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

DEPARTMENT: **Parks and Recreation**

AGENDA DATE: **June 16, 2009 (Introduction) June 23, 2009 (Hearing and Action)**

CONTACT PERSON/PHONE: **Nanette Smejkal, Director (915) 541-4331**

DISTRICT(S) AFFECTED: **District 1**

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

Approve an Ordinance of City Council authorizing the City Manager to sign a lease with the El Paso Independent School District for the purpose of constructing and operating baseball and softball fields on 21.68 acres adjacent to Brown Street and Schuster Avenue.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this Action? What are the citizen concerns?

Staff recommends entering into a Lease with El Paso Independent School District (EPISD) for the development of baseball and softball fields. The lease of property will be for 30 years with two, 10-year extensions. EPISD will construct the two fields and parking areas.

PRIOR COUNCIL ACTION:

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

Council terminated a lease with the Border Youth Athletic Association for the same property on September 30, 2008 and directed staff to begin negotiations with EPISD and PSB.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

The El Paso Independent School District will pay the full cost of the field improvements on the leased land. The lease payment to the City will be $1.00 per year.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

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

DEPARTMENT HEAD: _____

(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:** _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO ENTER INTO A LEASE AGREEMENT WITH EL PASO INDEPENDENT SCHOOL DISTRICT FOR THE PURPOSE OF DEVELOPING, CONSTRUCTING, AND UTILIZING YOUTH BASEBALL AND SOFTBALL FIELDS ON PROPERTY LOCATED ADJACENT TO BROWN STREET AND SCHUSTER AVENUE CONSISTING OF ALL OF BLOCKS 104, 105, AND 136, ALEXANDER ADDITION, AND A PORTION OF BLOCKS 103, 106, 107, 135, 137, 138, 139, 142, 143, AND 174, AND A PORTION OF ANGE STREET, OCTAVIA STREET, PRICE STREET, NOBLE STREET, DAGGETT STREET, WADE STREET, UNIVERSITY AVENUE, BLANCHARD AVENUE AND BLACKER AVENUE, RIGHTS-OF-WAY (VACATED), ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS

WHEREAS, the City owns certain real property ("the Property") located adjacent to Brown Street and Schuster Avenue consisting of all of Blocks 104, 105, and 136, Alexander Addition, and a portion of Blocks 103, 106, 107, 135, 137, 138, 139, 142, 143, and 174, and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue and Blacker Avenue, Rights-of-way (Vacated), Alexander Addition, El Paso, El Paso County, Texas, part of which has been set aside for use by the El Paso Water Utilities Public Service Board as the Art Woods Reservoir site and is subject to the Joint Use Resolution adopted by the City and the El Paso Water Utilities Public Service Board, and the remainder of which is currently set aside for park use as Lower Tom Lea Park; and

WHEREAS, facilities for practicing and playing baseball and softball and related amenities ("the Facilities") are proposed to be constructed on the Property, which will be operated for the benefit of the citizens of El Paso, Texas; and

WHEREAS, El Paso Independent School District, proposes to design, construct, operate and maintain, the Facilities upon the terms, conditions and covenants herein provided in the

attached Lease Agreement and the Interlocal Agreement also to be entered into between the parties regarding the use of the Property; and

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

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

That the City Manager be authorized to sign the Lease Agreement between the City of El Paso and El Paso Independent School District providing for design, development, construction, operation and, maintenance of youth baseball and softball fields at Lower Tom Lea Park in central El Paso for an initial term of thirty years with options to extend for no more than two additional terms of ten years each. The Lease Agreement shall be in the form which is attached hereto marked Ordinance Exhibit "A," and made a part hereof for all purposes.

(signatures on following page)

PASSED AND APPROVED this _____ day of _____, 2009.

CITY OF EL PASO:

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Nanette L. Smejkal, Director
Parks & Recreation Department

ORDINANCE NO.: _____

#47844 v5 - PARKS/1/LEASE & ORD FOR EPISD - LOWER TOM LEA (REVISED)
Document Author: KCHO

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2009 (the "Effective Date"), by and between THE CITY OF EL PASO, a municipal corporation existing under the laws of the State of Texas ("City" or "Lessor"), and EL PASO INDEPENDENT SCHOOL DISTRICT ("Lessee") (hereinafter collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, the City owns the real property described in Exhibit "A" ("Property"), on which facilities for practicing and playing baseball and softball and related amenities (herein the "Facilities") are proposed to be constructed and which will be operated for the benefit of the citizens of El Paso, Texas; and

WHEREAS, Lessee has the capability and desire to construct, operate and maintain the Facilities at the Lower Tom Lea Park site upon the terms, conditions and covenants herein provided and as provided in the Interlocal Agreement the Parties regarding the same property (hereinafter the "Interlocal Agreement"); and

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

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

SECTION 1: LEASED PREMISES

1.01 DEMISE OF REAL PROPERTY. For and in consideration of the mutual covenants hereof, Lessor hereby leases to Lessee and Lessee hereby agrees to lease from Lessor the real property known as Lower Tom Lea Park and adjoining property set aside for the use of the Public Service Board ("Leased Premises"), located adjacent to Brown Street and Schuster Avenue consisting of all of Blocks 104, 105, and 136, Alexander Addition, and a portion of Blocks 103, 106, 107, 135, 137, 138, 139, 142, 143, and 174, and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue, and Blacker Avenue, Rights-of-ways (Vacated), Alexander Addition, El Paso, El Paso County, Texas, and more specifically described by metes and bounds in Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof and as shown on the plat attached hereto as Exhibit "A-1" ("Leased Premises"). Lessee shall access the Leased Premises by constructing an access point over a portion of Tract 16 and Tract 35 of the H.F. Fisher Survey No. 293 as addressed in the Interlocal Agreement. Lessee acknowledges that the primary purposes of the Leased Premises are as a City park and as property used by the Public Service Board.

