

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

DEPARTMENT: Financial Services Department

AGENDA DATE: July 20, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria [(915) 541-4011]

DISTRICT(S) AFFECTED: All

SUBJECT:

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

Approve an extension of the lease agreement between the City of El Paso and Insights-El Paso Science Center, Inc. for a period of three years, from July 21, 2010 through July 21, 2013.

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?

In 2007, the City of El Paso acquired the leasehold interest from Insights-El Paso Science Center, Inc. ("Insights"). In addition, the City and Insights entered into a three-year lease agreement subject to various terms and conditions as outlined by Council. The formal documents were executed on July 20, 2007. Insights would like to extend this lease for an additional three years with the following changes to those terms: 1) Parking facilities would be open to the public after museum standard hours of operation; 2) Improvements made during the amendment term become the property of the City of El Paso at the end of the term subject to the exceptions outlined in the agreement; and 3) Challenge Grant would not longer be offered to the museum during the amendment term. All Challenge Grant terms of the original lease have been met and the obligations of both parties have been completed.

PRIOR COUNCIL ACTION:

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

On April 3, 2007, City Council authorized the execution of the purchase, lease, and challenge grant terms related to Insights Museum.

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?

There is no direct cost associated with this action.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD:

Carmen Arrieta-Candelaria

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

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

THAT the City Manager be authorized to sign a First Amendment to the Lease Agreement between the City of El Paso ("City") and Insights El Paso Science Museum, Inc. ("Insights") dated July 20, 2007 to extend the lease for an additional three (3) years; to provide that the parking facilities are open to the public after standard hours of museum operation; to provide for that building or parking lot improvements constructed during this extension; and to delete any and all references to the Challenge Grant.

APPROVED the ____ day of _____ 2010.

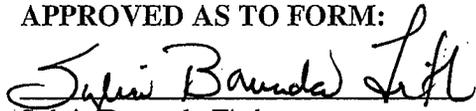
CITY OF EL PASO

John F. Cook
Mayor

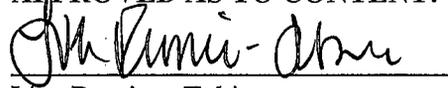
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Liza Ramirez-Tobias
Capital Assets Manager

STATE OF TEXAS)
)
COUNTY OF EL PASO) **FIRST AMENDMENT TO
) LEASE AGREEMENT**

This First Amendment to the Lease Agreement is made and entered into this ____ day of _____ 2010 by and between the **CITY OF EL PASO** ("City") and **INSIGHTS EL PASO SCIENCE MUSEUM, INC.** ("Insights").

WHEREAS, on July 20, 2007, the City and Insights entered into a Lease Agreement ("Lease") covering the real property and improvements located on a portion of Lots 1-10, Block B, Stevens Addition, a portion of Block 28, Anson Mills Map and a portion of Franklin Street right-of-way (vacated), City of El Paso, El Paso County, Texas, and municipally known and numbered as 505 N. Santa Fe St., El Paso, El Paso County, Texas ("Premises");

WHEREAS, the City and Insights now desire to amend the Lease to extend the term for an additional three (3) years; to provide that parking facilities are open to the public after standard hours of museum operation; to provide any building or parking lot improvements constructed by Insights during the extension of the Lease shall be owned by the City upon the termination of the Lease; to delete any and all references to the Challenge Grant and acknowledge that neither party has any continuing obligations to the other with regard to the Challenge Grant.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **TERM.** The Lease is hereby extended for an additional term of three (3) years commencing July 21, 2010 and expiring on July 20, 2013.

2. **PARKING FACILITIES.** Paragraph 2.5 is amended to provide that the parking facilities will be open to the public after standard hours of museum operation.

3. **BUILDING AND PARKING LOT IMPROVEMENTS.** As additional consideration for the Lease and the extension granted herein, any and all Building and Parking lot improvements constructed by Insights will remain on the Premises and become the property of the City at the termination of the Lease without payment or compensation. The Parties specifically acknowledge that the museum exhibits described on Exhibit "A" attached here to and incorporated herein by reference are not building improvements that shall remain on the Premises upon the limitation of the Lease as amended. Insights will be responsible for removing the Exhibits from the building and will bear all expenses in connection with their removal and repair of any damage caused to the building or the roof caused by the removal.

