

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

**DEPARTMENT:** Parks and Recreation  
**AGENDA DATE:** June 23, 2009  
**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 a resolution of City Council for an Interlocal Agreement for the construction, use and management of a baseball field, softball field and related facilities with the El Paso Independent School District (EPISD).

**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 an Interlocal Agreement with El Paso Independent School District (EPISD) for baseball and softball fields on park and PSB property. EPISD will construct two fields that the District will use and manage during the school year. The City will have use of the fields during the summer and other out of school hours.

**PRIOR COUNCIL ACTION:**

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

**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. Operating costs during the school year will be paid for by the District. During the summer, when the City is the primary user of the fields, the City will provide maintenance. These costs are available through the Parks and Recreation Department budget.

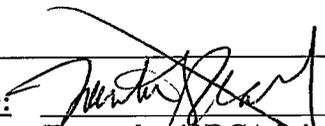
**BOARD / COMMISSION ACTION:**

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

**RESOLUTION**

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

**THAT** the Mayor be authorized to execute an Interlocal Agreement by and between the City of El Paso, Texas (the "City") and the El Paso Independent School District ("District"), whereby the District may lease a 21.686 acre portion of City property and construct and maintain a baseball field, a softball field, and related facilities, for joint use with the City for as long as the referenced Lease Agreement for said 21.686 acres is in effect.

**ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2009.

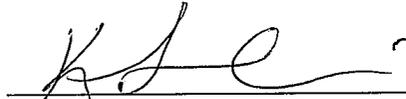
**CITY OF EL PASO, TEXAS**

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

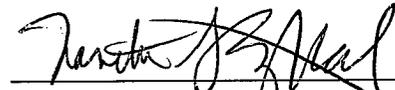
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

THE STATE OF TEXAS §  
  §  
CITY OF EL PASO               §

**INTERLOCAL AGREEMENT**  
**BETWEEN THE CITY OF EL PASO**  
**AND EL PASO INDEPENDENT SCHOOL DISTRICT**  
**FOR THE LEASE OF MUNICIPAL PARK PROPERTY AND**  
**CONSTRUCTION, USE AND MANAGEMENT**  
**OF A BASEBALL FIELD, SOFTBALL FIELD AND RELATED FACILITIES**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF EL PASO (hereinafter called "City"), a Texas municipality political subdivision, pursuant to the action of its Mayor and City Council of \_\_\_\_\_, 2009, and EL PASO INDEPENDENT SCHOOL DISTRICT, a Texas political subdivision (hereinafter called the "District"), acting by and through its Board of Trustees pursuant to its actions of \_\_\_\_\_, 2009.

**I.**  
**Preamble**

**WHEREAS**, the mission of the City is to promote the health, safety, and welfare of its citizens, and said mission is served by the development of parks and recreational areas and the education of its citizens; and

**WHEREAS**, the availability of quality schools, playgrounds, recreational areas and sports fields, serves the mission of the District, to provide for the educational, emotional, and physical development of its students; and

**WHEREAS**, the City and District wish to maximize land and facility use to provide such City and District services; and

**WHEREAS**, Chapter 791 of the *Texas Government Code* authorizes political subdivisions to enter into intergovernmental agreements; and

**WHEREAS**, the City and District are each political subdivisions located in El Paso, Texas; and

**WHEREAS**, the City wishes to commit 21.686 acres, more or less, of City property (hereinafter the "Property") as further described in Exhibit "A", attached hereto for all purposes for the construction of a baseball field, a softball field, parking, and related facilities (the "Facilities") for the benefit and enjoyment of the District's students and the citizens of the City as shown on the site plan attached hereto as Exhibit "A-1"; and

**WHEREAS**, the City and District agree that construction, utilization, and maintenance of baseball and softball fields on park land at Lower Tom Lea Park (hereinafter the "Project") would enhance the recreational assets of both City and District, will reduce operating costs of each, will offer more programs to area residents, and presents a unique opportunity and an efficient partnership approach to addressing community education and development needs, and the mutual benefits derived by the City and District in the construction, use, and maintenance of capital facilities would benefit the taxpayers and the mission of both jurisdictions; and