1.02 DEFINITIONS AND USE OF TERMS. The terms used in this Agreement shall have their normal and customary meaning except when they are expressly defined herein. When used in this Agreement the following terms are expressly defined:

1.02.1 "Land" or "Leased Premises" means the real property described in Subsection 1.01 above.

1.02.2 "Year" shall mean each annual calendar period beginning on the Start Date of the Agreement.

1.02.3 "Start Date" shall have the meaning set forth in Section 3.01.

SECTION 2: TERM

2.01 INITIAL TERM: The term of this Agreement shall be for a period of thirty (30) years commencing on the Effective Date and expiring on the last day of the month thirty years thereafter (the "Initial Term"). This Agreement shall be in full force and effect from and after the Effective Date first set forth herein for all purposes, including the City's and Lessee's rights and obligations hereunder and Lessee's use and enjoyment of the Leased Premises. Notwithstanding the foregoing, Lessee shall have a period of ninety (90) days from the Effective Date (the "Feasibility Period") to determine whether the Leased Premises are suitable for Lessee's use. Lessee may terminate this Agreement for any reason by providing written notice to Lessor prior to the expiration of the Feasibility Period. If Lessee fails to provide such notice prior to the expiration of the Feasibility Period, Lessee shall be deemed to have accepted the Leased Premises, and this Agreement shall remain in full force and effect. Lessor agrees to allow Lessee and its agents reasonable access to the Leased Premises during the Feasibility Period, and agrees to provide Lessee with complete access to any and all boundary and topographical surveys, soil reports, environmental reports, and other documents in Lessor's possession and control relating to the Leased Premises. During the Feasibility Period, Lessee shall carry and shall cause its consultants and contractors who enter upon the Land to carry the liability coverages required by this Agreement and shall provide Lessor with evidence of same.

2.02 EXTENSION. Lessee shall have the option to extend this Agreement for a period of ten (10) years beginning on the day following the conclusion of the Initial Term, as described in 2.01, and a second extension term for a period of ten (10) years beginning on the date following the conclusion of the first extension described in this paragraph. Lessee shall communicate its intent to exercise either extension option by sending written notice to Lessor

prior to ninety (90) days of the expiration of the Initial Term or the first extension as described in this paragraph. The Initial Term plus any extension, if any, shall be referenced herein as the "Term". Should Lessee fail to communicate its intent to exercise either extension option, the City may elect to terminate this Agreement or it may follow the provisions of Section 14 herein.

SECTION 3: CONSTRUCTION, USE AND OBLIGATIONS OF THE LESSEE

3.01 CONSTRUCTION TIMETABLE. Notwithstanding anything in this Agreement to the contrary, Lessee agrees that it shall begin construction of the Facilities, illustrated in Exhibit "B", within ninety (90) days of the end of the Feasibility Period. Lessee shall diligently prosecute same to completion so that the Facilities shall be completed and available for use by Lessee and the public within eighteen (18) months of the end of the Feasibility Period in accordance with the terms of this Agreement and the Interlocal Agreement. If Lessee fails to meet these deadlines for a reason other than force majeure or a breach by the City of its obligations hereunder, the City may terminate this Agreement upon not less than ninety (90) days' written notice to Lessee specifying the alleged default and Lessee's failure to cure within such ninety (90) day period; provided, however, should the nature of the default be such that it cannot be cured within ninety (90) days, Lessee shall be deemed to have cured such default if within such ninety (90) day period it shall commence performance and thereafter diligently prosecute the same to completion.

3.01.1 BONDS. Lessee shall cause its contractor, at its own cost and expense, to make, execute, and deliver to Lessor two (2) separate bonds, as follows:

3.01.1:1 Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of cost of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with

approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

3.01.1.2 Prior to the date of commencement of any construction, a payment bond with Lessee'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. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

3.01.2 PROCUREMENT. Lessee shall abide by all applicable laws regarding procurement for the construction on the Site, including worker's compensation, prevailing wages and insurance requirements.

3.02 USE. The Leased Premises shall be used for the operation of baseball and softball fields, including, but not limited to, one (1) U.I.L. regulation baseball diamond and one (1) U.I.L. regulation softball diamond, parking facilities and related improvements according to plans and specifications determined by Lessee. Any and all buildings, improvements, fixtures, machinery and equipment of whatever nature at any time constructed, placed or maintained on any part of the Leased Premises are and remain the property of the party constructing such improvements during the Term of this Agreement. Upon the expiration of the Term or earlier termination of this Agreement, all improvements to the Leased Premises shall be owned by the City. Lessee shall not use the Leased Premises or any portion thereof for any other purpose than that hereinabove set forth or as set forth in the Interlocal Agreement of even date herewith by and between Lessor and Lessee without first having obtained the written approval of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee agrees that, in its use and operation of the Leased Premises, it shall comply with all applicable City ordinances, state and

federal laws, and respective rules and regulation; provided, however, that the City agrees to authorize any zoning change or special permits required by Lessee to use the Leased Premises for the authorized use. In addition, the City shall permit Lessee to place a pole sign on that portion of the Leased Premises adjacent to Schuster Avenue in conformance with the applicable provisions of the El Paso City Code.