- 5. **CHALLENGE GRANT.** By signing this document, Insights affirms and agrees that all obligations concerning the Challenge Grant described in the Lease are terminated. By signing this First Amendment, the parties stipulate and agree that the Challenge Grant described in the Lease dated July 20, 2007 is terminated.
- 6. **RATIFICATION.** Except as expressly modified herein all other terms and conditions of the Lease Agreement dated July 20, 2007 shall remain in full force and effect and shall remain as written unless expressly modified herein.

IN WITNESS WHEREOF, this First Amendment to the Lease Agreement has been executed by the parties hereto as of this ____ day of _____ 2010.

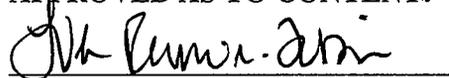
CITY OF EL PASO

 Joyce A. Wilson
 City Manager

APPROVED AS TO FORM:


 Sylvia Borunda Firth
 Senior Assistant City Attorney

APPROVED AS TO CONTENT:


 Liza Ramirez-Tobias
 Capital Assets Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
 COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____ 2010 by Joyce A. Wilson as City Manager of the City of El Paso (Lessor).

 Notary Public, State of _____

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

INSIGHTS EL PASO SCIENCE
MUSEUM, INC.

By: Jacqueline M. Henry
Printed Name: Jacqueline M. Henry
Title: Board President

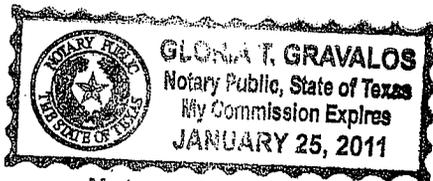
ACKNOWLEDGMENT

THE STATE OF Texas)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 14th day of July 2010
by Jacqueline M. Henry as Board President of Insights El Paso
Science Museum, Inc.

Gloria T. Gravalos
Notary Public, State of Texas

My Commission Expires:
1-25-11



Notary without Bond

EXHIBIT "A"

First Amendment to Lease Agreement
By and Between City and Insights

Mary Mead Lynch Howard Tower Clock – a 2-story clock donated to Insights by the Junior League of El Paso in 1993 in memory of Mary Lynch Mead the founder of Insights Museum

Tesla Coil lighting demonstration exhibit an original Insights Museum Exhibit

1904 Lohmann 9" Refractive Telescope owned by Mary Ann Dodson located on the roof of Insights

The above-listed museum exhibits and/or displays are not permanently affixed to the building and were located on the Premises prior to the extension of the Lease. Upon termination of the Lease, for whatever reason, Insights may remove the listed items from the Premises and will be responsible for all expenses incurred in connection with the removal and the repair of any damage to the building and the roof caused by the removal of the exhibits/displays.

ATTACHMENT 1

THE STATE OF TEXAS §

§

LEASE AGREEMENT

COUNTY OF EL PASO §

This Lease Agreement made this 20 day of July, 2007, between the CITY OF EL PASO, home rule municipal corporation (the "CITY"), and INSIGHTS EL PASO SCIENCE MUSEUM, INC. ("INSIGHTS").

WHEREAS, INSIGHTS has requested a lease of City property on a portion of Lots 1-10, Block B, Stevens Addition, a portion of Block 28, Anson Mills Map and a portion of Franklin Street right-of-way (vacated), City of El Paso, El Paso County, Texas, more particularly described on Attachment 1, and commonly known as 505 N. Santa Fe St., El Paso, Texas; and

WHEREAS, the City staff has recommended the lease of the identified property if INSIGHTS uses the Leased Premises as a science museum facility,

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants to INSIGHTS a lease of the improvements and the real property located on a portion of Lots 1-10, Block B, Stevens Addition, a portion of Block 28, Anson Mills Map and a portion of Franklin Street right-of-way (vacated), City of El Paso El Paso County, Texas, and commonly known as 505 N. Santa Fe St., El Paso, El Paso County, Texas, and referred to throughout this lease agreement as the "Leased Premises."

1. TERM AND RENT

1.1 Term of Agreement. This Lease Agreement shall become effective July 20, 2007 and shall be for a primary term of three (3) years from the effective date.