**WHEREAS**, District has committed, designated, and authorized over \$1 million to fund the construction of the Project; and

**WHEREAS**, in consideration of the City's leasing of the property, the District agrees to design, as set forth in the Lease, construct, operate, maintain and repair the Project, and to design and construct an entrance to the Property and both the City and District have the rights to shared use of portions of the Project for the public purposes of each, as set out herein and in the Lease;

NOW, THEREFORE, in consideration of the covenants, conditions, and provisions set forth herein, the parties hereto agree as follows:

## **II. Definitions**

2.1. When used in this Agreement, the following terms shall have the following meanings:

2.1.1 **City** shall mean the City of El Paso, a Texas municipality organized under the laws of the State of Texas, acting by and through its City Manager as authorized by the Mayor and City Council.

2.1.2 **City Fiscal Year** shall mean September 1 to August 31.

2.1.3 **City Manager:** wherever the term "City Manager" appears herein or in the Lease from the City, said term is intended to refer to the Chief Administrative Officer of the City of El Paso or his designee or other designee of the City of El Paso under whatever form of municipal governing system may prevail at the time.

2.1.4 **City Use** shall mean use of the Project designated for use by City, as herein agreed by the parties.

2.1.5 **Concurrent Use** shall mean simultaneous cooperative use, as agreed by the parties.

- 2.1.6 **Construction Phase** shall mean that phase of the Project commencing with the award of a contract for construction and terminating with final payment to the contractor.
- 2.1.7 **District** shall mean El Paso Independent School District, governed by its Board of Trustees.
- 2.1.8 **District Fiscal Year** shall mean September 1 to August 31.
- 2.1.9 **District Funds** shall mean those funds designated and authorized by the District's Board of Trustees for purposes of construction, maintenance and operation of the Project, including, but not limited to the construction of a baseball field, softball field and related facilities on the property to be leased from City.
- 2.1.10 **District Use** shall mean use of the Project by District, as herein agreed upon by the parties.
- 2.1.11 **Joint Use Committee** shall mean a committee consisting of two (2) City staff representatives and two (2) District staff representatives appointed by the Director of the Parks and Recreation Department and the Associate Superintendent – Operations, respectively.
- 2.1.12 **Lease** shall mean Ground Lease from the City to the District for the Project which is attached as Exhibit "B".
- 2.1.13 **Milestone Inspections** shall mean interim inspections of the Project's construction by the engineer and/or project managers, inspections which shall also determine the dates of substantial completion and final completion of the Project.
- 2.1.14 **Project** shall mean a baseball field, softball field, parking and related facilities to be constructed on approximately 21.686 acres of property in Lower Tom Lea Park which is to be leased to District by City in accordance with the terms of the Lease and an entrance to the Property on adjoining City property.
- 2.1.15 **Project Consultants** shall mean the project manager, engineer, surveyors, and other professionals employed by District to provide advice and consultation preliminary to and in conjunction with the construction of the Project.
- 2.1.16 **Project Costs** shall mean the cost of all elements of constructing the Project, including the total of the amount of the construction contract award, Project Consultant fees, and other construction costs. Project Costs do not include the cost of land or land use funded by the parties, or equipment and supplies for

the operation, repair or maintenance of the Project once construction is substantially completed and the Project is operational.

2.1.17 **Property** shall have the meaning ascribed thereto in the Preamble.

2.1.18 **Substantial Completion** shall mean the issuance of the Certificate of Substantial Completion by the engineer for the Project.

2.1.19 **Third-Party Use** shall mean use of the Project facilities by those (**Third-Party Users**) other than the parties to this Agreement, as may be agreed herein by the parties.

### III.

#### Statement of General Purpose and Intent

3.1. The general purpose and intent of this Agreement is to provide for the (1) use of the Project, (2) designation and expenditure of funding for the Project, (3) design, construction, maintenance, operation and management of the improvements on the Property, (4) design, and construction of an entrance point to access the Property on an adjoining parcel of City Property, more particularly described as Tracts 16 and 35 of the H.F. Fisher Survey No: 293, (5) use of the Project by District's students, faculty, and staff, by other District permittees, by City's staff, by other City permittees, invitees and by the general public, and (6) terms for the lease of City park land to the District for construction of the Project.

