

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

CITY CLERK DEPT.
08 JUN -9 AM 11:25

DEPARTMENT: Department of Public Health
AGENDA DATE: June 17, 2008
CONTACT PERSON/PHONE: Angela Mora – 771-5706
DISTRICT(S) AFFECTED: All

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.

That the City Manager be authorized to sign a lease agreement between the City of El Paso and Tenet Hospitals, Limited, d/b/a Sierra Medical Center to allow a Teen Center in the City facility located 110 Candelaria, El Paso, Texas 79907, and commonly known as the Ysleta Health Center.

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?

1. Sierra Teen Resource Center will make all decisions regarding medical treatment, including priority of patients, the time necessary for each visit and the appropriate treatment for each patient.
2. Provide ancillary staff, such as clerical and medical assistants, at the clinic as necessary for the delivery of services to clients.
3. Term of Contract shall be effective immediately upon execution from the El Paso City Manager and shall be for a term of two (2) years from that date.

PRIOR COUNCIL ACTION:

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

No, this agreement was previously approved by the El Paso City-County Board of Health.

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 monthly consideration to be paid by Tenet is One Thousand Three Hundred Eighty-One and 66/100 Dollars (1,368.66). Tenet to pay the City the entire amount of the Rent for each month on or before the tenth of the month.

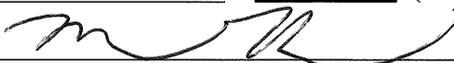
BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

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

DEPARTMENT HEAD: _____


(Example: if RCA is initiated by Purchasing, client department should sign also)
Michael Hill, Director, Dept. of Public Health

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

CITY CLERK DEPT.
08 JUN -9 4:11:25

RESOLUTION

CITY CLERK BEPT.
08 JUN -9 4M11:25

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

That the City Manager be authorized to sign a lease between the **CITY OF EL PASO** and **TENET HOSPITALS, LIMITED, d/b/a SIERRA MEDICAL CENTER** to allow a Teen Resource Center in the City facility located at 110 Candelaria, El Paso, Texas 79907, and commonly known as the Ysleta Health Center.

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria
Chief Financial Officer

THE STATE OF TEXAS
COUNTY OF EL PASO

§
§
§

LEASE AGREEMENT

CITY CLERK DEPT.
08 JUN -9 AM 11:26

This Lease Agreement (“Agreement”), made this the _____ day of _____, 2008, between the CITY OF EL PASO, TEXAS, a home rule municipal corporation (“CITY”), and TENET HOSPITALS LIMITED, d/b/a SIERRA MEDICAL CENTER (“TENET”).

WHEREAS, the CITY is the owner of the premises and improvements, including the parking lot adjacent to the building, located at 110 Candelaria, El Paso, Texas 79907, commonly known as the Ysleta Health Center, and hereinafter referred to as the “Premises”; and

WHEREAS, TENET desires to enter into a lease agreement (“Agreement”) with the CITY to lease 702 square feet of the Ysleta Health Center to provide services (“Services”) as a Teen Health Resource.

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants a non-assignable right to TENET to lease the property described on Exhibit “A” attached hereto and made a part hereof for all purposes, and hereinafter referred to as the “Center”.

1.0 TERM AND RENT

1.1 Term of Agreement. This Agreement shall become effective upon the date above and shall be for a term of two (2) years from that date.

1.2 Consideration. The monthly consideration to be paid by TENET is ONE THOUSAND THREE HUNDRED EIGHTY-ONE AND 66/100 DOLLARS (\$1,381.66). TENET shall pay to the CITY the entire amount of the Rent for each month on or before the tenth day of the month.

2.0 USE OF PREMISES

2.1 Center. The Center shall be under the control of TENET during the lease term of this Agreement primarily for the operation of the Teen Health Resource Center, which will provide services and information about basic health care and community resources. TENET understands and agrees that the Center is to be free and open to the public on a non-discriminatory basis, yet the services offered through the Center may be limited to those individuals (“Patients”), as determined appropriate by TENET. However, TENET may impose reasonable restrictions on its general services with the need to preserve and protect the Premises, the Center and the safety and welfare of any occupants therein.

