

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

DEPARTMENT: Financial Services
AGENDA DATE: May 27, 2008
CONTACT PERSON/PHONE: Carmen Arrieta-Candelaria, 541-4293
DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a Fifth Amendment to the Sept. 19, 1974 Lease between the City of El Paso and the El Paso County Humane Society, Inc. for a one acre parcel commonly known as 325 Shelter Place, El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

The El Paso County Human Society has requested a lease term extension through August 31, 2008, allowing them time to complete the construction of the new facility at Fred Wilson Avenue.

PRIOR COUNCIL ACTION:

Yes, Lease of city owned property

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

CARE Committee approval

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

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

DEPARTMENT HEAD: Carmen Arrieta-Candelaria
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007; and

WHEREAS, on Dec. 27, 2006, the City agreed to extend the term of the lease through Oct. 31, 2007 because the Humane Society is relocating to a new facility on Fred Wilson Avenue and requested time to allow for an orderly move to the new facility; and

WHEREAS, on Oct. 23, 2007 the City agreed to extend the lease term through May 31, 2008 because, while the construction documents for the new facility have been completed and submitted for a building permit, the final approval of the plans was pending issuance of an access agreement with adjacent property owners and a review and modification of the construction plans because of the future expansion plans for Fred Wilson Avenue; and

WHEREAS, the Humane Society has requested that the City extend the lease term through Aug. 31, 2008 because the Humane Society has experienced an additional delay in the completion of its new facility and cannot obtain service from various utility companies because of construction related to the expansion of Fred Wilson Road, which is a portion of the State Spur 601 Project.

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

That the City Manager be authorized to sign a Fifth Amendment to the Sept. 19, 1974 Lease between the City of El Paso and the El Paso County Humane Society, Inc. for a one acre parcel commonly known as 325 Shelter Place, El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2008.

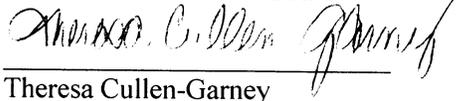
THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney

Deputy City Attorney

Document #: 39398

Document Name: CAM/Humane Society 5th Lease amend/reso

APPROVED AS TO CONTENT:



Carmen Arrieta-Candalaria

Chief Financial Officer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

FIFTH AMENDMENT

This Fifth Amendment made this _____ day of _____, 2008, by and between the **CITY OF EL PASO**, hereinafter referred to as "City," and the **EL PASO COUNTY HUMANE SOCIETY, INC.**, hereinafter referred to as the "Humane Society".

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society, and a copy of the lease is attached hereto, marked Exhibit "A", and made a part hereof by reference; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works, and a copy of the First Amendment is attached hereto, marked Exhibit "B", and made a part hereof by reference; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007, and a copy of the Second Amendment is attached hereto, marked Exhibit "C", and made a part hereof by reference; and

WHEREAS, on Dec. 27, 2006, the City agreed to extend the term of the lease through Oct. 31, 2007 because the Humane Society is relocating to a new facility on Fred Wilson Avenue and requested time to allow for an orderly move to the new facility, and a copy of the Third Amendment is attached hereto, marked Exhibit "D", and made a part hereof by reference; and

WHEREAS, on October 23, 2007, the City agreed to extend the lease term through May 31, 2008 because, while the construction documents for the new facility have been completed and submitted for a building permit, the final approval of the plans was pending issuance of an access agreement with adjacent property owners and a review and modification of the construction plans because of the future expansion plans for Fred Wilson Avenue, and a copy of the Fourth

Amendment is attached hereto, marked Exhibit "E", and made a part hereof by reference; and

WHEREAS, the Humane Society has requested that the City extend the lease term through Aug. 31, 2008 because the Humane Society has experienced an additional delay in the completion of its new facility and cannot obtain service from various utility companies because of construction related to the expansion of Fred Wilson Road, which is a portion of the State Spur 601 Project.

