

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

DEPARTMENT: INFORMATION TECHNOLOGY

AGENDA DATE: SEPTEMBER 29, 2009

CONTACT PERSON/PHONE: JOHN NEAL (915) 541-4288

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign a Lease Agreement between the City of El Paso and Missionary Radio Evangelism, Inc., or MRE, also known as Higher Ground Hosting, for a lease term of five (5) years for the purpose of constructing, installing, operating, maintaining and repairing wireless communications facilities including radio frequency transmitting and receiving equipment, etc., on the property located atop Mt. Franklin on a site known as Walton Peak located in the City of El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

This radio transmission site is part of a grant funded upgrade of the public safety radio system. It is the first in a series of sites needed to provide interoperable, encrypted, and digital radio communications. In conjunction with other sites, it will also provide increased communications coverage. MRE owns and maintains the real property lease site located atop Mt. Franklin. The Lease term is for five (5) years with the option to extend the Term for up to two (2) additional five (5) year periods or Renewal Terms, on the same terms and conditions as set forth in the agreement. The Agreement shall automatically be renewed for each successive Renewal Term unless Customer notifies MRE of its intention not to exercise its option to renew.

PRIOR COUNCIL ACTION: Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

Total: \$45,000

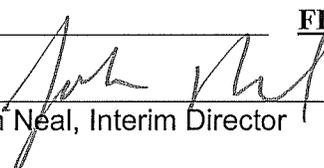
Funding is available in the FY10 Information Technology, Telecommunications General Fund Account: 502411-01101-39010352.

BOARD / COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD:  _____
John Neal, Interim Director

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, Missionary Radio Evangelism, Inc. or MRE, also known as Higher Ground Hosting, a Texas corporation, owns and maintains the real property located atop Mt. Franklin on a site known as Walton Peak; and,

WHEREAS, the City of El Paso desires to lease a portion of this property for the purpose of constructing, installing, operating, maintaining and repairing wireless communications facilities including radio frequency transmitting and receiving equipment, antennae, batteries and supporting structures and improvements,

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

That the City Manager is authorized to sign a Lease Agreement between the City of El Paso and Missionary Radio Evangelism, Inc. or MRE, also known as Higher Ground Hosting, for a lease term of five (5) years for the purpose of constructing, installing, operating, maintaining and repairing wireless communications facilities including radio frequency transmitting and receiving equipment, antennae, batteries and supporting structures and improvements on the property located atop Mt. Franklin on a site known as Walton Peak located in the City of El Paso, El Paso County, Texas.

PASSED AND APPROVED on this the _____ day of _____, 2009.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen

Theresa Cullen
Deputy City Attorney

Patricia A. Adauto

Patricia D. Adauto
Deputy City Manager
Development & Infrastructure Services

Higher Ground Hosting

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT (“Lease”) is entered into this _____ day of _____, 2009, by and between **The City of El Paso** (hereinafter referred to as “Customer”), whose address is 2 Civic Center Plaza, El Paso, Texas 79901 and **Missionary Radio Evangelism, Inc. or MRE**, also known as Higher Ground Hosting, a Texas corporation (hereinafter known as “MRE/Higher Ground Hosting”), whose office address is 11199 Pellicano Drive, El Paso, Texas 79935.

WHEREAS, MRE/Higher Ground Hosting owns and maintains the real property located atop Mt. Franklin on a site known as Walton Peak (incorporated by reference herein and commonly known as “Property”), and

WHEREAS, Customer desires to lease a portion of the Property depicted in the attached Rate Sheet, and

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

1. Premises.

a. MRE/Higher Ground Hosting hereby leases the Rate Sheet-defined Premises to Customer, together with facility access for the purpose of constructing, installing, operating, maintaining and repairing wireless communications facilities including radio frequency transmitting and receiving equipment, antennae, batteries and supporting structures and improvements (“Customer’s Equipment”).

b. The Premises may be used by Customer for any lawful activity in connection with the provision of wireless communications services, including the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities.

c. The Premises are hereby identified as portion of Mt Franklin Site, and more particularly shown on Exhibit “A”.

