NUMBER 4832140024B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE "C".

ZONE "C" AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

CERTIFICATION  
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY IMPROVEMENT SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
*[Signature]*  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS LICENSE NO. 2998  
DATE: 8-2-10

BOUNDARY & IMPROVEMENT SURVEY

4500 LAWRENCE AVENUE  
PORTION OF LOTS 7, 8 AND 9, BLOCK 1  
SIERRA VISTA ACRES  
EL PASO, EL PASO COUNTY, TEXAS

SU ENGINEERING, INC.  
SU ENGINEERING, INC.  
1332  
SUE F. TRILE

1 OF 1

4500 LAWRENCE

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is portions of Lots 6 & 9, Block 1, Sierra Vista Acres, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 10, Page 41, Plat Records of El Paso County, Texas.

Commencing at an existing city monument lying on the centerline intersection of Arlen Avenue and Roberts Drive (60' public right-of-way); Thence, South 29° 30' 32" West, along the centerline of Roberts Drive, a distance of 1,545.71 feet to a set nail and shiner on Lawrence Avenue (90' public right-of-way); Thence, South 01° 09' 02" West, a distance of 38.38 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998", lying on the southerly right-of-way line of Lawrence Avenue; Thence, South 71° 45' 44" West, a distance of 235.39 feet to a point; Thence, South 01° 13' 49" East, a distance of 116.15 feet to the TRUE POINT OF BEGINNING of this description;

THENCE, South 01° 02' 01" East, a distance of 205.58 feet to a point for a corner lying on the northerly right-of-way line of Tetons Drive (60' public right-of-way);

THENCE, South 88° 51' 00" West, along said right-of-way line, a distance of 117.59 feet to a set 1/2" iron pin with SLI cap stamped "TX2998";

THENCE, North 01° 01' 33" West, abandoning said right-of-way line, a distance of 205.49 feet to a set 1/2" rebar with yellow cap stamped "TX2998" for a property corner;

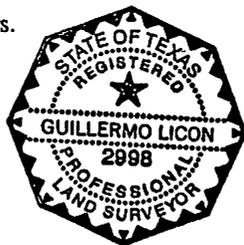
THENCE, North 88° 48' 23" East, a distance of 118.41 feet to the TRUE POINT OF BEGINNING of this description;

Said parcel of land containing 0.555 Acres (24,166 Sq. Ft.) of land more or less.

A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC.  
Consulting Engineers - Land Surveyors.

Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998



January 21, 2011  
Job # 06-10-2923  
M&B/

STATE OF TEXAS            )     **GROUND LEASE AGREEMENT**  
  )     (WAINWRIGHT)  
COUNTY OF EL PASO     )

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

**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 a tract of land located in the City of El Paso, El Paso County, Texas, containing 110,000 square feet, more particularly described as Exhibit "A" attached hereto and on the boundary survey, which is attached as Exhibit "B" made apart hereof for all purposes (collectively, the "Land").
- C. The Land is a vacant parcel adjacent to EPISD's Wainwright Elementary School ("Wainwright ES").
- D. Tenant desires to lease the Land from Landlord for the purposes of constructing public parks and recreation facilities upon the terms and conditions set forth herein.
- E. Concurrent hereto, the City and EPISD have entered into that certain Ground Lease (Memorial/Crockett) for property owned by City as a public park and a portion of a vacated Wheeling Street owned by the City that are adjacent to Crockett Elementary School and leased to EPISD as Tenant, for the purposes of constructing and operating certain educational facilities.
- F. 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 on this portion of the vacated right-of-way to EPISD 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.
- 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 and the street vacation will be of mutual benefit through enhancing each party's ability to deliver governmental functions and services by allowing Landlord to use the land adjacent to Crocket ES and the vacated right-of-way to construct facilities for the education of its students and by permitting Tenant to use the public parks and recreation facilities to be constructed by Tenant on the Land 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) payable to City annually as hereinafter provided from current revenues available to Tenant.

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

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

**"Land"** means that certain 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 the operation of public parks and recreation facilities.

