

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

DEPARTMENT: City Development
AGENDA DATE: 5/7/2013
CONTACT PERSON/PHONE: Peter Wallish, Economic Development 838-5578
DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to execute a Lease Agreement between the City of El Paso (the "Lessor") and Texas Tech University (the "Lessee"), for the placement of the Texas Tech University School of Architecture to be located at 700 W. San Francisco, El Paso, Texas. (District 8)
[Economic Development, Peter Wallish (915) 838-5578]

BACKGROUND/DISCUSSION:

The City of El Paso purchased the Union Depot building from the El Paso Union Passenger Depot Company on March 23, 1978. Since that time, the City has leased the facility to various organizations, with the current tenants being SunMetro and Amtrak. The proposed Lessee, Texas Tech University, proposes to repurpose 16,587 square feet of existing SunMetro space at 700 W. San Francisco. Upon approval of this lease, the Lessee would then relocate the Texas Tech School of Architecture to the facility. The proposed Lease calls for a Twenty-five year term beginning on June 1, 2013. Provided no event of default, Lessee shall have the right to extend the term of the lease for two (2) additional twenty-five (25) year renewals. In addition to paying annual rent of \$1.00, the Lessee will pay a proportionate share of common area maintenance and operating fees.

PRIOR COUNCIL ACTION:

On April 9, 2013, City Council met under Executive Session (551.071 and 551.072) to discuss the proposed lease between the City of El Paso and Texas Tech University, and directed staff to return with a resolution authorizing the City Manager to sign a long term Lease Agreement for 16,587 square feet at 700 W. San Francisco Street, El Paso, Texas 79901

AMOUNT AND SOURCE OF FUNDING:

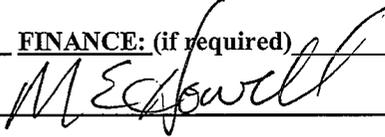
N/A.

BOARD/COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD: _____ 

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to sign a Lease Agreement by and between the CITY OF EL PASO and TEXAS TECH UNIVERSITY, for the Premises located at 700 West San Francisco, also known as the Union Depot, for the University's higher education purposes. The initial term of this Lease shall be for twenty-five (25) years, commencing on June 1, 2013, with options to extend the Lease for two (2) additional twenty-five (25) year periods.

ADOPTED this _____ day of _____, 2013

THE CITY OF EL PASO

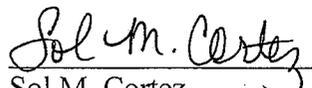
ATTEST:

John F. Cook,
Mayor

Richarda D. Momsen,
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Sol M. Cortez
Assistant City Attorney

Mathew McElroy, Director
City Development Department

LEASE

By and between

CITY OF EL PASO

Lessor

and

TEXAS TECH UNIVERSITY

Tenant

for the Premises located at
700 West San Francisco, El Paso, Texas 79901

UNION DEPOT LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made this _____ day of April 2013, between the **CITY OF EL PASO**, a Texas municipal corporation ("City") and **TEXAS TECH UNIVERSITY**, a Texas institution of Higher Education ("Tenant").

WHEREAS, City is the owner of that certain 11.851 acre property commonly known as the Union Depot, a historical property located at 700 West San Francisco Street, El Paso, Texas, which includes several buildings and related facilities (the "Property"), which was acquired and improved with funds from the Federal Transportation Authority; and

WHEREAS, the City previously leased a portion of the Union Depot building and granted certain rights in the Property to The National Railroad Passenger Corporation ("Amtrak") for offices and operations of its rail passenger service; and

WHEREAS, Tenant has indicated a desire to lease approximately 16,587 square feet of the Union Depot building, including the administrative annex (the "Building") along with associated parking areas and has the willingness and ability to use the leased premises for its higher education purposes in accordance with the terms of this Lease; and

WHEREAS, City has determined that a public purpose will be served by leasing portions the Premises (as further defined herein) to Tenant in accordance with the terms specified herein, together with certain privileges, rights, uses and interests therein, as hereinafter set out.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, City and Tenant agree and covenant as follows:

ARTICLE I - PREMISES, PRIVILEGES AND PERMITTED USE

1.1 LEASE OF PREMISES. 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, City does hereby demise and lease to Tenant and Tenant does hereby lease from City as follows:

A. Phase I. Approximately 5,353 square feet located on the First Floor and Second Floor of the Building together with all rights, privileges, and improvements constructed thereto, as further defined herein (collectively, the "Premises") as more particularly shown in the maps, attached hereto and incorporated into this agreement, as **Exhibit "A-1"**.

B. Phase II. Approximately 16,587 square feet located on the First Floor, Basement, and Second Floor of the Building together with all rights, privileges, and improvements constructed thereto and the associated exterior Parking Areas, as further defined herein (collectively, the "Premises")

as more particularly shown in the maps, attached hereto and incorporated into this agreement, as **Exhibit "A-2"**.

The Premises of Phase I and Phase II are located on the following described real property in El Paso County, Texas:

A portion of Campbell Addition, an addition in the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 2, Page 68 of the Plat Records, El Paso County, Texas, A/K/A a parcel of land out of a 11.851 acre parcel conveyed to the City of El Paso by deed recorded in Volume 901, Page 1137, Real Property Records, El Paso County, Texas, commonly known as Union Depot, 700 West San Francisco Avenue, El Paso, Texas, 79901 ("Property") in as more fully described in **Exhibit "A-3"** attached hereto and incorporated herein by reference.

In addition to the foregoing Premises, Tenant shall have the right to use for itself, its agents, employees and invitees, in common with the City, Amtrak, and others admitted to the use thereof by City, all those areas needed by Tenant on the Property and in the Building for access to and from the Premises. Furthermore, Tenant shall have the right to use for itself, its agents, employees and invitees, in common with City and Amtrak and others admitted to the use thereof by the City, all the areas shown and outlined in **Exhibit "A-4"**, Common Areas in the Building, which area includes but is not limited to, the restrooms together with all improvements thereto.

1.2 LEASEHOLD IMPROVEMENTS. Tenant shall have the right and privilege to construct, maintain, and remove at their cost any leasehold improvements only upon the Premises subject to the terms, covenants, and conditions contained herein in Section 8.1. Prior to any modifications, additions, alterations or changes to the Premises, Tenant shall submit the plans and specifications for any modifications, improvements, additions, alterations or changes to the City Manager or designee and the City Development Director, with a copy to the City Engineer or designee, for review and approval. No work shall commence until the City Engineer has given written approval, which permission shall not be unreasonably withheld.

All improvements constructed on the Premises shall be of substantial construction and good architectural design. Tenant shall employ licensed engineers and architects with experience in working on historic buildings to prepare architectural plans, construction plans and specifications.

1.3 RESTRICTION OF PRIVILEGES, USES AND RIGHTS. The rights and privileges granted to Tenant hereunder are subject and expressly limited to use of the Premises as a higher education facility with classrooms, offices and related uses for Tenant's operations, including spaces used for community and outreach classes and events under the direction of the Texas Tech ("Permitted Uses"). The Premises shall be for public purpose, and therefore, no person shall be denied entrance thereto, nor will anyone be refused the use of the same in accordance with all applicable laws.

Any change of use of the Premises will require the prior written approval of the City Council. Failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than the purposes set forth herein shall constitute an event of default

and may result in termination of the Lease.

1.4 CONDITIONS OF GRANTING LEASE. The granting of this Lease and its acceptance by Tenant is conditioned upon the following covenants:

- A. That no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of City.
- B. Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Building or Property. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose in accordance with City ordinances and state and federal laws, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises, the Building, or the Property.
- C. City may make reasonable rules for use of the Property and the common areas to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.
- D. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of City now in force or hereafter prescribed or promulgated by charter authority or by law.

ARTICLE II - OBLIGATIONS OF CITY

2.1 QUIET ENJOYMENT. City agrees that upon Tenant's occupying the Premises and performing all of the covenants, conditions, and agreements set forth in this Lease, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises. City has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

2.2 PARKING AREA. During Phase II of this Lease, the Premises shall include the parking areas, and all associated striping, and improvements located in areas of the canopied area west of the Building existing as of the date of this Lease, (the "Parking Area"), as further depicted in Exhibit B. The Parking Area is of exclusive use of Tenant, occupants and their invitees of the Union Depot building, provided that Tenant shall pay all the costs of maintaining the Parking Areas. All other Parking is not available for Tenant's use.

Prior to the commencement date of Phase II (as defined in Section 4.1 of this Lease), City agrees to restripe the Parking Area (currently used to park buses) and reconfigure spaces to accommodate motor vehicles. The City will provide the maximum number of spaces available

for parking in the Parking Area. The parking spaces available for the use of the Tenant will include handicap parking spaces in order to comply with any local, state, and federal laws.

City and Tenant agree that at any time during the Term of this Lease, at the City's sole discretion, the City may relocate, or cause to be relocated, parking facilities available to Tenant in the Parking Area, provided that at no time during the Term shall the number of spaces available to Tenant be less than the number made available in the Parking Area as set forth in this Section 2.2 during Phase II. The relocated parking facilities are not guaranteed to be covered parking. The City has the discretion of removing the entire or parts of the existing canopy at any time during this Lease.

2.3 ADDITIONAL CITY OBLIGATIONS. Subject to Tenant's payment of Common Area Maintenance and Property Operating Expenses Fees to City for its proportionate share of Common Area Maintenance Expenses ("CAM") and Property Operating Expenses as further described in Articles V and VI, City shall:

- A. Keep and maintain the Property, or cause the Property (including the Building) to be kept and maintained by a third party, in a good state of repair at all times;
- B. Pay any and all operational costs of the Building and the Property, including, but not limited to, all utilities, trash pickup and security; and
- C. Pay all casualty, bond, and liability insurance premiums required in accordance with the terms of this Lease.

2.4 UTILITIES AND SERVICES. City shall pay for all costs for utility services, including gas, electric, water, sewer services and other utility costs during the Term hereof. City is responsible for paying the cost of extending water, sewer, gas and electric lines to the boundary of the property and within the boundaries of the property (connecting to such lines and setting meters). The costs of such utilities shall be included in the CAM and Property Operating Expenses and allocated among the tenants of the Building and Property, as set forth herein in Section 5.3. City shall in no event be liable to Tenant for any interruption in the service of any such utilities to the Premises, without regard to the reason for such interruption; and this Lease shall continue in full force and effect despite any such interruptions.

2.5 TRASH, GARBAGE, AND OTHER REFUSE. City shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Property, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Property. City shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse.

2.6 DISABILITY LAWS. City agrees to make or cause to be made any alterations and any improvements, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal

authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Building, Common Areas, and the Property and any improvements by disabled persons ("Disability Laws"). City will be responsible for the cost of improvements as required to comply with Disability Laws.

The Tenant shall pay for all expenditures relating to accessibility inspections and for alterations and improvements required by any Disability Laws which relate to the use or occupation of the Premises. Tenant shall also be responsible for all costs associated with improvements necessary to comply with Disability Laws as a result of a tenant improvement. If any improvements are required under such Disability Laws and the City cannot fund any required Improvements, the parties will agree to terminate or renegotiate this Lease.