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

1. The City and the Humane Society hereby agree that the term of the Sept. 19, 1974 lease and its amendments is extended to Aug. 31, 2008. As consideration for the lease term extension, the Humane Society will continue to use the City's property for an animal shelter and like uses for the uninterrupted relief of suffering among animals and not for private profit while the Humane Society constructs its new facility.
2. The City and the Humane Society agree that the City will pay the Humane Society the sum of \$180,000.00 on Oct. 1, 2008, if the Humane Society no longer occupies City's property, for its improvements on the leased property. Upon the payment of this sum, the provisions of the original lease pertaining to any obligation of the City, or its successor in interest, to purchase the Humane Society's improvements, under the Sept. 19, 1974 lease and its amendments, will terminate.
3. The City and the Humane Society agree that the Humane Society may remove any fixtures it has attached to the leased property before Aug. 30, 2008. The Humane Society agrees that the removal of any fixtures will be done in an orderly fashion, and upon expiration of the lease, the Humane Society agrees it will leave the leased property in a secure manner subject to the approval of the City or its successor in interest.
4. Except as herein revised, the terms and conditions of the Sept. 19, 1974 lease and its amendments shall remain in full force and effect. Provided that upon expiration of

this Amendment, it is understood that all prior leases and prior amendments are cancelled and terminated and are no longer in effect whatsoever except that the provisions of Paragraphs 2 and 3 above shall survive the expiration of this Amendment.

WITNESS THE FOLLOWING SIGNATURES AND SEAL

CITY OF EL PASO:

Joyce A. Wilson

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008, by JOYCE WILSON, as the City Manager of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation.

My Commission Expires:

Notary Public, State of Texas
Notary's name printed:

(Signatures continue on next page)

EL PASO COUNTY HUMANE SOCIETY, INC.

By: Betty Hoover
Title: Executive Director

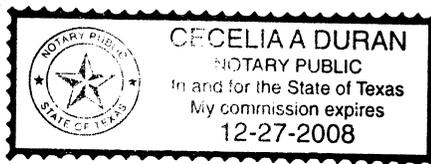
ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 19 day of May, 2008, by Betty Hoover, as the Executive Director of the El Paso County Humane Society, Inc.

My Commission Expires: Cecelia A. Duran
Notary Public, State of Texas

12-27-2008



LEASE AGREEMENT

This lease made this, the 19 day of September 1974 by and between the City of El Paso, hereinafter referred to as Lessor and the El Paso County Humane Society, Inc., hereinafter referred to as Lessee, witnesseth:

RECITAL

Whereas, Lessor and Lessee did enter into an original lease agreement for certain real property hereinafter described in this instrument, and whereas, said original lease agreement was executed on the 29th day of September, 1949 and was for a full term of thirty years from the date of said instrument, and

Whereas, Lessee has notified Lessor that they are desirous of canceling the original lease agreement, and

Whereas, Lessor is agreeable to the cancellation of the original lease agreement entered into between the parties hereto, and

Whereas, both parties are desirous of entering into a new lease agreement on the premises hereinafter described in accordance with the following terms and conditions hereinbelow set forth.

AGREEMENT

Now, therefore, in consideration of the mutual promises and agreements herein made, the parties do hereby agree as follows:

1. That certain lease agreement executed between the Lessor and the Lessee on the 29th day of September, 1949, a copy of which is attached hereto as Exhibit "A" and made a part of this lease agreement for all intents and purposes, is hereby in all things canceled.

2. The Lessor hereby leases to Lessee the following described lands, situated in the City and County of El Paso in the State of Texas:

BEGINNING at a point which is two hundred forty (240') feet west from the southwest corner of the Orchard Park Addition along the south line of the said addition extended westward and two hundred twenty seven (227') feet north of the said south line, measured at a right angle thereto; thence west parallel with the said south line of Orchard Park Addition two hundred twenty (220') feet to a point; thence north at a right angle with the said line one hundred ninety eight (198') feet to a point; thence east at a right angle two hundred twenty (220') feet to a point; thence south at a right angle one hundred ninety-eight (198') feet to the point of beginning, and containing one (1) acre of land.

EXHIBIT

A

TO HAVE AND TO HOLD the demised premises with the rights and appurtenances thereunto belonging unto the said Lessee and its successors from the date hereof during the full term of thirty years next ensuing, yielding and paying therefor as rent unto Lessor the sum of One Dollar (\$1.00) per annum.

2. Lessee shall use the property hereinabove described only for an animal shelter and like uses for the relief of suffering among animals and not for private private profit. However, reasonable charges may be made by Lessee for services rendered and such revenue shall be used in furtherance of its corporate purpose.

