

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

AGENDA DATE: September 25, 2023
PUBLIC HEARING DATE: September 25, 2023

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mary Lou Espinoza, Capital Assets Manager,
(915) 867-2629

DISTRICT(S) AFFECTED: 8

STRATEGIC GOAL: No. 6: Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: No. 6.6: Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

A resolution authorizing the City Manager, or designee, to effectuate the purchase and closing of real property, consisting of approximately 19 acres of land located at 5625 Confetti Drive, El Paso, Texas, for the purchase price of \$3,800,000. Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with the Board of Trustees of the El Paso Independent School District, for the purchase of the property, to include the Lease appearing as Exhibit D, which shall have a term beginning on the Effective Date of the Contract of Sale to end on the Closing Date in the amount of \$23,534.00 per month, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property and (5) sign any contract amendments provided that such amendments do not increase the purchase price, and (6) use the American Plan Act- Coronavirus State Fiscal Recovery Funds and effectuate any budget transfers necessary to ensure the funds are properly expended.

BACKGROUND / DISCUSSION:

The City of El Paso desires to acquire approximately 19 acres of land located at 5625 Confetti Drive, El Paso, Texas.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

\$3,800,000.00

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? x YES NO

PRIMARY DEPARTMENT: Real Estate

SECONDARY DEPARTMENT: Fire Department (OEM)

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

DEPARTMENT HEAD: Richard Bristol- Streets & Maintenance Director

Richard Bristol

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

RESOLUTION

That the City Manager, or designee, is authorized to effectuate the purchase and closing of the property commonly known as 5625 Confetti Dr., El Paso, Texas and more particularly described as Tract 4-E, A.F. Miller Survey 215 Abstract 3599, El Paso County, Texas, including any and all improvements located on the Property for \$3.8 million dollars.

Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with the Board of Trustees of the El Paso Independent School District, for the purchase of the property, to include the Lease appearing as Exhibit D, which shall have a term beginning on the Effective Date of the Contract of Sale to end on the Closing Date in the amount of \$23,534.00 per month, (2) sign any and all documents related and/or necessary to effectuate the purchase and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any documents necessary to effectuate any rights or obligations in relation to the purchase and closing of the property, (5) sign any contract amendments provided that such amendments do not increase the purchase price, and (6) use the American Rescue Plan Act- Coronavirus State and Local Fiscal Recovery Funds and effectuate any budget transfers necessary to ensure the funds are obligated and fully expended in accordance with the grant requirements

APPROVED this _____ day of _____ 2023.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Deputy City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza
Capital Assets Manager

REAL ESTATE SALES CONTRACT

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date of the last of the signatures by Seller and Buyer as parties to this contract ("Effective Date").

Seller: Board of Trustees of the El Paso Independent School District
1014 N. Stanton Street
El Paso, El Paso County, Texas 79902

Type of entity: Independent School District and Political Subdivision of the State of Texas

Seller's Attorney: Jeanne C. Collins, General Counsel
1014 N. Stanton Street
El Paso, Texas 79902
Phone: 915.230.2561
Fax: 915.230.0575
Email: jccollin@episd.org

With Copy to: Ann Greenberg
WALSH, GALLEGOS, TREVIÑO, KYLE & ROBINSON, P.C.
505 E. Huntland, Suite 600
Austin, Texas 78752
Phone: 512.454.6864
Fax: 512.467.9318
Email: agreenberg@wabsa.com

Buyer: City of El Paso, a Texas Municipal Corporation
Attn: City Manager
300 N. Campbell St.
El Paso, Texas 79901

City of El Paso
Attn: Real Estate Division
P. O. Box 1890
El Paso, Texas 79950-1890
Email: realestate@elpasotexas.gov

Type of entity: City of El Paso, a Texas Municipal Corporation

Buyer's Attorney: City of El Paso
Josette Flores, Deputy City Attorney
300 N. Campbell St., Second Floor
El Paso, Texas 79901
Phone: (915) 212-0033

Email: Floresj2@elpasotexas.gov

Carlos Armendariz, Assistant City Attorney II

Phone: (915) 212-0033

Email: Armendarizcl@elpasotexas.gov

Property: The surface only of 5625 Confetti, situated within the corporate limits of the City of El Paso, El Paso County, Texas, described as Tract 4-E, A.F. Miller Survey 215 Abstract 3599, El Paso County, Texas, described by metes and bounds in *Exhibit A*, attached hereto and incorporated herein by references, including any and all improvements located on the Property. The Property shall not include any personal property not permanently affixed to the land.

The parties acknowledge that the legal description contained in this contract technically may be, or is, legally insufficient for the purposes of supporting an action for specific performance or other enforcement hereof. As such, the parties confirm to each other that notwithstanding the insufficiency, if any, they desire to proceed with the conveyance of the Property as contemplated by this contract. Because the parties are desirous of executing this contract, they agree that (a) they are experienced in transactions of the nature provided for in this contract, (b) in fact, they are specifically familiar with the location of the Property, (c) each party waives any and all claims of an insufficient legal description in a cause of action for performance hereunder, and (d) upon the delivery of the Survey (defined below) to Buyer, and approval of such Survey by Buyer and Seller, the parties shall amend and restate this contract to replace the depiction of the Property on Exhibit A with the metes and bounds description of the Property prepared by the Surveyor in connection with the Survey.