ARTICLE III - OBLIGATIONS OF TENANT

3.1 CONDITION OF PREMISES. As of the Commencement Date, Tenant accepts the Premises in their present condition and agrees that the Premises are suitable for Tenant's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. City has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Tenant accepts the Premises "AS IS", "WHERE AS" and "WITH ALL FAULTS", relying on Tenant's own inspection and judgment and not in reliance on any representations of City. City shall have no obligation to make any improvements or refurbishments to the Premises throughout the Term.

3.2 COMPLIANCE WITH LAWS. Tenant, at Tenant's expense, agrees that it will operate and to the extent applicable, construct improvements on the Premises in accordance with the terms, conditions and processes contained herein, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the City or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements Tenant makes thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 Section 7401 et

seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, and diesel fuel.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its sublessees, agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. To the extent permitted by law, Tenant shall indemnify, defend and hold harmless City, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under environmental law. The obligations and liabilities under this paragraph shall continue so long as City bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises.

The parties agree that City's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section, City shall also have all other rights and remedies provided by law or otherwise provided in this Lease.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant results in any contamination of the Premises or any improvements thereon, Tenant shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws with regard to the Premises. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to City, Tenant shall promptly provide all information requested by City to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.
- (4) Tenant shall immediately notify City of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or City's obligations or liabilities under the Environmental Laws.
- (5) Tenant shall insert the provisions of this Section 3.2 in any assignment, sublease, agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

3.3 CITY'S APPROVAL OF PLANS. City's approval of any plans, specifications and working drawings for Tenant's construction or alterations of improvements of the Premises shall create no responsibility or liability on the part of City for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities. Tenant shall submit all plans to the City's Engineering and Construction

Management Department staff. It is specifically understood that the Engineering and Construction Management Department is only one of numerous departments of the City and that, in addition to obtaining approval of the Engineering and Construction Management Department, Tenant may be required to obtain the approval of other departments as well, such as City Manager or designee and the City Development Director.

3.4 JANITORIAL AND TELECOMMUNICATIONS SERVICES. Tenant shall provide janitorial services for the Premises and adequately handle and dispose of all trash, garbage and other refuse on the Premises. Tenant shall dispose all trash, garbage and other refuse from the Premises in the receptacles on the Property provided by City. Tenant shall also provide or contract for all telecommunications infrastructure and services to the Premises, including, but not limited to telephone, cable, internet or any other telecommunications services furnished to the Premises.

3.5 SIGNS. All signs on the Property or in the Premises shall comply with all building codes and other ordinances of the City of El Paso. The size, design and location of all signs shall be subject to approval by the City prior to installation and as required by applicable law. No outdoor advertising signs, billboards or flashing lighting shall be permitted. Signs on the property shall be limited to those identifying the uses conducted on the Premises and those necessary for informational and directional purposes.

3.6 PERMITTED USES. Tenant will not enter into any activity on the Premises other than those permitted in Paragraph 1.3. The Tenant shall not permit on the Premises any entertainment, amusement or other activity which violates any statute or ordinance, and will use Tenant's best efforts to prevent disorder and conduct amounting to a nuisance. The Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained. Tenant may make reasonable rules for use of the Premises to protect the rights of the public and other tenants and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.

3.7 OPERATING COVENANTS. Tenant further covenants and agrees that it will not: (i) commit or permit waste or a nuisance upon the Premises, the Building or the Property; (ii) permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles within the Tenant's control which will interfere with the use of the Common Areas of the Building or the Property; or (iii) place a load on any floor in the Building, which exceeds the floor load per square foot for which such floor was designed to carry.

ARTICLE IV – TERM AND TERMINATION

4.1 INITIAL TERM. Tenant shall lease the Premises for a term of twenty-five years beginning on June 1, 2013 (the "Commencement Date") and ending on May 31, 2038 (the "Initial Term"). The term of Phase I of this Lease shall be for the first Lease Year as defined in Section 4.2. Phase II shall commence on September 1, 2014 and end on May 31, 2038. However, the term of Phase I may be extended in writing by the City Manager if the Tenant is not able to

occupy the area as defined in Section 1.1 B. The City shall not be liable for failure to deliver the Premises to Tenant on the beginning date of this Lease for reasons beyond the City's control.

4.2 LEASE YEAR. The term "Lease Year" as used in this Lease shall mean a period during the Initial Term or any extensions thereof commencing on September 1 of each year and ending at midnight on August 31 of the same year except that: (i) the first Lease Year shall be the period commencing on the Commencement Date and ending at midnight on August 31, 2014; and (ii) the last Lease Year shall terminate at midnight on May 31, 2038 (the "End Date") subject to any extensions thereto.

4.3 OPTION TO EXTEND. Provided no event of default shall then exist under this Lease, Tenant shall have the right to extend the term of this lease for two (2) additional twenty-five(25) year renewal terms (the "Extended Terms"), provided however that written notice is given the City of such intention to extend the lease at least ninety (90) days prior to the End Date stated above; and further provided that all provisions of this Lease shall continue in full force and effect for the full period of any such extension. Minimum guaranteed rents, fees, and other charges for said additional term of years shall increase as set forth herein.

4.4 HOLDING OVER. If Tenant holds over or occupies the Premises beyond the Initial Term or any extensions thereto, Tenant shall pay additional rents, fees, and other charges required for each day of such holding over upon the terms set forth in herein. In such event, Tenant shall occupy the Premises on a tenancy from month to month and all other terms and provisions of this Lease shall be applicable to such period.

4.5 PUBLIC NECESSITY. Should the public necessity require as determined by the City, the City may terminate this Lease upon one hundred twenty (120) day written notice to the Tenant, and this Lease shall expire with no additional costs or liabilities to either party. The parties agree that the Tenant has an interest in continued occupancy during any academic term and the notice provided herein shall not require Tenant to vacate the Premises until at least 10 days following the end of the end of the current academic term.

4.6 TERMINATION FOR CONVENIENCE. This Lease may be terminated for convenience and without penalty by either City or Tenant by giving at least one hundred twenty (120) days written notice of such termination to the other party at the address set forth in Section 16.9 herein.

4.7 NON-APPROPRIATION OF FUNDS. Notwithstanding any contrary provision in this Lease, each payment obligation of Tenant created by this Lease is conditioned on the availability of funds that are appropriated or allocated for payment of the amounts due under this Lease. If such funds are not allocated and available, this Lease may be terminated by the Tenant. The Tenant shall notify the City at the earliest possible time before such termination. No penalty shall accrue to the Tenant in the event this provision is exercised and the Tenant shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section, except as provided by applicable law. This provision shall not be construed so as to permit Tenant to terminate this Lease in order to lease from another party.

ARTICLE V – BASE AND FEES

5.1 ANNUAL RENT. Tenant agrees to pay Annual Rent to the City for the Premises at the rate of \$1.00 per year. The payment shall be made on the first day of each Lease Year, except that the first payment shall be made within fifteen (15) days of the execution of this Lease.

5.2 COMMON AREA MAINTENANCE AND PROPERTY OPERATING EXPENSES FEES. In addition to the Annual Rent, Tenant shall pay as Common Area Maintenance and Property Operating Expenses Fees (the “Fees”) the Tenant’s proportionate share of the expenses required for Fees. The terms Common Areas, Property Operating Expenses, and Common Area Maintenance (“CAM”) Expenses are defined in Article VI of this Lease.

Such Fees will be paid on a monthly basis and shall be calculated in the manner described in Section 5.3. below based upon the Tenant’s proportionate share of Property Operating Expenses and CAM Expenses. Said Fees shall be paid without deduction, offset, prior notice or demand, no later than the first (1st) day of each and every month during the Initial Term or any Extended Terms or Holdover Periods, with proration to occur for any partial month.

Together, the Annual Rent and the Fees may be collectively referred to herein as the “Rent.”

5.3 CALCULATION AND PAYMENT OF FEES. The Fees to be paid by Tenant shall be estimated by City at the beginning of each City fiscal year (the “Lease Year”), and paid monthly by Tenant based upon the Property Operating Expenses and CAM Expenses for the preceding Lease Year; each such monthly payment shall equal one-twelfth (1/12th) of Tenant’s proportionate share of the Property Operating Expenses and CAM Expenses for the preceding Lease Year, except that at the commencement of the Lease Term, the City shall prepare a reasonable estimate of the total amount of the Property Operating Expenses and CAM Expenses for the prior year at the Property. Partial years shall be prorated accordingly. At the end of each Lease Year, City shall compute the actual Property Operating Expenses and CAM Expenses for such period and compute Tenant’s proportionate share due as Fees. Upon such calculation, City shall invoice Tenant, deducting the amount paid as Fees by Tenant during the preceding Lease Year. Should Tenant owe any additional sum as evidenced by such invoice, Tenant shall pay such amount within thirty (30) business days after receipt of invoice, subject to the Texas Prompt Payment Act. Conversely, should the invoice reflect an overpayment by Tenant during the preceding period, the amount of such overpayment shall be deducted from the next amount of Property Operating Expenses and CAM Expenses due pursuant to this Section. City shall provide written notice to Tenant of the estimated monthly amount due by Tenant during the next Lease Year. The City will review the actual Property Operating Expenses and CAM expenses every five years of the Initial Term and any Extended Term to determine if adjustments need to be made to the Fees paid by the Tenant based on actual expenses (“Fee Review Period”). The annual share of the Tenant’s Property Operating Expenses and CAM expenses together shall not exceed \$100,000.00 dollars per year during the Initial Term and Extended Term of this Lease unless this amount is revised by the City during the Fee Review Period. Any revised Fee during

the Fee Review Period shall not exceed ten (10) percent of the Fee assessed during the previous Review Period.

For purposes of these calculations, Tenant's proportionate share of the Fees shall be based on the square footage occupied by the Tenant in the leased premises as follows:

A. Share of Property Operating Expenses

The proportionate share is based on dividing the total area within the Building (33,360 square feet) by the amount of area of the leased Premises of each Phase of the term of this Lease (Phase I, 5,353 sq. ft, Phase II 16,587 sq. ft).

1. Phase I

Tenant's proportionate share of Property Operating Expenses shall be 16.1 percent of the total annual Property Operating Expenses of the Building during Phase I of the Initial Term of this Lease

2. Phase II

Tenant's proportionate share of the Property Operating Expenses shall be 49.7 percent of the total annual Property Operating Expenses of the Building during Phase II of the Initial Term of this Lease or the applicable Extended Term or Holdover Periods.

B. Share of CAM Expenses

The proportionate share is based on the following negotiated amounts:

1. Phase I

Tenant's proportionate share of CAM Expenses shall be 27.8 percent of the total annual CAM Expenses of the Building during Phase I of the Initial Term of this Lease

2. Phase II

Tenant's proportionate share of the CAM Expenses shall be 33.33 percent of the total annual CAM Expenses of the Building during Phase II of the Initial Term of this Lease or the applicable Extended Term or Holdover Periods

5.4 HOLD OVER RENT. If Tenant holds over or occupies the Premises beyond the Initial Term or any extensions thereto, Tenant shall pay a sum equal to one and one-half (1½) times the base Monthly Rent applicable for the Initial Term or the applicable Extended Term prorated for the number of days of such holding over. In addition, Tenant shall also pay all other additional fees and charges required during the Initial Term and any extended periods, including CAM and Property Operating Expenses as Fees as enumerated in Section 5.3.

