

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

DEPARTMENT: Parks and Recreation Department
AGENDA DATE: 12/13/2005
CONTACT PERSON/PHONE: Dr. Norman C. Merrifield - 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.

A resolution authorizing the City Manager to sign a Parkland Improvements Agreement and any subsequent documents necessitated thereby so that Frontera Vista L.P. is entitled to provide certain recreational improvements to the City's regional Valley Creek Park in the amount \$99,880.60 for play equipment

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?

Frontera Vista will get Park Dedication credit in future subdivisions for \$57,280

PRIOR COUNCIL ACTION:

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

Yes

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?

To be funded by Frontera Vista L.P.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

Approved by City Plan Commission

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

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

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

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a Parkland Improvements Agreement and any subsequent documents necessitated thereby so that Frontera Vista L.P. is entitled to provide certain recreational improvements to the City's regional Valley Creek Park, located in Park Zones 259 & 260, in exchange for parkland dedication credits within Park Zones 259 & 260. These parkland dedication credits will be available to off-set against parkland dedication otherwise required for Valley Creek Unit One and subsequent subdivision submittals by Frontera Vista L.P. and its related entities.

APPROVED this ___th day of December, 2005.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

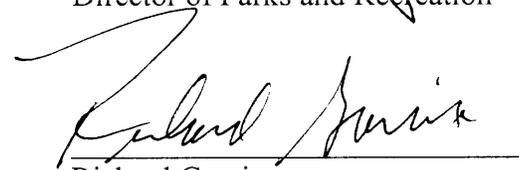


Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman Merrifield,
Director of Parks and Recreation



Richard Garcia,
Parks Operations Manager

STATE OF TEXAS)
)
COUNTY OF EL PASO) **PARKLAND IMPROVEMENTS AGREEMENT**

This Agreement is made this _____ day of _____, **2005**, by and between FRONTERA VISTA L.P., A TEXAS LIMITED PARTNERSHIP, hereinafter referred to as the “Developer,” and the **CITY OF EL PASO**, hereinafter referred to as the “City.”

WITNESSETH:

WHEREAS, Title 19 (Subdivisions) of the El Paso Municipal Code, Section 19.12.090 (Bonus Reductions for Recreational Improvements) permits up to a one-hundred percent reduction from the initial parkland dedication requirement for recreational improvements within the same park zone as the subdivision application that generates the required conveyance; and

WHEREAS, Developer proposes that dedication or fees otherwise required for Valley Creek Unit One, located in Park Zones 259 & 260, be fully off-set by proposed improvements to the City’s Valley Creek Park, a regional park located in Park Zones 259 & 260; and

WHEREAS, Developer intends that any excess bonus reduction improvements be applied toward requirements for subsequent subdivisions owned by itself or any entity owned by all or any lesser number of its current partnership shareholders, such individual partnership shareholders acknowledged herein to make up and constitute Developer (also known as subdivider), whether known in the future as Frontera L.P., individually, or as any other entity; and

WHEREAS, the City of El Paso Parks and Recreations Department has negotiated the specific improvements provided for herein and fully concurs with Developer’s request; and

WHEREAS, the El Paso City Council has authorized this agreement and directed the execution of same by the City Manager.

NOW, THEREFORE, the parties hereby agree as follows:

- 1. BONUS REDUCTION CREDIT:** Developer received approval of Valley Creek Unit One from the El Paso City Plan Commission on November 17, 2005. Valley Creek Unit One, located in Park Zones 259 & 260, contains 142 units and requires a total of \$42,600.00 in parkland dedication fees. Developer herein provides for additional recreational improvements to the City’s regional Valley Creek Park, located in Park Zones 259 and 260, in accordance with Chapter 19.12.090 (Bonus Reductions for Recreational Improvements) and in lieu of said parkland dedication fees otherwise required. These improvements are as described in further

detail as Attachment "A." However, substitute recreational improvements may be provided when such improvements are of the same or equal value to the Parks Department and are otherwise agreed to by the Developer and the Director of Parks and Recreation. Such improvements may also to be applied toward any subsequent parkland requirement within Park Zones 259 and 260 as provided for in 19.12.090 of the Municipal Code.

