

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

CITY CLERK DEPT.
05 NOV 17 PM 12:30

DEPARTMENT: Parks and Recreation_
AGENDA DATE: November 22, 2005
CONTACT PERSON/PHONE: Norman C. Merrifield (915) 541-4910
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.

An Ordinance Authorizing the City Manager to sign a lease agreement between the City of El Paso and Miracle League of El Paso, Inc.

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?

The area to be leased is known as a portion of Ponder Park, located within lot 97, Cielo Vista Subdivision Subdivision, El Paso, El Paso County, Texas. The term of the lease shall be 20 years at a rate of \$10.00 per year with the option to extend.

PRIOR COUNCIL ACTION:

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

AMOUNT AND SOURCE OF FUNDING:

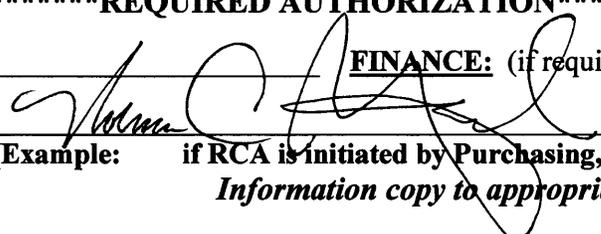
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Miracle League and the field development will be funded by grants and donations solicited by Miracle League.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____
DEPARTMENT HEAD:  _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND EL PASO'S MIRACLE LEAGUE, INC., FOR THE DEVELOPMENT OF A BASEBALL FIELD AND RELATED FACILITIES ACCESSIBLE BY THE DISABLED COMMUNITY, SUCH FIELD AND FACILITIES TO BE LOCATED AT A PORTION OF PONDER PARK, ALSO KNOWN AS A PORTION OF LOT 97, CIELO VISTA SUBDIVISION, EL PASO, EL PASO COUNTY, TEXAS, FOR A TERM OF TWENTY (20) YEARS, WITH RENEWAL OPTIONS.

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

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease upon the following terms to MIRACLE LEAGUE of El Paso, Texas:

(1) The area to be leased is known as a portion of Ponder Park, located within lot 97, Cielo Vista Subdivision, El Paso, El Paso County, Texas, and further described as the area enclosed by global positioning system coordinates shown and described on Exhibit "A" attached hereto ("Premises").

(2) The term shall be for a primary term of twenty (20) years, at a rate of \$10.00 (TEN AND NO/100 DOLLARS) per year plus other good and valuable consideration, and shall be extended for two additional five (5) year periods under the same price, terms and conditions, if mutually agreed to by both parties. This lease agreement supersedes any prior agreements, whether written or oral, regarding the lease of the Premises by the MIRACLE LEAGUE, should any such agreements be claimed to exist.

(3) Said lease from the City of El Paso to the MIRACLE LEAGUE shall be in the form that is attached as Exhibit "B" and incorporated herein by reference for all purposes as if set forth verbatim.

PASSED AND APPROVED on this the _____ day of _____, 2005.

THE CITY OF EL PASO

ATTEST:

John F. Cook,
Mayor

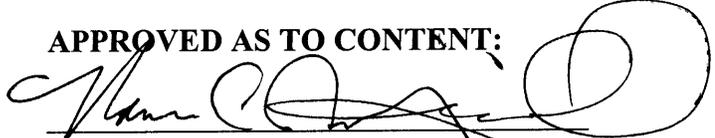
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Department

THE STATE OF TEXAS

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LEASE AGREEMENT

COUNTY OF EL PASO

This Lease Agreement (“Agreement”), made this the _____ day of _____, 2005, between the CITY OF EL PASO, a home rule municipal corporation (“CITY”), and EL PASO’S MIRACLE LEAGUE, a non-profit corporation (“MIRACLE LEAGUE”).