5.5 UNPAID RENT, FEES, AND OTHER CHARGES. Any installment of Rent, Fees, or other charges accruing under any provision of this Lease that are not received by City by the tenth (10th) day of the month in which payment is due, shall bear interest at the rate permitted by the Texas Government Code Chapter 2251.

5.6 RENTAL PAYMENTS. All rentals to be paid by Tenant to City shall be paid without deduction or offset, prior notice or demand, except as provided elsewhere in this lease and at such place or places as may be designated from time to time by City. Tenant's obligation to pay rent under this Lease is an independent covenant and no act or circumstance shall release Tenant of its obligation to pay rent as required by this Lease, except as set forth herein.

All Rent, Fees, and other charges required of Tenant herein shall be paid to City at the following address, or at such place as may be designated from time to time by City:

City of El Paso
Department of Financial Services
P.O. Box 1890
El Paso, Texas 79950-1890

ARTICLE VI – COMMON AREAS AND PROPERTY OPERATING & CAM EXPENSES

6.1 COMMON AREAS.

- A. All Common Areas as identified within Exhibit "A-4" and other areas and improvements provided by City for the general use in common of Building and Property tenants, occupants and their invitees (hereinafter referred to collectively as "Common Areas") shall at all times be subject to the exclusive control and management of City. City shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas.
- B. Subject to the provisions of Section 2.2, City shall have the right to: (i) change the sizes, locations, shapes and arrangements of parking and other common areas; (ii) construct additional or remove existing surface, sub-surface, or elevated facilities; and (iv) design and complete such other acts in and to said parking and common areas as City in its sole discretion deems advisable.
- C. Use of Common Areas. City, all tenants, and its business invitees, employees, and customers shall have the nonexclusive right of access to the Common Areas in common with Tenant. Tenant shall abide by all rules and regulations and cause its concessionaires, officers, employees, agents, customers, and invitees to abide thereby. City may at any time temporarily close any Common Area to make repairs or changes, prevent the acquisition of public rights therein, discourage

non-customer parking, or for any other purposes. Tenant shall not interfere with City's, or other tenant's rights to use any part of the Common Areas.

6.2 PROPERTY OPERATING AND CAM EXPENSES. The term "Property Operating Expenses" as used herein means the total cost and expense incurred by City in operating and maintaining the Building. The term "CAM Expenses" as used herein means the total cost and expense incurred by City in operating and maintaining the Common Areas. The operation and maintenance of the Building and Common Areas include, without limitation, the following: (i) landscaping, watering, and gardening expenses incurred in connection with the maintenance of the Building and Common Areas; (ii) cleaning, striping, and lighting of the Building and Common Areas, including all parking areas; (iii) maintaining, repair, and replacement on machinery and equipment used in the maintenance and cleaning of the Building and Common Areas and properly allocable thereto; (iv) security costs related to the Building and Common Areas, including fire alarm system; (v) utility expenses incurred in operating the Building and Common Areas; (vi) the cost of fuel, supplies, materials, and service contracts for maintenance of the Building and Common Areas; (vii) insurance of the Building and Common Areas, including, but not limited to , fire, property damage, flood, rental loss, rent continuation, boiler machinery, business interruption, construction coverage insurance for up to the full replacement cost of the project and such other insurance as is customarily carried by operators of other similar class buildings in the City of El Paso, to the extent carried by City, at its discretion; and the deductible portion of any insured loss otherwise covered by such insurance; (viii) the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons (including independent contractors) who perform services connected with the operation, maintenance or repair of the Building or Property; (ix) all costs and expenses required by any governmental or quasi-governmental authority or by applicable law, for any reason, including capital improvements, whether capitalized or not, and the cost of capital improvements made to the Building or Property by City to improve life-safety systems or reduce operating expenses (such as costs of energy efficiency measures); (x) the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance; (xi) sign maintenance; (xii) utilities, as defined in Section 2.4 of this Lease; (xiii) such other expenses reasonably incurred by City in operating and maintaining the Common Areas in a first-class condition; and (xv) an Administration Fee equal to an amount not to exceed ten percent (10%) of the fees assessed by City.

The following items shall be excluded from Property Operating Expenses and CAM Expenses:

- A. Costs incurred due to a violation of law by City relating to a project;
- B. All items and services for which Tenant or other tenants reimburse City outside of Operating Costs;
- C. Repairs or other work occasioned by fire, windstorm, or other work paid for through insurance or condemnation proceeds (excluding any deductible);

ARTICLE VII – MAINTENANCE OF THE PREMISES

7.1 MAINTENANCE OF BUILDING. City shall be responsible and shall keep or cause to be kept, the Building in good order, repair, and condition. City shall be responsible at the date of commencement for routine maintenance and repairs to the common areas of the Building and Property, including but not limited to the public restrooms and public vending machine room, the utilities basement, and exterior portions of the Property including but not limited to: electrical power including electrical switches, outlets and lamp replacements, floor coverings, interior walls and wall coverings, all interior plumbing, pipes and conduits, all fixtures, doors, door locks, seasonal maintenance, maintenance of building equipment such as heating, ventilating and air conditioning equipment, fire protection, sprinkler system, cleaning, trash service, roof repair and replacement, foundation, exterior plumbing lines, exterior electrical power, structural soundness of the property. This includes the walkways and parking lots surrounding the Property that are not of exclusive use to the Tenant.

7.2 MAINTENANCE OF PREMISES.

- A. Tenant shall at all times keep at their cost the Premises (including all entrances and vestibules) and all partitions, window and window frames and moldings, glass doors, door openers, fixtures, equipment and appurtenances thereof and any Leasehold Improvements it makes and all other parts of the Premises not required herein to be maintained by City in good order, condition and repair and clean, orderly, sanitary and safe, damage by unavoidable casualty excepted.
- B. City shall make routine maintenance and repairs to the Common Areas including but not limited to: electrical power including electrical switches, outlets and lamp replacements, floor coverings, interior walls and wall coverings, all fixtures, doors, door locks, maintenance of building equipment such as heating, ventilating and air conditioning equipment, fire protection, and sprinkler system.
- C. Such maintenance responsibilities shall include but are not limited to those activities necessary to cause the Premises to comply with applicable laws, ordinances, rules, regulations and orders or governmental and public bodies and agencies. City shall replace equipment, fixtures and appurtenances thereto the same with equipment, fixtures and appurtenances of the same quality, and repair all damages done in or by such replacement.
- D. Tenant, at its expense, shall keep the Premises and all fixtures contained therein in a safe, clean and neat condition and Tenant shall be responsible for any repair and maintenance of any Leasehold Improvements it makes and all other parts of the Premises not required herein to be maintained by City in good order, condition and repair and clean, orderly, sanitary and safe, damage by unavoidable casualty excepted.

- E. Tenant shall be responsible for maintenance and repairs to all equipment installed by Tenant.
- F. Tenant will inspect all fixtures and improvements on the Premises upon taking possession. City shall commence required repairs as soon as reasonably practicable after receiving written notice from Tenant of any required repair. City will, within a reasonable amount of time of such notice, place such fixtures and improvements in good and tenantable condition.
- G. Except as provided in this Section, City shall not be obligated to make repairs, replacements, or improvements of any kind upon any equipment, merchandise, stock in trade, facilities, or trade fixtures therein, all of which shall be Tenant's responsibility.

7.3 CONDITION AT SURRENDER OF PREMISES. At the expiration or termination of this Lease, Tenant shall surrender the Premises in the same condition as they were in on the Commencement Date, reasonable wear and tear excepted, and deliver all keys for, and all combinations on locks, safes, and vaults in the Premises to City.

7.4 REPAIRS TO PREMISES, BUILDING OR PROPERTY. From time to time during the lease term, City may find it necessary to make repairs to the improvements located on the Premises, Building or Property. Every effort will be made to not interfere with Tenant's use and enjoyment of the site but Tenant understands and agrees that the use of the Premises, Building or Property will sometimes require the cooperation of Tenant and adjustments to Tenant's operations.

7.5 RAILROAD RELOCATION. The Tenant acknowledges that the Union Pacific Railroad and the City are discussing the exchange of properties which may relocate the current railroad tracks currently adjacent to the Building ("Project"). Tenant understands that the Project will entail construction work. The Tenant acknowledges that the work related with the Project may interfere with Tenant's use and enjoyment of the site but that Tenant will remain obligated to pay the Rent under this Lease and will not be able to recover damages from the City. Furthermore, the relocation of the railroad tracks and any related construction will not be grounds for Termination of this Lease.

ARTICLE VIII – ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

8.1 LEASEHOLD IMPROVEMENTS. Tenant may alter the non-historic Premises to accommodate its needs consistent with the Permitted Uses of the Premises. The Tenant shall obtain the City's approval prior to the construction of any leasehold improvements. Within 30 days of the commencement of the Lease, or at least 60 days prior to the date of any subsequent improvements proposed by Tenant, the Tenant shall submit to the City the Tenant's plans, specifications and working drawings for Tenant's construction or alterations of any improvements to the Premises (the "Leasehold Improvements"), and a schedule for completion of such Leasehold Improvements for review and approval. During construction of the Leasehold

Improvements shall not interfere with access to the Common Areas and other tenant leasehold interests. Tenant shall have no right whatsoever to alter the interior or exterior walls or the roof of the Premises or any portion of the Building or Property outside the Premises except as expressly approved. Any Leasehold Improvements permitted to be installed by Tenant shall incorporate new or completely reconditioned fixtures and materials.

No work shall commence until the City Manager or designee has given written approval. It is specifically understood that the City Development Department is only one of numerous departments of the City and that, in addition to obtaining approval of the Capital Assets and Real Estate Manager, Tenant shall be required to obtain the approval of other departments as well, such as Engineering, Municipal Services, or Building and Planning Services.

8.2 PROCUREMENT/BONDS. In the event of any construction on the 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 City two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction in an amount established by applicable law at the time of 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 in an amount established by applicable law at the time of 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.

8.3 OWNERSHIP UPON TERMINATION OR EXPIRATION. All Improvements, including Leasehold Improvements, made by Tenant, or made by City on Tenant's behalf, whether or not paid for wholly or in part by City, shall remain Tenant's property for the Lease Term. Upon expiration or termination of this Lease, any such improvements shall immediately become City's property, be considered part of the Premises, and shall not be removed without City's prior written consent unless City, in writing, requests Tenant to remove same. If Tenant removes any shelving, decoration, equipment, trade fixtures, or personal property, Tenant shall repair or pay for the repair of any damage done to the Premises resulting from removing the same.

8.4 LIENS. It is expressly acknowledged and understood that City does not consent, and has not by the execution and delivery of this Lease consented, to the imposition of any liens upon the City's interest in the Premises, Building or Property by any party whomsoever. Tenant covenants and agrees that all Improvements at any time constructed upon the 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 IX - NO LEASEHOLD MORTGAGE

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

ARTICLE X - TAXES AND GOVERNMENTAL CHARGES

Tenant is a governmental entity and is exempt from all taxes and assessments (i) levied against any personal property, tenant improvements or trade fixtures of Tenant in or about the Premises and (ii) based upon this Lease or any document to which Tenant is a party creating or transferring an interest in this Lease or an estate in all or any portion of the Premises. If any such taxes or assessments are levied against City or City's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant, City shall immediately notify Tenant and Tenant will challenge the assessment (on its behalf and on behalf of City) for the taxes and assessments so levied against City, or such taxes, levies and assessments resulting from such increase in assessed value. City agrees it will reasonably cooperate with Tenant in the challenge of any taxes assessed in contravention of law.