It is understood that TENET intends to use the Center as the Teen Health Resource Center. In connection with the services it provides in the Center, TENET agrees it shall:

- (a) Have qualified practitioners make all decisions regarding medical treatment, including priority of Patients, the time necessary for each visit, and the appropriate treatment for each Patient;
- (b) Provide all equipment, materials, supplies, office equipment, furniture, telephone and computer equipment, and staff, such as clerical and medical assistants, at the Center as necessary for the delivery of services to Patients, and
- (c) Not use the Premises or the Center for any other purpose without first obtaining the CITY'S consent in writing.

The CITY reserves the right to use the Premises for Women, Infant's, and Children (WIC) immunizations and other public health services in areas of the Premises not utilized by TENET.

2.1.1 Functions. TENET shall create and maintain all medical and other records required by law or otherwise related to provision of the Services it provides at the Center. Its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination. Admission to a public function held at the Center and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.1.2 Recordkeeping and Billing. TENET shall create and maintain all medical and other records required by law or otherwise related to provision of the Services. All documents and records created by TENET shall be the exclusive property of TENET. TENET shall have all responsibility for billing and collecting payment from Patients and Third Party Payors for fees associated with Services provided. The Parties expressly agree that the CITY shall have no responsibility for billing or collecting fees for TENET's Services.

2.2 Repairs. TENET shall keep the Center and improvements, without limitation including the fixtures, equipment and property in the Center in good condition and repair during the lease term of this Agreement, as stated in Section 1.1 above. TENET shall notify the CITY of any repairs needed during the lease term. TENET shall at all times during the term of this Agreement keep the Center clean, orderly and in an attractive condition. TENET shall not be responsible for maintenance or repair of the Premises' parking lot or the grounds and landscaping.

2.3 CITY's Responsibilities. The CITY will provide electricity, gas and water; general janitorial and building maintenance services; security and security monitoring, and pest control services to the Premises. The term "general janitorial services" does not include handling of biohazard medical waste. TENET is responsible for the containment, removal and disposition of any biohazard medical waste related to its use of the Center and the Premises. The City reserves the right to monitor the use and consumption of electricity, gas and water provided to the Center and to make recommendations should there be an overabundant consumption of these identified utilities because of TENET's use. If after the CITY makes recommendations on limiting consumption of utility use in the Center and the utility use is not

directly proportionate to TENET's use of the Center, the CITY reserves the right to renegotiate the terms of this Agreement.

2.4 Delivery, Acceptance and Surrender of Center. TENET shall submit a detailed listing of any and all defects to the interior of the Center within ten (10) days of the start of the lease term and any extensions. Should Center not be in substantially the same condition as it was at the beginning of the term of this Agreement and any of the noted conditions were not reported or given approval by the CITY, TENET shall make any necessary repairs to restore Center to its pre-lease condition. The interior of the Center shall be cleaned prior to vacating the Center. At the conclusion of this Agreement, and at the discretion of the City Manager, a payment in the amount of such repairs, in an amount determined appropriate by the sole discretion of the City Manager may be accepted in lieu of completion of said repairs, cleaning, or painting.

2.4.1 AS IS. TENET acknowledges that the Premises, including the parking lot, may be used on an "AS-IS" Basis. TENET shall not request and the CITY shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to TENET'S stated purpose, agenda or mission or believed necessary for the continuance of the Center. This AS-IS condition shall specifically include, but shall not be limited to structural walls, foundation, roof, plumbing, electrical, carpentry, compliance with the Americans with Disabilities Act, and heating, ventilation, and air conditioning problems that may or may not exist, on the Premises. **TENET has been and is herein placed on notice that the CITY neither has knowledge of, nor can it warrant against the existence of asbestos, either of which may or may not exist on the Premises. Should TENET determine that asbestos exists, it may rescind this Lease without further obligation.**

2.4.2 Improvements. TENET shall not, without first obtaining the written consent of the City Manager, make any alterations, additions or improvements in, to or about the Center. All such alterations shall be made at TENET's expense and shall become the property of the CITY at the end of the lease term without additional consideration by the CITY.

2.4.2.1 Fixtures. The CITY, at its option and without additional consideration by the City, at the termination of this Agreement, may retain any fixtures placed by TENET upon the Center, or may require that such fixtures be removed by TENET or its agents as soon as possible upon termination of this Agreement. TENET shall bear all reasonable costs for repair to the Center that may be required due to removal of such fixtures.