3.02.1 PUBLIC NECESSITY. It is understood and agreed that should Lessor determine at any time that it requires the Leased Premises for a public purpose different from that for which the Leased Premises are being used, then, and in that event, Lessor and Lessee shall negotiate a termination of this Agreement upon terms as mutually agreed upon, which agreement shall include, at a minimum, reimbursement to Lessee of the fair market value of its assets, improvements, and leasehold interest.

3.03 MAINTENANCE. Lessee expressly agrees that, throughout the lease Term, it shall, at its cost, maintain, use and operate the Leased Premises and all improvements, furnishings, fixtures and equipment thereon in a manner consistent with its operation of baseball and softball facilities located on Lessee's property and in accordance with all applicable local ordinances.

3.04 FACILITIES. Lessee shall perform or cause to be performed all the duties normally and customarily required in the operation of a baseball and softball facility of a similar type. Lessee agrees that it will at all times during the Agreement Term to faithfully perform the duties herein.

3.05 DESIGN CONSIDERATIONS. All construction plans shall be reviewed and approved by the City of El Paso Engineering Department and the Director of the City of El Paso Department of Parks and Recreation prior to any construction and, where appropriate as determined by the Engineering Department of the Public Service Board. Furthermore, prior to any construction, the site plan shall be reviewed and approved by the Public Service Board and

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

3.06. OTHER USE. The Facilities shall be open to Third-Party Users authorized by either party during their usage period per the Interlocal Agreement.

SECTION 4: CONSIDERATION

4.01 LESSEE RENTAL. In consideration for Lessee's use of City's land, Lessee shall pay to the City of El Paso as yearly rent, the sum of One and no/100 Dollars ($1.00) in advance on the effective date and each year thereafter during the Term hereof.

4.02 PUBLIC USE. The Facilities shall be open to the public through the Department of Parks and Recreation when not in use by EPISD for school purposes. Per the Interlocal Agreement, the City shall have exclusive use of the Facilities, at a minimum, from 7:00 p.m. to 10:00 p.m. on Mondays through Saturdays and from 8:00 a.m. to 10:00 p.m. on Sundays during Lessee's use and in the summers when Lessee does not have exclusive use.

4.03. CONSTRUCTION. As additional consideration for Lessee's use of City's land, Lessee shall construct or cause to be constructed the Facilities herein referenced at its own cost pursuant to this Lease and the Interlocal Agreement.

SECTION 5: RENTALS

5.01 THIRD-PARTY USE FEE. For any Third-Party use, each party reserves the right to establish fees, charges, and conditions of use of any Third-Party Use as the party deems

necessary and proper, provided that such Third-Party Use does not adversely affect the rights of use or maintenance of either party. For any Third-Party use during the City's time, City reserves the right to establish fees, charges, and conditions of use of any Third-Party Use as City deems necessary and proper, which shall be contained in a Third-Party Use Agreement. For any Third-Party use during the Lessee's time, the Lessee reserves the right to establish fees, charges and conditions of use of any Third-Party Use as Lessee deems necessary and proper, which shall be contained in a Third-Party Use Agreement.

SECTION 6: FACILITIES

6.01 GENERAL. Lessee may install lighting on only one of the two diamonds at the Facilities, such lighting to minimize light pollution. The height of the lights must not exceed the top of the slope to Rim Road, north of the Leased Premises. If Lessee chooses not to install lighting, Lessee shall at minimum design and install the conduit for a future lighting system that may be installed by the City. Any sound system shall be installed so as to minimize the impact on the surrounding residences. The Project shall be designed to permit the future construction of walking/jogging paths around the Facilities, and restrooms, which may be constructed by the City or the Lessee if and when funds have been allocated for such purposes. The Facilities constructed shall meet or exceed University Inter-scholastic League standards for baseball and softball facilities constructed by a public school.

6.02 MAINTENANCE. Authorized agents of Lessor, may at any reasonable time, without notice, enter upon the Leased Premises to determine if satisfactory maintenance is being performed. If it is determined by Lessor's agents qualified or certified in the care and maintenance of parks facilities that maintenance is not being reasonably performed in the reasonable judgment of Lessor, Lessor shall notify Lessee in writing specifying Lessor's

complaints and, if satisfactory maintenance is not performed or ongoing with due diligence by Lessee within thirty (30) days after receipt of written notice, Lessor or its agents shall have the right to enter upon the Leased Premises and perform the maintenance therefore, and Lessee agrees to promptly reimburse Lessor for the cost thereof.

6.03 TRASH AND GARBAGE. Lessee shall provide and pay all costs for a complete and proper arrangement for the adequate, sanitary handling of all trash, garbage and other refuse caused as a result of its operations pursuant hereto and shall provide for its timely removal in accordance with all applicable laws or regulation. City and any Third-Party Users shall be responsible for trash and garbage removal for their respective operations.

6.04 CHANGES, ALTERATIONS AND ADDITIONS. No substantial changes, alterations or additions shall be made to the Leased Premises by Lessee without the prior written approval of the City's Director of Parks and Recreation, or designee, which consent shall not be unreasonably withheld or delayed.

SECTION 7: STANDARDS OF SERVICE

7.01 STANDARD. Throughout the entire Term of this Agreement, Lessee shall operate the Facilities in accordance with high standards of service and materials for a baseball/softball complex of a similar nature.

7.02 PERSONNEL. All personnel, while on or about the Leased Premises, shall be clean, neat in appearance, courteous and appropriately attired.