ARTICLE XI - INSURANCE AND INDEMNITY

11.1 TENANT SELF-INSURANCE. City agrees that Tenant may self-insure against the risks described in this Article XI, including but not limited to General Commercial Liability, 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 City and its officers, employees or agents of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws.

11.2 INSURANCE GENERALLY. Tenant, at its sole cost and expense, shall throughout the Initial Term of this Lease and any extensions thereto insure the Tenants contents on the Premises. City shall not be liable for any loss by any casualty, fire, or theft. Tenant is solely responsible for carrying adequate insurance at its sole cost and expense to cover Tenant for any such losses.

11.3 WORKERS COMPENSATION. In addition, Tenant, at its sole cost and expense shall, throughout the Initial Term of this Lease and any extensions thereto, shall obtain and maintain Workers' Compensation and Employers Liability coverage or self-insure, as permitted by state law, with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

A. A Waiver of Subrogation in favor of the City of El Paso.

11.4 AUTHORIZED INSURANCE COMPANIES. Any policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by City, such approval not to be unreasonably withheld. Except to the extent Tennant self-insures, evidence of compliance with the insurance requirements set forth in this Section 11 shall be delivered to City at least ten (10) days prior to the Commencement Date.

11.5 INDEMNITY.

- A. It is agreed for all purposes hereunder, the Tenant is and shall be an independent contractor and shall not, with respect to their acts or omissions be deemed an agent or employee of the City.
- B. To the extent allowed and not otherwise prohibited by Texas law, the Tenant agrees to indemnify and hold harmless and defend the City, its officers, agents and employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from Tenant's occupancy of the leased Premises or activities conducted in connection with or incidental to this Lease and from any liability arising out of or resulting from the intentional acts or negligence, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part thereon of tenants, including, but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other persons.
- C. To the extent allowed and not otherwise prohibited by Texas law, the Tenant further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for the safety of its officers, agents, employees, subcontractors, licensees, invitees, tenants, and other persons as well as their property, while in or on leased Premises. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of Tenant, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other persons.
- D. To the extent allowed and not otherwise prohibited by Texas law, it is further agreed with respect to the above indemnity, that the City and Tenant will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Tenant or the City and the City shall have the right to compromise and defend the same to the extent of its own interest. It is agreed that this indemnity provision shall be considered as an additional remedy for the City, and not an exclusive remedy. It is the expressed intention of the parties hereto, both the City and Tenant that the indemnity provided for in this paragraph is indemnity by Tenant to indemnify and protect the City from the consequences of the City's own negligence while the City is participating in this agreement where that negligence is a concurring cause

of the injury, death, or damage. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit, or liability where the injury, death, or damage results from the sole negligence of the City, unmixed with the fault of any other person or entity.

ARTICLE XII - DEFAULT AND TERMINATION

12.1 TENANT DEFAULT. Any one or more of the following events shall be a default by Tenant under this Lease:

- A. Tenant fails to pay on the due date any rent, fees, other amounts or charges or additional obligations provided for in this Lease, subject to the provisions of Texas Government Code Section 2251;
- B. Tenant fails to observe or perform any other term, provision, condition, covenant, promise or obligation of this Lease for more than thirty (30) days after receiving written notice of such failure;
- C. After reasonable notice from this City, Tenant fails to immediately cure any potentially hazardous condition which the Tenant or an agent for the Tenant has created; or
- D. Tenant vacates or abandons the Premises or does not do business in the Premises for thirty (30) consecutive calendar days;
- E. Tenant does anything upon or in connection with the Premises which directly or indirectly interferes in any way with, or results in a work stoppage in connection with, construction or other activities of City or other tenants; and
- F. Tenant becomes bankrupt or insolvent or file or have filed against it a petition in bankruptcy or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or Tenant makes an assignment for the benefit of creditors.

12.2. CITY'S REMEDIES.

- A. **Default and Re-Entry.** Should any such event of default occur, and without any grace period, demand or notice, except as herein provided, City, in addition to all other rights or remedies it may have, shall have the right thereupon or at any time thereafter to terminate this Lease by giving notice to Tenant stating the date upon which such termination shall be effective. City shall further have the right, either before or after any such termination, to the extent permitted by law, to re-enter and take possession of the Premises, remove all persons and property from the Premises and store such property at Tenant's expense, without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

Nothing herein shall be construed to require City to give notice before exercising any of its rights and remedies provided for in this Lease.

- B. **Right to Relet.** If City re-enters as provided herein, or if City takes possession pursuant to legal proceedings or otherwise, City may either terminate this Lease or City may, from time to time, without terminating this Lease, make such alterations and repairs as it deems advisable to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may extend beyond the Term or any extensions thereof) and at such rentals and upon such other terms and conditions as City in its sole discretion deems advisable.
- C. **Termination Damages.** Notwithstanding any such reletting without termination, City may at any time thereafter terminate this Lease for any prior breach or default. If City terminates this Lease for any events of default or breach, in addition to any other remedies City may have, to the extent permitted by law, City may recover from Tenant all damages incurred by reason of such default or breach, including all costs of retaking.

12.3 TERMINATION UPON SALE. If during the Term of this Lease, City decides to sell Premises or any substantial portion thereof, City shall have the option of terminating this Lease by providing at least one hundred twenty (120) days written notice to Tenant of its election to do so. The parties agree that the Tenant has an interest in continued occupancy during any academic term and the notice provided herein shall not require Tenant to vacate the Premises until at least 10 days following the end of the current academic term.

ARTICLE XIII - DAMAGE AND DESTRUCTION

13.1 OBLIGATIONS OF TENANT. During the term hereof, except as provided in Section 13.3 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to City, and City shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by City.

13.2 INSURANCE PROCEEDS. Upon receipt by City of the proceeds of the insurance policy or policies, such proceeds shall be disbursed by City during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, City may immediately terminate this Lease. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by City. Tenant shall be relieved of any further obligation to pay rent as of the date of such termination.

13.3 CANCELLATION OF LEASE. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Lease, Tenant shall have the right to cancel this Lease by giving City written notice of such election within thirty (30) days after the date of any such

damage or destruction. In such event, this Lease shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by City. All rents payable under this Lease shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by City will relieve City from any responsibility to restore the Premises to their former condition.

ARTICLE XIV - EMINENT DOMAIN/CONDEMNATION

14.1 DEFINITIONS. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant;
 - 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired;
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Tenant under this Lease.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.

- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the Taking.
- G. "Award" means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

14.2 NOTICE OF CONDEMNATION. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

14.3 RIGHTS OF PARTIES DURING CONDEMNATION PROCEEDING. City and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

14.4 TAKING OF LEASEHOLD. Upon a Total Taking, Tenant's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation. If the Taking is substantial under the aforementioned definition, Tenant may, by notice to City within ninety (90) days after Tenant receives Notice of the intended Taking, elect to treat the Taking as a Total Taking. If Tenant does not so notify City, the Taking shall be deemed a partial Taking. Upon a partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

14.5 TOTAL TAKING. All of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by any Tenant-owned improvements, but subject to the Lease, shall be disbursed to City.

14.6 PARTIAL TAKING. Upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to City and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. City shall receive all sums awarded for the Premises, as unencumbered by the Tenant-owned improvements but subject to the Lease.

14.7 OBLIGATIONS OF TENANT UNDER PARTIAL TAKING. Promptly after any such Partial Taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last year of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying City of its intention to that effect; provided however, that all sums awarded for Tenant owned improvements and the Leasehold estate shall be disbursed to City.

14.8 TAKING OF TEMPORARY USE OF PREMISES AND IMPROVEMENTS. Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the Taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such Taking, Tenant shall receive, hold and disburse the Award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

If any such Taking is for a period extending beyond the expiration date of the term, the Taking shall be treated under the foregoing provisions for total, substantial and Partial Takings.

ARTICLE XV - ASSIGNMENT

15.1 ASSIGNMENT. Tenant shall not assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise and shall not sublet the Premises or any part

thereof, except upon receipt of prior written permission and consent of City. Consent of City to any such assignment or subletting shall not be permitted if: (i) at the time of such assignment or subletting, Tenant is in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee, or subtenant will not expressly assume in writing all of Tenant's obligations hereunder; and (iii) Tenant's provision of proof to City that the assignee's or subtenant's financial condition is not satisfactory to City.

15.2 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 City under this Lease.

ARTICLE XVI - MISCELLANEOUS

16.1 ENTRY BY THE CITY. The City shall have the right to examine the Premises at all reasonable times and with proper notification to the Tenant.

City or their agents and employees shall have the right to enter the Premises from time to time at reasonable times to examine and make such repairs, alterations, improvements, or additions as City deems desirable. Rent shall in no way abate while any such repairs, alterations, improvements, or additions are being made. During the last six (6) months of the Initial Term or any extensions thereto, City, or their agents and employees may exhibit the Premises to prospective lessees and maintain upon the Premises notices deemed advisable by City. In addition, during any apparent emergency, City or their agents and employees may enter the Premises forcibly without liability therefore and without in any manner affecting Tenant's obligations under this Lease. Nothing herein contained, however, shall be deemed to impose upon City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair except as otherwise herein expressly provided.

16.2 END OF TERM. Tenant shall surrender the Premises at the end of this Lease in good order and condition except for ordinary wear and tear.

16.3 NO WAIVER OF BREACH. Any failure or neglect by the City to assert or enforce any rights or remedies because of any breach or default by Tenant under this Lease shall not prejudice the City's rights or remedies with respect to any existing or subsequent breaches or defaults. Acceptance of any partial payment from Tenant will not waive the City's right to pursue Tenant for any remaining balance due nor shall any endorsement or statement on any check or any letter which acknowledges a check or payment as rent be deemed an accord and satisfaction.

16.4 SUCCESSORS AND ASSIGNS. The covenants hereby contained shall, subject to the assignment and subletting provision herein, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties.

16.5 INVALIDITY OF ANY PROVISION. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

16.6 WAIVER. No delay or omission in the exercise of any right or remedy of City on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by City of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of City including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of this Lease. Only notice from City to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease. City's consent to or approval of any act by Tenant requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act by Tenant. Any waiver by City of any default must be in writing.

16.7 APPLICABLE LAW. This Lease shall be construed according to the laws of the State of Texas and venue shall be in the courts of El Paso County, Texas.

16.8 AMENDMENT. This agreement may be amended in writing to include such provisions as the Parties may agree.

16.9 NOTICES. Whenever any payment notice, consent, or request is given or made under this Lease, it shall be in writing and delivered in person or mailed by certified mail to the address set forth below or to any other address as may have been specified by prior notice to the other party.

