

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

DEPARTMENT: Financial Services
AGENDA DATE: December 27, 2006
CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074
DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a Third Amendment to the Sept. 19, 1974 Lease between the City of El Paso and the El Paso County Humane Society, Inc. for a one acre parcel commonly known as 325 Shelter Place, El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

El Paso County Humane Society, Inc. is requesting a Third Lease Amendment to extend stay on leased premises to October 31, 2007 to allow for an orderly move to new facility on Fred Wilson.

PRIOR COUNCIL ACTION:

In January 6, 2004 Council approved a Second Lease Amendment to extend to January 2007.

AMOUNT AND SOURCE OF FUNDING:

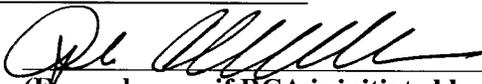
\$1.00 per year revenue.

BOARD / COMMISSION ACTION:

N/A

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

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

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

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007, and

WHEREAS, because the Humane Society is relocating to a new facility on Fred Wilson Avenue, and, to allow for an orderly move to the new facility, the Humane Society has requested that the City extend the lease term through Oct. 31, 2007; and

WHEREAS, because the City is selling land to the County of El Paso, and one of the identified parcels is the City property leased to the Humane Society, the City and the Humane Society do not want any confusion about the terms and conditions of the Sept. 19, 1974 lease and its amendments in connection with the sale of the City property to the County of El Paso,

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

That the City Manager be authorized to sign a Third Amendment to the Sept. 19, 1974 Lease between the City of El Paso and the El Paso County Humane Society, Inc. for a one acre parcel commonly known as 325 Shelter Place, El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2006.

THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

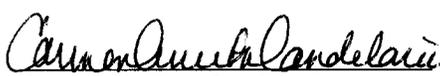
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Carmen Arrieta-Candalaria
Chief Financial Officer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

THIRD AMENDMENT

This Third Amendment made this _____ day of _____, 2006, by and between the **CITY OF EL PASO**, hereinafter referred to as "City," and the **EL PASO COUNTY HUMANE SOCIETY, INC.**, hereinafter referred to as the "Humane Society."

WHEREAS, on Sept. 19, 1974, the El Paso City Council approved the lease of City property commonly known as 325 Shelter Place, El Paso, El Paso County, Texas to the Humane Society, and a copy of the lease is attached hereto, marked Exhibit "A," and made a part hereof by reference; and

WHEREAS, on June 6, 1995, the Sept. 19, 1974 lease was amended to streamline the procedures for approval of plans for additions to the existing building by delegating the authority for approval of any such plans to the City's Director of Public Works, and a copy of the First Amendment is attached hereto, marked Exhibit "B," and made a part hereof by reference; and

WHEREAS, on Jan. 6, 2004, the City and the Humane Society agreed to amend the term of the Sept. 19, 1974 lease with the intention of extending the term of the lease for an additional three years through Jan. 6, 2007, and a copy of the Second Amendment is attached hereto, marked Exhibit "C," and made a part hereof by reference; and

WHEREAS, because the Humane Society is relocating to a new facility on Fred Wilson Avenue, and, to allow for an orderly move to the new facility, the Humane Society has requested that the City extend the lease term through Oct. 31, 2007; and

WHEREAS, because the City is selling land to the County of El Paso, and one of the identified parcels is the City property leased to the Humane Society, the City and the Humane Society do not want any confusion about the terms and conditions of the Sept. 19, 1974 lease and its amendments in connection with the sale of the City property to the County of El Paso,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree and covenant as follows:

1. The City and the Humane Society hereby agree that the term of the Sept. 19, 1974 lease and its amendments is extended to Oct. 31, 2007. As consideration for the lease term extension, the Humane Society will continue to use the City's property for an animal shelter and like uses for the uninterrupted relief of suffering among animals and not for private profit while the Humane Society constructs its new facility.