SECTION 8: INSURANCE

Lessee agrees to provide the following as a condition of the Agreement:

8.01 LIABILITY INSURANCE. Lessee shall provide commercial general liability insurance for personal injuries and death growing out of any one accident or other cause in a

minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause.

8.01.1 Lessee is required to name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents and employees alleged or asserted by any individual, in connection with the performance of this Agreement; provided, however, such insurance need not provide coverage to the City for acts or omissions of the City or City's third-party users arising during the City's use of the Leased Premises.

8.01.2 Lessee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Lessee, its officers, agents, servants or employees.

8.01.3 This Agreement shall not be in effect until Lessee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the City of El Paso Parks and Recreation Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Term of this Agreement shall be grounds for cancellation of this Agreement.

8.02 NON-WAIVER. **NOTWITHSTANDING ANY PROVISIONS CONTAINED HEREIN TO THE CONTRARY: (i) NEITHER DISTRICT NOR CITY WAIVES ANY RIGHTS TO SOVEREIGN IMMUNITY OR ANY OTHER IMMUNITIES OR DEFENSES BY ITS EXECUTION OR DELIVERY OF THIS AGREEMENT.**

SECTION 9: FIRE INSURANCE

9.01 Lessee's obligations with respect to fire insurance are as follows:

9.01.1 Lessee, at its own cost and expense, shall insure for fire and extended coverage for all buildings on the Leased Premises. Such insurance shall be in a form acceptable to Lessor and in an amount equal to the full insurable replacement value of such leasehold improvements. Any payments received by either Lessee or Lessor from insuring companies by reason of loss under such policy or policies shall be applied toward repair or reconstruction of the leasehold improvements.

9.01.2 A Certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk within thirty (30) days after execution of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled, reduced or materially changed without thirty (30) days' prior written notice to the City Clerk.

9.01.3 At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City Clerk.

9.01.4 In the event that Lessee shall at any time fail to provide the certificate or certificates required under this subsection, Lessor, upon ten (10) days written notice to Lessee, shall have the right to secure the required insurance, at the cost and expense of Lessee, and Lessee agrees promptly to reimburse Lessor for the cost thereof.

SECTION 10: DAMAGE OR DESTRUCTION OF LEASED PREMISES.

10.01 PARTIAL DAMAGE. If all or a portion of the Leased Premises, developed by Lessee, are partially damaged by flood, fire, explosion, the elements, public enemy, or other casualty, but if none of the Leased Premises is rendered untenable, the same will be repaired with due diligence by Lessee, subject to the limitations of Subsection 10.03.

10.02 EXTENSIVE DAMAGE. If the damage by causes referred to in Subsection 10.01 shall be so extensive as to render a substantial portion of the Leased Premises unusable, the same shall be repaired with due diligence by Lessee subject to the limitation of Subsection 10.03, and the Minimum Rental payable herein shall abate from the time of such damage until

such time as the Leased Premises are fully restored and certified by the Lessee's engineer as ready for occupancy.

10.03 COMPLETE DESTRUCTION.

10.03.1 In the event that the Facilities are completely destroyed by fire, explosion, the elements, the public enemy or other casualty or so damaged that they are untenable within the last two years of the Initial Term or either the first or second extension (as described in section 2.02) of this Agreement, Lessee shall be under no obligation to repair, replace and reconstruct said premises, and rental payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as such buildings are fully restored, if ever. If within three (3) months after the time of such damage or destruction such portions of the Leased Premises shall not have been repaired or reconstructed, Lessee may cancel this Agreement in its entirety or only as to that portion of the Leased Premises completely destroyed as of the date of such damage or destruction.

10.03.2 Notwithstanding the foregoing, if the Leased Premises, or a portion thereof, are completely destroyed as a result of the negligent act or omission of Lessee, its sublessees, agents or employees, rentals shall not abate and Lessor may, in its discretion, require Lessee to repair and reconstruct the said premises within twenty-four (24) months of such destruction and pay the costs therefore; or Lessor may repair and reconstruct the said premises and Lessee shall be responsible for reimbursing Lessor for the costs and expenses incurred in such repair.

10.04 LIMIT OF OBLIGATIONS. It is understood that, in the application of the foregoing Subsections 10.01, 10.02, and 10.03, Lessee's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement date hereof.

SECTION 11: TERMINATION

11.01 TERMINATION GENERAL. This Agreement may be terminated by Lessor after the happening of one or more of the following events:

11.01.1 The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Leased

Premises, or any substantial part or parts thereof, in such a manner as substantially to restrict the Facilities' use for a period of at least ninety (90) days from operating thereon; provided, however, that Lessee shall be entitled to receive compensation from such Government or agency for condemnation.

11.01.2 Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Leased Premises as the Facilities, and the remaining in force of such injunction for a period of at least ninety (90) days.

11.01.3 The default by Lessee in the performance of any covenant or agreement herein required to be performed by Lessee and the failure of Lessee to remedy such default for a period of ninety (90) days after receipt from the Lessor of written notice to remedy the same.

11.01.4 Failure of Lessee, in accordance with the terms hereinabove, to repair and reconstruct the Leased Premises, or portion thereof, that are completely destroyed.