Seller reserves and excepts from the Property, for Seller and Seller's heirs, successors, and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

The Property is restricted and shall not be used, by Buyer or its successors, as part of or in support of any entity offering pre-kindergarten through high school education, with any such use creating an automatic reversion to the Seller.

Title Company: LONE STAR TITLE COMPANY
6701 N. Mesa St.
El Paso, Texas 79912
Phone: 915.545.2222
Fax: 915.545.1104

Purchase Price: Three Million Eight Hundred Thousand and No/100 Dollars (\$3,800,000.00).

Earnest Money: Ten Thousand and No/100 Dollars (\$10,000.00).

County for Performance: This Contract shall be performed in El Paso County, Texas.

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M., local time where the Property is located, on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence for this Contract.

1. Earnest Money Deadline: The Earnest Money deposit from the Buyer shall be tendered to the Title Company within five (5) business days after the Effective Date.
2. Delivery of Title Commitment: ten (10) days after the Effective Date. Buyer would deliver
3. Delivery of Survey: ten (10) days after the Effective Date. Seller would deliver
4. Delivery of UCC Search: not applicable.
5. Delivery of legible copies of instruments referenced in the Title Commitment and Survey: twelve (12) days after the Effective Date. Title Company would deliver
6. Delivery of Title Objections: ten (10) days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
7. Delivery of Seller's Records specified in Paragraph G.1: ten (10) days after the Effective Date.
8. End of Inspection Period: ninety (90) days after the Effective Date.
9. Closing Date: fifteen (15) days after the End of Inspection Period.
10. Closing Time: 4:00 p.m. unless otherwise agreed by Seller and Buyer.

B. Closing Documents

1. At closing, Seller will deliver the following items: Special Warranty Deed (including the restrictive covenant) in the form attached (Exhibit C). Evidence of Seller's authority to close this transaction.
2. At closing, Buyer will deliver the following items: Purchase price in cash or cash equivalent; Evidence of Buyer's authority to consummate this transaction; lien release, if any. The documents listed in this section B are collectively known as the Closing Documents.

C. Exhibits

The following exhibits are attached, and are incorporated by reference as part of this Contract:

Exhibit A - Legal Description of the Property
Exhibit B - Representations; Environmental Matters
Exhibit C- Form of Special Warranty Deed
Exhibit D – Form of Lease

D. Purchase and Sale of Property – Lease from Effective Date to Closing

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract. The Form of Special Warranty Deed in Exhibit C will be used to convey the property. Seller and Buyer agree that this Contract shall not be binding upon or enforceable against Seller until the Board of Trustees of the Seller has approved this Contract in a properly noticed open meeting of the Board of Trustees. Buyer may lease the Property, pursuant to the terms and conditions set out in the Lease at Exhibit D, from the Effective Date of this Contract to the day and time of Closing.

E. Interest on Earnest Money

Seller may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

F. Title and Survey

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.
2. *Title Commitment; Title Policy.* Title Commitment means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. Title Policy means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.
3. *Survey.* Survey means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, at the direction and cost of the Buyer, subject to the approval of the Seller, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.
4. *Delivery of Title Commitment.* The Buyer, at its expense, will order a title commitment, accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the Buyer. Buyer must cause the Survey to be completed by the deadline stated in section A.3. Seller must deliver legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.5.
5. *Title Objections.* Buyer has until the deadline stated in section A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them

("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are Permitted Exceptions. If Buyer notifies Seller of any Title Objections, Seller has five (5) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing (Cure Notice). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this Contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Contract, and cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller's Records.* To the extent that Seller has possession of any soil reports, environmental reports, engineering reports, prior surveys or site plans of or pertaining to the Property, Seller will deliver electronically or make the items or copies of them available to Buyer by the deadline stated in section A. 7.
2. *Entry onto the Property.* Buyer may enter onto the Property prior to closing for purposes of conducting a boundary or environmental survey, or otherwise to inspect the property, subject to the following:
 - a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed survey or inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;
 - b. Buyer may not unreasonably interfere with existing operations or occupants of the Property, if any;
 - c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
 - d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;
 - e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within five (5) days of their preparation or receipt by Buyer; and,
 - f. Buyer must abide by any other reasonable entry rules imposed by Seller.
3. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. Unless Buyer terminates because of Seller's default, the Earnest Money shall be paid to Seller.

4. *Buyer Release of Seller.*

Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property, including, but not limited to, claims alleged to have arisen in whole or in part as a result of Seller's negligence.

H. Representations

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the information before the end of the Inspection Period. If Seller's notice is given within three (3) days before the end of the Inspection Period, the Inspection Period will be extended for three (3) days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.
2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property.. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen (15) days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property.
3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this Contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer

does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.
5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.
6. *No Recording.* Buyer may not file this contract or any memorandum or notice of this Contract in the real property records of any county. If, however, Buyer records this Contract or a memorandum or notice, Seller may terminate this Contract and record a notice of termination.