2. The City and the Humane Society agree that the City will pay the Humane Society the sum of \$180,000 on Nov. 1, 2007 for its improvements on the leased property. Upon the payment of this sum, the provisions of the original lease pertaining to any obligation of the City, or its successor in interest, to purchase the Humane Society's improvements, under the Sept. 19, 1974 lease and its amendments, will terminate.
3. The City and the Humane Society agree that the Humane Society may remove any fixtures or improvements it has made to the leased property before Oct. 31, 2007. The Humane Society agrees that the removal of any fixtures or improvements will be done in an orderly fashion, and upon expiration of the lease, the Humane Society agrees it will leave the leased property in a secure manner subject to the approval of the City or its successor in interest.
4. Except as herein revised, the terms and conditions of the Sept. 19, 1974 lease and its amendments shall remain in full force and effect. Provided that upon expiration of this Amendment, it is understood that all prior leases and prior amendments are cancelled and terminated and are no longer in effect whatsoever except that the provisions of Paragraphs 2 and 3 above shall survive the expiration of this Amendment.

WITNESS THE FOLLOWING SIGNATURES AND SEAL

CITY OF EL PASO:

Joyce A. Wilson

EL PASO COUNTY HUMANE SOCIETY

By: Dale K. Donney
Title: PRESIDENT

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

LEASE AGREEMENT

This lease made this, the 19 day of September 1974 by and between the City of El Paso, hereinafter referred to as Lessor and the El Paso County Humane Society, Inc., hereinafter referred to as Lessee, witnesseth:

RECITAL

Whereas, Lessor and Lessee did enter into an original lease agreement for certain real property hereinafter described in this instrument, and whereas, said original lease agreement was executed on the 29th day of September, 1949 and was for a full term of thirty years from the date of said instrument, and

Whereas, Lessee has notified Lessor that they are desirous of canceling the original lease agreement, and

Whereas, Lessor is agreeable to the cancellation of the original lease agreement entered into between the parties hereto, and

Whereas, both parties are desirous of entering into a new lease agreement on the premises hereinafter described in accordance with the following terms and conditions hereinbelow set forth.

AGREEMENT

Now, therefore, in consideration of the mutual promises and agreements herein made, the parties do hereby agree as follows:

1. That certain lease agreement executed between the Lessor and the Lessee on the 29th day of September, 1949, a copy of which is attached hereto as Exhibit "A" and made a part of this lease agreement for all intents and purposes, is hereby in all things canceled.
2. The Lessor hereby leases to Lessee the following described lands, situated in the City and County of El Paso in the State of Texas:

BEGINNING at a point which is two hundred forty (240') feet west from the southwest corner of the Orchard Park Addition along the south line of the said addition extended westward and two hundred twenty seven (227') feet north of the said south line, measured at a right angle thereto; thence west parallel with the said south line of Orchard Park Addition two hundred twenty (220') feet to a point; thence north at a right angle with the said line one hundred ninety eight (198') feet to a point; thence east at a right angle two hundred twenty (220') feet to a point; thence south at a right angle one hundred ninety-eight (198') feet to the point of beginning, and containing one (1) acre of land.

EXHIBIT

A

TO HAVE AND TO HOLD the demised premises with the rights and appurtenances thereunto belonging unto the said Lessee and its successors from the date hereof during the full term of thirty years next ensuing, yielding and paying therefor as rent unto Lessor the sum of One Dollar (\$1.00) per annum.

2. Lessee shall use the property hereinabove described only for an animal shelter and like uses for the relief of suffering among animals and not for private private profit. However, reasonable charges may be made by Lessee for services rendered and such revenue shall be used in furtherance of its corporate purpose.

3. If any taxes be hereafter legally assessed against said property, Lessee will pay the same before delinquency.

4. Lessee agrees that the building and structure heretofore erected on the above described premises under the term of the original lease attached hereto as Exhibit "A" shall be maintained in a suitable and adequate manner for the purposes of this lease. Lessee further agrees that if it adds additions to the existing building that plans and specifications for such additions shall first be submitted to the City Council for approval prior to construction.

5. The Lessor, its officers, agents, servants and employees shall stand indemnified by Lessee as herein provided. Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and the Lessor shall in no way be responsible therefor. Lessee will indemnify and hold Lessor, its officers, agents, servants and employees harmless against all claims arising out of Lessee's use of the premises which is the subject matter of this lease agreement, and its exercise or enjoyment of the privileges herein granted.