WHEREAS, MIRACLE LEAGUE desires to enter into a lease agreement with the CITY for the use and development of a “field of dreams” baseball field to be located at Ponder Park, such baseball field for the sole use of individuals with disabilities in and around the greater El Paso area; and

WHEREAS, MIRACLE LEAGUE, has offered to make all necessary improvements on the baseball field so that the baseball field can be used by individuals with disabilities; and

WHEREAS, the CITY believes the improvements contemplated herein and activities provided by MIRACLE LEAGUE will be of benefit to the public by increasing the availability of accessible park and recreational facilities, such increased availability along with the improvements constituting adequate consideration for entering into a lease agreement with MIRACLE LEAGUE; and

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants a non-assignable right to MIRACLE LEAGUE to maintain, use and provide park and recreational facilities and services at a portion of Ponder Park, which is located in a portion of lot 97 of Cielo Vista Park subdivision, El Paso, El Paso County, Texas and more properly identified as a hatched area shown on Exhibit “A” (“Premises”).

1.0 TERM AND RENT

1.1 Term of Agreement. This Agreement shall become effective on **January 1, 2006**, and shall be for a primary term of Twenty (20) years from that date. Upon mutual agreement of the parties, said Agreement may be extended for two additional five (5) year periods under the same price, terms and conditions, unless terminated as hereinafter provided in Section 6.0, *et seq.*, of this Agreement. In no event shall this Agreement extend beyond December 31, 2035.

(A) This Agreement supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by MIRACLE LEAGUE.

1.2 Rent. MIRACLE LEAGUE will pay the CITY, in consideration for this Agreement, the sum of TEN AND NO/100 DOLLARS (\$10.00) per year for the lease term of this Agreement, as stated in Section 1.1 above. Said amount is to be paid in advance on the first (1st) day of November of each year during the lease term of this Agreement. If November 1st falls on a weekend or holiday, then said amount is to be paid on the following business day.

2.0 USE OF PREMISES

2.1 Facilities. The park and recreational facilities on or to be placed on the Premises shall be under the control of MIRACLE LEAGUE during the lease term of this Agreement, as stated in Section 1.1 above. MIRACLE LEAGUE understands and agrees that all such facilities are to be open to the public on a non-discriminatory basis yet athletic play may be limited to persons with physical or mental disabilities as defined pursuant to the Americans with Disabilities Act. However, MIRACLE LEAGUE may impose reasonable restrictions on admission consistent with the need to preserve and protect improvements made to the Premises once such improvements have been made.

2.1-1 Rental of Facilities. MIRACLE LEAGUE may grant temporary licenses of the Premises to organizations or individuals for functions that are suitable to a public recreational facility and which are consistent with City Council's prior restriction of this field to use by persons with disabilities. Any proceeds from such licensing shall be used solely for the maintenance and upkeep of the leased premises, improvements thereto, or for capital improvements or land acquisition to benefit MIRACLE LEAGUE. Further, no fees shall be permitted until improvements to the Premises have been completed.

(A) MIRACLE LEAGUE, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination when renting the facilities under this Agreement. Rental of the baseball field covered by this Agreement shall not be denied to any group attempting to utilize it for play by persons with disabilities and which offers reasonable terms and consideration for such use. Any such proceeds derived shall be used by MIRACLE LEAGUE to provide maintenance and upkeep of the leased premises,

2.1-2 Admission to Events at Facilities. MIRACLE LEAGUE may charge a reasonable fee for admission to functions held at the facilities on the Premises that are open to the general public. The revenues from such admission fees shall be used for the purpose of constructing and/or maintaining said facilities on the Premises. MIRACLE LEAGUE may not charge for admission until such improvements have been complete as stated hereunder in paragraph 2.9.

(A) MIRACLE LEAGUE, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination when charging admission to a public function under this Agreement. Admission to a public function held on the Premises and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.1-3 Joint Use Restroom Facilities. MIRACLE LEAGUE may construct restrooms on the leased premises that are accessible from both the exterior and interior portion of the leased premises. Should MIRACLE LEAGUE construct restrooms with such dual accessibility, CITY agrees to clean and maintain such restrooms in a manner keeping with

maintenance schedules generally provided for other restrooms located in other CITY parks managed and maintained by the Parks and Recreation Department.

2.2 Landscaping. MIRACLE LEAGUE may plant and maintain ground cover, shrubs and trees on any part of the Premises that MIRACLE LEAGUE determines to be in need of such improvement. MIRACLE LEAGUE shall obtain written permission from the CITY, by and through its Director of Parks and Recreation or designee, prior to installing such landscaping on the Premises.