J. Termination

1. *Disposition of Earnest Money after Termination.* Buyer and Seller agree that if this Contract is terminated by either party prior to closing, Buyer shall not be entitled to the Earnest Money except as otherwise set forth herein. Buyer hereby authorizes the Title Company to deliver the Earnest Money to Seller upon receipt by Title Company of written notice from Seller that the contract is terminated.
2. *Duties After Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents, within 5 business days. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

K. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time, subject to delays due to District's efforts to cure any title objection under Section F. 5. At closing, the following will occur:
 - a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
 - b. *Payment of Consideration.* Buyer will deliver the Consideration and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be paid to Seller.
 - c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse funds in accordance with this Contract, record the deed and the other

Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and the requirements of the Form of Deed.

2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the costs to prepare the deed.
- b. *Buyer Costs.* Buyer will pay all other costs of the transaction, including, but not limited to: reimbursement to the Seller for the cost of Seller's appraisal and survey(s); the cost of the new survey, with metes and bounds; the basic charge for the Title Policy; the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the costs to obtain the Survey and certificates or reports of ad valorem taxes; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this Contract; the costs to obtain financing of the Purchase Price, including the incremental premium cost of mortgagee's title policies and endorsements and deletions required by Buyer's lender; any cost or expenses for re-platting, platting, subdividing, zoning or meeting any requirements of a governmental authority resulting from this transaction, including any requirements impacting the remainder property; Seller's expenses and attorney's fees; and Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Seller represents that it is entitled to an exemption from ad valorem taxes during the time it owned the Property. If this sale or Buyer's use of the Property results in the assessment of any ad valorem taxes for the Property for the calendar year of closing, all such taxes and any associated costs will be paid by the Buyer. Buyer shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, and Buyer shall be responsible for any and all taxes, late fees or penalties assessed against the Property by reason of Buyer's failure to so note the change of ownership. Seller will, upon request, provide to Buyer proof of Seller's ownership of the property prior to the date of closing, and will assist Buyer in demonstrating Seller's exemption from ad valorem taxes.
- d. *Brokers' Commissions.* Seller and Buyer each represent to the other that they do not have a Broker, person, or entity that may claim a broker's or finder's fee or commission because of this transaction or this contract.
- e. *Insurance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. **Default and Remedies**

- 1. *Seller's Default.* If Seller fails to perform any of its obligations under this Contract or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date (Seller's Default), Buyer may as its sole and exclusive remedy terminate this Contract by giving notice to Seller on or before the Closing Date and Closing Time and

have the Earnest Money, less \$100.00 as independent consideration for the right granted by Seller to Buyer to terminate this contract returned to Buyer.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract (Buyer's Default), Seller may elect either of the following as its sole and exclusive remedy:
 - a. *Termination; Liquidated Damages.* Seller may terminate this Contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller as liquidated damages.
3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money is a reasonable forecast of just compensation to the non-defaulting party for the harm that would be caused by a default.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this Contract must be in writing. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given, if the attorneys have been identified by the parties.
2. *Entire Contract.* This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Contract.
3. *Amendment.* This Contract may be amended only by an instrument in writing signed by the parties.
4. *Prohibition of Assignment.* Buyer may not assign this Contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This Contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.
5. *Survival.* The obligations of this Contract that cannot be performed before termination of this Contract or before closing will survive termination of this Contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue.* This Contract will be construed under the laws of the State Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in El Paso County, Texas.
7. *Waiver of Default.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.
8. *No Third Party Beneficiaries.* There are no third-party beneficiaries of this contract.
9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
10. *Ambiguities Not to Be Construed Against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.
11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

[signatures on next page]

SELLER:

BOARD OF TRUSTEES OF THE EL PASO
INDEPENDENT SCHOOL DISTRICT, a political
subdivision of the State of Texas

APPROVED AS TO FORM:

Jeanne C. Collins
General Counsel

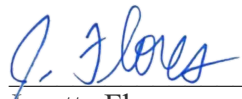
By: _____
Diana Sayavedra, Superintendent of Schools
Date: _____

BUYER:

CITY OF EL PASO:

Cary Westin
Interim City Manager
Date: _____

APPROVED AS TO FORM:



Josette Flores
Deputy City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Real Estate
Capital Assets Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this the ____ day of _____, 2023,
by _____, authorized to sign on behalf of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

Title Company acknowledges receipt of Earnest Money in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) and a copy of this contract executed by both Buyer and Seller.