1.2 Rent. The CITY and INSIGHTS agree that the annual rental for the Leased Premises will be Ten and no/100 Dollars (\$10.00) a year payable in advance on July 20, 2007, beginning July 20, 2007.

2.0 USE OF LEASED PREMISES

2.1 Use. INSIGHTS agrees that the Leased Premises shall be under the control of INSIGHTS. INSIGHTS agrees to make all facilities on the property open to the public on a non-discriminatory basis. As an incident to such use, INSIGHTS may from time to time rent the buildings, rooms or other facilities on the property to organizations or individuals for functions which are suitable to a science museum, with the revenues from such rentals to be used for the purpose of operating and maintaining the Leased Premises. In addition, INSIGHTS may make reasonable charges for admission to functions which are open to the general public with such charges to be used to pay expenses of such functions and for the purpose of meeting its obligations under this Lease. It is the intent of both the CITY and INSIGHTS that the Leased Premises be accessible to a wide variety of people. To that end, INSIGHTS agree that admission charges will be reasonable and applied on a non-

discriminatory basis. INSIGHTS shall be totally responsible for the management and operation of the Leased Premises and shall have complete and absolute control over its program so long as such programs are solely directed toward such purpose.

INSIGHTS may make reasonable rules for use of the Leased Premises to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon. Copies of such rules shall be provided to the CITY.

Should INSIGHTS fail to use the Leased Premises for a science museum, the CITY may send notice of failure, by certified mail, return receipt requested, to INSIGHTS at the following address: 505 N. Santa Fe St., El Paso, Texas 79901, and INSIGHTS shall have a time period not to exceed ninety (90) days from the date of notice to correct the default. If the default has not been corrected within the time specified, INSIGHTS shall reassign the remaining term of the lease with the CITY and abandon the Leased Premises.

2.2 Improvements. Under this Lease Agreement, INSIGHTS is given permission to operate on the Leased Premises in accordance with the terms of this Lease Agreement. INSIGHTS shall submit to the City's Capital Assets Manager, the plans and specifications for any improvements, additions, alterations or changes, and no work thereon shall be commenced until the Capital Assets Manager has given his/her approval, which permission the CITY agrees not to unreasonably withhold.

2.2.1 This Lease Agreement in every sense shall be without cost to the CITY for the development, maintenance or improvement of the Leased Premises, unless the CITY is specifically made responsible for such development, maintenance or improvement by the terms hereof. Except as noted in this paragraph, it shall be the sole responsibility of INSIGHTS to keep, maintain, repair and operate the entirety of the Leased Premises and all improvements at Insights' sole cost and expense.

2.2.2 INSIGHTS stipulates and agrees that it has fully inspected the Leased Premises prior to the execution of this Lease Agreement and that by executing this Lease Agreement it is accepting the Leased Premises in its current condition.

2.2.3 The Leased Premises are being leased "AS-IS" and no warranties or representations expressed or implied have been made by the CITY, its employees, agents or representatives concerning the condition of the Leased Premises, its habitability or fitness for a particular purpose.

2.2.4 INSIGHTS understands and agrees that it shall water, trim and maintain any landscaping improvements so that the same is kept in a neat, orderly and attractive condition at all times.

2.3 Repairs. INSIGHTS shall keep the Leased Premises, in good condition and repair during the lease term of this Lease Agreement, as stated in Section 1.1 above. INSIGHTS shall be solely responsible for any repairs needed during the lease term. INSIGHTS shall at all time during the term of this Lease Agreement keep the Leased Premises clean, orderly and in an attractive condition. In the event INSIGHTS, fails to maintain the Leased Premises and such failure shall continue for thirty (30) days after receipt of written notice from the

CITY, the CITY may, at its option proceed to make the necessary repairs and submit a statement to INSIGHTS. Notwithstanding the foregoing, if such failure cannot reasonably be cured in thirty (30) days, INSIGHTS shall have additional time as may be necessary to diligently pursue such cure to completion if the CITY has been provided with documentation as to why the failure cannot be cured within the identified thirty (30) days and the CITY has given its prior written approval of any time extension beyond the thirty (30) days. Full payment shall be made to the CITY within five (5) days of receipt of the statement. In the event of damage or destruction by fire or other casualty to the Leased Premises, INSIGHTS shall have the option to (i) receive all insurance proceeds and promptly restore or replace, the Leased Premises in a reasonable time; or (ii) terminate this Lease and assign all available insurance proceeds to the CITY. INSIGHTS shall exercise the option provided herein by written notice to the CITY within thirty (30) days after any damage or destruction. Should the Leased Premises not be in substantially the same condition as same were at the beginning of the term of this Lease Agreement except for those modifications approved by the CITY, INSIGHTS shall make the necessary repairs to restore Leased Premises to its pre-lease condition.