2.4.3 Signs. TENET agrees to remove all identifying signs or symbols placed on the Center by it before redelivery of the Center to the CITY and to restore the portion of the Center on which they were placed to the same condition as before their placement. Any identifying signs or symbols placed on the Center must have the City's approval prior to placement.

2.5 Improper Use. TENET shall not permit any activity in the Center that violates any federal, state and local laws and regulations.

2.6 **HHS PRIVACY REGULATIONS.** The Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule), see 45 CFR Part 160 and Subparts A and E of Part 164, requires that TENET will safeguard any protected health information received or created on behalf of TENET. Pursuant to this requirement, TENET agrees to comply with the following HIPAA sections: 164.504(e)(2)(i), 164.504(e)(2)(ii)(B-I), 164.504(e)(4)(i)(A-B), 164.504(e)(4)(ii), 164.530(e)(1), and 164.530(f), and any amendments thereto.

3.0 CONTRACTUAL RELATIONSHIP

3.1 TENET is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with the CITY. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

3.1.1 As an independent contractor, TENET understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to TENET's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

3.1.2 TENET shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of TENET.

4.0 ALLOCATION OF RISK

4.1 **Governmental Function.** The Parties expressly agree that since the CITY is a governmental entity, any claims will be governed by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of CITY, which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function. Accordingly, the Parties further agree that CITY's liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.

4.2 **Exclusion of Incidental and Consequential Damages.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **THE CITY WILL NOT BE LIABLE TO TENET (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM TENET'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND** – including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress – **AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**

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CITY CLERK DEPT

4.3 Responsibility. **TENET AND CITY AGREE EACH PARTY WILL BE RESPONSIBLE FOR ITS OWN ACTIONS UNDER THIS AGREEMENT.**

4.4 Insurance.

4.4.1 TENET shall provide the CITY with written evidence of the following coverage:

(a) Professional liability insurance with limits of at least \$200,000 per occurrence and at least \$600,000 in the aggregate. Insurance shall cover each practitioner within the group that provides services at the Center, and in addition shall cover the group as a whole.

(b) Comprehensive general liability insurance at minimum levels of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(c) TENET shall maintain said insurance with a solvent insurance company authorized to do business in Texas or a prudent program of self-insurance. The general liability policy shall name the CITY, its officers, agents, servants, and employees as additional insureds. Such policy shall provide that the insurance cannot be canceled or the amount of coverage reduced without thirty (30) days prior written notice to the CITY.

4.4.2 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its elected and appointed officials, officers, agents or employees.

4.4.3 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the CITY, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.

4.4.4 Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to TENET for any further premium payment and has no right to recover any premiums from the CITY.

5.0 CLAIMS

5.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to TENET every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

5.2 In addition, TENET shall promptly advise the CITY in writing of any claim or demand against the CITY or TENET known to TENET related to or arising out of TENET's activities under this Agreement.

5.3 TENET understands and agrees that it will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as TENET may deem expedient.

6.0 TERMINATION. This Agreement may be terminated as provided herein.

6.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

6.2 Termination by Either Party. It is further understood and agreed by TENET and the CITY that either party may terminate this Agreement without cause by providing the other party with ninety (90) days written notice.

6.3 Termination by CITY. If TENET ceases to use or occupy the Center for the purposes herein contemplated for a time period of more than three (3) continuous months, or if TENET defaults in any of its obligations under this Agreement and fails to correct such default within thirty (30) days written notice, the CITY may terminate said Agreement by written notice and take possession of the Center. In such an event, all rights of TENET in the Center and the Premises shall then terminate.

6.4 Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

6.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

6.6 Effective Federal or State Eminent Domain Proceedings. State or federal eminent domain proceedings resulting in condemnation of the Premises or any part thereof shall result in termination of this Agreement. All compensation awarded shall be the CITY'S and TENET hereby assigns and transfers to the CITY any claim it may have to compensation for damages as a result of such condemnation except reasonable moving expenses.

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7.0 GENERAL PROVISIONS

7.1 Taxes and Assessments. TENET will promptly pay all taxes and assessments, if any, lawfully levied on TENET's leasehold interest, as well as on TENET's personal property.

7.2 Assignments and Subletting. TENET shall not assign this Agreement nor sublet the Premises or any part thereof without the prior written consent of the CITY.