6. Lessee shall maintain in force during the term of this lease public liability and property damage insurance in the minimum amount of \$100,000.00 for one person and \$300,000.00 with respect to each accident or occurrence, and in the sum of \$20,000.00 for injury or damage to property. Lessee shall maintain said insurance with insurance underwriters authorized to do business

2A
AD

in the State of Texas and satisfactory to the City. All policies shall name the City, its officers, agents, servants and employees as additional insureds. Lessee shall furnish the City with a certificate from the insurance carrier showing such insurance to be in full force and effect during the term of this agreement. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policies by the insurer shall be delivered to the City thirty days in advance of the effective date thereof.

7. (a) If at the end of the primary term of this lease the Lessee shall still be using the premises for the purposes for which the lease is made, and if the Lessor shall not be willing to renew the lease for a further term of thirty years, (the Lessor will buy from the Lessee all permanent improvements placed by the Lessee on the land at a price to be determined at the then fair cash market value, to be determined by a majority opinion of three appraisers, one selected by the Lessor, one selected by the Lessee, and the third selected by agreement between the other two appraisers. If the third appraiser cannot be agreed upon, he shall be appointed by the County Judge of El Paso County.)

(b) If before the end of the primary term of this lease, or any extended term, the Lessee shall cease to use the premises for the purpose for which this lease is made, or if the Lessee shall cease to carry out actively the purposes of its incorporation, or if its corporate existence or right to operate shall terminate, the Lessor may take possession of the premises, and all permanent improvements thereon shall become the property of the Lessor without payment therefor; but in such case the Lessor will use the premises for animal welfare work in accordance with the then generally accepted humane standards, until the original or extended term, as the case may be, shall expire; or the Lessor may use the premises for any purpose if it shall provide for equivalent animal welfare work at some other suitable location until the end of the term.

8. Lessee will keep the premises in good repair and in a clean and sanitary condition, and will not use the same, or permit the same to be used,

in violation of any law or ordinance of the City of El Paso or so as to become a nuisance.

9. Lessee will not assign this lease or sublet the premises without the written consent of the City Council.

10. Lessor reserves the right to terminate this lease agreement at any time during the term hereof when in Lessor's opinion it becomes necessary to use the demised property for any of Lessor's functions. In the event Lessor deems it necessary to rescind this lease agreement and terminate this lease prior to the expiration date hereof, it shall first give Lessee written notice of its intention to do so, which shall be rendered to Lessee one year in advance of the date set for termination of this agreement by Lessor. In the event that Lessor terminates this agreement under this clause, Lessor shall then be obligated to purchase the property of Lessee under the formula hereinabove set forth in paragraph 7(a).

11. (a) This Lease Agreement may be canceled by Lessor after the happening of the following events: Default in the performance of any of the covenants and conditions required herein to be kept and performed by the Lessee, and such default continues for a period of fifteen (15) days after receipt of written notice from Lessor of said default.

(b) In the event this lease is canceled as herein set forth, Lessor shall have the right to re-enter the premises without legal process and in such case all improvements placed upon the land shall become the property of Lessor without further obligation on Lessor's part for payment for such improvements.

12. Lessee reserves the right to terminate this lease agreement at any time during the term hereof provided, however, that prior to termination Lessee shall first give written notice of its intention to terminate this agreement which shall be tendered to Lessor one year in advance of the date set for termination of this agreement by Lessee. In the event Lessee terminates this agreement under this clause, then the provisions of Paragraph 11(b) shall apply.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY OF EL PASO

ATTEST:

W. Rejes
City Clerk

By [Signature]
Mayor

EL PASO COUNTY HUMANE SOCIETY, INC.

ATTEST:

[Signature]
Secretary

By Cinda M. Dorman
President

THE STATE OF TEXAS
COUNTY OF EL PASO

THIS LEASE, made this 29th day of Sept,
1949, by and between the City of El Paso, Lessor, and the
El Paso County Humane Society, Inc., Lessee, WITNESSETH:

For and in consideration of the payment of rents and
the performance of the covenants on the part of Lessee as
hereinafter set forth, Lessor has demised and leased and by
these presents does demise and lease unto Lessee the following
described land, situated in the City and County of El Paso in
the State of Texas:

BEGINNING at a point which is two
hundred forty (240') feet west from the
southwest corner of the Orchard Park Addition
along the south line of the said addition
extended westward and two hundred twenty-
seven (227') feet north of the said south
line, measured at a right angle thereto;
thence west parallel with the said south
line of Orchard Park Addition two hundred
twenty (220') feet to a point; thence north
at a right angle with the said line one
hundred ninety-eight (198') feet to a point;
thence east at a right angle two hundred
twenty (220') feet to a point; thence south
at a right angle one hundred ninety-eight
(198') feet to the point of beginning, and
containing one (1) acre of land.