2.3.1 AS IS. INSIGHTS acknowledges that the Leased Premises are leased "AS IS." INSIGHTS shall not request and the CITY shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to Insights' stated purpose, agenda or mission or believed necessary for the continuance of the Leased Premises. This "AS IS" condition shall specifically include, but shall not be limited to plumbing, electrical, carpentry, Americans with Disabilities Act, heating, ventilation and air conditioning problems that may or may not exist. INSIGHTS has been and is herein placed on notice that the CITY neither has knowledge of, nor can it warrant against ADA non-compliance issues or the existence of asbestos, either of which may or may not exist on the Leased Premises.

2.4 Maintenance of Grounds. All other maintenance and upkeep of the Leased Premises shall be the responsibility of INSIGHTS.

2.4.1 Garbage and Trash. INSIGHTS shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Leased Premises, of all trash, garbage and other refuse caused by the operations of the Leased Premises. INSIGHTS shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse throughout the Leased Premises. Piling of boxes, cartons, trash or similar items on the Leased Premises, including the facilities and improvements, shall not be permitted at any time.

2.5 Parking Facilities. The CITY and INSIGHTS agree that the CITY has made a portion of the Leased Premises, described on Attachment 1, available to INSIGHTS for the sole purpose of providing parking for the Museum.

2.6 Utilities. INSIGHTS shall be responsible for the payment of all utilities that are used on the Leased Premises.

2.7 Improper Use. INSIGHTS shall not permit on the Leased Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations.

2.7.1 Alcoholic Beverages. INSIGHTS shall prohibit the sale, use or consumption of alcoholic beverages on the Leased Premises unless in accordance with State law and City regulations.

2.8 Municipal regulations. INSIGHTS expressly agrees that the Leased Premises will only be used for a non-profit science museum, which is in compliance with municipal regulations to include zoning regulations.

3.0 CONTRACTUAL RELATIONSHIP

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

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

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

3.2 INSIGHTS understands and expressly agrees that, in all things relating to this Lease Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Lease Agreement as a governmental entity for the purpose of performing a governmental function.

4.0 INSURANCE

4.1 Fire and Casualty Insurance. INSIGHTS shall keep Leased Premises insured with a solvent insurance company that is authorized to do business in Texas, to the full replacement value, for the benefit of INSIGHTS and the CITY, as their interest may appear. A Certificate of Insurance indicating such coverage will be provided to the CITY's Financial Services Department Capital Assets Division within ten (10) days of the execution of this Lease Agreement. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the INSIGHTS default in the terms of this Lease Agreement.

4.2 Liability Insurance. INSIGHTS understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for Leased Premises damage (including damage to the facilities and

the Leased Premises) for the term of this Lease Agreement. The CITY, as owner of the Leased Premises, shall be named as an additional named insured under the coverage. A Certificate of Insurance indicating such coverage will be provided to the CITY's Financial Services Department Capital Assets Division within ten (10) days of the execution of this Lease Agreement. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Lease Agreement.

- 4.3 Cancellation. Each policy must expressly state that it may not be cancelled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City Clerks office by the insurance company. INSIGHTS shall give written notice to the City's Capital Assets Manager within five (5) days of the date upon which total claims by any party against INSIGHTS reduce the aggregate amount of coverage below the amounts required by this Lease Agreement.
- 4.4 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its elected and appointed officials, officers, agents or employees.
- 4.5 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the CITY with respect to claims arising hereunder and that the insurance applies separately to each insured.
- 4.6 Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to INSIGHTS for any further premium payment and has no right to recover any premiums from the CITY.