3. If any taxes be hereafter legally assessed against said property, Lessee will pay the same before delinquency.

4. Lessee agrees that the building and structure heretofore erected on the above described premises under the term of the original lease attached hereto as Exhibit "A" shall be maintained in a suitable and adequate manner for the purposes of this lease. Lessee further agrees that if it adds additions to the existing building that plans and specifications for such additions shall first be submitted to the City Council for approval prior to construction.

5. The Lessor, its officers, agents, servants and employees shall stand indemnified by Lessee as herein provided. Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and the Lessor shall in no way be responsible therefor. Lessee will indemnify and hold Lessor, its officers, agents, servants and employees harmless against all claims arising out of Lessee's use of the premises which is the subject matter of this lease agreement, and its exercise or enjoyment of the privileges herein granted.

6. Lessee shall maintain in force during the term of this lease public liability and property damage insurance in the minimum amount of \$100,000.00 for one person and \$300,000.00 with respect to each accident or occurrence, and in the sum of \$20,000.00 for injury or damage to property. Lessee shall maintain said insurance with insurance underwriters authorized to do business

in the State of Texas and satisfactory to the City. All policies shall name the City, its officers, agents, servants and employees as additional insureds. Lessee shall furnish the City with a certificate from the insurance carrier showing such insurance to be in full force and effect during the term of this agreement. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policies by the insurer shall be delivered to the City thirty days in advance of the effective date thereof.

7. (a) If at the end of the primary term of this lease the Lessee shall still be using the premises for the purposes for which the lease is made, and if the Lessor shall not be willing to renew the lease for a further term of thirty years, (the Lessor will buy from the Lessee all permanent improvements placed by the Lessee on the land at a price to be determined at the then fair cash market value, to be determined by a majority opinion of three appraisers, one selected by the Lessor, one selected by the Lessee, and the third selected by agreement between the other two appraisers. If the third appraiser cannot be agreed upon, he shall be appointed by the County Judge of El Paso County.)

(b) If before the end of the primary term of this lease, or any extended term, the Lessee shall cease to use the premises for the purpose for which this lease is made, or if the Lessee shall cease to carry out actively the purposes of its incorporation, or if its corporate existence or right to operate shall terminate, the Lessor may take possession of the premises, and all permanent improvements thereon shall become the property of the Lessor without payment therefor; but in such case the Lessor will use the premises for animal welfare work in accordance with the then generally accepted humane standards, until the original or extended term, as the case may be, shall expire; or the Lessor may use the premises for any purpose if it shall provide for equivalent animal welfare work at some other suitable location until the end of the term.

8. Lessee will keep the premises in good repair and in a clean and sanitary condition, and will not use the same, or permit the same to be used,

in violation of any law or ordinance of the City of El Paso or so as to become a nuisance.

9. Lessee will not assign this lease or sublet the premises without the written consent of the City Council.

10. Lessor reserves the right to terminate this lease agreement at any time during the term hereof when in Lessor's opinion it becomes necessary to use the demised property for any of Lessor's functions. In the event Lessor deems it necessary to rescind this lease agreement and terminate this lease prior to the expiration date hereof, it shall first give Lessee written notice of its intention to do so, which shall be rendered to Lessee one year in advance of the date set for termination of this agreement by Lessor. In the event that Lessor terminates this agreement under this clause, Lessor shall then be obligated to purchase the property of Lessee under the formula hereinabove set forth in paragraph 7(a).

11. (a) This Lease Agreement may be canceled by Lessor after the happening of the following events: Default in the performance of any of the covenants and conditions required herein to be kept and performed by the Lessee, and such default continues for a period of fifteen (15) days after receipt of written notice from Lessor of said default.

(b) In the event this lease is canceled as herein set forth, Lessor shall have the right to re-enter the premises without legal process and in such case all improvements placed upon the land shall become the property of Lessor without further obligation on Lessor's part for payment for such improvements.