EXHIBIT "A"

TO HAVE AND TO HOLD the demised premises with the rights and appurtenances thereunto belonging unto the said Lessee and and its successors from the date hereof during the full term of thirty (30) years next ensuing, yielding and paying therefor as rent unto the Lessor the sum of One Dollar per annum.

And in consideration of the premises Lessee covenants as follows:

1. Said property shall be used only for an animal shelter and like uses for the relief of suffering among animals, and not for private profit. However, reasonable charges may be made by Lessee for services rendered and such revenue shall be used in furtherance of its corporate purpose.

2. If any taxes be hereafter legally assessed against said property, Lessee will pay the same before delinquency.

3. Lessee will within a reasonable time erect on said land a building suitable for the purposes of this lease. The plans and specifications for said building and any other permanent improvements placed on the land shall be subject to the approval of the City Council.

4. (a) If at the end of the primary term of this lease the Lessee shall still be using the premises for the purposes for which the lease is made, and if the Lessor shall not be willing to renew the lease for a further term of thirty years, the Lessor will buy from the Lessee all permanent improvements placed by the Lessee on the land at a price to be determined at the then fair cash market value, to be determined by a majority opinion of three appraisers, one selected by the Lessor, one selected by the Lessee, and the third selected by agreement between the other two appraisers. If the third appraiser cannot be agreed upon, he shall be appointed by the County Judge of El Paso County.

THE STATE OF TEXAS
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared D. L. P. DUKE, Mayor of the City of El Paso, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged before me in my County aforesaid that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated and as the act and deed of the City of El Paso.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 29th day
of Sept, 1949.


Notary Public in and for El Paso County,
T e x a s

G. R. DANIELS, Notary Public
in and for El Paso County, Texas
My commission expires June 1, 1951

THE STATE OF TEXAS
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared MARIAN E. YOUNG, President of the El Paso County Humane Society, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of El Paso County Humane Society, Inc., a corporation, and that she executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 3rd day
of October, 1949.


Notary Public in and for El Paso
County, Texas

G. R. DANIELS, Notary Public
in and for El Paso County, Texas
My commission expires June 1, 1951

STATE OF TEXAS

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FIRST AMENDMENT

COUNTY OF EL PASO

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This First Amendment made this 6th day of June, 1995, by and between the CITY OF EL PASO, hereinafter referred to as "Lessor," and the EL PASO COUNTY HUMANE SOCIETY, INC., hereinafter referred to as "Lessee."

WHEREAS, on September 19, 1974, the El Paso City Council authorized the Mayor to execute a lease with Lessee, said lease is attached hereto, marked Attachment "1", and made a part hereof by reference; and

WHEREAS, the September 19, 1974 lease requires that the Lessee obtain the approval of plans and specifications by the City Council before any construction begins on any additions to the existing building, and

WHEREAS, both the Lessor and the Lessee desire to streamline the procedures for approval of any plans for additions to the existing building by delegating the authority for approval of any such plans to the Lessor's Director of Public Works,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree and covenant as follows:

- 1. That Paragraph No. 4 of Attachment "1" is hereby amended to read as follows:
 - 4. Lessee agrees that the building and structure heretofore erected on the above described premises under the term of the original lease attached hereto as Exhibit "A" shall be maintained in a suitable and adequate manner for the purposes of this lease. Lessee further agrees that if it adds additions to the existing building that plans and specifications for such additions shall first be submitted to the Lessor's Director of Public Works for approval prior to construction.

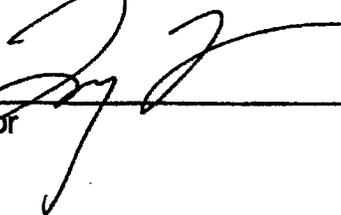
4. Except as herein amended, Attachment "1", the lease dated September 19, 1974, shall remain in full force and effect.