5.0 INDEMNIFICATION

- 5.1 INSIGHTS UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, INCLUDING, BUT NOT LIMITED TO, INJURY TO OR DEATH OF ANY PERSON, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF INSIGHTS, ITS AGENTS, SUB-CONTRACTORS, EMPLOYEES OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS LEASE AGREEMENT.

INSIGHTS FURTHER EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION FOR INJURY OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY

PROPERTY, ARISING OUT OF IN CONNECTION WITH INSIGHT'S USE OF THE LEASED PREMISES, REGARDLESS OF WHETHER SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY UP TO THE MINIMUM AMOUNTS REQUIRED FOR THE PUBLIC LIABILITY INSURANCE UNDER THIS LEASE.

- 5.1.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to INSIGHTS every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.
- 5.1.2 In addition, INSIGHTS shall promptly advise the CITY in writing of any claim or demand against the CITY or INSIGHTS known to INSIGHTS related to or arising out of Insights' activities under this Lease Agreement.
- 5.1.3 INSIGHTS understands and agrees that it will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as INSIGHTS may deem expedient; and 3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.
- 5.1.4 INSIGHTS understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by INSIGHTS pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by INSIGHTS, and premiums on any appeal bonds.
- 5.1.5 The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving INSIGHTS of any of its obligations under this paragraph.

6.0 TERMINATION

This Lease Agreement may be terminated as provided herein.

- 6.1 Termination by the CITY. The CITY may terminate this Lease Agreement if the property is needed by the CITY for any purpose, other than another museum related use. In such event, this Lease Agreement shall terminate immediately upon six (6) months prior written notice from the CITY to INSIGHTS. If the CITY should terminate the lease during the three-year term, the City will provide the remainder of any monies it has pledged toward the Challenge Grant match, in accordance with Attachment 2 attached hereto and made a part hereof for all purposes, without Insights providing the matching funds, and INSIGHTS shall have no further claim by reason of this Lease Agreement or any other reason.
- 6.2 Termination by INSIGHTS. It is further understood and agreed by INSIGHTS that should it terminate this Lease Agreement during the lease term, INSIGHTS will reimburse to the City any remaining monies still in INSIGHTS' possession or control that were previously

provided by the CITY to INSIGHTS toward the Challenge Grant match, in accordance with Attachment 2 hereof.

6.3 Default by INSIGHTS. If INSIGHTS or default in the operating a science museum ceases to use or occupy the Leased Premises for the purposes herein contemplated for a time period not to exceed ninety (90) days, or if INSIGHTS defaults in any of its obligations under this Lease Agreement and fails to correct such default within thirty (30) days written notice from the CITY to INSIGHTS or such additional time to complete such correction as provided in Section 2.3 above, the CITY may cancel said Lease Agreement and take possession of the Leased Premises. In addition, INSIGHTS will reimburse the City any remaining monies still in INSIGHTS' possession or control that were previously provided by the CITY to INSIGHTS toward the Challenge Grant match, in accordance with Attachment "2" hereof. In such an event, all rights of INSIGHTS in the Leased Premises, including buildings, facilities and improvements, shall then terminate. Any waiver by the CITY of any breach of any of Insights' obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of INSIGHTS.

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

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

6.6 Improvements. Upon termination of this Lease Agreement for any reason, INSIGHTS shall vacate the Leased Premises. The Leased Premises will be returned to the City in its current condition, reasonable wear and tear excepted.

7.0 GENERAL PROVISIONS

7.1 Taxes and Assessments. If INSIGHTS is not otherwise exempt from taxation, INSIGHTS will promptly pay all taxes and assessments lawfully levied on Insights' leasehold interest, on the buildings and structures on the Leased Premises as well as on Insights' personal property located on the Leased Premise

7.2 Assignments and Subletting. INSIGHTS shall not assign this Lease Agreement nor sublet the Leased Premises or any part thereof without the prior written consent of the CITY, which consent shall not be unreasonably withheld. However, in the event, INSIGHTS is unable to secure an exhibit for the traveling exhibit space on the Leased Premises, INSIGHTS may sublet the space to third parties for appropriate science based exhibits on

such reasonable terms as INSIGHTS and the third party may agree. At all relevant times, INSIGHTS will retain control of the Leased Premises.