TITLE COMPANY:

By: _____
Name: _____

Title: _____
By: _____

EXHIBIT A TO REAL ESTATE SALES CONTRACT

Legal Description to be Added when Survey with Metes and Bounds Completed

EXHIBIT B TO REAL ESTATE SALES CONTRACT

Representations; As Is, Where Is; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is an independent school district duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to convey the Property to Buyer. This Contract is, and all documents required by this Contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by an authorized representative of Seller.
2. *Litigation.* There is no litigation pending or, to the best of Seller's knowledge, threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this Contract.
3. *Violation of Laws.* Seller has not received written notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. *Licenses, Permits, and Approvals.* Seller has not received written notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal. Provided, however, that Seller's governmental exemption for *ad valorem* taxes is not transferable to Buyer, and Buyer will be responsible for all taxes and related charges arising from its purchase of the Property.
5. *Condemnation; Zoning; Land Use.* Seller has not received written notice of any condemnation, zoning, or land-use proceedings affecting the property.
6. *No Other Obligation to Sell the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer.
7. *No Liens.* On the Closing Date, the Property will be free and clear of any valid mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.
8. *Parties in Possession.* There are no parties in possession of any portion of the property as lessee, tenants, at sufferance, or otherwise, except for Buyer.
9. *No Other Representation.* Except as stated above, Seller makes no representation with respect to the Property.
10. *No Warranty.* Seller has made no warranty in connection with this Contract.

B. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date and shall survive Closing, as set forth herein.

1. Buyer represents to Seller that Buyer has received and reviewed the following items:
 - a. This Contract
 - b. Form of Special Warranty Deed

2. CONSULTATION WITH ATTORNEY.

Buyer represents to Seller that Buyer is aware that this Contract has important legal consequences, and that Buyer is entitled to consult an attorney of its choosing prior to executing this Contract. Buyer further represents that to the extent it has elected not to consult an attorney; Buyer has done so of its own free will and act.

3. Buyer represents and warrants to the Seller that the remainder of the parcel will not require any replating after the sale. Buyer's representation and warranty is an inducement to Seller to sell the Property. This representation and warranty shall survive Closing.

C. PROPERTY SOLD "AS IS, WHERE IS;" NO WARRANTIES

NOTICE: THE PROPERTY WILL BE CONVEYED TO BUYER IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE CLOSING DOCUMENTS, ARE EXPRESSLY DISCLAIMED.

BUYER REPRESENTS AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER.

Buyer further represents and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely on its own investigation of the property and not on any information provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller will not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further represents and agrees that to the maximum extent permitted by law, the sale of the property as provided for herein is made on an "as is" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the property is sold by Seller and purchased by Buyer subject to the foregoing.

The provisions of this Section C regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

D. ENVIRONMENTAL MATTERS

ASBESTOS AND/OR ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS MAY BE PRESENT ON THE PROPERTY, AND BUYER ACKNOWLEDGES THAT IT MAY PERFORM AN ENVIRONMENTAL SURVEY OF THE PROPERTY. AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS OCCURRING BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER RELEASES SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. BUYER RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. BUYER RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO CLAIMS ALLEGED TO HAVE ARISEN AS A RESULT OF SELLER'S OWN NEGLIGENCE. BUYER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The provisions of this Section D regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

EXHIBIT C TO REAL ESTATE SALES CONTRACT

Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: FORM ONLY – NOT FOR EXECUTION

Grantor: BOARD OF TRUSTEES OF THE EL PASO INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision of the State of Texas

Grantor's Mailing Address: 1014 N. Stanton Street
El Paso, El Paso County, Texas 79902

Grantee: CITY OF EL PASO, a Texas municipal corporation

Grantee's Mailing Address: FORM ONLY – NOT FOR EXECUTION

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration.

Property (including improvements): FORM ONLY – NOT FOR EXECUTION

Reservations from Conveyance:

For Grantor and Grantor's heirs, successors, and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

Exceptions to Conveyance and Warranty:

[Permitted Exceptions]

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of

improvements; all rights, obligations, and other matters arising from and existing by reason of any water or utility district; and prorated taxes for 2023, which Grantee assumes and agrees to pay, and subsequent prorated assessments, if applicable to the City as a municipal corporation, for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

The Property is restricted and shall not be used, by Grantee or its successors, as part of or in support of any entity offering pre-kindergarten through high school education, with any such use creating an automatic reversion to the Grantor.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN AND THE LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THE CONTRACT OF SALE AND PURCHASE BY AND BETWEEN GRANTOR AND GRANTEE, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (I) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (II) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (III) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (IV) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (V) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (VI) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS. AFTER CLOSING, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, GRANTEE RELEASES

GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **TO THE EXTENT ALLOWED BY LAW, GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES.** GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. GRANTEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, their heirs, beneficiaries, successors and assigns forever; and it does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, their heirs, beneficiaries, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

BOARD OF TRUSTEES OF THE EL PASO
INDEPENDENT SCHOOL DISTRICT, a political
subdivision of the State of Texas

By: NOT FOR SIGNATURE, Board President
Date: NOT FOR COMPLETION – FORM ONLY

THE STATE OF TEXAS

§

§

ACKNOWLEDGEMENT

COUNTY OF EL PASO

§

BEFORE ME, a Notary Public, on this day personally appeared , known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated

that he is the President of the Board of Trustees of the El Paso Independent School District; that he was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on DRAFT and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of ____, 2023.