Communications and payment to Tenant shall be addressed to:

Procurement Services
Box 41094
Lubbock, Texas 79409-1094
Attention: Managing Director of Procurement Services

Communication and payments to the City shall be addressed to:

City of El Paso
P.O. Box 1890
El Paso, Texas, 79950-1890
Attn: City Manager

With a copy to:

Capital Assets Management
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
Attn: City Development Director

16.10 ENTIRE AGREEMENT. This Lease and attachments contain all of the agreements and understandings made between the parties and may only be modified in a writing signed by the parties or their respective successors in interest.

16.11 LEGAL RELATIONSHIP. Nothing in this Lease shall be construed or deemed to create any partnership or other relationship between the parties, other than as expressly provided for herein. Subject to the provisions of this Lease, Tenant shall be solely responsible for and shall wholly control the Premises referenced in this Agreement.

16.12 FORCE MAJEURE. If either party hereto shall be delayed or hindered in or prevented from performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of war or other reason of the like nature not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, Tenant shall not be excused from any obligations for payment of rents, fees, or other payments required by the terms of the Lease when same are due, and all such amounts shall be paid when due.

16.13 TITLES. The titles and the Article headings are inserted only for convenience and are not to be construed as part of this Lease.

16.14 NONDISCRIMINATION COVENANT.

Tenant, for itself, its representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

1. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, Building or Property pursuant to this Lease.
2. That in the construction of any improvements in the Premises and the furnishing of services therein, no person on the grounds of race, creed, color, sex, age disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
3. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to cancel this Lease immediately and re-enter and repossess the Premises and hold the same as if said Lease had never been made or issued.

ARTICLE XVII - DISPUTE RESOLUTION

The dispute resolution process provided for in the Texas Government Code, Chapter 2260 shall be used, as further described herein, by Tenant and City in an attempt to resolve any unresolved claim by City for breach of contract arising under this Lease.

1. City's claim for breach of this Lease that cannot be resolved by the parties in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the City shall submit written notice, as required by Subchapter B, to the Director of Procurement Services, Texas Tech University at the following address: Box 41094, Lubbock, Texas 79409-1094. Said notice specifically shall state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Tenant and City that are otherwise entitled to notice under this Lease as set forth in Section 16.9 herein. Compliance by the City with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.
2. The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the City's sole and exclusive process for seeking a remedy for an alleged breach of contract by Tenant if the parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B, unless, after considering the recommendation of the Administrative Law Judge, the Legislature grants the City consent to sue under Chapter 107 of the Civil Practices and Remedies Code.
3. Neither the execution of this Lease by Tenant nor any other conduct of any representative of Tenant relating to the contract shall be considered a waiver of Tenant's sovereign immunity to suit.
4. The dispute resolution process provided for in Government Code Chapter 2260 will not, at any time, affect Tenant's right or ability to bring suit against City for disputes arising under this agreement, nor will it affect Tenant's ability to assert all claims and defenses in a lawsuit.
5. Pursuant to Chapter 2260, the submission, processing and resolution of the City's claim is governed by the published rules adopted by the Texas Attorney General's Office, as currently effective, hereafter enacted or subsequently amended.
6. An event or claim for breach of contract is not grounds for City to suspend performance under this Lease.

[Signature Page to follow]

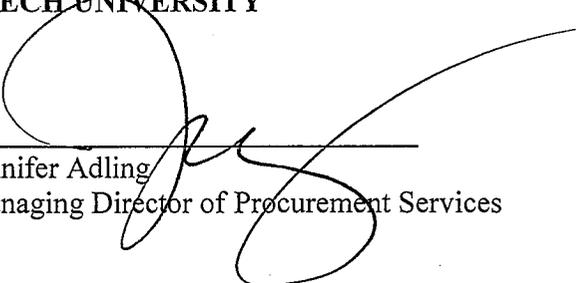
UNION DEPOT LEASE AGREEMENT

[Signature Page]

IN WITNESS WHEREOF, City and Tenant have signed this Addendum as of the day and year first above written.

TEXAS TECH UNIVERSITY

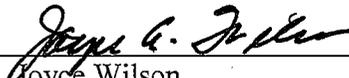
By:



Jennifer Adling
Managing Director of Procurement Services

CITY OF EL PASO

By:



Joyce Wilson
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

Approved as to Form:



Sol M. Cortez
Assistant City Attorney

Approved as to Content:

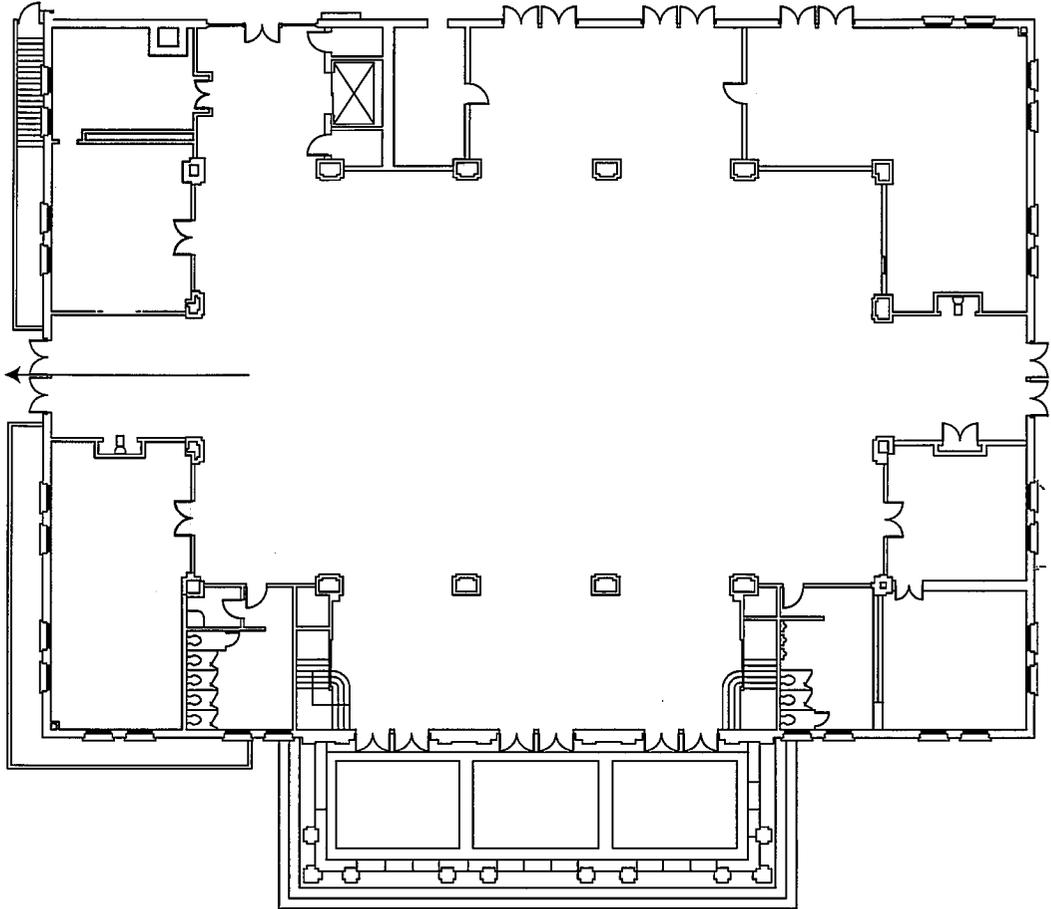


Mathew McElroy, Director
City Development Department

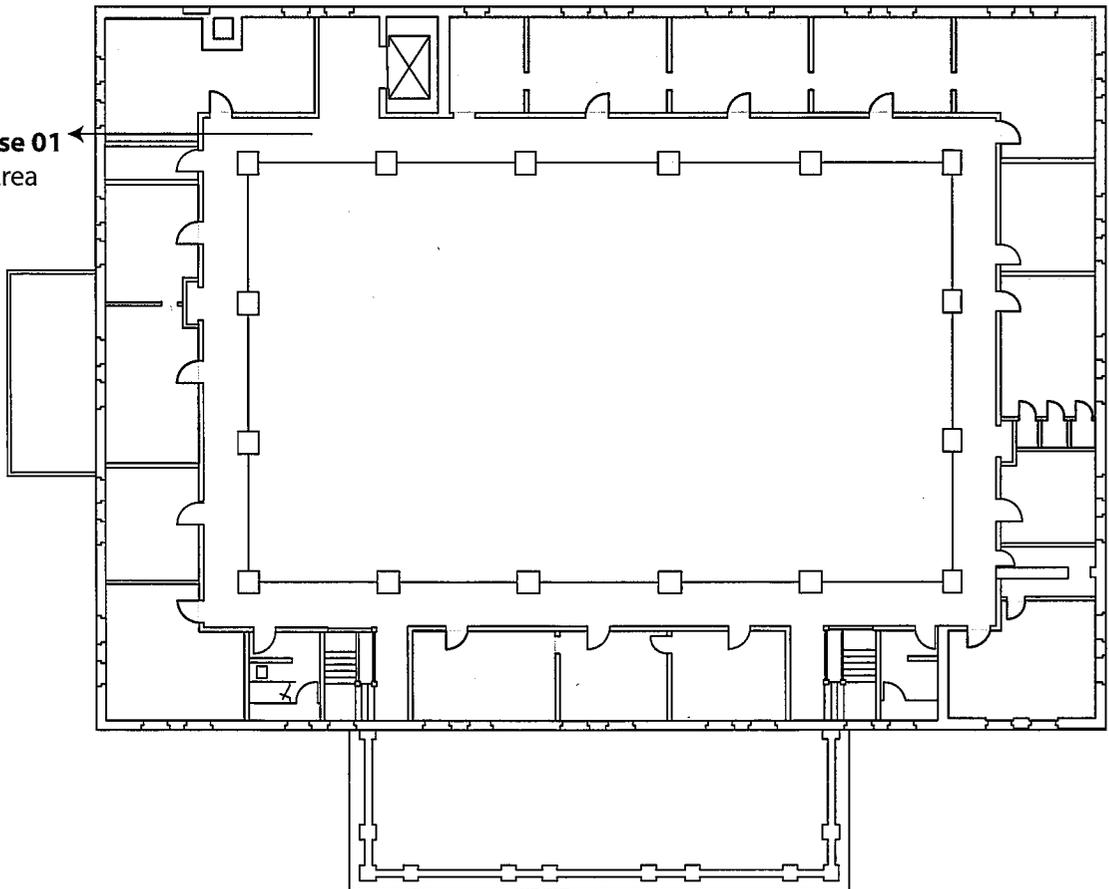
Exhibit A-1

Phase 01
Total Sq. Ft.
TTU Leased Area
5,353 Sq. Ft.

Floor 1 - Phase 01
TTU Leased Area
1,774 Sq. Ft.