2. Contingencies.

a. This Lease is conditioned upon Customer obtaining and maintaining all governmental licenses, permits and approvals enabling Customer to construct, install, operate, maintain and repair wireless communications facilities on the Premises. MRE/Higher Ground Hosting agrees to cooperate with Customer as Customer makes application for and obtains all licenses, permits and any other approvals that may be required for Customer’s intended use of the Premises.

b. Prior to the Commencement Date, MRE/Higher Ground Hosting shall allow Customer to perform a survey, geotechnical and/or environmental study. Such survey/study shall be at the Customer’s expense. If such survey or study reveals defects which Customer determines would interfere with Customer’s intended use of property, Customer shall have the right to terminate this Lease immediately upon written notice to MRE/Higher Ground Hosting.

c. Prior to the Commencement Date, Customer may conduct radio frequency propagation studies (“RF Studies”) on the Property. If the RF Studies provide unsatisfactory results (in Customer’s sole judgment) or demonstrate that Customer’s intended operations will disrupt or interfere with any pre-existing operations, Customer shall have the right to terminate this Lease immediately upon written notice to MRE/Higher Ground Hosting.

Higher Ground Hosting

3. Term.

a. Initial Term. The initial term of this Lease shall be five (5) years commencing not later than one (1) month following the execution of this Lease or upon the start of construction, whichever first occurs ("Commencement Date"), and terminating on the fifth anniversary of the Commencement Date unless otherwise terminated as provided in Section 18, Termination.

b. Renewal Term. Customer shall have the right to extend the Term for up to two (2) additional five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be renewed for each successive Renewal Term unless Customer notifies MRE/Higher Ground Hosting of its intention not to exercise its option to renew at least ninety (90) days prior to the expiration of the then-current term.

4. Rent.

a. Customer shall pay MRE/Higher Ground Hosting, as rent, THREE THOUSAND SEVEN HUNDRED FIFTY AND 00/100 Dollars (\$3,750.00) per month, beginning December 1, 2009.

Rent shall be payable by the fifteenth day of each month, in advance, to MRE/Higher Ground Hosting at MRE/Higher Ground Hosting's address specified at the beginning of this Lease. Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated.

b. Rental payments for each Renewal Term shall be increased at the commencement of such Renewal Term by six percent (6%) over the Rent for the immediately preceding month.

c. Customer may not expand the Premises for Customer's Equipment beyond the square footage of the Premises without MRE/Higher Ground Hosting's prior written consent. If such expansion is allowed, Rent shall be increased in proportion to the extra square footage included in the revised Premises.

5. Equipment.

a. Customer has the right to do all work necessary to prepare, add to, maintain and alter the Premises for Customer's communications operations and to install connecting antennae to transmitters and receivers. All of Customer's construction and installation work shall be performed at Customer's sole cost and expense and in a good and workmanlike manner and approved in advance by MRE/Higher Ground Hosting.

b. Customer shall have the right to install any warning signs on or about the Premises required by federal, state or local law.

c. Title to Customer's Equipment and any other equipment or property placed on the Premises shall be held by Customer. Customer's Equipment shall not be considered fixtures.

d. Customer shall remove Customer's Equipment within thirty (30) days of termination of this Lease and shall restore the Premises to their original condition, reasonable wear and tear excepted. Customer shall have no obligation to remove any concrete pad installed on the Premises.

e. MRE/Higher Ground Hosting agrees to maintain air conditioning and other equipment at industry standards. Customer shall maintain air conditioning equipment and other equipment, in any solely leased space, at or above industry standards.

6. Access.

Higher Ground Hosting

a. Customer shall have the right at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Customer's Equipment and for the purpose of preparing for the construction of Customer's Equipment. During any Tests or pre-construction work, Customer will have insurance as set forth in Section 10, Insurance. Customer will notify MRE/Higher Ground Hosting of any proposed Tests or pre-construction work and will coordinate the scheduling of same with MRE/Higher Ground Hosting

b. MRE/Higher Ground Hosting shall provide Customer, Customer's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Customer. MRE/Higher Ground Hosting represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Customer to the extent required to construct, install, operate, maintain and repair Customer's Equipment on the Premises, and to remove them therefrom. Customer's exercise of such rights shall not cause undue inconvenience to MRE/Higher Ground Hosting.

c. MRE/Higher Ground Hosting shall maintain all access, after tramway, in a manner sufficient to allow reasonable access. Should Customer cause any damages to access facilities, it shall promptly repair same.

d. Customer hereby acknowledges that access to the Communications Site shall be by Aerial Tramway. Said tramway is operated by KFOX TV, and trip access shall be charged directly to Customer by KFOX. Currently the trip charge from KFOX to MRE and its customers is \$150 per trip during weekdays and \$250 per trip on nights (after 5PM) and weekends. Additional equipment hauling trips are currently \$75 per load. Customer must adhere to weight considerations as set by KFOX. MRE/Higher Ground Hosting makes no claims or representations as to the future cost of tramway charges.

e. Customer hereby agrees that keys and/or any other security devices or considerations to the premises will be assigned and delivered to customer or customer's assigns solely by MRE/Higher Ground Hosting.