## ARTICLE II

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

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

**Section 2.02. Base Rental.** As rent for the Demised Premises, Tenant hereby agrees to pay to Landlord, without deduction, set-off, prior notice or demand, Base Rental of ONE DOLLAR AND NO/100 (\$1.00) per year. The Base Rental for the entire Lease Term shall be paid upon execution of the Lease. As additional consideration for this Lease, Tenant has agreed to construct the Improvements and Tenant has agreed to lease to the Landlord that certain land owned by Tenant at Memorial Park, including a portion of the vacated Wheeling Street for new school and related facilities, as described in that certain Ground Lease (Memorial/Crockett) 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 Seventy-Nine Thousand Forty-Eight and No/100 Dollars (\$179,048.00). The parties have agreed that value of the land being leased by City to EPISD is One Hundred Two Thousand and No/100 Dollars (\$102,000.00) and value of one-half of the vacated right-of-way on Wheeling Street conveyed to EPISD is Three Thousand Four Hundred Thirty-Six and No/100 Dollars (\$3,436.00). 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 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; Insurance

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

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

and equipment thereof, by fire or other casualty during the last ten (10) years of the Lease Term, Tenant may, at its option by written notice to Landlord given within sixty (60) days of such casualty, terminate this Lease by delivering to Landlord written notice of such termination, whereupon Tenant shall be responsible for cleaning and clearing the damaged facilities from the Land in compliance with all municipal ordinances.

## ARTICLE VII

### Insurance

**Section 7.01. Liability Insurance.** For the duration of this Lease and any extension thereof, the Tenant shall carry commercial general liability insurance to cover the Tenant and its employees and protect the general public and the Landlord with, at a minimum, the following coverages and limitations:

|                                       |             |
|---------------------------------------|-------------|
| Bodily Injury & Property Damage       | \$1,000,000 |
| Personal Injury/Advertising Liability | \$1,000,000 |
| Products/Completed Operations         | \$1,000,000 |
| General Aggregate                     | \$1,000,000 |

**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 shall also, during the Lease Term, cause the Demised Premises and all Improvements constructed from time to time thereon to be insured against such other risks and in such amounts as Landlord and Tenant shall, from time to time, agree. Tenant agrees to add EPISD 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 EPISD.

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 unless and until not less than thirty (30) days prior written notice of cancellation has been served upon Landlord and 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 Associate Superintendent of Operations. 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 or binder which shall comply with the foregoing provision with respect to prior notice of cancellation thereof being given by the insurance company to Landlord. In the event of the failure of Tenant to procure and deliver such renewal policy or policies or binder or binders 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 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 reasonable 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, together with any separate award to Tenant, shall be apportioned and paid in the following order of priority:

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

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

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

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

**Section 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 (i) abandons the Demised Premises for two (2) consecutive years by failing to use same as a public parks and recreation facility.

**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, 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: 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 100  
El Paso, Texas 79901

If to Tenant: 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

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

**Section 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 \_\_\_\_\_, 2012.

*(signatures on next page)*

**LANDLORD**

**EL PASO INDEPENDENT SCHOOL DISTRICT**

---

Isela Castañon Williams  
President, EPISD Board of Trustees

---

Terri Jordan, Ed.D.  
Interim Superintendent, EPISD

**TENANT**

**CITY OF EL PASO**

---

Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**



---

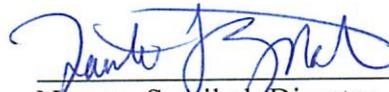
Bertha A. Ontiveros  
Assistant City Attorney

**APPROVED AS TO CONTENT:**



---

R. Alan Schubert, 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 Isela Castañon Williams, known to me the President of the Board of Trustees of the El Paso Independent School District, a Texas Political Subdivision, and the person whose name is subscribed to the foregoing Ground Lease, and who acknowledged to me that she executed the instrument for the purposes and considerations therein expressed and on behalf of the El Paso Independent School District.