- 7.3 Liens and Encumbrances. INSIGHTS shall not give nor permit any liens or encumbrances on the Leased Premises, including but not limited to the facilities, buildings and improvements. Upon termination of this Lease Agreement, INSIGHTS shall peacefully surrender such Leased Premises to the CITY free of all such liens and encumbrances. INSIGHTS shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Leased Premises, including facilities, buildings and improvements, together with reasonable attorneys' fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens and encumbrances.
- 7.4 Inspections. The CITY shall have the right to enter the Leased Premises at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Lease Agreement.
- 7.5 Outside Lighting. Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other Leased Premises in the neighborhood or otherwise violate Chapter 18.18 (Outdoor Lighting) of the El Paso Municipal Code. If this provision is violated, the CITY may require any such lighting to be extinguished, changed or removed at Insights' expense.
- 7.6 Signs. All signs on the Leased Premises, including building, facilities and improvements, shall comply with the El Paso Building Code, El Paso Zoning Code, and other relevant ordinances of the CITY. The size, design and location of all signs shall additionally be subject to the approval of the building official designee prior to installation.
- 7.7 Right of Assurance. Whenever one party to this Lease Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within thirty (30) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Lease Agreement.
- 7.8 Survival. Each party shall remain obligated to the other under all clauses of this Lease Agreement that expressly or by their nature extend beyond the expiration of termination of this Lease Agreement, including but not limited to the indemnification provisions hereof.
- 7.9 Amendments and Waiver. The parties may amend this Lease Agreement at any time by mutual consent. Unless otherwise provided herein, this Lease Agreement may be amended only by written instrument duly executed on behalf of the CITY and INSIGHTS. No claim or right arising out of a breach of this Lease Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

- 7.10 Attorneys' Fees. In any action brought by either party for the enforcement of any provisions of this Lease Agreement, the successful party shall be entitled to recover reasonable attorneys' fees.
- 7.11 Complete Agreement. This Lease Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Lease Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Lease Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Lease Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Lease Agreement.
- 7.12 Governing Law. This Lease Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.
- 7.13 Severability. All agreements and covenants contained in this Lease Agreement are severable. Should any term or provision of this Lease Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Lease Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 7.14 Venue. For the purpose of determining the place of this Lease Agreement and the law governing the same, this Lease Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.
- 7.15 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

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

COPY TO: City of El Paso
Capital Assets Manager
Two Civic Center Plaza
El Paso, Texas 79901-1196

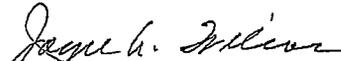
INSIGHTS: Insights El Paso Science Museum, Inc.
Attention: Michael Ancell, President
505 N. Santa Fe
El Paso, Texas 79901

7.16 Warranty of Capacity to Execute Agreement. The person signing this Lease Agreement on behalf of INSIGHTS warrants that he/she has the authority to do so and to bind INSIGHTS to this Lease Agreement and all the terms and conditions contained herein.

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

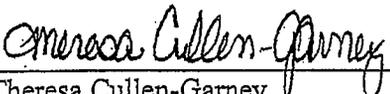
Witness the following signatures:

CITY OF EL PASO



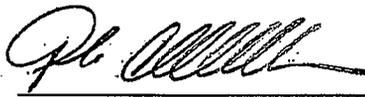
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



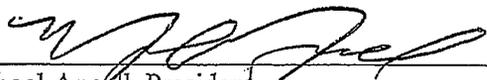
Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria, CFO
Financial Services

Insights El Paso Science Museum, Inc.
D/B/A INSIGHTS SCIENCE MUSEUM

By: 

Michael Ancell, President

SANTANA ST

278'

101'

PROPOSED
INSIGHTS MUSEUM

PLANS

TOTAL OR PARKING SPACES FOR INSIGHTS MUSEUM

6 Spaces for
Leassee for
Loading/Parking

3 Spaces for
Lessor
Loading/Parking

PROPOSED FUTURE PARKING GARAGE

EXISTING
CITY HALL
BUILDING

SOUTHERN PACIFIC RAILROAD

DURANGO ST

11:03
SITE PLAN
NORTH

PROPOSED DEVELOPMENT - CITY HALL - INSIGHTS MUSEUM - EL PASO, TEXAS

Attachment 1