2. **PARKLAND CALCULATION:** Should Developer and its related entities, successors and assigns, as same are set forth in the recitals, submit a subsequent subdivision plat for residential development within Park Zone 259 or 260, the amount of parkland required under Chapter 19.12 (Parkland Dedication) of the Municipal Code shall be deducted from any credit herein provided for the 19.12.090 improvements to the City's Valley Creek Park which remains after providing for off-set for Valley Creek Unit One.

3. **COMPLETION AND COSTS:** Valley Creek Park shall be improved by Developer as provided for in Attachment "A." However, substitute recreational improvements may be provided when such improvements are of the same or equal value to the Parks Department and are otherwise agreed to by the Developer and the Director of Parks and Recreation. The Director of Parks and Recreation or designee shall specify the exact location of placement of the improvements in Valley Creek Park within one month following approval of this Agreement, or as mutually extended by the concurrence of both parties. All such improvements shall be completed by no later than six months following the recording of Valley Creek Unit One.

Such improvements shall be completed in a timely manner as provided for herein. Improvement cost shall be no greater than the lesser of the amount paid by Developer or NINETY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 60/100 DOLLARS (\$99,880.60), whichever amount is less, as set forth in Attachment "B." However, should this agreement not be approved by City Council on or before December 13, 2005, it is understood that there may be an increase in materials cost, in the amount of \$3,111.00 which developer will additionally be entitled to count toward bonus reductions should proof of required expense be so provided.

4. **PARKLAND DEDICATION ORDINANCE:** All provisions of this Agreement are subject to Title 19 (Subdivisions), Chapter 19.12 (Parkland Dedication) and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the

Code. Valley Creek Park is located in both park zones 259 & 260, as identified by the Park Zone Map located herein as Attachment "C."

5. **INSURANCE:** Developer understands and warrants that it shall provide liability insurance coverage of no less than \$250,000 per individual per occurrence for personal injury and \$500,000 per occurrence for personal injury for more than one person at all times when construction of the improvements provided for herein is underway. 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, naming the CITY as an additional insured, may result in the cancellation of this Agreement.

6. **INDEMNIFICATION: DEVELOPER 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 DEVELOPER, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES COMPLETING THE IMPROVEMENTS UNDER THIS AGREEMENT.**

DEVELOPER 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 IMPROVEMENTS AGREEMENT, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

7. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

8. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

9. **SEVERABILITY:** Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

10. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

11. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

12. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

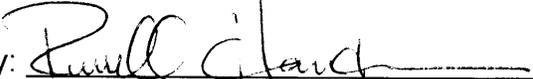
Frontera Vista, L.P.
6927 N. Mesa
El Paso, Texas 79912

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

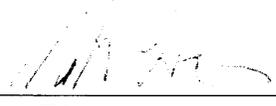
THE CITY OF EL PASO:

Joyce A. Wilson,
City Manager

Developer: **FRONTERA VISTA L.P.**
By: HAM Management, L.L.C.,
Its: General Partner

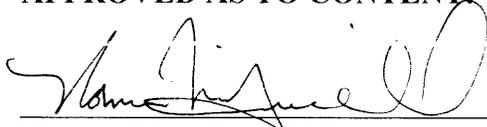
By: 
Russell Hanson, Manager

APPROVED AS TO FORM:

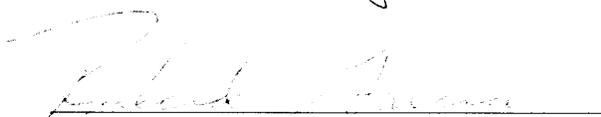


Matt Watson,
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman Merrifield, Ed.D
Director of Parks & Recreation


Richard Garcia, Parks Operations Manager

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

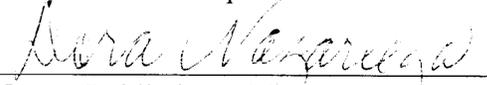
This instrument was acknowledged before me on the ___ day of _____, 20___, by JOYCE WILSON, as City Manager of **THE CITY OF EL PASO**, a municipal corporation, on behalf of said corporation.