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:

\_\_\_\_\_

**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:  
\_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**



VICINITY MAP  
Scale = 1" = 50'



METES AND BOUNDS

The parcel of and herein described is portion of Lot 7, portion of Lot 8 and a portion of Lot 9, Block 1, Serra Vista Acres, an addition to the City of El Paso, El Paso County, Texas.

Commencing at an existing city monument lying on the centerline intersection of Arlen Avenue and Roberts Drive (80' public right-of-way); thence South 29° 30' 33" West, along the centerline of Roberts Drive, a distance of 1,042.71 feet to a set nail and stake on Lawrence Avenue; thence South 01° 03' 02" West, a distance of 38.38 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998"; thence on the southerly right-of-way line of Lawrence Avenue (80' public right-of-way); thence thence North 89° 51' 00" East, a distance of 30.99 feet; TRUE POINT OF BEGINNING of this description;

THENCE North 89° 51' 00" East, continuing along said right-of-way line, a distance of 123.22 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE South 29° 28' 00" West, a distance of 454.34 feet to a fixed 1/2" rebar lying on the northerly right-of-way line of Serra Drive;

THENCE South 89° 51' 00" West, along said right-of-way line, a distance of 148.07 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 01° 02' 01" West, along said right-of-way line, a distance of 205.04 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 01° 15' 40" West, a distance of 116.19 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 89° 42' 41" East, a distance of 242.64 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 03° 04' 18" East, a distance of 23.80 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE South 89° 45' 03" East, a distance of 10.80 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998" for a property corner;

THENCE North 00° 09' 14" West, a distance of 45.00 feet to the TRUE POINT OF BEGINNING of this description.

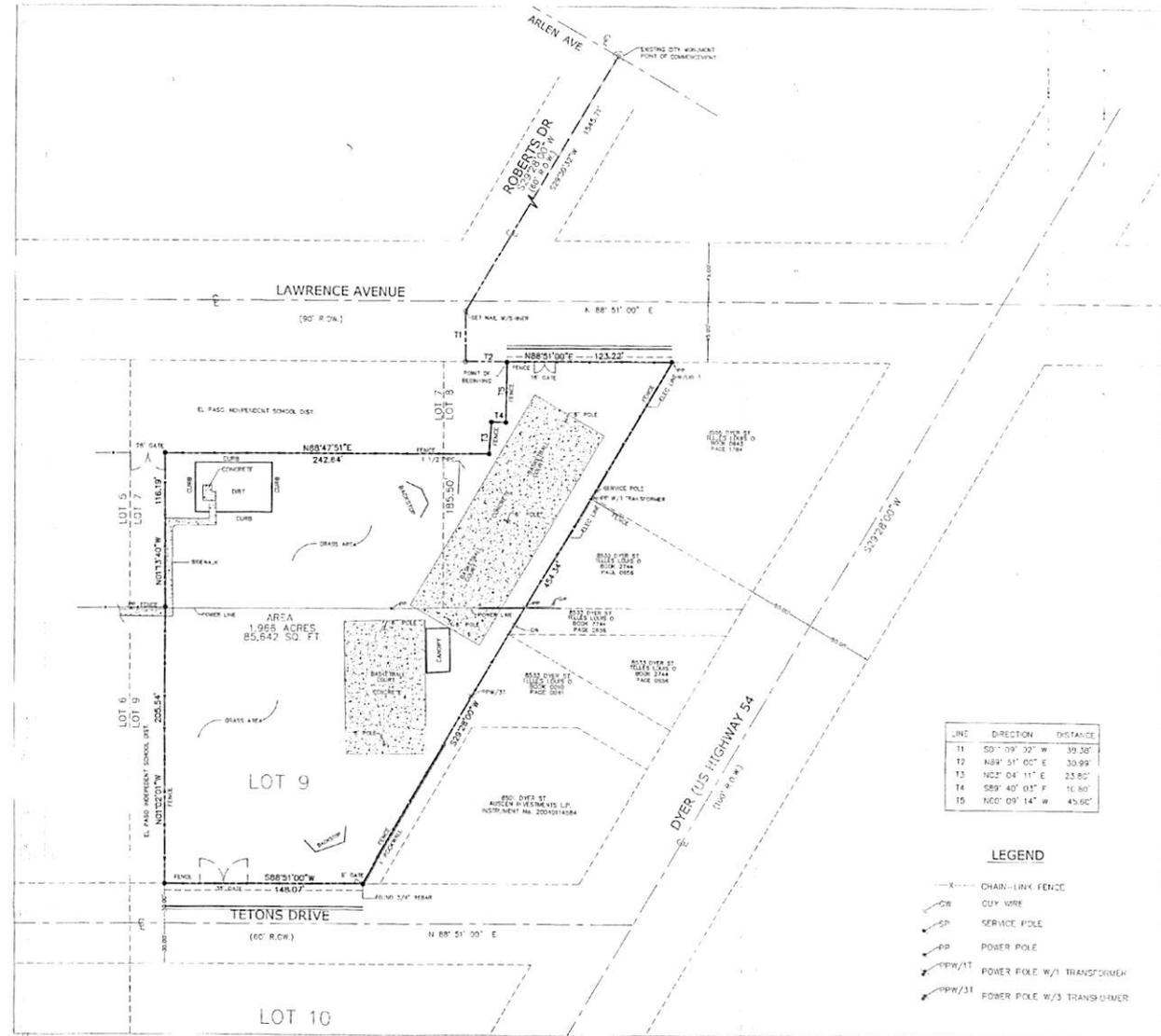
Said parcel of land containing 1.956 Acres (85,842 Sq. Ft.) of land more or less.