12. Lessee reserves the right to terminate this lease agreement at any time during the term hereof provided, however, that prior to termination Lessee shall first give written notice of its intention to terminate this agreement which shall be tendered to Lessor one year in advance of the date set for termination of this agreement by Lessee. In the event Lessee terminates this agreement under this clause, then the provisions of Paragraph 11(b) shall apply.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY OF EL PASO

ATTEST:

W. R. Rejes
City Clerk

By [Signature]
Mayor

EL PASO COUNTY HUMANE SOCIETY, INC.

ATTEST:

[Signature]
Secretary

By Cinda M. Dorman
President

THE STATE OF TEXAS
COUNTY OF EL PASO

THIS LEASE, made this 29th day of Sept,
1949, by and between the City of El Paso, Lessor, and the
El Paso County Humane Society, Inc., Lessee, WITNESSETH:

For and in consideration of the payment of rents and
the performance of the covenants on the part of Lessee as
hereinafter set forth, Lessor has demised and leased and by
these presents does demise and lease unto Lessee the following
described land, situated in the City and County of El Paso in
the State of Texas:

BEGINNING at a point which is two
hundred forty (240') feet west from the
southwest corner of the Orchard Park Addition
along the south line of the said addition
extended westward and two hundred twenty-
seven (227') feet north of the said south
line, measured at a right angle thereto;
thence west parallel with the said south
line of Orchard Park Addition two hundred
twenty (220') feet to a point; thence north
at a right angle with the said line one
hundred ninety-eight (198') feet to a point;
thence east at a right angle two hundred
twenty (220') feet to a point; thence south
at a right angle one hundred ninety-eight
(198') feet to the point of beginning, and
containing one (1) acre of land.

EXHIBIT "A"

TO HAVE AND TO HOLD the demised premises with the rights and appurtenances thereunto belonging unto the said Lessee and its successors from the date hereof during the full term of thirty (30) years next ensuing, yielding and paying therefor as rent unto the Lessor the sum of One Dollar per annum.

And in consideration of the premises Lessee covenants as follows:

1. Said property shall be used only for an animal shelter and like uses for the relief of suffering among animals, and not for private profit. However, reasonable charges may be made by Lessee for services rendered and such revenue shall be used in furtherance of its corporate purpose.

2. If any taxes be hereafter legally assessed against said property, Lessee will pay the same before delinquency.

3. Lessee will within a reasonable time erect on said land a building suitable for the purposes of this lease. The plans and specifications for said building and any other permanent improvements placed on the land shall be subject to the approval of the City Council.

4. (a) If at the end of the primary term of this lease the Lessee shall still be using the premises for the purposes for which the lease is made, and if the Lessor shall not be willing to renew the lease for a further term of thirty years, the Lessor will buy from the Lessee all permanent improvements placed by the Lessee on the land at a price to be determined at the then fair cash market value, to be determined by a majority opinion of three appraisers, one selected by the Lessor, one selected by the Lessee, and the third selected by agreement between the other two appraisers. If the third appraiser cannot be agreed upon, he shall be appointed by the County Judge of El Paso County.

THIS INSTRUMENT IS VALID AND LEGAL AND SHALL BE ENFORCED AS SUCH BY THE COURT.

(b) If before the end of the primary term of this lease, or any extended term, the Lessee shall cease to use the premises for the purposes for which this lease is made, or if the Lessee shall cease to carry out actively the purposes of its incorporation, or if its corporate existence or right to operate shall terminate, the Lessor may take possession of the premises, and all permanent improvements thereon shall become the property of the Lessor without payment therefor; but in such case the Lessor will use the premises for animal welfare work in accordance with the then generally accepted humane standards until the original or extended term, as the case may be, shall expire; or the Lessor may use the premises for any purpose if it shall provide for equivalent animal welfare work at some other suitable location until the end of the term.

5. Lessee will keep the premises in good repair and in clean and sanitary condition, and will not use the same, or permit the same to be used, in violation of any law or ordinance, or so as to become a nuisance.

6. Lessee will not assign this lease or sublet the premises without the written consent of the City Council.

7. If the Lessee shall breach any of its covenants contained in this lease, the Lessor may after thirty days written notice to the Lessee to comply with such covenant and the Lessee's failure so to do, terminate this lease and reenter the premises without legal process; and in such case all permanent improvements placed upon the land shall become the property of the Lessor without further obligation on its part.