7. Utilities.

a. Customer shall have the right to install utilities, at Customer's expense, and to improve the present utilities on or near the Premises (including, but not limited to, the installation of emergency back-up power). Subject to MRE/Higher Ground Hosting's approval of the location and specifications, which approval shall not be unreasonably withheld, Customer shall have the right to place utilities on (or to bring utilities across) MRE/Higher Ground Hosting's Property in order to service the Premises and Customer's Equipment.

b. MRE/Higher Ground Hosting shall furnish sufficient electrical power necessary to power Customer equipment at no additional cost to Customer. Said electrical power supply shall be within industry norms for similar equipment. MRE/Higher Ground Hosting reserves the right to charge a premium for electrical needs above these industry norms. Customer shall have the right to sub-meter electricity from the existing utilities on the Property. MRE/Higher Ground Hosting agrees to sign such documents or easements as may be required by utility companies to provide such service. Any easement necessary for such power or other utility work will be at a location acceptable to MRE/Higher Ground Hosting and the servicing utility company.

8. Interference.

a. Customer's Equipment shall not cause interference with the operation of any other wireless communications equipment existing on MRE/Higher Ground Hosting's Property as of the date of this Lease ("Pre-existing Equipment"). Customer's Equipment shall comply with all non-interference rules of the Federal Communications Commission.

Higher Ground Hosting

b. MRE/Higher Ground Hosting shall not permit the use of any portion of MRE/Higher Ground Hosting's Property in a way which interferes with Customer's use of the Premises. Such interference with Customer's communications operations shall be deemed a material breach by MRE/Higher Ground Hosting. MRE/Higher Ground Hosting shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease within forty-eight (48) hours of MRE/Higher Ground Hosting's receipt of written notice from Customer of the existence of interference ("Notice Date"), MRE/Higher Ground Hosting shall require the party causing the interference to power down its equipment until such time as the interference can be eliminated or rectified to Customer's satisfaction. If said interference cannot be eliminated or rectified to Customer's satisfaction within thirty (30) days of the Notice Date, MRE/Higher Ground Hosting shall (at the request of Customer) require the party causing the interference to remove its equipment from the Property.

9. Taxes. Customer shall pay personal property taxes assessed against Customer's Equipment and MRE/Higher Ground Hosting shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Lease.

10. Insurance. MRE/Higher Ground Hosting acknowledges that Customer is self-insured for purposes of comprehensive general liability as related to Customer's use, occupancy and operations on the Premises. MRE/Higher Ground Hosting shall maintain Commercial General Liability with limits of \$5,000,000.00 per occurrence covering the Property and improvements thereon, and shall name Customer as an additional insured.

11. Indemnity. To the extent allowed by law, Customer agrees to hold MRE/Higher Ground Hosting harmless from third party claims solely arising from the installation, use, maintenance, repair or removal of Customer's Equipment, except for claims arising from the negligence or intentional acts or omissions of MRE/Higher Ground Hosting, its employees, agents or contractors; provided however that MRE/Higher Ground Hosting must take all necessary steps to mitigate damages and related liabilities arising out of any such claims. MRE/Higher Ground Hosting agrees to defend, indemnify, and hold harmless Customer from any and all claims arising from the use of the Property by MRE/Higher Ground Hosting, its employees, agents, contractors and invitees.

12. Condemnation. If a condemning authority takes all or a portion of MRE/Higher Ground Hosting's Property, which in Customer's opinion is sufficient to render the Premises unsuitable for Customer's use, then Customer may terminate this Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding, each party shall be entitled to make a claim against the condemning authority for just compensation.

13. Assignment. Customer may not assign this Lease without MRE/Higher Ground Hosting's prior written consent.

14. MRE/Higher Ground Hosting's Representations and Warranties.

a. Title. MRE/Higher Ground Hosting represents and warrants that it has full right, power, and authority to execute this Lease and that it has good and marketable title to the Property.

b. Quiet Enjoyment. MRE/Higher Ground Hosting covenants that Customer shall have quiet enjoyment of the Premises during the term of this Lease and represents that it has obtained all necessary approvals and consents, and has taken all necessary action, to enable MRE/Higher Ground Hosting to enter into this Lease.

15. Repairs. Customer shall not be required to make any repairs to the Premises except for damages to the Premises caused by Customer, its employees, agents, contractors or subcontractors. The cost of painting and repairing the tower shall be borne by MRE/Higher Ground Hosting.