NOTES:

1. SET 1/2" IRON WITH S.J. CAP'S AMPED 1X2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
2. BASIS OF BEARING: PLAT OF SERRA VISTA ACRES SUBDIVISION, RECORDED IN VOL. 10, PG. 41.
3. NO BUILDINGS EXIST ON THE PROPERTY.

NOTE:

ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED UNLESS SPECIFICALLY ACCEPTED BY SU ENGINEERING, INC. IN WRITING. SU ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.



| LINE | DIRECTION    | DISTANCE |
|------|--------------|----------|
| 11   | S01°09'32" W | 39.38'   |
| 12   | N89°51'00" E | 30.99'   |
| 13   | N01°04'11" E | 23.80'   |
| 14   | S89°40'03" E | 10.80'   |
| 15   | N00°09'14" W | 45.00'   |

- LEGEND**
- X— CHAIN-LINK FENCE
  - DB— CUI WIRE
  - SP— SERVICE POLE
  - PP— POWER POLE
  - PPW/T— POWER POLE W/ TRANSFORMER
  - PPW/SI— POWER POLE W/ TRANSFORMER

Copyright © 2010 SU Engineering, Inc.

This map and survey are being provided solely for the use of the CITY OF EL PASO and no license has been created, expressed or implied, to copy the surveys and/or maps, except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon AUGUST 03, 2010.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-FLOOD NUMBER 4832140024B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE "C".

ZONE "C" AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

CERTIFICATION  
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY IMPROVEMENT SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
*[Signature]*  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS LICENSE NO. 2998  
DATE: 8-2-10

BOUNDARY & IMPROVEMENT SURVEY

4500 LAWRENCE AVENUE  
PORTION OF LOTS 7, 8 AND 9, BLOCK 1  
SERRA VISTA ACRES  
EL PASO, EL PASO COUNTY, TEXAS

SU ENGINEERING, INC.  
SU ENGINEERING, INC.  
SUE TITLE

1 OF 1

4500 LAWRENCE

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is portions of Lots 6 & 9, Block 1, Sierra Vista Acres, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 10, Page 41, Plat Records of El Paso County, Texas.