2.2-1 MIRACLE LEAGUE understands and agrees that it shall water, trim and maintain any such landscaping it installs so that the same is kept in a neat, orderly and attractive condition at all times.

2.3 Repairs. MIRACLE LEAGUE shall keep the facilities, improvements and property on the Premises in good condition and repair during the lease term of this Agreement, as stated in Section 1.1 above. MIRACLE LEAGUE shall at all times during the lease term of this Agreement keep the facilities, improvements and property on the Premises clean, orderly and in an attractive condition. In the event of damage or destruction by fire or other casualty to the Premises, MIRACLE LEAGUE shall promptly restore or replace the same in a reasonable time.

2.4 Maintenance of Grounds. The CITY shall only be responsible for the mowing of the grounds that retain turf (“park”). Any and all other maintenance and upkeep of the Premises, including facilities, improvement and property, shall be the responsibility of MIRACLE LEAGUE.

2.4-1 Garbage and Trash. MIRACLE LEAGUE shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Premises, of all trash, garbage and other refuse caused by the operations of the Premises, including but not limited to the buildings, facilities, and improvements. The CITY shall only be responsible for garbage and trash pick-up in the turf area prior to mowing as stated above in Paragraph 2.5.

(A) MIRACLE LEAGUE shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse throughout the Premises. Piling of boxes, cartons, trash or similar items on the Premises, including the building, facilities, improvements and park, shall not be permitted at any time. Additionally, the placement of trash receptacles shall be at locations approved by the Director of Parks and Recreation or that person’s designee.

2.5 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work is as provided for in this agreement and necessary permits have been requested and authorized by the CITY.

2.6 Utilities. MIRACLE LEAGUE shall be responsible for the payment of all utilities that are consumed except that CITY shall be responsible for certain utilities as herein set forth. The CITY shall be responsible for the payment of utilities as follows:

2.6-1 Outdoor Recreational Lighting 3850KWH during the months of January, February, March, November and December; 2400KWH for the months of April, May, August, September and October; and 3000KWH for the months of June and July. MIRACLE LEAGUE understands and agrees that it shall pay for the consumption of utilities in the outdoor recreational lighting over and above the kilowatts stated above. MIRACLE LEAGUE further agrees that the use of outdoor recreational lighting will be done in accordance with Section 13.24.040 and 18.18.020 of the El Paso Municipal Code.

2.6-2 The CITY will be responsible for the payment of water consumed on said Premises during the term of the Agreement. MIRACLE LEAGUE will be responsible for the payment of all other utilities not referenced above.

2.7 Improper Use. MIRACLE LEAGUE shall not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations. Furthermore, solicitation of funds for improvements contemplated herein shall be accomplished in a manner keeping with the promotion of the City Parks and Recreation Department.

2.8 Authorization for food concessions. MIRACLE LEAGUE is herein authorized to sell food concessions for the sole benefit of the teams, their family, and friends using the Premises during actual games, tournaments, or events at the Premises. No solicitation or sale to other individuals or groups not otherwise associated with MIRACLE LEAGUE shall be permitted. Additionally, such food concessions shall otherwise comply with any and all applicable ordinances related to food safety or otherwise. Any proceeds from such food concessions shall be used solely for the maintenance and upkeep of the leased premises, improvements thereto, or for capital improvements or land acquisition to benefit MIRACLE LEAGUE.

2.9 Construction of improvements. MIRACLE LEAGUE herein covenants and agrees to complete certain improvements to the Premises as a large portion of the consideration for this lease, such improvements to become the property of the City at cancellation or expiration of the lease, for whatever reason, and at no cost to the City. Such improvements shall include, at a minimum, the following: rubberized baseball field surfacing, dug-outs, restrooms, fencing with a security gate, concession stand, storage office, fencing, and lighting if not already provided. These improvements are valued at between \$300,000.00 and \$400,000.00. A schedule for completion of said improvements together with improvement plans shall be provided no later than March 1, 2006 and shall provide for completion thereof no later than January 1, 2008. The schedule and plans shall be approved by the Director of Parks and Recreation, such approval not to be unreasonably withheld. Failure to obtain approval or complete said improvements shall constitute breach of this lease by MIRACLE LEAGUE. The City of El Paso, upon such breach, is entitled to rescind this lease and is additionally entitled to any and all other remedies provided for herein.