WITNESS the following signatures and seals:

ATTEST:
H. Quinn
City Clerk

THE CITY OF EL PASO
By *[Signature]*
Mayor

ATTEST:
Marie Cass
Secretary

EL PASO COUNTY HUMANE SOCIETY, INC
By *Marion E. Young*
President

THE STATE OF TEXAS
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared D. L. P. DUKE, Mayor of the City of El Paso, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged before me in my County aforesaid that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated and as the act and deed of the City of El Paso.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 29th day of Sept, 1949.


Notary Public in and for El Paso County,
Texas

G. B. DANIELS, Notary Public
in and for El Paso County, Texas
My commission expires June 1, 1951

THE STATE OF TEXAS
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared MARIAN E. YOUNG, President of the El Paso County Humane Society, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of El Paso County Humane Society, Inc., a corporation, and that she executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 3rd day of October, 1949.


Notary Public in and for El Paso
County, Texas

G. B. DANIELS, Notary Public
in and for El Paso County, Texas
My commission expires June 1, 1951

STATE OF TEXAS
COUNTY OF EL PASO

§
§
§

FIRST AMENDMENT

This First Amendment made this 6th day of June, 1995, by and between the CITY OF EL PASO, hereinafter referred to as "Lessor," and the EL PASO COUNTY HUMANE SOCIETY, INC., hereinafter referred to as "Lessee."

WHEREAS, on September 19, 1974, the El Paso City Council authorized the Mayor to execute a lease with Lessee, said lease is attached hereto, marked Attachment "1", and made a part hereof by reference; and

WHEREAS, the September 19, 1974 lease requires that the Lessee obtain the approval of plans and specifications by the City Council before any construction begins on any additions to the existing building, and

WHEREAS, both the Lessor and the Lessee desire to streamline the procedures for approval of any plans for additions to the existing building by delegating the authority for approval of any such plans to the Lessor's Director of Public Works,

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

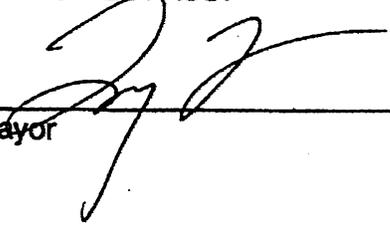
1. That Paragraph No. 4 of Attachment "1" is hereby amended to read as follows:
 4. Lessee agrees that the building and structure heretofore erected on the above described premises under the term of the original lease attached hereto as Exhibit "A" shall be maintained in a suitable and adequate manner for the purposes of this lease. Lessee further agrees that if it adds additions to the existing building that plans and specifications for such additions shall first be submitted to the Lessor's Director of Public Works for approval prior to construction.
4. Except as herein amended, Attachment "1", the lease dated September 19, 1974, shall remain in full force and effect.

EXHIBIT

B

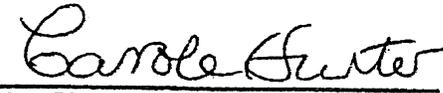
WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:



Mayor

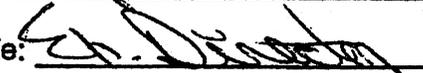
ATTEST:



City Clerk

EL PASO COUNTY HUMANE SOCIETY

By: 

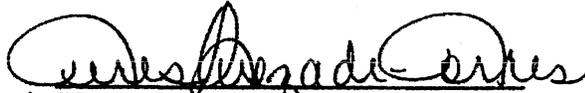
Title: 

APPROVED AS TO FORM:



Assistant City Attorney

APPROVED AS TO CONTENT:

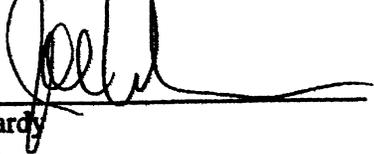


for Director of Public Works

2. **TO HAVE AND TO HOLD** the demised premises with the rights and appurtenances thereunto belonging to the said Lessee and its successors to begin on the date hereof, and to continue thereafter for a period of 3 years unless terminated by either party's giving the other at least 18 months prior written notice of the intention to terminate the tenancy.
3. Except as herein amended, the Lease Agreement dated September 19, 1974, shall remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:



Joe Ward
Mayor

ATTEST:



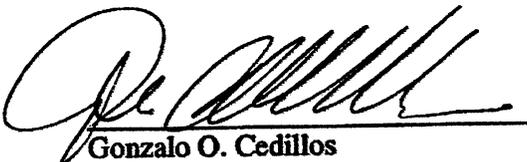
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



K. Elkins
Assistant City Attorney

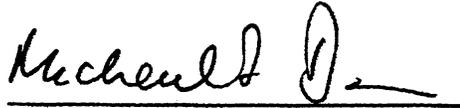
APPROVED AS TO CONTENT:



Gonzalo O. Cedillos
Capital Assets Manager

(Signatures continue on following page)

EL PASO COUNTY HUMANE SOCIETY, INC.



Michael Davis
President

ATTEST:

Secretary

STATE OF TEXAS §
COUNTY OF EL PASO §

THIRD AMENDMENT

This Third Amendment made this 17th day of DECEMBER 2006, by and between the CITY OF EL PASO, hereinafter referred to as "City," and the EL PASO COUNTY HUMANE SOCIETY, INC., hereinafter referred to as the "Humane Society."

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society, and a copy of the lease is attached hereto, marked Exhibit "A," and made a part hereof by reference; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works, and a copy of the First Amendment is attached hereto, marked Exhibit "B," and made a part hereof by reference; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007, and a copy of the Second Amendment is attached hereto, marked Exhibit "C," and made a part hereof by reference; and

WHEREAS, because the Humane Society is relocating to a new facility on Fred Wilson Avenue, and, to allow for an orderly move to the new facility, the Humane Society has requested that the City extend the lease term through Oct. 31, 2007; and

WHEREAS, because the City is selling land to the County of El Paso, and one of the identified parcels is the City property leased to the Humane Society, the City and the Humane Society do not want any confusion about the terms and conditions of the Sept. 19, 1974 lease and its amendments in connection with the sale of the City property to the County of El Paso,

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

1. The City and the Humane Society hereby agree that the term of the Sept. 19, 1974 lease and its amendments is extended to Oct. 31, 2007. As consideration for the lease term extension, the Humane Society will continue to use the City's property for an animal shelter and like uses for the uninterrupted relief of suffering among animals and not for private profit while the Humane Society constructs its new facility.

00:30 PM 3:00
DEC 15 2006
CITY CLERK DEPT.

Exhibit "D"

2. The City and the Humane Society agree that the City will pay the Humane Society the sum of \$180,000 on Nov. 1, 2007 for its improvements on the leased property. Upon the payment of this sum, the provisions of the original lease pertaining to any obligation of the City, or its successor in interest, to purchase the Humane Society's improvements, under the Sept. 19, 1974 lease and its amendments, will terminate.
3. The City and the Humane Society agree that the Humane Society may remove any fixtures or improvements it has made to the leased property before Oct. 31, 2007. The Humane Society agrees that the removal of any fixtures or improvements will be done in an orderly fashion, and upon expiration of the lease, the Humane Society agrees it will leave the leased property in a secure manner subject to the approval of the City or its successor in interest.
4. Except as herein revised, the terms and conditions of the Sept. 19, 1974 lease and its amendments shall remain in full force and effect. Provided that upon expiration of this Amendment, it is understood that all prior leases and prior amendments are cancelled and terminated and are no longer in effect whatsoever except that the provisions of Paragraphs 2 and 3 above shall survive the expiration of this Amendment.

WITNESS THE FOLLOWING SIGNATURES AND SEAL

CITY CLERK DEPT.
 06 DEC 15 PM 3:00

CITY OF EL PASO:

Joyce A. Wilson
 Joyce A. Wilson

EL PASO COUNTY HUMANE SOCIETY

By: Dale K. Donney
 Title: PRESIDENT

APPROVED AS TO FORM:

Theresa Cullen-Garney
 Theresa Cullen-Garney
 Deputy City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
 Carmen Arrieta-Candelaria
 Chief Financial Officer

3D

STATE OF TEXAS §
§
COUNTY OF EL PASO §

CITY CLERK DEPT.
FOURTH AMENDMENT
OCT 10 PM 2:29

This Fourth Amendment made this 23rd day of October, 2007, by and between the CITY OF EL PASO, hereinafter referred to as "City," and the EL PASO COUNTY HUMANE SOCIETY, INC., hereinafter referred to as the "Humane Society".