Commencing at an existing city monument lying on the centerline intersection of Arlen Avenue and Roberts Drive (60' public right-of-way); Thence, South 29° 30' 32" West, along the centerline of Roberts Drive, a distance of 1,545.71 feet to a set nail and shiner on Lawrence Avenue (90' public right-of-way); Thence, South 01° 09' 02" West, a distance of 38.38 feet to a set 1/2" rebar with yellow cap stamped "TEXAS 2998", lying on the southerly right-of-way line of Lawrence Avenue; Thence, South 71° 45' 44" West, a distance of 235.39 feet to a point; Thence, South 01° 13' 49" East, a distance of 116.15 feet to the TRUE POINT OF BEGINNING of this description;

THENCE, South 01° 02' 01" East, a distance of 205.58 feet to a point for a corner lying on the northerly right-of-way line of Tetons Drive (60' public right-of-way);

THENCE, South 88° 51' 00" West, along said right-of-way line, a distance of 117.59 feet to a set 1/2" iron pin with SLI cap stamped "TX2998";

THENCE, North 01° 01' 33" West, abandoning said right-of-way line, a distance of 205.49 feet to a set 1/2" rebar with yellow cap stamped "TX2998" for a property corner;

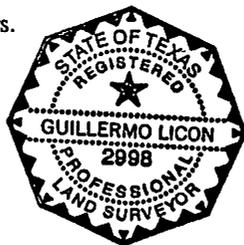
THENCE, North 88° 48' 23" East, a distance of 118.41 feet to the TRUE POINT OF BEGINNING of this description;

Said parcel of land containing 0.555 Acres (24,166 Sq. Ft.) of land more or less.

A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC.  
Consulting Engineers - Land Surveyors.

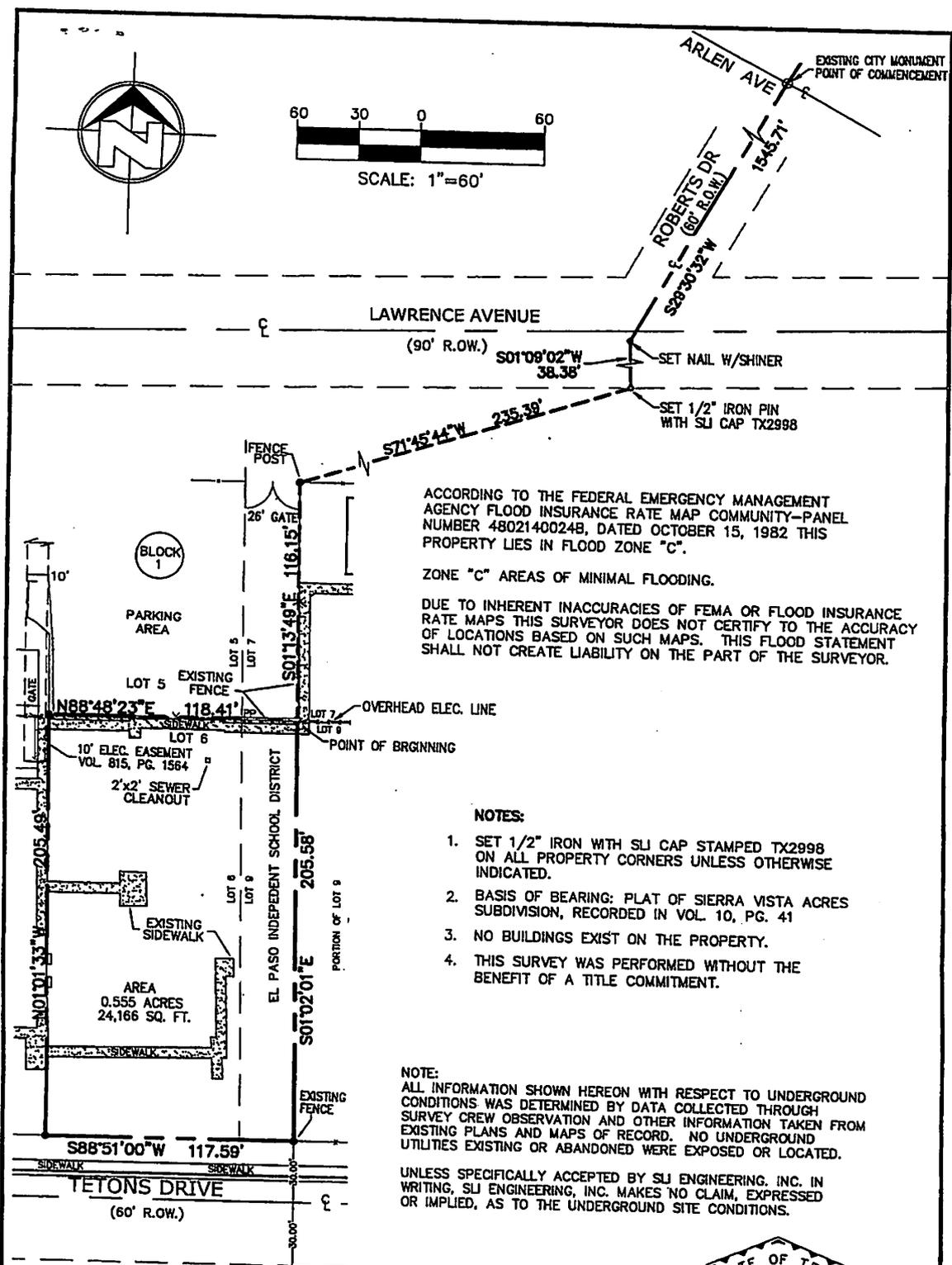
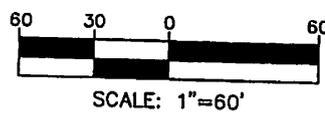
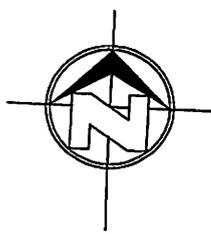
Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998