7.3 Liens and Encumbrances. TENET shall not give nor permit any liens or encumbrances on the Center or Premises. Upon termination of this Agreement, TENET shall peacefully surrender such Premises to the CITY free of all such liens or encumbrances.

7.4 Inspections. The CITY shall have the right to enter the Center at all reasonable times, on reasonable notice to TENET (except that no notice need be given in case of an emergency) for the purpose of inspecting the same and determining compliance with the terms of this Agreement. TENET shall have no claim or cause of action against the CITY by reason thereof.

7.5 Compliance with Laws. TENET shall observe and comply with all federal, state and local codes and ordinances including, but not limited to those related to health care, and with such further reasonable rules and regulations as the CITY may prescribe, on written notice to TENET, for the safety, care and cleanliness of the Premises.

7.6 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within thirty (30) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

7.7 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions herein.

7.8 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and TENET. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Any waiver by the CITY of any breach of any of TENET's obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of TENET.

7.9 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or

assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

7.10 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

7.11 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.12 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

7.13 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

CITY: City of El Paso
Attn: City Manager
Two Civic Center Plaza
El Paso, Texas 79901-1196

TENET: Sierra Providence
Attn: Chief Executive Officer
1625 Medical Center Drive
El Paso, Texas 79902

Copy to: Tenet Central Region
Attn: Regional Counsel, Law Department
P.O. Box 13737 Noel Rd., Suite 100
Dallas, Texas 75240

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7.14 Warranty of Capacity to Execute Agreement. Each person signing below represents that he or she has read this Agreement, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Effective this _____ day of _____, 2008.

CITY OF EL PASO

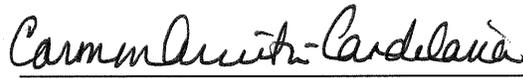
Joyce A. Wilson
City Manager

APPROVED AS TO CONTENT:



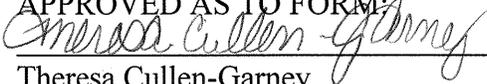
Michael Hill, Health Director
Department of Public Health

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria
Chief Financial Officer

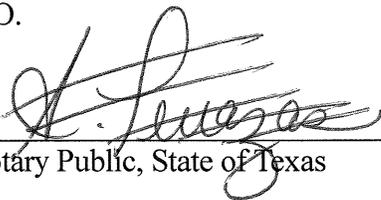
APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

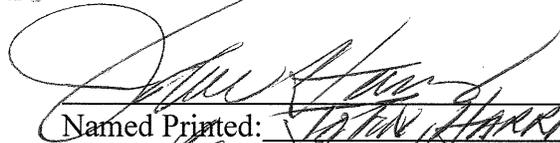
This instrument was acknowledged before me on this _____ day of _____, 2008, by
Joyce Wilson, as City Manager of the CITY OF EL PASO.



Notary Public, State of Texas

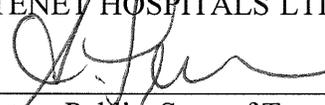
My commission expires:

CITY CLERK DEPT. TENET HOSPITALS LTD. D/B/A SIERRA
08 JUN -9 AM 11:26 MEDICAL CENTER


Named Printed: JATIN HARRIS
Title: PRESIDENT

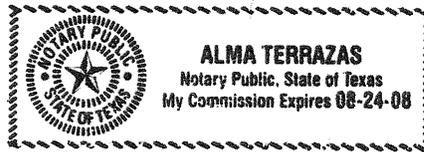
THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 20th day of May, 2008, by Alma Terrazas, as Notary for TENET HOSPITALS LTD. d/b/a SIERRA MEDICAL CENTER.