11.02 TERMINATION EXPRESS PROVISION: Should any one or more of the following events of default happen:

11.02.1 Lessee shall fail to pay any part of the rentals, fees or charges agreed upon hereunder when the same shall become due and Lessee does not remedy such failure for a period of twenty (20) days after receipt from Lessor of written notice to remedy same; or

11.02.2 Any interests of Lessee hereunder shall be levied upon under execution which levy is not lifted within ninety (90) days; or

11.02.3 Lessee shall file a voluntary petition in bankruptcy, shall have an involuntary petition in bankruptcy filed against it and the same shall not be dismissed within ninety (90) days, the Lessee shall be adjudged insolvent according to law, or the Lessee shall make any assignment of its property for the benefit of creditors; or

11.02.4 Lessee shall default on any other obligations assumed by it hereunder; then and in any such event, should Lessee fail to cure such default within ninety (90) days from the time Lessor shall mail written notice thereof to Lessee, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within ninety (90) days, Lessee shall be deemed to have cured such default if

within such ninety (90) day period it shall commence performance and thereafter diligently prosecute the same to completion.

11.03. RIGHT OF ENTRY UPON TERMINATION. In any case in which provision is made herein for the termination or cancellation of this Agreement by Lessor or in the case of abandonment or vacating the premises by Lessee, Lessor in lieu of declaring forfeiture may enter upon the Leased Premises. In such case, Lessor shall use its best efforts to relet the Leased Premises upon commercially reasonable terms, and if a sufficient sum shall not be realized thereby, after paying expenses of such reletting, to satisfy the rent and other sums herein agreed to be paid by Lessee, Lessee agrees to pay any such deficiency. 11.04 NOTICE OF TERMINATION. If any of the events enumerated in Subsection 11.01 and 11.02 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by thirty (30) days' notice in writing, as provided in Section 28 of this Agreement, such cancellation and termination to be effective upon the date specified in such notice. Rental due shall be payable only to the date of cancellation.

11.05 EMINENT DOMAIN. If the Leased Premises, or a substantial part thereof, shall be lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, the Term of this Agreement shall end upon, and not before, the date of the taking of possession by the condemning authority. Current Rentals shall be apportioned as of the date of such termination, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. If any part of the Leased Premises not constituting a substantial part thereof shall be so taken or condemned or conveyed under threat of such taking or condemnation, or if the grade of any street adjacent to the Leased Premises is changed by any competent authority and such taking or change of grade makes it necessary or desirable

substantially to remodel or restore the Leased Premises, Lessee shall have the right to cancel this Agreement, such cancellation to take place not later than the date of this taking of possession by the condemning authority, and Lessee shall be entitled to pursue an award with respect to such taking or condemnation. Lessor will give Lessee notice of such intended taking or condemnation within a reasonable time of its receipt of same.

SECTION 12: ASSIGNMENT

Except as provided hereinafter, Lessee shall not lease, sell, assign or transfer this Agreement or any interest in this Agreement.

SECTION 13: TAXES AND LICENSES

The Lessee shall obtain and pay for all licenses or permits necessary or required by law for the construction of additions or improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder. Lessor shall assist Lessee where necessary in the process of obtaining said licenses and permits.

SECTION 14: INSPECTION OF PREMISES

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

SECTION 15: HOLDING OVER

Should Lessee hold over said Leased Premises after this Agreement has terminated in any manner, during such holding over the Lessee shall be deemed a tenant at sufferance and at a rental to be fixed by Lessor, upon thirty (30) days' advance written notice, otherwise on the same terms and conditions as herein provided.

SECTION 16: REDELIVERY OF PREMISES

Lessee shall, upon termination or expiration of this Agreement, quit and deliver up the Leased Premises to Lessor peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by the Lessee, reasonable use and wear thereof excepted. Lessee agrees that it shall provide Lessor notice and description of any personal property that it desires to have covered by this subordination and that such subordination to a lender's lien shall be effective only for so long as the loan is outstanding on the particular item of personal property.

SECTION 17: QUIET ENJOYMENT

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

SECTION 18: NO LIENS

Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Leased Premises by Lessee, and shall keep said Leased Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission. Nothing herein shall prevent Lessee from, in good faith, contesting any such lien.

SECTION 19: HAZARDOUS SUBSTANCE

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

herein authorized; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon. Nothing shall be done on the Leased Premises, other than as is provided for in this Agreement, which will increase the rate of or suspend the insurance upon said Leased Premises. All herbicides and pesticides applied to the Leased Premises by the District should conform to the standards of the Texas Department of Agriculture and to the requirements of the Texas Occupations Code and the District's Integrated Pest Management Plan, as such may hereafter be amended, a copy of which has been provided to and approved by the City.

SECTION 20: WAIVERS

No waiver by Lessor or Lessee at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter or the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. It is agreed that each and all of the rights, powers, options, or remedies given to Lessee and to Lessor by this Agreement are cumulative and no one of them shall be exclusive of the other or inclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by Lessee or by Lessor shall not impair its right to any other right, power, option, or remedy.

SECTION 21: WAIVER OF CLAIMS

Lessee hereby waives any claim against the City of El Paso and its elected officials, officers, agents or employees only as regards loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or suit or proceeding seeking to declare this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 22: UTILITIES; WATER

Lessee shall pay before delinquency all charges for water, sewer, gas, heat, air cooling, electricity, power, telephone, garbage and other utility services used on the Leased Premises during the Term of this Agreement subject to reimbursement according to the Interlocal Agreement, except that if lighting is installed on the ballfield, said electrical utility service expenses shall be paid by City.