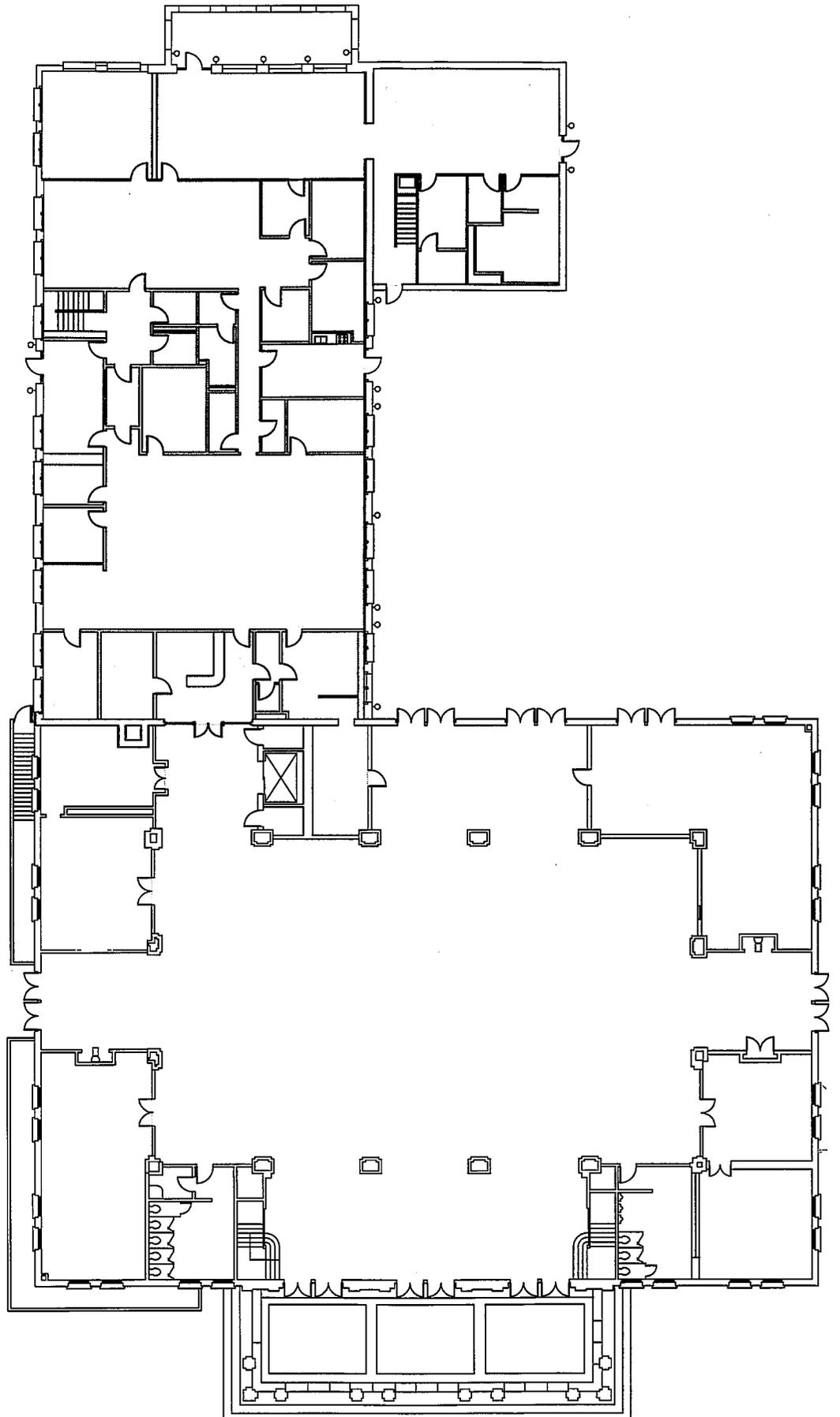


Floor 2 - Phase 01
TTU Leased Area
Square Ft.
3,579 Sq. Ft.

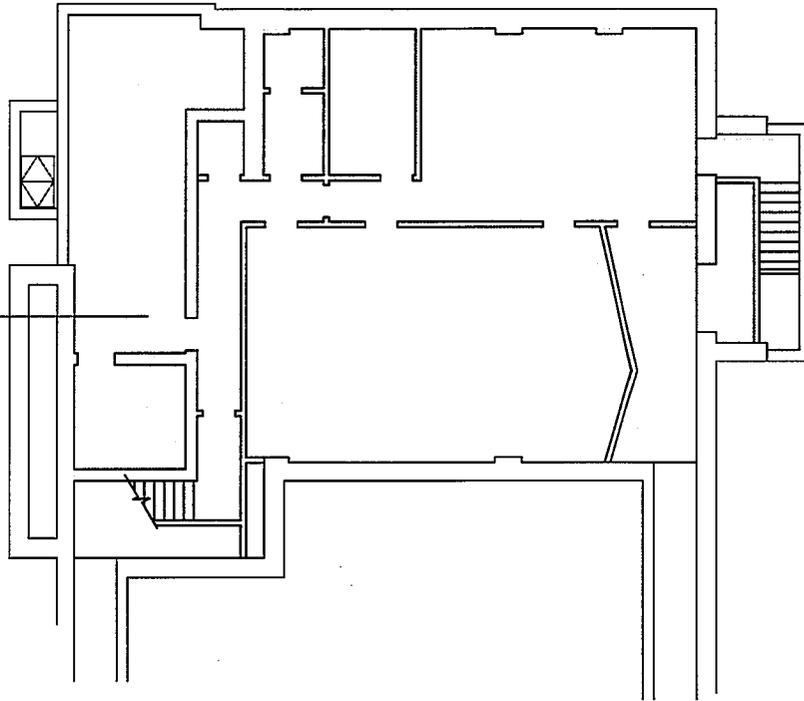


Phase 02
Total Sq. Ft.
TTU Leased Area
16,587 Sq. Ft.

Floor 01 - Phase 02
TTU Leased Area
10,345 Sq. Ft.



Basement - Phase 02
No Elevator
TTU Leased Area
2,663 Sq. Ft.



Floor 2 - Phase 02
TTU Leased Area
Square Ft.
3,579 Sq. Ft.

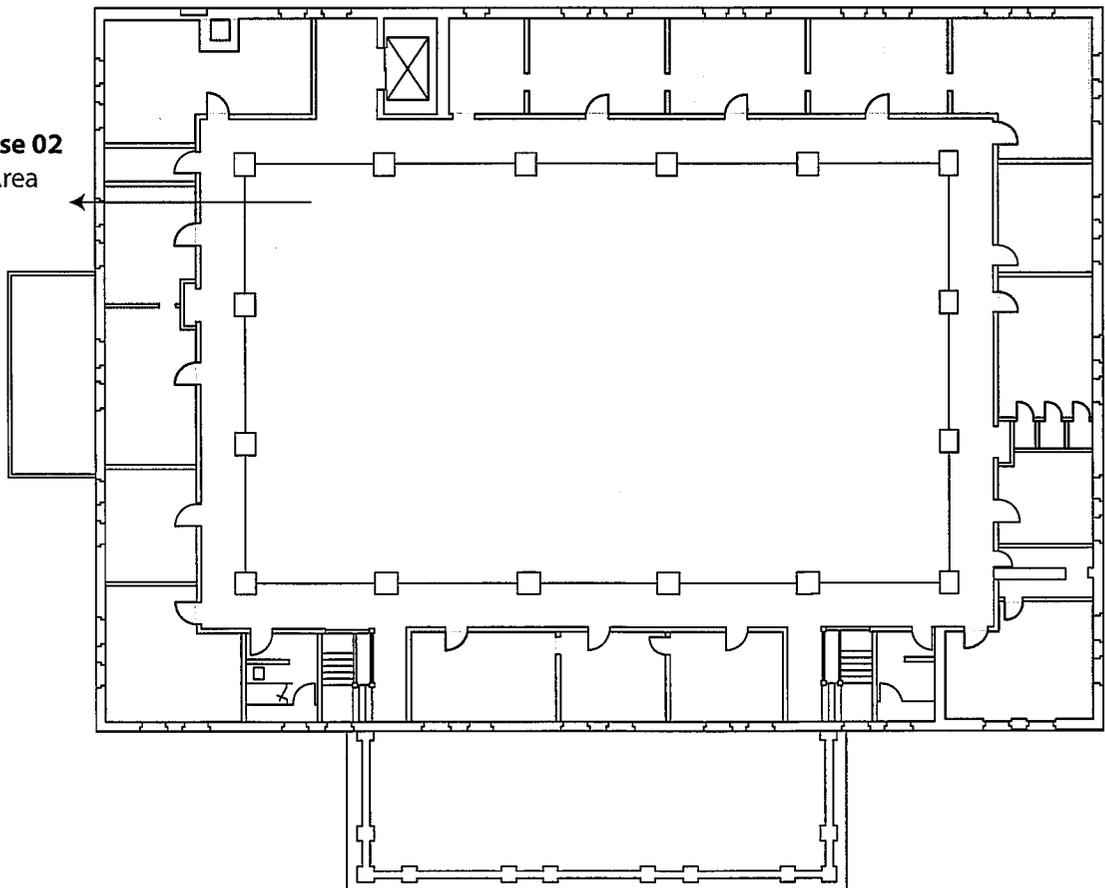


EXHIBIT A-3
METES AND BOUNDS

**METES AND BOUNDS DESCRIPTION
EL PASO UNION PASSENGER DEPOT (EAST)**

Property Description: A Portion out of UNION PASSENGER DEPOT, located in the City of El Paso, El Paso County, Texas, according to the Deed recorded in Volume 901, Page 1134, Real Property Records of El Paso County.

Commencing at a monument laying on the centerline intersection of San Antonio Street and Durango Street (both a 70' public right-of-ways); Thence, North 15° 31' 00" West, with said centerline of Durango Street, a distance of 467.19 feet to a point laying on the centerline intersection of Durango Street and San Francisco Street; Thence, North 80° 32' 00" East, with said centerline of San Francisco Street, a distance of 88.75 feet to a point; Thence, North 15° 31' 00" West, a distance of 35.20 feet to a set ½ inch rebar laying on the northerly right-of-way line of San Francisco Street, said point being the most easterly corner of the parcel of land of the El Paso Union Passenger Depot Company and the TRUE POINT OF BEGINNING of this description;

THENCE, along the boundary line between El Paso Union Passenger Depot Company and the Southern Pacific Transportation Company, South 89° 33' 00" West, a distance of 833.02 feet to a set "PK" nail for a corner;

THENCE, South 00° 25' 28" East, a distance of 115.56 feet to a set chiseled "X", being the southwest corner of the parcel herein described;

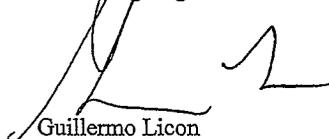
THENCE, North 89° 22' 41" East, a distance of 106.83 feet to a set chiseled "X";

THENCE, North 80° 32' 00" East, a distance of 735.33 feet to the TRUE POINT OF BEGINNING of the parcel herein described containing 54,172 square feet or 1.2436 acres of land MORE OR LESS.

A 25 foot easement in favor of the Southern Pacific Transportation Company is reserved for their use commencing at a point which bears South 89° 33' 00" West, a distance of 571.25 feet from the most easterly point of this parcel (the TRUE POINT OF BEGINNING); Thence, South 00° 57' 58" West, a distance of 91.03 feet; Thence South 80° 32' 00" West, a distance of 25.42 feet, Thence, North 00° 57' 58" East, a distance of 95.02 feet; Thence South 89° 33' 00" East, a distance of 25.01 feet to the point of beginning of the easement herein described, containing 2,325 square feet or 0.0534 acres 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



June 19, 2012
Job# 06-12-3220
M&B/****

NOTES:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. DEED REFERENCE IN VOL. 901, PG. 1134 DEED RECORDS OF EL PASO COUNTY.
4. BASIS OF BEARING: PLAT OF CAMPBELL ADDITION RECORDED IN VOL. 2, PG. 68.