3.2. The project facility shall only be used for their intended purpose, *i.e.*, Baseball and Softball activities. The Project facilities are not to be used by the District, the City or by any Third-Party Users for any other unrelated activities, *i.e.*, football, soccer.

### IV.

#### Ownership

4.1. The City will certify that it owns the land identified for use as the Project described herein, and is not prohibited by any term, condition, covenant of ownership from using the land as contemplated herein, to the best of its knowledge without the necessity of conducting an official title search or commitment.

### V.

#### City's and District's Share of Construction Costs

5.1. **Project Construction Cost Apportionment.** For and in consideration of the lease of property for the Project, District agrees to be financially responsible for all improvements made to the Property. The City shall not be required to expend any resources towards the construction of the Project.

5.2. **Accounts and Records.** District shall account and pay for all Project Costs (including all receipts, expenditures, and investments thereof) and shall retain all records of such accounting for six years or the length of time required for the retention of public records, whichever is longer. Upon reasonable request of the City, its agents, or any State oversight agencies, District shall provide copies of the records, or reasonable inspection by, City, or State agency, including their employees or agents of the records.

5.3. **Reports.** District will provide to the City, within fifteen (15) days after receipt, a copy of the construction contract for completion of the Project and copies of monthly pay applications submitted by the Contractor to the District.

## VI.

### Consultant and Construction Contracts

6.1. **Project Design and Construction Management.** It shall be District's responsibility to contract for all Project Consultant services necessary to design, plan, and monitor construction work related to the Project. Monitoring and administration of such consultant contract, and the making of payments to such consultant, shall be District's responsibility. City approval shall be required for the Project's final plans and specifications before their implementation, which approval shall not be unreasonably withheld or delayed and which shall be evidenced by the issuance of a building permit for construction of the Project.

## VII.

### Coordination and Consultation

7.1. **Project Review Committee.** District shall keep the Director of Parks and Recreation informed of progress of the Project throughout the design, planning, and specification phase of the Project. District and the City shall each, for such purposes, appoint staff members to a Project Review Committee, of which the engineer and project manager for the Project shall also be members. The Committee shall meet with the Project Consultant(s) to review design, plans, specifications and progress of the Project. Such meetings shall be called by District at times and places mutually convenient to the City and District.

7.2. **Bids/Proposals.** District shall have full responsibility for review and acceptance of proposals for construction of the Project in compliance with all applicable laws.

7.3. **Construction Supervision.** Supervision of construction and completion of the Project in accordance with the plans and specifications is the sole responsibility of District. All contracts with the construction contractor and the Project Consultant(s) are District's responsibility, as is the administration of the construction contract and payments to the construction contractor and construction consultants. District agrees to invite the City to all design meetings and pre-construction conferences and construction administration meetings. The District will provide notice of such meetings to the Director of Park and Recreation of the City. District agrees to require the engineer to provide the City and District a full set of construction plans and drawings and further agrees to permit the City to observe and inspect

construction work; provided, however, that such City representative shall not direct the contractor or any Project Consultant or in any fashion represent himself to hold inspection or supervisory authority, except for regular and customary inspections by City officials under the City's building and development codes.

Should the Director of Parks and Recreation or designee observe any deficiencies or other problems in the construction work of the Project, such deficiencies or problems may be immediately reported in writing to District's Project Manager. District agrees to promptly review the report and, where appropriate, cause corrective action(s) to be taken.

7.4. **Corrective Action.** Except from matters involving enforcement of the City's building and development codes, it shall be District's sole responsibility to determine appropriate action required in Paragraph 7.3 above. Only District or the City, in accordance with its ordinances and policies, shall have the authority to issue a stop work order to the construction contractor or Project Consultants under the construction contract. Deficiencies or problems in the work performed by District shall be corrected at District's expense.

### VIII.

#### **Final Project Inspection and Acceptance**

8.1. **Inspections.** District agrees to notify the Director of Parks and Recreation of the date and time of final Project's inspection. District agrees to permit City representatives to participate in such final inspection and to include such deficiencies, if any, as may be noted by City representatives, in the punch list for correction. The City representative shall have the right to inspect the work performed by District's contractor for the Project prior to acceptance of said work.