My Commission Expires:

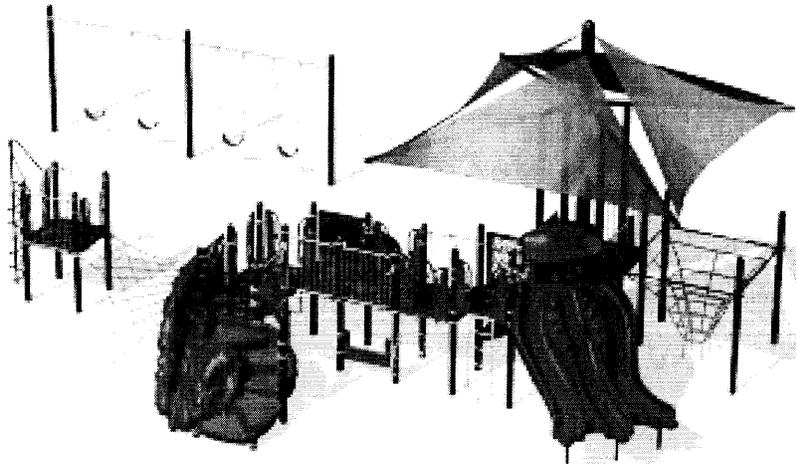
Notary Public, State of Texas
Notary's Printed or Typed Name:

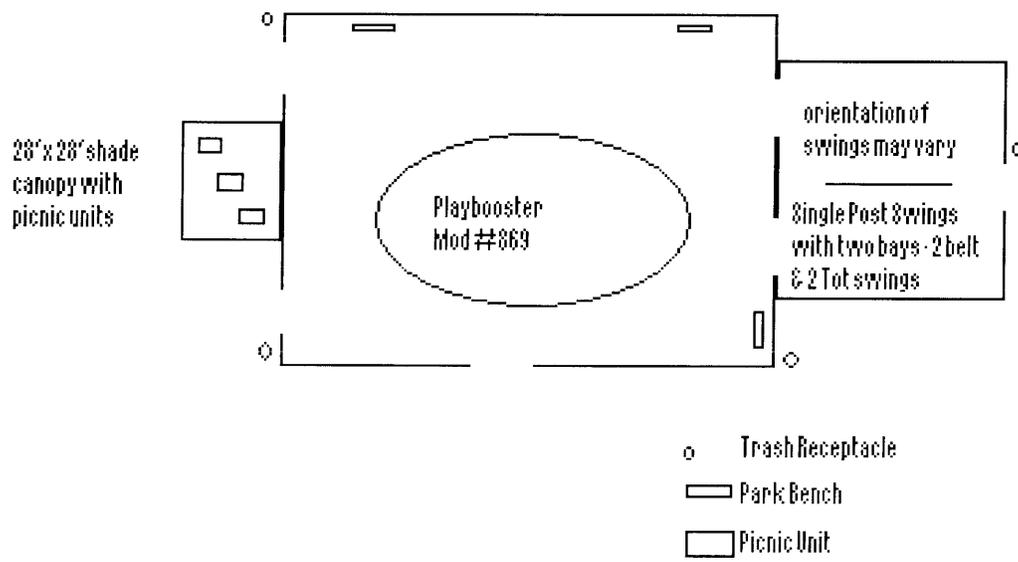
THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument is acknowledged before me on this 21st day of Nov. 2005, by Russell Hanson as Manager of HAM Management LLC, general partner of FRONTERA Vista L.P., a Texas Limited Partnership, on behalf of said Limited Partnership.



Notary Public in and for the State of Texas
_____





PO Box 1160
Cedar Crest, NM 87008-1160
Phone: (505) 281-0151
Fax: (505) 281-0155
Toll Free (800) 457-5444
Email: info@exerplay.com
Visit www.exerplay.com



Providing the very best for
exercise and play!