January 21, 2011  
Job # 06-10-2923  
M&B/

**EXHIBIT "B"**

**BOUNDARY SURVEY**



ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 4802140024B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE "C".

ZONE "C" AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

**NOTES:**

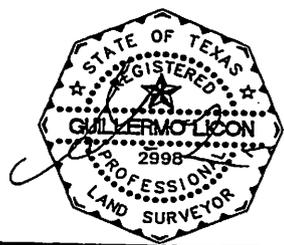
1. SET 1/2" IRON WITH SLJ CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
2. BASIS OF BEARING: PLAT OF SIERRA VISTA ACRES SUBDIVISION, RECORDED IN VOL. 10, PG. 41
3. NO BUILDINGS EXIST ON THE PROPERTY.
4. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.

**NOTE:**  
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED.

UNLESS SPECIFICALLY ACCEPTED BY SLJ ENGINEERING, INC. IN WRITING, SLJ ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

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This map and survey are being provided solely for the use of City of El Paso, Texas and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon January 21, 2011.



**PLAT OF SURVEY**

**SLJ** ENGINEERING, INC.  
CIVIL ENGINEERS  
LAND SURVEYORS  
LAND PLANNERS  
6600 WESTWIND DRIVE  
EL PASO, TEXAS 79912  
915-584-4457

JOB # 06-11-3014 DR. BY: MN

SCALE: 1"=60' F.B. #: 800K

DATE: 01/21/2011 DWG: 10-2936 4500 Lawrence

|  |           |
|--|-----------|
| PORTIONS OF LOTS 6 AND 9, BLOCK 1, SIERRA VISTA ACRES, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF ON FILE IN VOL. 10, PG. 41, PLAT RECORDS OF EL PASO COUNTY, TEXAS. |           |
| PLAT REFERENCE   | VOLUME 10 |
| PAGE   | 41        |

CERTIFICATION  
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GUILLERMO LICON, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS LICENSE NO. 2998

F:\PROJECTS\MP\SURV\001 Previous Years - S\ys\10 PROJECTS\10-2936 4500 LAWRENCE\DWG\LAWRENCE.DWG, 1/25/2011 10:03:47 AM

Wainwright Lease area



PATRIOT  
RAMP

GATEWAY NORTH

LAWRENCE

TETONS

EDGAR PARK

SUNRISE

LAWSON

NORTON

ROBERTS

DYER

DYER

SIERRA VISTA

BRITTON

HOWARD