8.2. **Plans.** District shall provide the City with a copy of the final Project improvements acceptance document and shall also provide the City with a set of as-built documents, within a reasonable period of time following Project's acceptance.

### IX.

#### **Project Rental and Use Fees**

9.1. **Project Rental and Use Fees.** It is contemplated that the Project will be utilized by Third Party Users, to include members of the general public, and such use shall be consistent with District's and City's policies for Third-Party Use. For any Third-Party Use during the District's time, District reserves the right to establish fees, charges, and conditions of any Third-Party Use as District deems necessary and proper, which shall be contained in a Third-Party Use Agreement prepared by the District (the "District Third Party Use Agreement") 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 Use time, the 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 prepared by the City (the "City Third Party Use Agreement") provided that such Third-Party

Use does not adversely affect the rights of use or maintenance of either party. If District's and City's use policies conflict or cannot otherwise be reconciled, the Joint Use Committee shall recommend a resolution for Third Party Use for consideration by City and District. However, notwithstanding any provision herein, neither District nor City shall be obligated to modify its use policies to accommodate Third-Party Use or Third-Party Users. No Third-Party Use shall be permitted by either party unless and until said Third-Party User shall execute and deliver the Use Agreement and comply with all requirements contained therein.

9.2. **Liability Insurance.** District 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.

9.2.1 District 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 shall not provide coverage to the City for acts or omissions of the City arising during the City's use of the Project.

9.2.2 District 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 groups, its officers, agents, servants or employees.

9.2.3 No performance required under this Agreement shall be rendered by the City until District files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the 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.

## X.

### **Project Shared Use and Times of Operation (Lease)**

10.1. **Joint Use Committee.** The Joint Use Committee consisting of two or more City and two or more District representatives shall convene at least once per year to schedule and

review and establish relevant use and operational policies, and discuss and resolve maintenance issues and standards for the Project. The Joint Use Committee shall meet and establish yearly schedules for the baseball and softball facility between May and June 1<sup>st</sup> of each year consistent with the terms of this Article X. The Joint Use Committee shall also determine after an on-site inspection and evaluation, whether the fields require re-seeding or other maintenance during the summer months. If the Joint Use Committee deems necessary, the fields will be closed during July and August in order to be leveled, seeded, sodded, aerated and/or rested in preparation of the fall sports seasons. In the event the Joint Use Committee cannot reach a consensus, on any issue, it is to be referred for negotiation/resolution to the District's Associate Superintendent of Operations and the City's Director of Parks & Recreation.

10.2. **District Exclusive Use.** The District shall have exclusive use of the Project facilities five (5) calendar days prior to the first day of school each school year and continuing to the last day of school or last day of league competition each school year.

- The District shall have exclusive use of the Project facilities during the time interval indicated above Monday through Saturday from 8:00 a.m. to 7:00 p.m.
- Requests for use of the facilities by City or Third-Party Users during the school year must receive the prior approval of El Paso High School Administration and the District's Associate Superintendent of Operations.
- The batting cage constructed and the storage containers installed at each of the fields are to be for the exclusive use of the District.

10.3. **City Exclusive Use.** The City shall have the exclusive use of the Project facilities during the days and times that the District does not have exclusive use of the Project facilities, which shall be a minimum of 7:00 p.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. to 10:00 p.m. on Sundays and in summer Monday through Sunday from 8 a.m. to 10 p.m. after League Competition ends.

10.4. **Alcoholic Beverages, Tobacco and Firearms.** The possession or use of alcoholic beverages, tobacco and the possession of firearms shall be prohibited within the boundaries of the Property. The District shall post signs at the District's sole cost and at locations mutually agreeable to both the District and the City. The sign(s) shall contain the following language:

**El Paso Independent School District – City of El Paso, Texas  
General public admitted by permit only. Closed to the general  
public during school activities. Alcoholic beverages, firearms  
and tobacco products not permitted anytime.**

10.5. **District Duties.** The District shall maintain the Project facilities in the same manner it maintains and repairs its other sports turf grass areas, including regular watering, aerating,

fertilizing and cutting of the Project facilities turf during the interval the District enjoys exclusive use of the Project facilities.