QUOTATION

DATE	NUMBER
11/9/2005	Q110905-3R

NAME / ADDRESS		PURCHASE ORDER TO BE ISSUED TO		
Valley Creek Park Attn: Russell Hansen P: 915-478-7877		Exerplay, Inc. PO Box 1160 Cedar Crest, NM 87008 Please fax copy to ExerPlay (505) 281-0155		
SHIPPED VIA	TERMS	REP	FOB	EST. SHIP DATE
Common Carrier	Net 30 W/...	DG	El Paso	3-4 weeks

PLEASE MAKE PURCHASE ORDER TO BASICS, INC. - SEE ABOVE

ITEM	DESCRIPTION	QTY	COST	TOTAL
PLAYBOOSTER	LSI Playbooster As per drawing #869, Ages 5-12 Years, Wt 6350 lbs (Area 57'x38')	1	40,922.00	40,922.00
LSI 136487C	CoolToppers Pyramid 28'X28', 12' Entrance Height, Wt 979 lbs.	1	5,150.00	5,150.00
LSI 141685A	Litter Receptacle with panels and liner, DB, Wt 88 lbs	4	310.00	1,240.00
LSI 141683A	TenderTuff coated Steel Bench, With Back, DB, Wt 121 lbs	4	315.00	1,260.00
LSI 141684F	TenderTuff coated Picnic Table, 7-1/2' with two 6' seats, Tender Tuff coated steel, DB, Wt 303 lbs	2	725.00	1,450.00
LSI 141684D	TenderTuff Coated Picnic Table; (Config.2); DB, Frames 2 3/8" galvanized steel Powder Coated; Wt 324 lbs	2	750.00	1,500.00
LSI 122837A	Single Post Swing, 2-Place, Uncoated Chain; Wt 229 lbs	1	860.00	860.00
LSI 122838A	Additional 2-Place Bay, Uncoated Chain, Wt 157 lbs	1	882.00	882.00
LSI 100106A	Age Appropriate Sign, (2 color permalene), 5-12 Years no charge per Dan	1		
TotTurf	TotTurf Poured in Place Safety Surfacing, 516sq'x4" Thickness with Turndown, Under Playstructure Only	516	17.35	8,952.60
* MISC.	Sub-Total There will be a 5% increase in pricing of LSI Equipment after 12-31-05		3,111.00	62,216.60 3,111.00

IF YOU ARE TAX-EXEMPT, PLEASE PROVIDE A TAX-EXEMPT CERTIFICATE ADDRESSED TO BASICS, INC.

	Page 1	TOTAL
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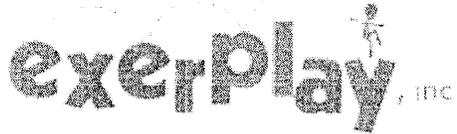
PLEASE MAKE PURCHASE ORDER TO BASICS, INC. - SEE ABOVE

ITEM	DESCRIPTION	QTY	COST	TOTAL
Freight	Freight/Shipping Charges for LSI Equipment Only good until 12-23-05.		5,581.00	5,581.00
Freight	Freight/Shipping Charges for TotTurf Poured in Place Only		738.00	738.00
Install	Installation of Playstructure #869 and Swings		14,340.00	14,340.00
Install	Installation of Shade Shelter, Trash Receptackles, Park Benches and Picnic Tables		3,500.00	3,500.00
Install	Installation and Purchase of 516sq' of Concrete Pad to go under Playstructure Only for Poured in Place.		1,125.00	1,125.00
Install	Installation and Purchase of Playground Quality Sand to go around TotTurf Safety surfacing and under Swings which covers the entire area within the rock wall Perimeter.		1,800.00	1,800.00
Install	Installation of Rock Wall around Structure and Swings		5,000.00	5,000.00
Install	Installation of Sidewalk, 300 Linear'x5' wide, forming only, no site prep included.		3,300.00	3,300.00
Install	Installer will Excavate 10 to 12" where the PlayStructure and Swings will be.		1,980.00	1,980.00
MISC.	Additional Insured Per Customers Request	2	150.00	300.00

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<i>Jolain B...</i>	Page 2	TOTAL
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Common Carrier	Net 30 W/...	DG	El Paso	3-4 weeks	

PLEASE MAKE PURCHASE ORDER TO BASICS, INC. - SEE ABOVE

ITEM	DESCRIPTION	QTY	COST	TOTAL
Note	Pricing is for the above listed equipment only, and does not include, additional insured addendum, off loading of equipment at time of delivery, storage, security, or any applicable taxes, bonds, or permits. If additional insured addendum is required, add \$150.00 per additional insured. Pricing is good until 12-20-05. *SEE ATTACHED QUOTATION ADDENDUM*			

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Page 3	TOTAL	\$102,991.60
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- 3,111.00
\$ 99,880.60