NOT FOR EXECUTION
Notary Public, State of Texas

GRANTEE:

CITY OF EL PASO, A Texas municipal corporation

By: NOT FOR SIGNATURE

Date: NOT FOR COMPLETION – FORM ONLY

THE STATE OF TEXAS

§

§

ACKNOWLEDGEMENT

COUNTY OF EL PASO

§

BEFORE ME, a Notary Public, on this day personally appeared , known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon her oath stated that she is the NOT FOR COMPLETION; that s/he was authorized to execute such instrument and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of ____, 2023.

NOT FOR EXECUTION
Notary Public, State of Texas

Return to Grantee's Address:

TO BE COMPLETED

EXHIBIT D TO REAL ESTATE SALES CONTRACT

LEASE

This Lease is entered into on _____, 2023 between **EL PASO INDEPENDENT SCHOOL DISTRICT**, a Texas independent school district and political subdivision of the State of Texas (“Landlord” or “District”) and **CITY OF EL PASO**, a Texas Municipal Corporation the _____ (“Lessee” “Tenant” or “City”).

ARTICLE 1. DEMISE OF LEASED PREMISES

In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Landlord demises and Leases to Tenant, and Tenant Leases from Landlord, the following Leased Premises:

The surface only of 5625 Confetti, situated within the corporate limits of the City of El Paso, El Paso County, Texas, described as Tract 4-E, A.F. Miller Survey 215 Abstract 3599, commonly known as Morehead Middle School

Tenant is to have and to hold the Leased Premises as set forth herein, together with all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to them.

Reservation of Rights.

Tenant’s use and enjoyment of the Leased Premises under this Agreement will be subject to the following uses by the Landlord, and Landlord reserves a priority right to use the Leased Premises to the extent its use is required under the following agreements for the purpose of responding to the emergency situations set out therein: Any use that does not prohibit Tenant’s use.

ARTICLE 2. LEASE TERM

Fixed Beginning and Termination Date.

§ 2.01. The term of this Lease begins on the Effective Date of that certain Real Estate Sales Contract entered into between the District and City (the “Commencement Date”) and terminates on the Closing Date (“Initial Term”). The definitions of the Effective Date and Closing Date included in the Real Estate Sales Contract are incorporated herein.

Holdover.

§ 2.02 Tenant has no ability to holdover. Any attempt to holdover is prohibited.

ARTICLE 3. RENT

Base and Additional Rent.

§ 3.01 Tenant will pay Landlord Twenty-Three Thousand, Five Hundred and Thirty-Four Dollars (\$23,534.00) a month during the Term of this Lease as monthly “Base Rent” for using and occupying the Leased Premises, which Base Rent shall be payable in equal monthly payments made in advance, beginning on the Commencement Date and on the first day of each month thereafter for the Initial Term of the Lease.

§ 3.02 Except as otherwise expressly provided herein, Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Leased Premises. In addition to Base Rent, Tenant shall pay to the Landlord, as Additional Rent, taxes, if said taxes are applicable under Texas law, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, which arise with regard to the Leased Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.

§ 3.03 In addition to Base Rent, Tenant shall pay to Landlord any other sums due to Landlord under the terms of this Lease (collectively, “Additional Rent”) within thirty (30) days following Tenant’s receipt of Landlord’s invoice therefor. As used herein, the term “Rent” shall mean Base Rent and Additional Rent. Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Leased Premises, and Tenant shall be responsible for the payment of, all (i) insurance premiums Tenant is obligated to pay under this Lease, (ii) ad valorem property taxes relating to the Leased Premises (provided that Landlord provides a copy of the invoice therefor promptly following receipt and prior to the date due) and Tenant’s personal property, (iii) costs of the utilities servicing the Leased Premises to the extent any not directly metered to Tenant; (iv) cost of security personnel for the Leased Premises to the extent Tenant fails to provide the services as set forth in Section 4.02; and (iv) costs of repair and maintenance for the Leased Premises to the extent the responsibility of Tenant under Section 7.01 of this Lease.

§ 3.04 As used herein, the term “Rent” shall mean Base Rent and Additional Rent. Tenant’s covenant to pay Rent and Landlord’s covenants are independent of each other. Except as otherwise provided herein, Tenant shall not be entitled to abate the Base Rent or Additional Rent for any reason.

ARTICLE 4. UTILITIES AND SECURITY

§ 4.01 Tenant is responsible for providing all utilities to connect to and utilized on the Leased Premises. Base Rent shall not abate as a result of any variation, interruption, or failure of utilities. Tenant shall be responsible for determining whether available utilities and their capacities will meet Tenant’s needs. Tenant shall install and connect, if necessary, and pay for all water, sewer, gas, janitorial, electricity, garbage removal, heat, telephone, and other utilities and services used by Tenant for the Leased Premises during the Term, whether such services are billed directly to Tenant or to Landlord. Tenant will also procure, or cause to be procured, without cost

to Landlord, all necessary permits, licenses or other authorizations required for the lawful and proper installation, maintenance, replacement, and removal on or from the Leased Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying all utilities or services for Tenant to the Leased Premises.

§ 4.02 Only during the effective period of this Lease, Tenant shall provide no less than eight (8) licensed security officers on the Leased Premises at all times, at the sole cost of Tenant.

ARTICLE 5. USE OF LEASED PREMISES

§ 5.01 Tenant may use the Leased Premises for purposes of storage of Tenant's goods for Tenant's use as a municipal corporation.