Notary Public, State of Texas

My commission expires:
8/24/08



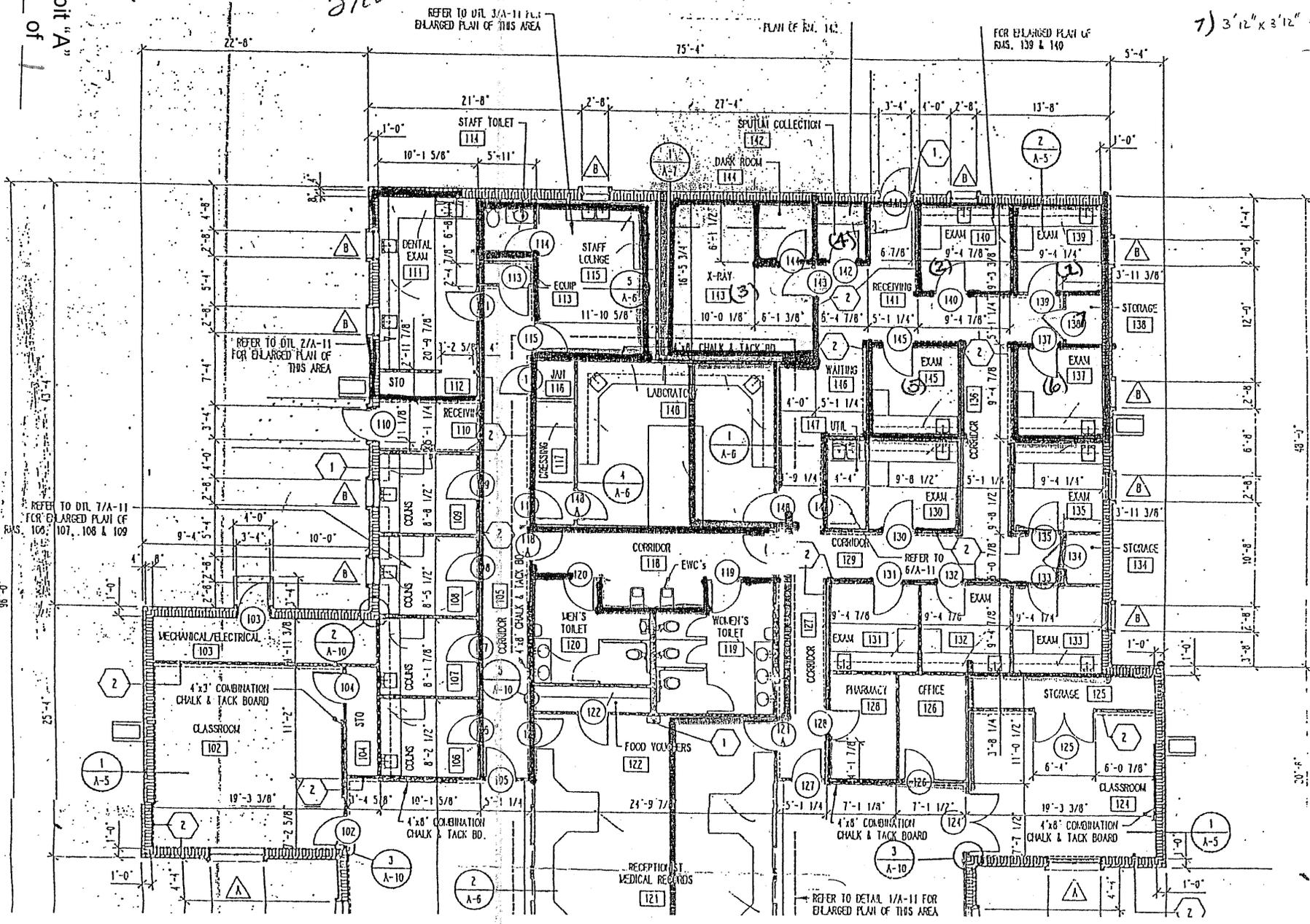
YSLETA HEALTH CENTER

*USING
Additional
2 Rooms*

- 1) 9' x 10' = 90
- 2) 9' x 10' = 90
- 3) 17' x 17' = 289
- 4) 6' x 6' = 36
- 5) 9' x 10' = 90
- 6) 9' x 10' = 90
- 7) 3'12" x 3'12" = 17

702. SQ. FT.

Page 1
Exhibit "A"



REFER TO DTL 7/A-11 FOR ENLARGED PLAN OF THIS AREA

REFER TO DTL 2/A-11 FOR ENLARGED PLAN OF THIS AREA

REFER TO DTL 3/A-11 FOR ENLARGED PLAN OF THIS AREA

PLAN OF Rm. 142

FOR ENLARGED PLAN OF RmS. 139 & 140

REFER TO DETAIL 1/A-11 FOR ENLARGED PLAN OF THIS AREA

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