With regard to construction of these improvements, it is understood that the City of El Paso makes no warranty or representation regarding the current suitability of the surface for the leased premises. MIRACLE LEAGUE understands that as part of any improvements provided

for herein, it must independently provide for a proper foundation for said improvements, even if such improvements require an engineering solution such as soil compacting, etc.

3.0 CONTRACTUAL RELATIONSHIP

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

3.1-1 As an independent contractor, MIRACLE LEAGUE 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 MIRACLE LEAGUE's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

3.1-2 MIRACLE LEAGUE shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of MIRACLE LEAGUE.

3.2 MIRACLE LEAGUE shall not receive any compensation or benefits from the CITY.

3.3 MIRACLE LEAGUE understands and expressly agrees that, in all things relating to this 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 Agreement as a governmental entity for the purpose of performing a governmental function.

4.0 INSURANCE

4.1 Fire and Casualty Insurance. MIRACLE LEAGUE shall keep all facilities and improvements on the Premises insured with a solvent insurance company that is authorized to do business in Texas, to the full amount of insurance procurable, for the benefit of MIRACLE LEAGUE and the CITY, as their interests may appear. A Certificate of Insurance indicating such coverage will be provided to the CITY within **ten (10) days** of the execution of this Agreement. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement. However, with regard to insurance against damage caused by fire, such coverage is not necessary until construction of improvements has commenced.

4.2 Liability Insurance. MIRACLE LEAGUE 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 property damage (including damage to the facilities and the premises) for the term of this Agreement. The CITY, as owner of the 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 within **ten (10) days** of the execution of this Agreement.

Failure to provide the required proof of insurance during the term of this agreement, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

4.3 Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless **thirty (30) days advance notice of cancellation or intent not to renew** is given in writing to the Director of the Parks & Recreation Department by the insurance company. MIRACLE LEAGUE shall give written notice to the Parks & Recreation Department Director **within five (5) days** of the date upon which total claims by any party against MIRACLE LEAGUE reduce the aggregate amount of coverage below the amounts required by this 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, the Additional Insured, 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 MIRACLE LEAGUE for any further premium payment and has no right to recover any premiums from the CITY.

5.0 INDEMNIFICATION

5.1 MIRACLE LEAGUE 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, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF MIRACLE LEAGUE, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS AGREEMENT.

MIRACLE LEAGUE FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY AS THEY RELATE DIRECTLY OR INDIRECTLY TO THIS LEASE AGREEMENT, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

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 MIRACLE LEAGUE every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

5.1-2 In addition, MIRACLE LEAGUE shall promptly advise the CITY in writing of any claim or demand against the CITY or MIRACLE LEAGUE known to MIRACLE LEAGUE related to or arising out of MIRACLE LEAGUE's activities under this Agreement.

5.1-3 MIRACLE LEAGUE 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 the MIRACLE LEAGUE 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 MIRACLE LEAGUE understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by MIRACLE LEAGUE pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by MIRACLE LEAGUE, 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 MIRACLE LEAGUE of any of its obligations under this paragraph.

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

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

6.2 Termination by Either Party. It is further understood and agreed by the MIRACLE LEAGUE and the CITY that either party may terminate this Agreement, in whole or in part, upon **thirty (30) days** written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach.

6.3 Termination by CITY. If MIRACLE LEAGUE ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than twelve (12) continuous months, or if MIRACLE LEAGUE defaults in any of its obligations under this Agreement and fails to correct such default within **thirty (30) days** written notice, CITY may cancel said Agreement and take possession of the property. In such an event, all rights of MIRACLE LEAGUE in the Premises, including buildings, facilities and improvements, shall then terminate. Any waiver by the CITY of any breach of any of MIRACLE LEAGUE's obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of MIRACLE LEAGUE.

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

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

6.5-1 Upon termination of this Agreement for any reason, ownership of all improvements done by MIRACLE LEAGUE on the Premises shall revert to the CITY.

7.0 GENERAL PROVISIONS

7.1 Taxes and Assessments. MIRACLE LEAGUE will promptly pay all taxes and assessments lawfully levied on MIRACLE LEAGUE's leasehold interest, on the buildings and structures on the property as well as on MIRACLE LEAGUE's personal property.