§ 5.02 Tenant's use of the Leased Premises under this Lease shall be subject at all times to the Landlord's rights specifically reserved in Article 1 of this Lease.

§ 5.03 Tenant shall not create any nuisance, unreasonably interfere with Landlord's normal operations, permit any waste or use the Leased Premises in any way that would be construed as extra hazardous.

§ 5.04 Under no circumstances during the term of this Lease will Tenant use or cause to be used any hazardous or toxic substances or materials, or store or dispose of any such substances or materials on the Leased Premises.

§5.05 Tenant shall not permit tobacco, drugs, alcohol, or firearms on the Leased Property. Security guards are exempted from this prohibition against firearms on the Leased Property. Tenant represents and warrants that it has been advised of and shall comply with Landlord's Board Policies set forth at: www.episd.org/Page/906.

§ 5.06 Tenant may not use all or any part of the Leased Premises for any use or purpose that violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, the County of El Paso, the policies of Landlord, or other lawful authority with jurisdiction over the Leased Premises. This includes, but is not limited to, the prohibition of possession or use of alcohol, firearms, illegal drugs, or the use of tobacco products.

ARTICLE 6. CONSTRUCTION BY TENANT

General Conditions.

§ 6.01 Tenant may not, at any time during the Lease Term, erect, alter, remodel, reconstruct, rebuild, replace, or remove buildings and other improvements on the Leased Premises, or correct and change the contour of the Leased Premises without the Landlord's written agreement and subject to the following:

- a. Tenant bears the cost of such work.

- b. Tenant shall keep the Leased Premises free of mechanics' and materialmen's liens, or other liens or liabilities, and may not utilize the Leased Premises as collateral of any sort, as the Leased Premises are Leased by a governmental entity.
- c. Pursuant to Texas Government Code Section 2252.909, Tenant shall:
 - i. Include in each contract for the construction, alternation, or repair of an improvement to the Leased Premises a condition that the contractor:
 - 1. Execute a payment bond that confirms to Subchapter I, Chapter 53, Property Code; and
 - 2. Execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and
 - ii. Provide to Landlord a notice of commencement consistent with Section 2252.909, Texas Government Code, at least 90 days before the date the construction, alteration, or repair of any improvement to the Leased Premises begins.
- d. A notice of commencement provided pursuant to Texas Government Code Section 2252.909 must:
 - i. Identify the public property where the work will be performed;
 - ii. Describe the work to be performed;
 - iii. State the total cost of the work to be performed;
 - iv. Include copies of the performance and payment bonds required in accordance with the statute and this Lease; and
 - v. Include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date of a subcontract is executed.
- e. Pursuant to Texas Government Code Section 2252.909, on or before the 10th day after the date Landlord received a notice of commencement for the construction, alteration, or repair of an improvement to the Leased Premises required under the statute and this Lease, the Landlord may notify the Tenant that the construction, alternation, or repair may not proceed.
- f. Pursuant to Texas Government Code Section 2252.909, a person commits an offense if the person materially misrepresents information in a notice of commencement. The offense is a Class A misdemeanor.
- g. Tenant shall comply with all legal requirements for a public work. The legal requirements include, but are not limited to:

- i. Engagement of a licensed Architect and other design professionals competent and qualified for a public work;
 - ii. Payment of Prevailing Wages as adopted by Landlord's Board of Trustees;
 - iii. Public Procurement pursuant to law state and Landlord's Board Policies, rules and regulations;
 - iv. All contracts shall include indemnification of Landlord as an Additional Insured on all construction contracts; and
 - v. Accessibility requirements, including, but not limited to, the Americans with Disabilities Act and Texas accessibility requirements, and all requirements applicability to Landlord, shall be met.
- h. Landlord must be notified of the time for beginning and the general nature of any such work, other than routine maintenance, at the time the work begins.
- i. The conditions of Section 6.02 concerning Landlord's approving plans must be followed.

Landlord's Approval of Plans.

§ 6.02 The following rules further govern Landlord's approving addition of utilities, construction, additions, and alterations of buildings or other improvements on the Leased Premises:

- a. Written Approval Required. No construction, utilities, or improvement may be made to the Leased Premises unless the plans, specifications, and proposed location of the utilities, building or other improvement has received Landlord's written approval. No material addition to or alteration to the Leased Premises may be begun until plans and specifications covering the proposed addition or alteration have been first submitted to and approved by Landlord.
- b. Submission of Plans. Tenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for construction of utilities, improvements or additions or alterations to the Leased Premises that require Landlord's approval under subparagraph (a) above. Tenant must submit two (2) copies of detailed working drawings, plans, and specifications for construction for Landlord's approval prior to construction.
- c. Landlord's Approval. Within fifteen (15) days following submission, Landlord will review and approve all plans submitted under subparagraph (b) above or note in writing any required changes or corrections that must be made to the plans. Any required changes or corrections must be made, and the plans resubmitted to Landlord, within ten (10) days after Landlord's notice of corrections or changes has been received by Tenant. Landlord's failure to object to the resubmitted plans and specifications within fifteen (15) days after receipt constitutes its approval of the changes. Should Landlord issue in writing additional changes or corrections to the plans within such fifteen (15) day period, Tenant and Landlord shall once again follow the process set forth above.