10.6. **District Costs.** The District shall pay the cost of water and wastewater, solid waste disposal and electricity used for the Project facilities during the time interval for which it has exclusive use.

10.7 **City Duties.** The City shall maintain the Project facilities in the same manner it maintains and repairs its other sports turf areas, including regular watering, aerating, fertilizing and cutting of the Project facilities turf during the summer time interval the City enjoys exclusive use of the Project facilities. The City shall perform all other tasks normally associated with keeping such Project facilities reasonable good condition for general use. The District retains the right, but not the obligation, to maintain and repair the Project facilities during the summer time interval.

10.8 **City Costs.** The City shall pay the cost of water and wastewater, solid waste disposal and electricity used for the Project facilities during the summer time interval only when it has exclusive use. The costs will be billed on a monthly basis by the District and will be payable by the City to the District.

10.9 **Vandalism.** The City and District shall enter into negotiations in good faith to allocate between the parties the costs for repair necessitated by Acts of God, vandalism or other extraordinary circumstances.

## **XI.**

### **Cost Sharing for Operation and Maintenance of Project**

11.1. The following operation and maintenance provisions, subject to the provisions of Section X, shall apply to the special Project facilities required by the City and the District:

11.1.1 **Park Area Space and Lighting.** The cost of operating and maintaining park area space and lighting for the portion of the City Park outside the Project shall be that of the City.

11.1.2 **Security Lighting.** The City shall be responsible for security lighting of park areas outside of the Project.

11.1.3 **Events.** The costs of security and traffic control for events shall be the responsibility of the event's sponsor. Third-Party Users sponsoring events shall be responsible for assuming all costs of security and traffic control as part of their Use Agreement for use of the Facilities. Litter control after any special event shall be assumed and undertaken by the event's sponsor, provided, however, that District or City may recover the costs of litter control from Third-Party Users as part of a contractual agreement for the use of the

facilities. District or City may also require a deposit from all Third-Party Users entering into a Use Agreement with District or City.

- 11.1.4 **Concessions.** During periods sanctioned by the Joint Use Committee for the exclusive use by the City or the District, the party entitled to such use may authorize the sale of concessions and non-alcoholic beverages for itself or for any Third-Party User approved by the District or the City.
- 11.1.5 **Parking.** It is generally provided that parking shall be available to the City, District, and Third-Party Users at all times, except that parking shall be restricted during District's school hours, or parking may be reserved as approved by the Joint Use Committee for other events. The responsibility for controlling parking shall be that of the event sponsor. Third-Party Users sponsoring events shall be responsible for assuming all costs of parking control as part of their contractual agreement with the District or City for use of the facilities. Overnight parking or camping shall not be permitted.
- 11.1.6 **Irrigation and Landscape Maintenance.** The City shall be responsible for irrigation and landscape maintenance of portions of the parkland located outside the Property, and District shall be responsible for irrigation and landscape maintenance of the Property, except during those time periods in June, July and August when the Property is reserved for City use, which shall be the responsibility of the City.
- 11.1.7 **Fencing.** The City shall be responsible for the maintenance and repair of fencing or perimeter fencing of portions of the parkland located outside the Property, and District shall be responsible for maintenance and repair of fencing or perimeter fencing constructed by District and located within the Property. It is mutually agreed that no fence (except the standard fencing used by District to enclose its baseball and softball fields located on the Property) shall be erected by either party to this Agreement except as approved by the Joint Use Committee.
- 11.1.8 **Standard of Care.** District shall promptly carry out its maintenance obligations hereunder to preserve the facilities in their original character and condition, reasonable wear and tear excepted. Any issues arising from the manner in which maintenance obligations are to be carried out shall be referred to and determined by the Joint Use Committee.

## XII.

### Signs and Acknowledgment of Participation

12.1. District agrees that signs shall be located on the Project site during construction that acknowledge the participation of the City and the District in the Project development.

12.2. District agrees to include in the design plans a permanently-installed plaque or other suitable permanent sign within the Project which acknowledges the participation of the City and the District in the Project development.