7.2 Assignments and Subletting. MIRACLE LEAGUE shall not assign this Agreement nor sublet the Premises or any part thereof without the prior written consent of the CITY, except that MIRACLE LEAGUE may grant permission, in the nature of licenses (as the term is used in real property law), but not in the nature of leases or subleases, for the use of the property for the purposes contemplated by this Agreement, but such permission shall not impair or diminish the rights of the CITY hereunder. The CITY shall have the right of first refusal on all licenses.

7.3 Liens and Encumbrances. MIRACLE LEAGUE shall not give nor permit any liens or encumbrances on the Premises, including but not limited the facilities, buildings, improvements, and park. Upon termination of this Agreement, MIRACLE LEAGUE shall peacefully surrender such Premises, including facilities, building, improvements and park, to the CITY free of all such liens or encumbrances. **MIRACLE LEAGUE shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Premises, including facilities, buildings, improvements and park, together with reasonable attorney's fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.**

7.4 Inspections. The CITY shall have the right to enter the Premises, including the buildings, facilities or improvements at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

7.5 Outside Lighting. Outside lighting, except security lighting, on the property shall be operated during the established park hours, as set forth in Section 13.24.040, El Paso

Municipal Code. Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other property 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 MIRACLE LEAGUE's expense.

7.6 Signs. All signs on the 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 Director of the Parks & Recreation Department or designee prior to installation.

7.6-1 MIRACLE LEAGUE shall have the right to sell advertising on the fence of the ball fields provided no advertisements shall be placed thereon that are fraudulent or illegal or of a duration in excess of the term of this Agreement as same may be subsequently amended or terminated. Except for signs placed on the fences facing into the ball fields, signs on the remainder of the Premises shall be limited to those identifying the uses conducted on the property and those necessary for information and directional purposes. Any proceeds from such advertising shall be used solely for the maintenance and upkeep of the leased premises, improvements thereto, or for capital improvements or land acquisition to benefit MIRACLE LEAGUE.

7.7 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given **within five (5) calendar days**, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

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

7.9 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and MIRACLE LEAGUE. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.10 Financial Statement and Right to Audit. MIRACLE LEAGUE shall submit a financial report detailing all financial activity related to the leased Premises for the prior year each year at the anniversary of the execution of this Agreement. The City Manager or designee shall have the right at all times to audit MIRACLE LEAGUE'S books and other records related to monies derived from billboard sponsorships authorizing advertising as provided for in 7.6, food concessions as provided for in 2.8, and licenses for use of the facilities to other groups providing athletic play for persons with disabilities as provided for in 2.1-1. Any proceeds from

such activities shall be used solely for the maintenance and upkeep of the leased premises, improvements thereto, or for capital improvements or land acquisition to benefit MIRACLE LEAGUE.

7.11 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

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

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

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

7.15 MIRACLE LEAGUE understands that CITY is entering into this lease on these terms, in part, because of MIRACLE LEAGUE'S non-profit status and with the understanding that any proceeds derived by virtue of the lease herein will be as provided for herein in continuing MIRACLE LEAGUE'S mission of helping persons with disabilities and accepting a profit in so doing.

7.16 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: Mayor's Office
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

COPY TO: Parks and Recreation Department
Attention: Parks Director
Two Civic Center Plaza, 6th Floor
El Paso, Texas 79901-1196

LESSEE: El Paso's Miracle League, Inc.
Attention: Sandi Olivar, Executive Director and President
1312 Morgan Marie St.
El Paso, Texas 79936

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

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

Executed, this the _____ day of _____, 2005.

THE CITY OF EL PASO

Joyce Wilson,
City Manager

EL PASO'S MIRACLE LEAGUE, INC.



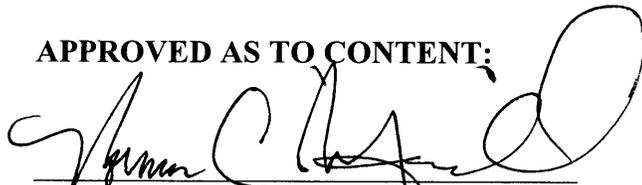
Sandi Oliver
President of EL PASO'S MIRACLE LEAGUE,
INC.

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Department