SECTION 23: ENCUMBRANCE OF LEASEHOLD INTEREST PROHIBITED

Lessee shall have the right during the Term of this Agreement, with Lessor's prior written consent not to be unreasonably withheld, to mortgage, pledge, or otherwise encumber Lessee's interest in the Agreement, including the buildings and all fixtures, trade fixtures, inventory, and equipment located thereon, to a lender (the "Lender"). Lessee shall not have the right to mortgage or pledge Lessor's fee interest or reversionary interest in the Leased Premises or any improvements located thereon, and no such mortgage or pledge shall affect Lessor's rights under this Agreement. Any mortgage, pledge or other encumbrance of Lessee's interest in the Agreement and improvements shall at all times be subordinate to Lessor's fee interest in the Leased Premises and reversionary interest in the improvements. Lessor agrees to execute all documents reasonably requested by the Lender, which shall include, but not be limited to, an agreement which provides for notice to the Lender of Lessee defaults and a reasonable opportunity to cure, removal of trade fixtures and equipment by the Lender provided that rent is paid during such removal period, and subordination of Lessor's lien against the personal property of Lessee pledged to the Lender shall not encumber its interest or rights under this Agreement by any mortgage, deed of trust, or other instrument in the nature of a security agreement, lien, mortgage or deed of trust.

SECTION 24: SEVERABILITY

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

SECTION 25: NON-DISCRIMINATION

Lessee in the operation and use of the Leased Premises as described herein, will not, on grounds of sex, race, color, creed, or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by established law.

SECTION 26: TERMS BINDING UPON SUCCESSORS

All the terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

SECTION 27: TIME OF ESSENCE

Time is expressed to be of the essence of this Agreement.

SECTION 28: NOTICES

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

Lessee:	EPISD Attn: Associate Superintendent of Operations 6531 Boeing El Paso, Texas 79925
City (Lessor):	Joyce A. Wilson City Manager City of El Paso

2 Civic Center Plaza
El Paso, Texas 79901-1196

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

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

SECTION 29: AGREEMENT MADE IN TEXAS

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

SECTION 30: CONFLICT

This Lease Agreement is executed pursuant to the terms of an Interlocal Agreement by and between Lessor and Lessee of even date herewith (the "Interlocal Agreement"). To the extent of any conflict or inconsistency between the terms of this Agreement and the Interlocal Agreement, the provisions of the Interlocal Agreement shall control.

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

(Signatures are on the following page)

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:

Nanette L. Smejkal, Director
Parks & Recreation Department

ACKNOWLEDGMENT

THE STATE OF TEXAS }
}
COUNTY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2009, by Joyce A. Wilson, as City Manager of the CITY OF EL PASO.

_____
Notary Public, State of Texas

EL PASO INDEPENDENT SCHOOL DISTRICT

By:_____
Patricia L. Hughes, President
Board of Trustees

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Interlocal Agreement was approved by the Board of Trustees of the El Paso Independent School District on the _____ day of _____, 2009, and that the person whose signature appears above is authorized to execute such Interlocal Agreement on behalf of the Board.

_____
Lisa Colquitt-Munoz, Secretary
El Paso Independent School District
Board of Trustees

ACKNOWLEDGMENT

THE STATE OF TEXAS }
}
COUNTY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2009, by Patricia L. Hughes, as President of the Board of Trustees of EL PASO INDEPENDENT SCHOOL DISTRICT.