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 SLI ENGINEERING, INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

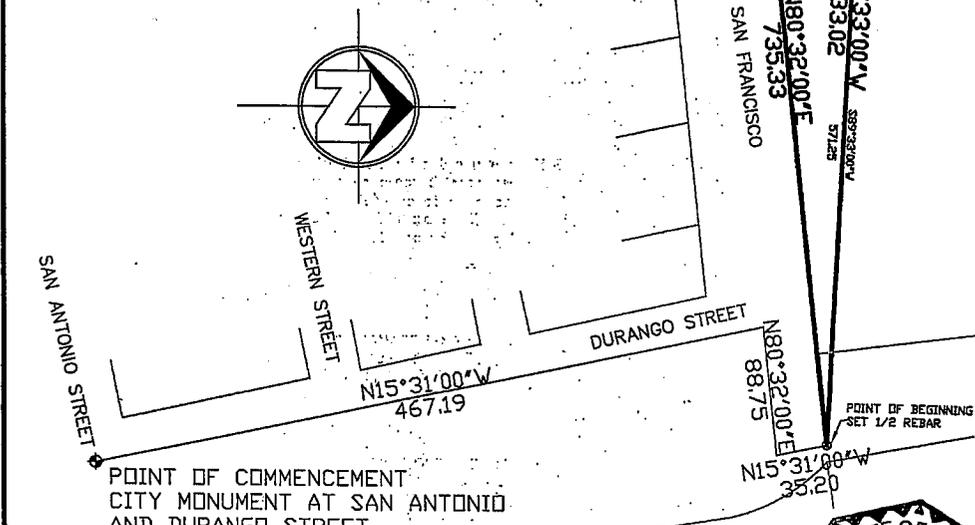
Copyright 2011 SLI Engineering, Inc.

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 map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon June 19, 2012.

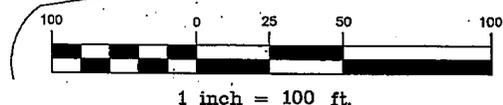
ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0039B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE "C".

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.



F:\PROJECTS\MP\SURV\12-3220 Union Depot-4 REDD.dwg, 7/18/2012 11:34:24 AM



PLAT OF SURVEY

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

JOB #: 06-12-3220 DR. BY: EK, TR
 SCALE: 1"=100' F.B. #: XXXX
 DATE: 06/19/2012 DWG. #: 12-3220 Union Depot

UNION PASSENGER DEPOT
 CITY OF EL PASO,
 EL PASO COUNTY,
 TEXAS

PLAT REFERENCE
 VOLUME 2 PAGE 68

STATE OF TEXAS
 REGISTERED
 GUILLERMO LICON
 2998
 PROFESSIONAL
 LAND SURVEYOR

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.

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

DATE: 7-18-12

**METES AND BOUNDS DESCRIPTION
EL PASO UNION PASSENGER DEPOT (CENTER)**

Property Description: A Portion out of UNION PASSENGER DEPOT, located in the City of El Paso, El Paso County, Texas, according to the Deed recorded in Volume 901, Page 1134, Real Property Records of El Paso County, Texas and a portion of CAMPBELL ADDITION to the City of El Paso, according to the Plat thereof recorded in Volume 2, Page 68, of the Plat Records of El Paso County, Texas.

Commencing at a monument laying on the centerline intersection of San Antonio Street and Durango Street (both a 70' public right-of-ways); Thence, North 15° 31' 00" West, with said centerline of Durango Street, a distance of 467.19 feet to a point laying on the centerline intersection of Durango Street and San Francisco Street; Thence, North 80° 32' 00" East, with said centerline of San Francisco Street, a distance of 88.75 feet to a point; Thence, North 15° 31' 00" West, a distance of 35.20 feet to a set ½ inch rebar laying on the northerly right-of-way line of San Francisco Street, said point being the most easterly corner of the parcel of land of the El Paso Union Passenger Depot Company; Thence South 89° 33' 00" West, a distance of 833.02 feet to a set "PK" nail being the TRUE POINT OF BEGINNING of this description;

THENCE, along the boundary line between El Paso Union Passenger Depot Company and the Southern Pacific Transportation Company, South 89° 33' 00" West, a distance of 399.32 feet to a set "PK" nail for a corner;

THENCE, South 00° 31' 22" East, a distance of 355.29 feet to a set chiseled "X" on the northerly Right-of-Way of Piasano Drive, being the southwest corner of the property herein described;

THENCE, 51.27 feet along the arc of a curve to the left, being the northerly Right-of-Way of Piasano Drive, having a radius of 1249.48 feet, with a central angle of 2° 21' 03" and a chord that bears South 89° 54' 35" East for a distance of 51.26 feet;

THENCE, continuing along Piasano Drive, North 88° 44' 03" East, a distance of 511.53 feet to a set chiseled "X" at the southwest corner of the El Paso Union Passenger property;

THENCE, leaving the El Paso Union Passenger property, North 88° 44' 03" East, a distance of 169.44 feet to a set chiseled "X" on the easterly Right-of-Way of West San Francisco Street;

THENCE, South 15° 18' 09" East, a distance of 10.27 feet to a set "PK" nail for a corner on the easterly Right-of-Way of West San Francisco Street;

THENCE, North 74° 26' 15" East, a distance of 120.00 feet, along the southern boundary of Lot 4, Block 171, of the Campbell Addition;

THENCE, North 15° 33' 45" West, a distance of 262.28 feet to a chiseled "X" at the on the northerly Right-of-Way of San Francisco Street;

THENCE, South 80° 32' 00" West, a distance of 280.07 feet to a chiseled "X";

THENCE, South 89° 22' 41" West, a distance of 106.83 feet to a chiseled "X";

THENCE, North 00° 25' 28" West, a distance of 115.56 feet to the TRUE POINT OF BEGINNING of the parcel herein described containing 245,813 square feet or 5.6431 acres of land MORE OR LESS.

Reserving 25 foot easement in favor of the Southern Pacific Transportation Company for their use, commencing at the northeasterly corner of the above described property; Thence, South 80° 32' 00" West, a distance of 125.42 feet to the point of beginning of the easement herein described; Thence South 00° 57' 58" West, a distance of 256.13 feet to a point; Thence South 88° 44' 03" West, a distance of 25.02 feet to a point; Thence, North 00° 57' 58" East, a distance of 252.39 feet to a point; Thence North 80° 32' 00" East, a distance of 25.42 to the point of beginning of this easement containing 6,356 square feet, or 0.1459 acre 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



June 19, 2012
Job# 06-12-3220
M&B/****

NOTES:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. DEED REFERENCE IN VOL. 901, PG. 1134 DEED RECORDS OF EL PASO COUNTY.
4. BASIS OF BEARING: PLAT OF CAMPBELL ADDITION RECORDED IN VOL. 2, PG. 68.

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 SLI ENGINEERING, INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

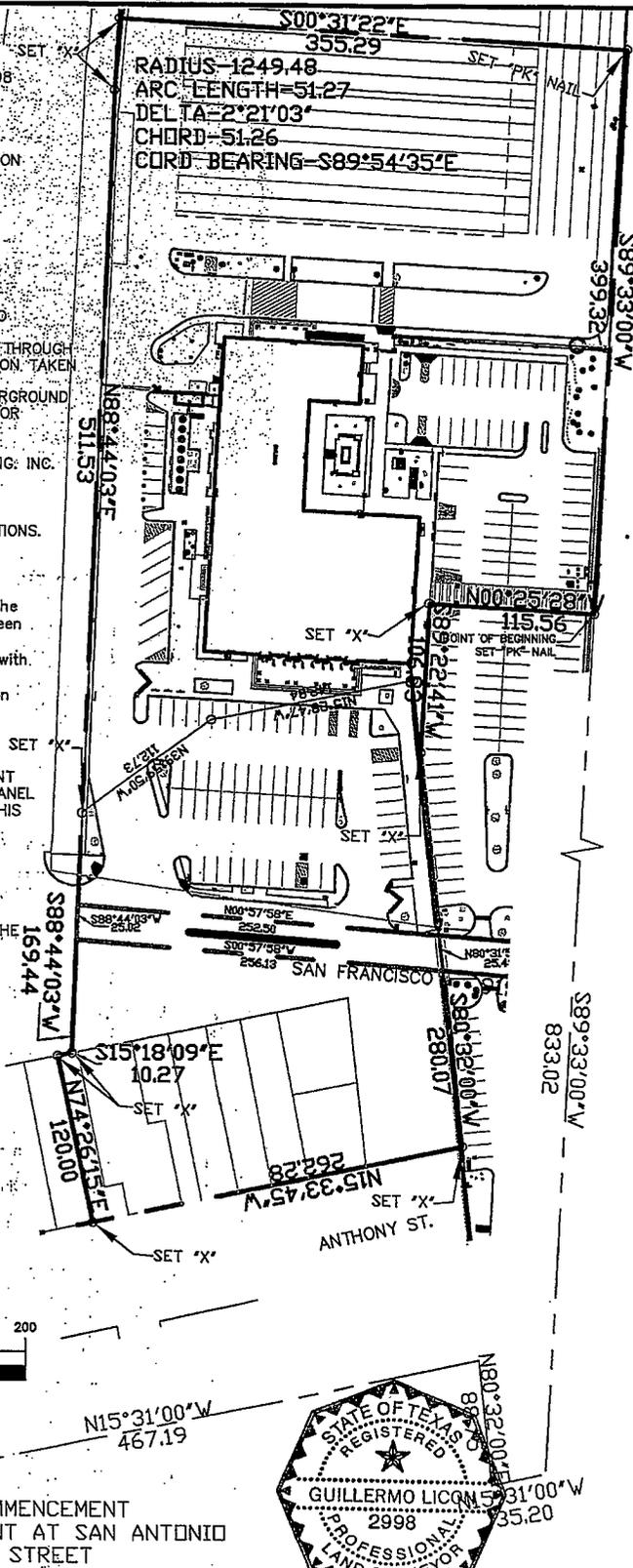
Copyright 2011 SLI Engineering, Inc.

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 map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon June 19, 2012.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0039B, 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.



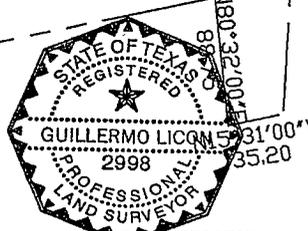
F:\PROJECTS\IMPSURV\12-3220 Union Depot\dwg\12-3220 Union Depot-4 REDO.dwg, 7/18/2012 11:34:46 AM

PLAT OF SURVEY



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

UNION PASSENGER DEPOT and a
PORTION OF CAMPBELL ADDITION
CITY OF EL PASO,
EL PASO COUNTY,
TEXAS



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.