12.3. District shall erect signs informing Project users of hours of operation of the Project and any alcohol, tobacco and firearms restrictions at all times.

### **XIII. Project Safety**

13.1. District and the City hereby agree and pledge that each shall fully comply with all established safety standards applicable to operation and use of the Project. District shall post such informational signs as necessary to inform users of rules, regulations, governmental codes, and ordinances. During their respective use and joint use periods, the City and District agree to enforce such rules and regulations. District and the City agree that any security for events shall be the cost of the party using the facility.

### **XIV. Insurance and Non-Indemnification**

14.1. District, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without retention, or a self-insurance program, allowed or provided by law to a Texas school district, which shall cover liability for property damage and personal injury pursuant to District's use and ownership of the Project. Third-party Users shall maintain insurance during the times the Third-Party Users are in possession and use of the Project. The City shall be responsible for property damage and personal injury during its possession and use.

14.2. District understands that the City of El Paso is self-insured.

14.3. District and the City shall each be liable for their own acts and the conduct of its officials, employees and agents, to the extent provided by law. The City and District shall not contractually indemnify each other for claims, damages or losses arising from performance of this Agreement, however, each party shall have all recovery rights for any damages or losses to which it is entitled.

### **XV. Project Term (Lease)**

15.1. The term of this Agreement for the Project shall be the term of the Project Lease..

**XVI.**  
**Default (Construction and Lease)**

16.1. The parties hereto shall be entitled to written notice of default. Absent a cure of default satisfactory to the notifying party, that each party may, at the conclusion of ninety (90) days from the receipt of notice by the defaulting party, declare default, and both parties shall be entitled to their respective rights and remedies under contract and law.

**XVII.**  
**Assignment**

17.1. This Agreement shall not be assignable by either party.

**XVIII.**  
**Severability**

18.1. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, including any renewals, then and in that event, it is the intent of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intent of the parties to this Agreement that, in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

**XIX.**  
**Entire Agreement**

19.1. This Agreement is in conjunction with the Lease Agreement entered between the parties. The two Agreements contain the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon to date, and no other agreements of prior date, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. It is the intent of the parties that neither party shall be bound by any term, condition, or representation not herein written.

**XX.**  
**Amendment**

20.1. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

**XXI.**  
**Non-Discrimination**

21.1. Any discrimination by District or the City or their agents or employees on account of race, color, sex, age, religion, handicap, or national origin, in employment practices or in the use of or admission to the Project, is prohibited.

**XXII.**  
**Notices**

22.1. 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:

District: El Paso Independent School District  
Attn: Associate Superintendent of Operations  
6531 Boeing  
El Paso, Texas 79925

City: 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.

**XXIII.**  
**Texas Law to Apply**

23.1. This Agreement and its obligations shall be performed pursuant, construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. **NOTWITHSTANDING ANY PROVISIONS HEREIN CONTAINED 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.**

**XXIV.**  
**Force Majeure**

24.1. Neither party to this Agreement shall be required to perform any term, condition, or covenant in this Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by a governmental authority, civil riots, floods, and any other cause not reasonably within the control of either party to this Agreement and which, by the exercise of due diligence, such party is unable, wholly or in part, to prevent or overcome. If, by reason of force majeure, either party is prevented from full performance of its obligations under this Agreement, written notice shall be provided to the other party within five (5) business days.

**XXV.**  
**Gender**

25.1. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**XXVI.**  
**Captions**

26.1. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

**XXVII.**  
**Authority**

27.1. The signers of this Agreement hereby represent and warrant that they have authority to execute this Agreement on behalf of each of their governing bodies.

**XXVIII.**  
**No Waiver**

28.1. Notwithstanding any provision set forth herein, District's and the City's obligations shall be performable and enforceable only to the extent such obligation is permitted by Texas law. By entering into this Agreement and performing hereunder, District and the City (including their officials, employees and agents) do not intend, and this Agreement shall not be construed to waive immunities, defense or limits of liability to which the District and the City are entitled.

**XXIX.**  
**Attorney Fees**

29.1. In an action to enforce or construe this Agreement in a court of law, the prevailing party shall be entitled to its necessary and reasonable attorney's fees and costs of court, in accordance with Texas Local Government Code §271.159.