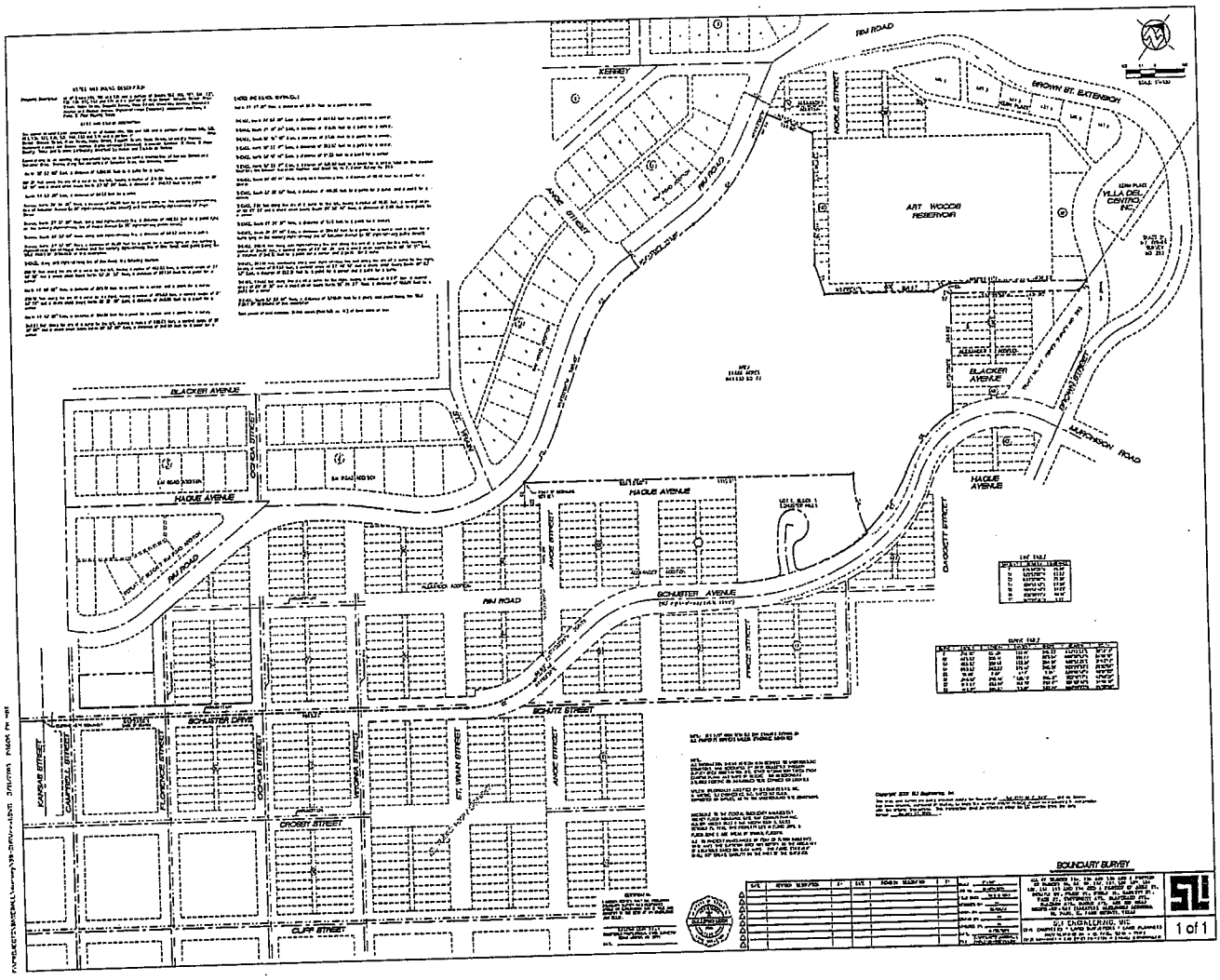
_____
Notary Public, State of Texas

Exhibit "A"

METES AND BOUNDS PROPERTY DESCRIPTION

(See attached pages)

Exhibit "A-1"



#47844 v5 - PARKS/1/LEASE & ORD FOR EPISD - LOWER TOM LEA (REVISED)
Document Author: KCHO

Property Description: All of Blocks 104, 105 and 136 and a portion of Blocks 103, 106, 107, 135, 137, 138, 139, 142, 143 and 174 and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue and Blacker Avenue, Rights-of-ways (Vacated), Alexander Addition, El Paso, El Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Blocks 104, 105 and 136 and a portion of Blocks 103, 106, 107, 135, 137, 138, 139, 142, 143 and 174 and a portion of Ange Street, Octavia Street, Price Street, Noble Street, Daggett Street, Wade Street, University Avenue, Blanchard Avenue and Blacker Avenue, Rights-of-ways (Vacated), Alexander Addition, El Paso, El Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at an existing city monument lying on the centerline intersection of Kansas Street and Schuster Drive; Thence, along the centerline of Schuster Drive, the following courses:

North 52° 23' 00" East, a distance of 1,685.00 feet to a point for a curve;
251.39 feet along the arc of a curve to the left, having a radius of 376.02 feet, a central angle of 38° 18' 19" and a chord which bears North 33° 12' 29" East, a distance of 246.73 feet to a point;
North 14° 03' 35" East, a distance of 69.93 feet to a point;

Thence, North 75° 56' 25" West, a distance of 45.00 feet to a point lying on the westerly right-of-way line of Schuster Avenue (a 90' right-of-way public street) and the southerly right-of-way of Ange Street,

Thence, North 37° 37' 00" West, along said right-of-way line, a distance of 465.29 feet to a point lying on the easterly right-of-way line of Hague Avenue (a 70' right-of-way public street);

Thence, South 52° 23' 00" West, along said right-of-way line, a distance of 50.62 feet to a point;

Thence, North 37° 37' 00" West, a distance of 70.00 feet to a point for a curve lying on the northerly right-of-way line of Hague Avenue and the easterly right-of-way line of Rim Road, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, along said right-of-way line of Rim Road, the following courses:

209.16 feet along the arc of a curve to the left, having a radius of 483.83 feet, a central angle of 24° 46' 10" and a chord which bears North 03° 36' 53" West, a distance of 207.54 feet to a point for a corner;

North 16° 00' 00" West, a distance of 285.42 feet to a point for a corner and a point for a curve;

258.18 feet along the arc of a curve to the right, having a radius of 465.83 feet, a central angle of 31° 45' 19" and a chord which bears North 00° 21' 35" East, a distance of 254.89 feet to a point for a corner;

North 16° 43' 00" East, a distance of 253.80 feet to a point for a corner and a point for a curve;

343.53 feet along the arc of a curve to the left, having a radius of 690.63 feet, a central angle of 28° 30' 00" and a chord which bears North 02° 28' 00" East, a distance of 340.00 feet to a point for a corner;

North 11° 47' 00" West, a distance of 86.74 feet to a point for a corner;

THENCE, North 74° 50' 06" East, a distance of 164.60 feet to a point for a corner;

THENCE, South 37° 39' 34" East, a distance of 410.36 feet to a point for a corner;

THENCE, South 56° 55" 42" East, a distance of 97.50 feet to a point for a corner;

THENCE, North 52° 22' 41" East, a distance of 359.57 feet to a point for a corner;

THENCE, North 28° 16' 48" East, a distance of 61.23 feet to a point for a corner;

THENCE, North 52° 22' 41" East, a distance of 436.53 feet to a point for a corner lying on the common boundary line between Alexander Addition and Tract 16, H. F. Fisher Survey No. 293;

THENCE, South 00° 00' 11" West, along said boundary line, a distance of 40.18 feet to a point for a corner;

THENCE, South 52° 25' 59" West, a distance of 401.80 feet to a point for a curve, and a point for a corner;

THENCE, 7.86 feet along the arc of a curve to the left, having a radius of 10.00 feet, a central angle of 45° 01' 23" and a chord which bears South 29° 55' 18" West, a distance of 7.66 feet to a point for a corner;