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society. and a copy of the lease is attached hereto, marked Exhibit "A," and made a part hereof by reference; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works, and a copy of the First Amendment is attached hereto, marked Exhibit "B," and made a part hereof by reference; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007, and a copy of the Second Amendment is attached hereto, marked Exhibit "C," and made a part hereof by reference; and

WHEREAS, on Dec. 27, 2006, the City agreed to extend the term of the lease through Oct. 31, 2007 because the Humane Society is relocating to a new facility on Fred Wilson Avenue and requested time to allow for an orderly move to the new facility, and a copy of the Third Amendment is attached hereto, marked Exhibit "D", and made a part hereof by reference; and

WHEREAS, the Humane Society has requested that the City extend the lease term through May 31, 2008 because, while the construction documents for the new facility have been completed and submitted for a building permit, the final approval of the plans is pending issuance of an access agreement with adjacent property owners and a review and modification of the construction plans because of the future expansion plans for Fred Wilson Avenue; and

WHEREAS, because the City is discussing the sale of land to the County of El Paso, and one of the identified parcels is the City property leased to the Humane Society, the City and the Humane Society do not want any confusion about the terms and conditions of the Sept. 19, 1974 lease and its amendments in connection with the sale of the City property to the County of El Paso,

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

1. The City and the Humane Society hereby agree that the term of the Sept. 19, 1974 lease and its amendments is extended to May 31, 2008. As consideration for the lease term extension, the Humane Society will continue to use the City's property for an animal shelter and like uses for the uninterrupted relief of suffering among animals and not for private profit while the Humane Society constructs its new facility.
2. The City and the Humane Society agree that the City will pay the Humane Society the sum of \$180,000.00 on June 30, 2008, if the Humane Society no longer occupies the City's property, for its improvements on the leased property. Upon the payment of this sum, the provisions of the original lease pertaining to any obligation of the City, or its successor in interest, to purchase the Humane Society's improvements, under the Sept. 19, 1974 lease and its amendments, will terminate.
3. The City and the Humane Society agree that the Humane Society may remove any fixtures it has attached to the leased property before May 31, 2008. The Humane Society agrees that the removal of any fixtures will be done in an orderly fashion, and upon expiration of the lease, the Humane Society agrees it will leave the leased property in a secure manner subject to the approval of the City or its successor in interest.
4. Except as herein revised, the terms and conditions of the Sept. 19, 1974 lease and its amendments shall remain in full force and effect. Provided that upon expiration of this Amendment, it is understood that all prior leases and prior amendments are cancelled and terminated and are no longer in effect whatsoever except that the

provisions of Paragraphs 2 and 3 above shall survive the expiration of this Amendment.

WITNESS THE FOLLOWING SIGNATURES AND SEAL

CITY OF EL PASO:

[Signature]

Joyce A. Wilson

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

[Signature]

Theresa Cullen-Garney
Deputy City Attorney

[Signature]

Carmen Arrieta-Candelaria
Chief Financial Officer

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

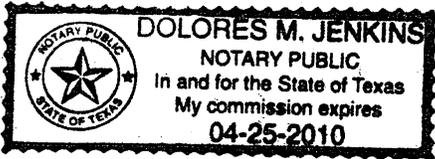
This instrument was acknowledged before me on the 23rd day of October, 2007, by JOYCE WILSON, as the City Manager of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation.

My Commission Expires:

04/25/2010

[Signature]

Notary Public, State of Texas
Notary's name printed:
DOLores M JENKINS



(Signatures continue on next page)

Exhibit "E"
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EL PASO COUNTY HUMANE SOCIETY, INC.

By: Betty Hoover
Title: Executive Director

ACKNOWLEDGMENT

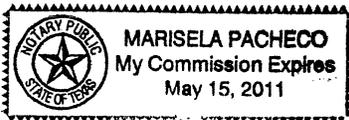
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 8th day of October, 2007, by Betty Hoover, as the Executive Director of the El Paso County Humane Society, Inc.

My Commission Expires:

Marisela Pacheco
Notary Public, State of Texas

May 15, 2011



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Exhibit 'E'
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