Minor changes in work or materials not affecting the general character of the improvement or the scope of the contract pursuant to Texas Government Code Subsection 2252.909, may be made at any time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

- d. Effect of Approval. Landlord's approval does not constitute approval of the architectural or engineering design, and Landlord, by approving the plans and specifications, assumes no liability or responsibility for the architectural or engineering design or for any defect in work constructed from the plans or specifications. The work as constructed must substantially comply with the approved plans and specifications.

Ownership of Buildings, Improvements, and Other Structures.

§ 6.03 Any buildings (which includes portable, modular or pre-fabricated/pre-engineered buildings), improvements, additions or alterations constructed, placed, or maintained on any part of the Leased Premises during the Lease Term shall become the property of Landlord upon the termination of this Lease, either upon expiration or earlier termination. The provisions of this Section 6.03 shall survive the expiration or earlier termination of this Lease.

Right to Remove Improvements.

§ 6.04 Tenant may, at any time during the Term, remove any furniture, personal property, machinery, equipment, or other trade fixtures owned or placed by Tenant in, under, or on the Leased Premises, or acquired by Tenant, whether before or during the Lease Term. Tenant must repair any damage to the Leased Premises and surrounding Premises (the building and all improvements) resulting from the removal of any furniture, personal property, machinery, equipment or other trade fixtures by Tenant, excluding normal wear and tear. Any such items not removed by the date that this Lease expires will become Landlord's property on that date. The provisions of this Section 6.04 shall survive the expiration or earlier termination of this Lease.

ARTICLE 7. REPAIRS, MAINTENANCE, AND RESTORATION

Tenant's Duty to Maintain and Repair.

At all times during the Lease Term, Tenant, at its sole expense, shall keep and maintain, or cause to be kept and maintained, the Leased Premises in a good state of appearance and repair (except for reasonable wear and tear and damage from fire or other casualty), subject, however, to any maintenance and repair obligations of Landlord as set forth in this Lease.

ARTICLE 8. LIENS

§ 8.01 Tenant acknowledges that no lien rights exist with respect to public property as the Landlord is a public entity. Notwithstanding the foregoing, Tenant agrees that it will use commercially reasonable efforts not to cause or permit any liens to be filed against the fee of the Leased Premises or against Tenant's Leasehold interest in the land or any buildings or

improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Leased Premises or any part of them through or under Tenant. If such a lien is recorded against the Leased Premises or any Premises, buildings or improvements on them, Tenant must, within thirty (30) days following notice of such lien from Landlord, either cause it to be removed or, if Tenant in good faith wishes to contest the lien, take timely action to do so, at Tenant's sole expense. If Tenant contests the lien, in the event of a judgment of foreclosure on the lien, Tenant will cause the lien to be discharged and removed before the judgment is executed. Notwithstanding anything herein to the contrary, if Tenant either removes the lien or contests the lien in accordance with this Section, no Event of Default (as defined herein) shall have occurred under this Lease.

ARTICLE 9. CONDEMNATION AND CASUALTY

Condemnation - Parties' Interest.

§ 9.01 If the Leased Premises or any part of them are taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, Sections 9.01, 9.02, 9.03, 9.04 and 9.05 shall govern Landlord's and Tenant's interest in the award or consideration for the transfer and the effect of the taking or transfer on this Lease.

Condemnation - Total Taking – Termination.

§ 9.02 If the entire Leased Premises are taken or so transferred as described in Section 9.01, Landlord shall provide notice thereof to Tenant, this Lease and all of the rights, titles, and interests under it will cease on the date that title to the Leased Premises vests in the condemning authority, and the proceeds of the condemnation will be the property of El Paso Independent School District. In such event, Tenant shall have the right, prior to the date that the Leased Premises vests in or is transferred to the condemning authority to remove any and all personal property, furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant, in, under, or on the Leased Premises, or acquired by Tenant, whether before or during the Lease Term.

Condemnation - Partial Taking – Termination.

§ 9.03 If only a part of the Leased Premises is taken or so transferred as described in Section 9.01, Landlord shall provide notice thereof to Tenant and this Lease will terminate if, in Tenant's opinion, the remainder of the Leased Premises is in such a location, or is in such form, shape, or reduced size, that Tenant's use of the Leased Premises cannot be effectively and practicably operated on the remaining Leased Premises. Tenant shall have a period thirty (30) days following Landlord's notice in which to make such determination by written notice to Landlord. Should Tenant fail to provide such written notice to Landlord, Tenant shall be deemed to have not terminated this Lease and the provisions of Section 9.04 shall apply. In the event this Lease is terminated pursuant to this Section, this Lease and all rights, title, and interest under it will cease on the date that title to the portion of the Leased Premises taken or transferred vests in the condemning authority and the proceeds of the condemnation will be the property of El Paso Independent School District. In such event, Tenant shall have the right, prior to the date that the

Leased Premises vests in or is transferred to the condemning authority to remove any and all personal property, furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant, in, under, or on the Leased Premises, or acquired by Tenant, whether before or during the Lease Term.