EXHIBIT

B

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:



Mayor

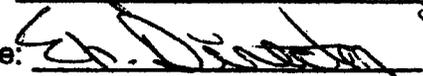
ATTEST:



City Clerk

EL PASO COUNTY HUMANE SOCIETY

By: 

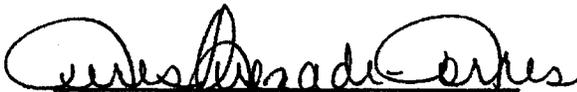
Title: 

APPROVED AS TO FORM:



Assistant City Attorney

APPROVED AS TO CONTENT:



for Director of Public Works

STATE OF TEXAS §
 § **SECOND LEASE AMENDMENT**
 COUNTY OF EL PASO §

This Second Lease Amendment is effective the 6th day of January, 2004, by and between the CITY OF EL PASO, hereinafter referred to as the "City", and EL PASO COUNTY HUMANE SOCIETY, INC., hereinafter referred to as the "Lessee."

WHEREAS, the City and the Lessee are parties to that certain Lease Agreement ("Original Lease") dated September 19, 1974, adopted by Resolution of even date, a copy of which Lease is attached hereto as Exhibit "A" and made a part hereof as if fully set forth herein, wherein the City, as Lessor, leased to Lessee the following described real property, to wit:

Beginning at a point which is two hundred forty (240') feet west from the southwest corner of the Orchard Park Addition along the south line of the said addition extended westward and two hundred twenty seven (227') feet north of the said south line, measured at a right angle thereto; thence west parallel with the said south line of Orchard Park Addition two hundred twenty (220') feet to a point; thence north at a right angle with the said line one hundred ninety eight (198') feet to a point; thence east at a right angle two hundred twenty (220') feet a point; thence south at a right angle one hundred ninety-eight (198') feet to a point of beginning, and containing one (1) acre of land, commonly known as 325 Shelter Place, El Paso County, Texas; and

WHEREAS, the parties amended the Original Lease on June 6, 1995, to amend the procedures for approval of any plans for additions to the existing building of the property to be leased, which lease amendment ("1995 amendment") is attached hereto as Exhibit "B" and made a part hereof as if fully set forth herein; and

WHEREAS, Lessee has requested that the City amend the Lease Agreement by modifying Paragraph 2 of the September 19, 1974 Original Lease Agreement between the City of El Paso and EL PASO COUNTY HUMANE SOCIETY, INC.

NOW THEREFORE, the parties hereto agree and covenant as follows:

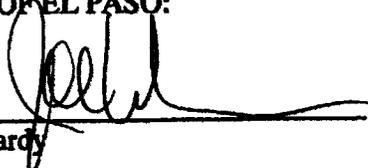
1. That Paragraph 2 of the Original Lease is hereby amended to read as follows:

EXHIBIT
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2. **TO HAVE AND TO HOLD** the demised premises with the rights and appurtenances thereunto belonging to the said Lessee and its successors to begin on the date hereof, and to continue thereafter for a period of 3 years unless terminated by either party's giving the other at least 18 months prior written notice of the intention to terminate the tenancy.
3. Except as herein amended, the Lease Agreement dated September 19, 1974, shall remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:



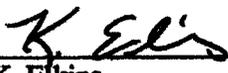
Joe Wardy
Mayor

ATTEST:



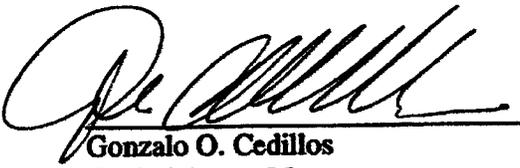
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



K. Elkins
Assistant City Attorney

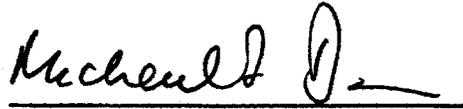
APPROVED AS TO CONTENT:



Gonzalo O. Cedillos
Capital Assets Manager

(Signatures continue on following page)

EL PASO COUNTY HUMANE SOCIETY, INC.



Michael Davis
President

ATTEST:

Secretary