16. Notices. All notices shall be in writing and shall be: (i) delivered by hand, (ii) sent via U.S. mail

Higher Ground Hosting

(return receipt requested), or (iii) sent reliable overnight courier to the addresses shown in paragraph one above.

17. Termination.

a. Default. This Lease, in addition to any other remedies, which may be pursued in law or in equity, may be terminated by either party upon a material default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default.

b. Convenience. This Lease may be terminated by Customer without further liability for any reason or for no reason, provided Customer delivers written notice of termination to MRE/Higher Ground Hosting prior to the Commencement Date. After the Commencement Date, this Lease may also be terminated by Customer without further liability on thirty (30) days prior written notice if Customer is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Customer from installing, removing, replacing, maintaining or operating Customer's Equipment or using the Premises in the manner described in Section 1(b) above.

c. Upon the expiration, cancellation or termination of this Lease, Customer shall surrender the Premises to MRE/Higher Ground Hosting in good condition, less ordinary wear and tear.

18. Miscellaneous.

a. Effect of Invalidity. If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease (or the application of such provision to persons other than those as to whom it is held invalid or unenforceable) shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

b. Survival. Sections 5(c), 5(d), 5(e), 9, 11, 12, 14, 18 and 20 of this Lease shall survive the termination, cancellation or expiration of this Lease.

c. Choice of Law. This Lease shall be governed under the domestic laws of the State of Texas.

d. Binding on Successors. This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

e. Entire Agreement. This Lease constitutes the entire agreement between the parties, and supersedes all understandings, offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Lease must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Lease effective as of the date first above written.

(Signatures begin on next page)

Higher Ground Hosting

MRE/HIGHER GROUND HOSTING:
Missionary Radio Evangelism, Inc.,
Higher Ground Hosting

CUSTOMER:
City of El Paso

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen

Patricia D. Adauto

Theresa Cullen
Deputy City Attorney

Patricia D. Adauto
Deputy City Manager
Development & Infrastructure Services

Notarization of MRE/Higher Ground Hosting's signature:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

On _____, 2009, before me, _____ Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for the State of _____

My commission expires:

(Notarizations continue on next page)

Higher Ground Hosting

Notarization of Customer's signature:

STATE OF TEXAS)

)

COUNTY OF EL PASO)

On _____, before me, _____ Notary Public, personally appeared _____ & _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for the State of Texas

My commission expires:

Higher Ground Hosting

A division of Missionary Radio Evangelism (MRE)

SITE & POWER PRICE SCHEDULE (Customer Owned Base/Repeater Equipment)

Higher Ground Hosting looks forward to being your host on El Paso's Mt. Franklin. This ideally located site (with a panoramic view of three states and two nations and targeting metro El Paso) will meet your communication site needs well into the new millennium.

This price sheet is a guide for most standard installations but HGH reserves the right to modify this schedule based upon customer requirements. We'll do what we can to meet your needs.

Call us today to see how we may serve you.

SCHEDULE

Higher Ground Equipment Room Fees

Each 24"x24" Rack (incl. one Transmitter): \$250 \$ _____

Each additional Transmitter: \$250

Higher Ground Tower Fees

Each Antenna (1 rec, 1 xmit): \$250

One-time \$250 facilities charge for all new installations.

\$ 250 plus Total/Mo \$ _____

Returned Check Charges - \$50

Late Fees - 2% of monthly fee per day

NOTES:

1. Standard indoor 19" rack, tall upright housing, larger racks subject to a surcharge.
2. 110VAC 15amp Transmitter Service;
3. 220VAC 20amp circuit an additional \$150.00/Mo.
4. Antennas includes one coax; additional coaxes @ \$50 ea
5. Helicopter access pad available
6. Add \$50.00 if antenna system is to be combined through HGH combiner.
7. Twenty-Four hour cctv catwalk monitoring
8. Access to site is via KFOX tramway. Tram fees to be negotiated with KFOX.
9. Tower Mounted microwave dishes @ \$100/dia ft
10. Building mounted microwave dishes @ \$50/dia ft
11. Check with HGH Site Engineering for frequency compatibility, and muxin requirements.
12. Rates are subject to change without notice.
13. On site secure storage available.