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

JOB # 06-12-3220 DR. BY: EK, TR

SCALE: 1"=100' F.B. # XXXX

DATE: 06/19/2012 DWG. # 12-3220 Union Depot

PLAT REFERENCE
VOLUME 2 PAGE 68

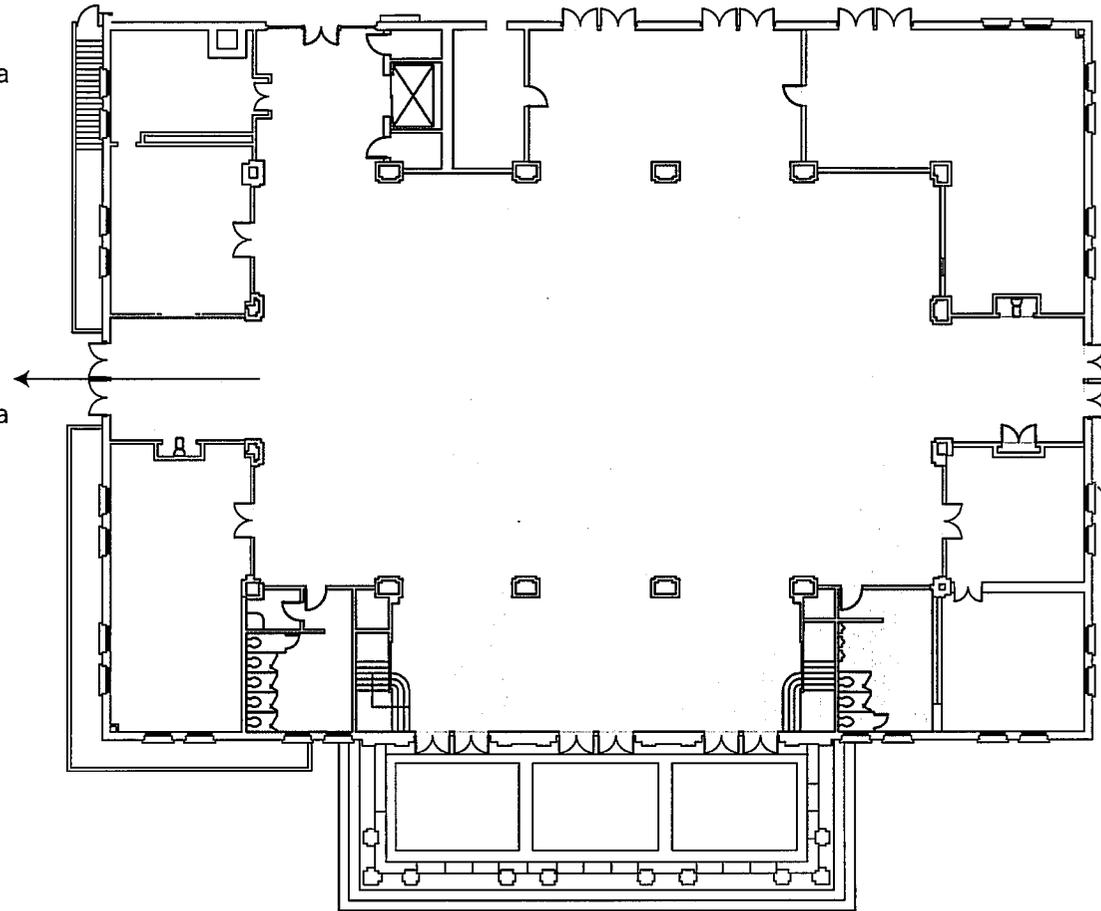
DATE: 7-18-12

EXHIBIT A-4
COMMON AREAS

Exhibit A-4

Total Sq. Ft.
Common Area
14,128 Sq. Ft.

Floor 1
Common Area
Square Ft.
10,388 Sq. Ft.



Floor 2
Common Area
Square Ft.
3,740 Sq. Ft.

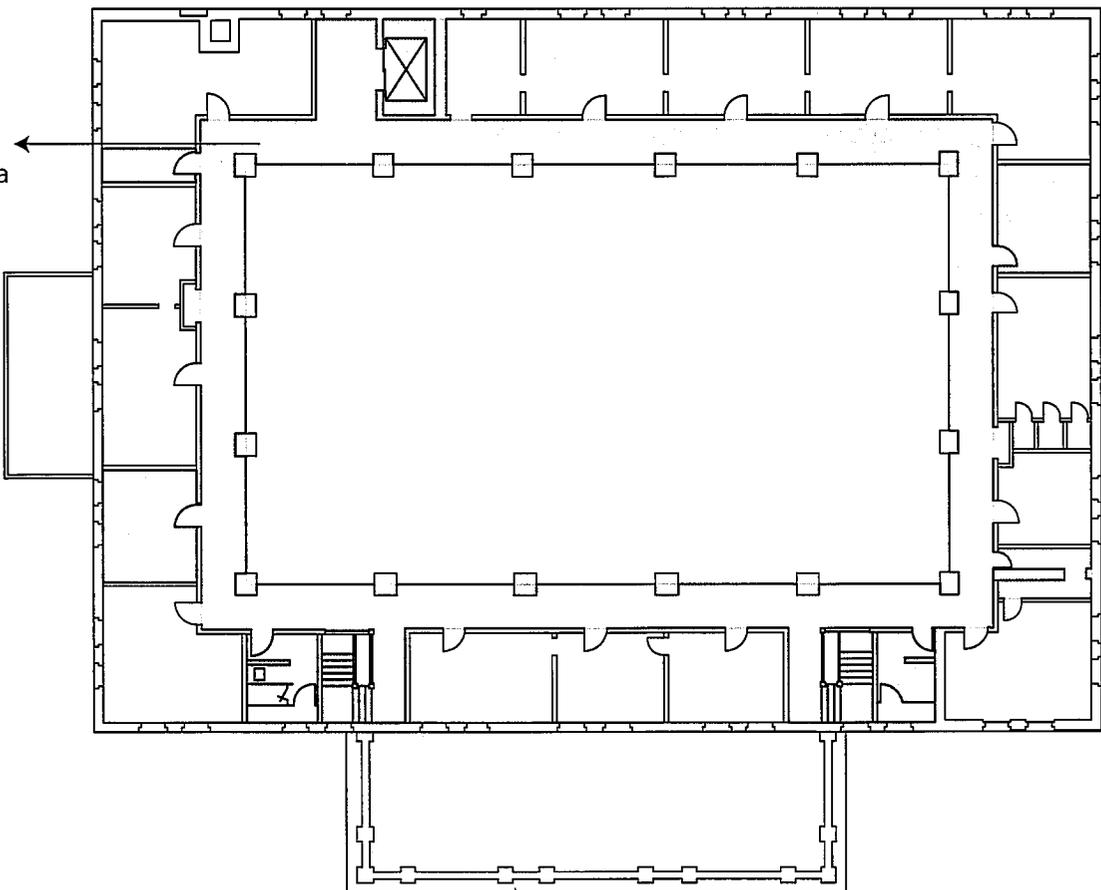
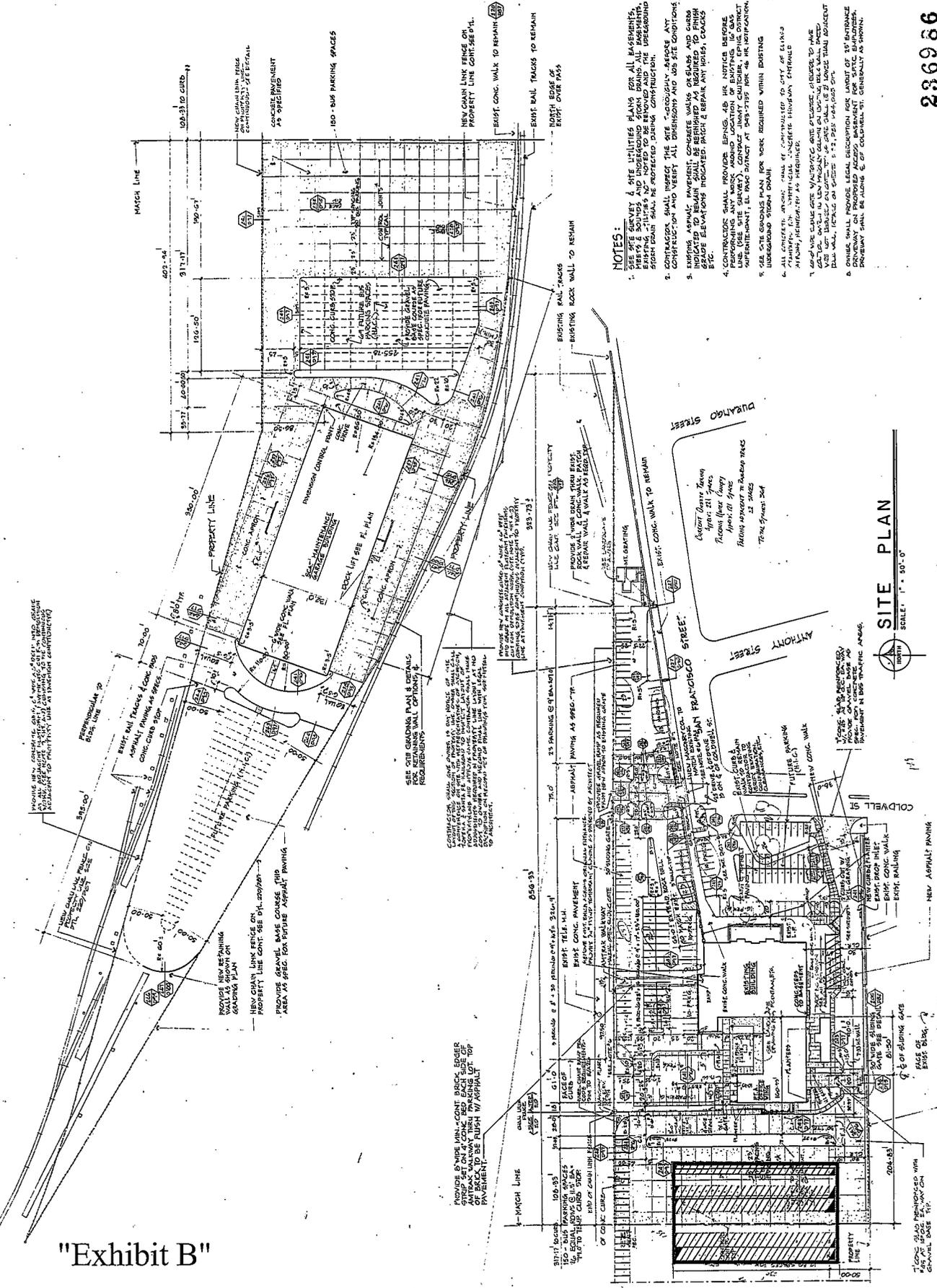


EXHIBIT B
PARKING AREA

"Exhibit B"



NOTES:

1. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
2. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
3. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
4. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
5. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
6. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
7. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.
8. CONTRACTOR SHALL VERIFY ALL UTILITIES AND RECORDS FROM ALL BARRIERS, BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS. BARRIERS, UTILITIES AND RECORDS FROM ALL BARRIERS.

SITE PLAN
SCALE: 1" = 30'-0"

236966