THENCE, South 07° 24' 36" West, a distance of 5.10 feet to a point for a corner;

THENCE, South 37° 37' 00" East, a distance of 364.62 feet to a point for a corner and a point for a curve lying on the westerly right-of-way line of Schuster Avenue (a 90' right-of-way public street);

THENCE, 245.45 feet along said right-of-way line and along the arc of a curve to the left, having a radius of 344.60 feet, a central angle of 40° 48' 38" and a chord which bears South 03° 10' 11" West, a distance of 240.30 feet to a point for a corner and a point for a curve;

THENCE, 223.95 feet, continuing along said right-of-way line and along the arc of a curve to the right, having a radius of 517.98 feet, a central angle of 24° 46' 19" and a chord which bears South 01° 03' 42" East, a distance of 222.21 feet to a point for a corner and a point for a curve;

THENCE, 184.83 feet along the arc of a curve to the right, having a radius of 412.91 feet, a central angle of 25° 38' 50" and a chord which bears North 50° 26' 27" West, a distance of 183.29 feet to a point for a corner;

THENCE, South 52° 23' 00" West, a distance of 1,110.61 feet to a point, said point being the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 21.686 acres (944,630 sq. ft.) of land more or less.

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

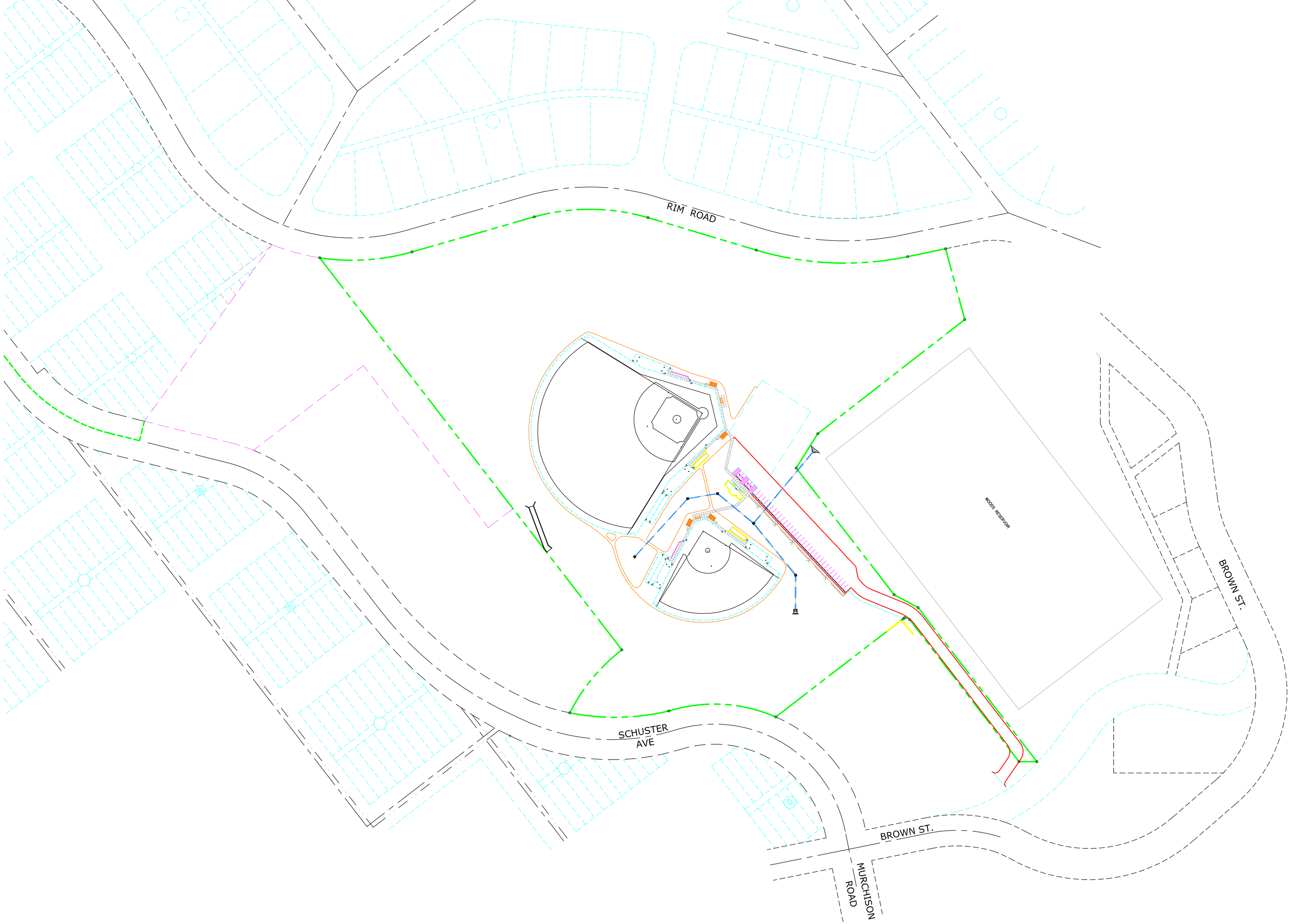
SLI ENGINEERING, INC.
Consulting Engineers—Land Surveyors

STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998
February 1, 2007; Rev. January 20, 2009; Job Number 09-99-1721
M&B\1366

Exhibit "B"

Site Plan


RIM ROAD
WOODS RESERVOIR
BROWN ST.
SCHUSTER AVE
BROWN ST.
MURCHISON ROAD