EL PASO'S PREMIER SITE PROVIDER

3720 Greenwich, El Paso, Texas 79912

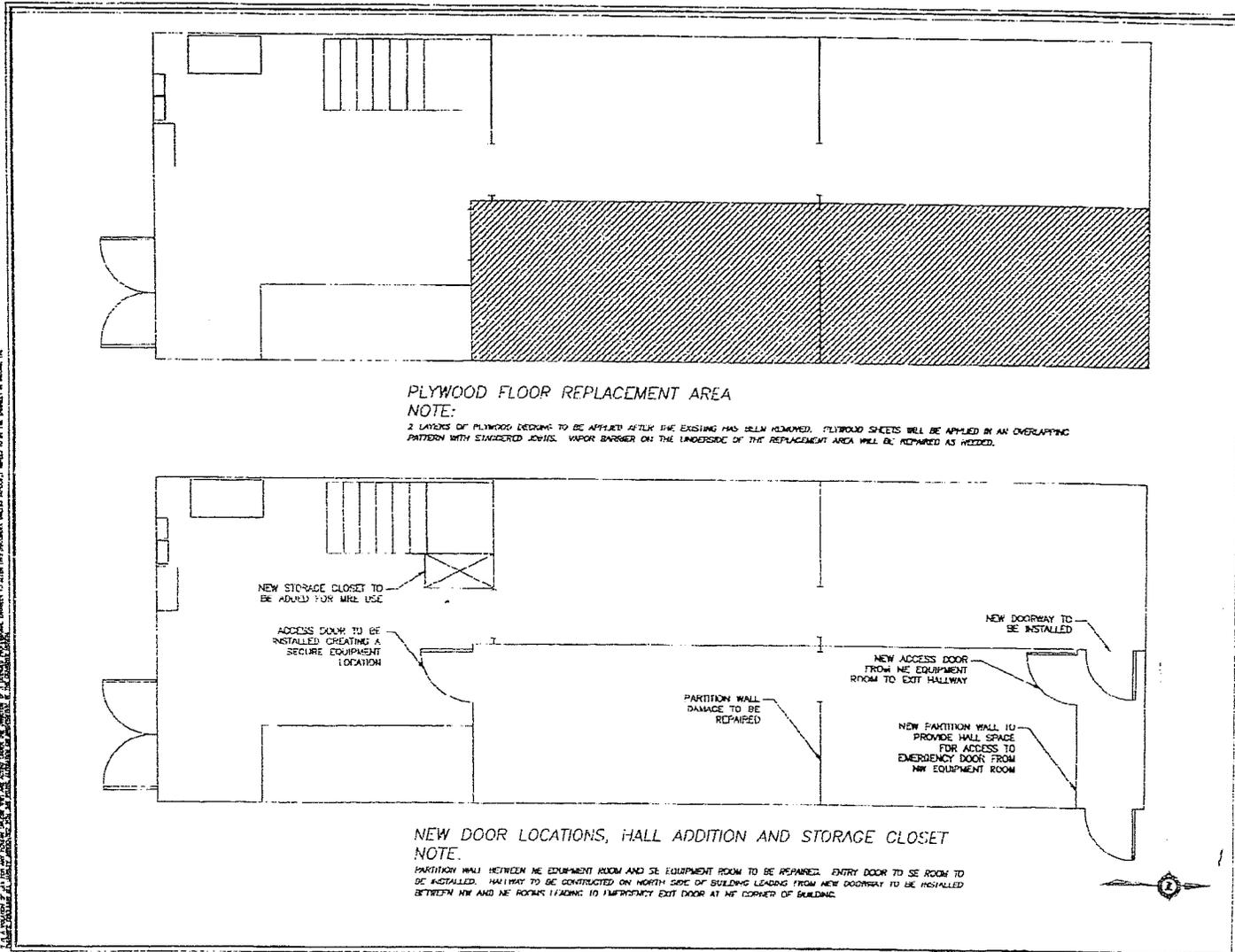
915-591-0404 or 1-888-221-9121

Tower: Walton Peak, Mount Franklin: 31*48.92N, 106*29.357W, 5746'

RATES EFFECTIVE 09/15/07

A3

Exhibit "A"
1 of 2



CITY OF EL PASO

PATRIOT
AUTOWIRE

NOT FOR CONSTRUCTION

SCALE IS BASED ON 24 X 36" 1/8" SIZE (1/8" = 1' UNLESS OTHERWISE NOTED)

DRAWN BY: A.K.
APPROVED BY: E.L.

SUBMITTALS			
REV.	DATE	DESCRIPTION	BY
1	5-21-08	PRELIMINARY	A.K.

SITE NAME:
CITY OF EL PASO
FRANKLIN MOUNTAIN

SITE ADDRESS:
MOUNT FRANKLIN STATE PARK

PROJECT TITLE:
PROPOSED BUILDING UPGRADES