**XXX.**  
**Conflicts**

30.1 To the extent of any conflict or inconsistency between the terms of this Interlocal Agreement and the Lease Agreement, the provisions of this Interlocal Agreement shall control.

WITNESS the signatures of the parties hereto in duplicate originals as of the date first written above.

**(Signatures to follow on next page)**

CITY OF EL PASO, TEXAS

\_\_\_\_\_  
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 and Recreation Department

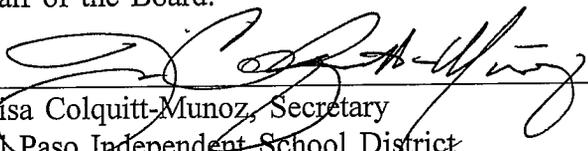
*(Signatures Continued on Next Page)*

**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 10<sup>th</sup> day of June, 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

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

BEFORE ME, the undersigned Notary Public, on this day personally appeared Patricia L. Hughes, known to me the President of the Board of Trustees of the El Paso Independent School District, a Texas Political Subdivision, and the person whose name is subscribed to the foregoing Interlocal Agreement, and who acknowledged to me that he executed the instrument for the purposes and considerations therein expressed and on behalf of the El Paso Independent School District.

Given under my hand and seal of office on the 10<sup>th</sup> day of June, 2009.

Elizabeth Carrasco  
NOTARY PUBLIC in and for the State of Texas

My Commission Expires:  
9/5/2011



**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

BEFORE ME, the undersigned Notary Public, on this day personally appeared JOHN F. COOK, known to me Mayor of the City of El Paso, a Texas Political Subdivision, and the person whose name is subscribed to the foregoing Interlocal Agreement, and who acknowledged to me that he executed the instrument for the purposes and considerations therein expressed and on behalf of the City of El Paso, Texas.

Given under my hand and seal of office on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "A"**

Metes and Bounds Property Description

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;

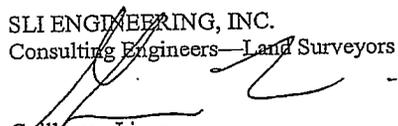
343.53 feet along the arc of a curve to the left, having a radius of 690.63 feet, a central angle of 28° 30' 00" and a chord which bears North 02° 28' 00" East, a distance of 340.00 feet to a point for a corner;

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.

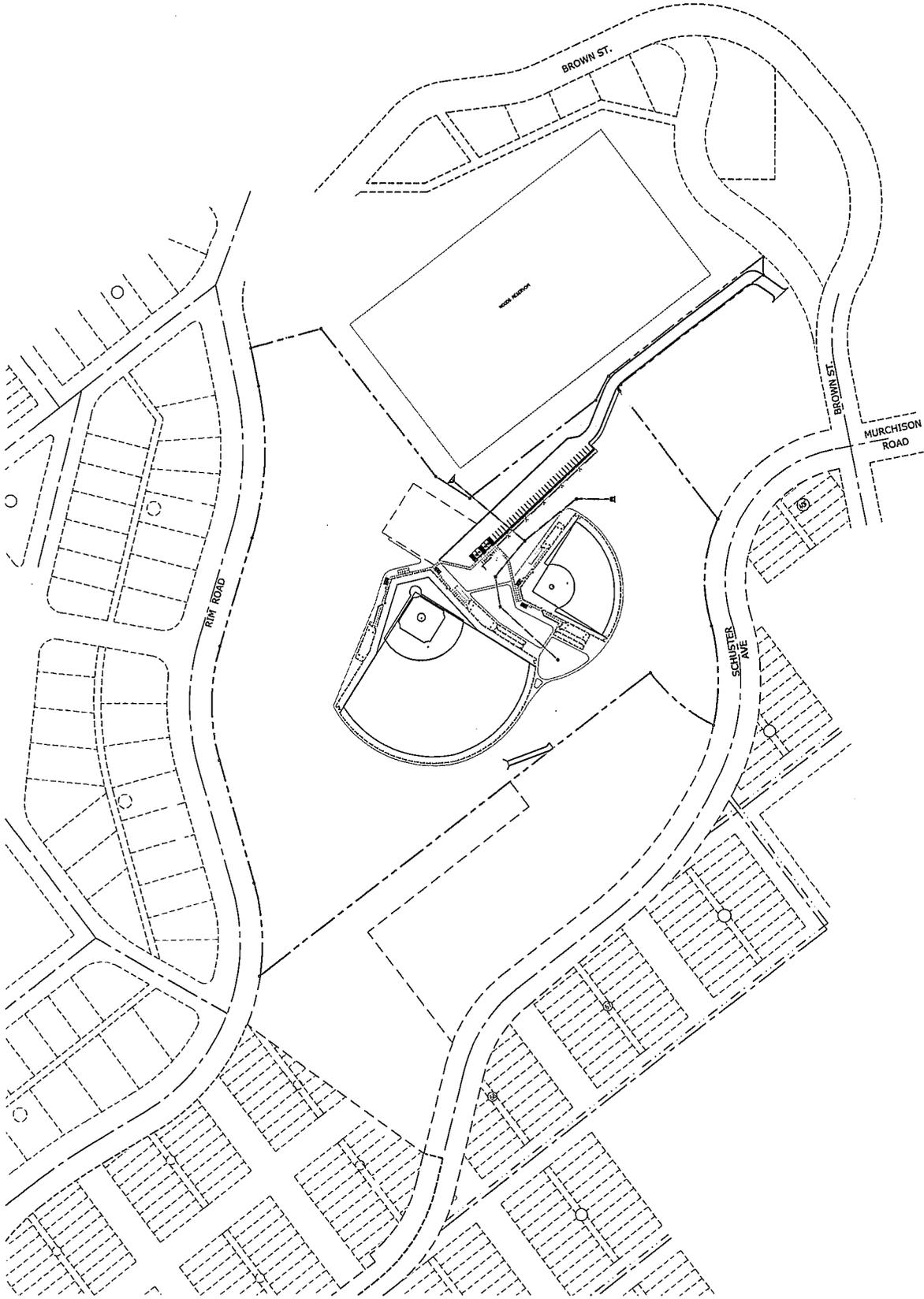
SLI ENGINEERING, INC.  
Consulting Engineers—Land Surveyors

  
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 "A-1"

## Site Plan



**EXHIBIT "B"**

Lease Agreement

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.

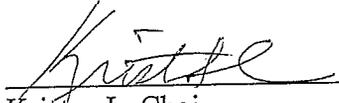
*(Signatures are on the following page)*

CITY OF EL PASO

---

Joyce A. Wilson  
City Manager

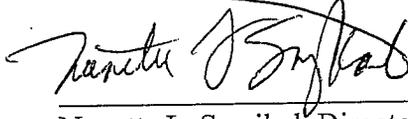
**APPROVED AS TO FORM:**



---

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*  
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.

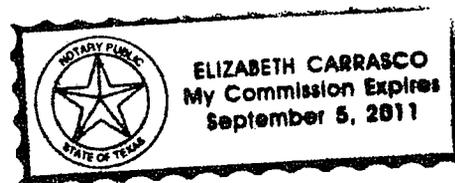
*Lisa Colquitt-Munoz*  
Lisa Colquitt-Munoz, Secretary  
El Paso Independent School District  
Board of Trustees

**ACKNOWLEDGMENT**

THE STATE OF TEXAS }  
  }  
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 10<sup>th</sup> day of June, 2009, by Patricia L. Hughes, as President of the Board of Trustees of EL PASO INDEPENDENT SCHOOL DISTRICT.

*Elizabeth Carrasco*  
Notary Public, State of Texas



# **Exhibit "A"**

## **METES AND BOUNDS PROPERTY DESCRIPTION**

(See attached pages)

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;

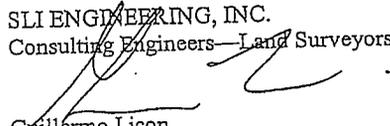
343.53 feet along the arc of a curve to the left, having a radius of 690.63 feet, a central angle of 28° 30' 00" and a chord which bears North 02° 28' 00" East, a distance of 340.00 feet to a point for a corner;

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

  
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