Condemnation - Partial Taking – Continuation with Rent Abatement.

§ 9.04 If only a part of the Leased Premises is taken or transferred as described in Section 9.01 and, Tenant has notified Landlord in accordance with procedures set forth in Section 9.03 that, in Tenant's opinion, the remainder of the Leased Premises is in such a location and in such form, shape, or size that Tenant's use of the Leased Premises can be effectively and practicably operated on the remaining Leased Premises, this Lease will terminate with respect to the portion of the Leased Premises taken or transferred as of the date title to such portion vests in the condemning authority but will continue in full force with respect to the portion of the Leased Premises not taken or transferred. As of the date title to such portion of the Leased Premises vests in the condemning authority, the Base Rent shall be proportionately reduced on the basis of the percentage of the Leased Premises so taken. The Base Rent reduction is to be determined as of the date immediately before any actual taking. Any and all proceeds of the condemnation will be the property of El Paso Independent School District.

Condemnation - Voluntary Conveyance.

§ 9.05 Nothing in this article prohibits Landlord from voluntarily conveying all or part of the Leased Premises to a public utility, agency, or authority under threat of a taking under the power of eminent domain. Any such voluntary conveyance will be treated as a taking within the meaning of this article.

Casualty.

§ 9.06 Unless Tenant gives a notice of termination per Section 9.07 below, in case of any damage to or destruction of the Leased Premises by fire or other casualty, Landlord may elect in its sole discretion to restore, repair, replace, or rebuild (individually or collectively, the "Restoration"). Notwithstanding anything herein to the contrary, Landlord shall have no obligation to pay for restoration of any Tenant improvements that required Landlord approval under this Lease. If Landlord elects to rebuild, such Restoration shall be commenced promptly and prosecuted with reasonable diligence, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control. In the event Landlord elects to rebuild, the improvements shall be restored as near as possible to their condition immediately prior to their destruction and such Restoration shall be at its sole cost and expense of the Landlord. If Landlord has elected to rebuild and determines that such Restoration is not capable of being completed within sixty (60) days after the occurrence of such damage or destruction, Landlord shall notify Tenant in writing of the length of time required for such Restoration and Tenant shall have the right to terminate this Lease on the terms set forth in Section 9.07 below. In case of any damage to or destruction of Tenant's alterations, additions or improvements to the Leased Premises, Tenant, at Tenant's option, may use its insurance proceeds payable to Tenant as to any alterations,

additions or improvements to the Leased Premises to return such alterations, additions or improvements to their original condition.

§ 9.07 If at any time during the Term, the building on the Leased Premises shall be substantially destroyed by fire or any other cause so as to render more than twenty-five percent (25%) of the building containing the Leased Premises unfit for use, and in the reasonable opinion of Tenant the repair or rebuilding thereof for Tenant's purposes would not be possible within thirty (30) days, then Tenant shall have the option of terminating this Lease. Such termination shall be effected by notice given no more than thirty (30) days after the date of the occurrence of the destruction or damage specifying a date not more than sixty (60) days after the giving of such notice as the date for such termination. Upon the date specified in such notice, this Lease and all right, title and interest of Tenant hereunder shall cease and come to an end, and Tenant shall make payment of all Rent payable by Tenant hereunder apportioned to the period prior to such termination. Tenant shall have no obligation to pay Rent or any other charges apportioned to the period after such termination.

§ 9.08 In the event the building and/or improvements located on the Premises should be damaged by fire or other casualty through no fault of Tenant, in whole or in part, and Leased Premises are not habitable for Tenant's business purposes, Rent shall abate for a reasonable length of time sufficient to permit Restoration of the Leased Premises as required herein (or until the date of termination of this Lease by Tenant as provided in Section 9.07).

§9.09 The provisions of this Lease, including Sections 9.06, 9.07, 9.08 and 9.09, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Leased Premises, and any statute, regulation or case law of the State of Texas with respect to termination rights arising from damage or destruction shall have no application to this Lease or any damage or destruction to all or any part of the Leased Premises.

ARTICLE 10. INSURANCE AND INDEMNIFICATION

Insurance on Buildings and Improvements.

§ 10.01 At all times during the Lease Term, Tenant shall provide and keep in force property and liability insurance for the buildings and other improvements at its sole cost and expense. Such policy shall name the Landlord as an additional insured. This insurance is to be carried by one or more reputable insurance companies selected by Tenant (which insurance companies are duly authorized or admitted to transact business in Texas). The insurance provided under this section must be in the amount of not less than \$1,000,000 for property damage, not less than \$1,000,000 for personal injury to any one person and not less than \$1,000,000 for any one accident for personal injury. Tenant may provide a self-insurance letter.

Liability Insurance.

§ 10.02 At all times during the Lease Term, Tenant will provide and keep in force commercial general liability insurance at its sole cost and expense. Such policy shall name the Landlord as an additional insured. This insurance is to be carried by one or more reputable insurance companies selected by Tenant (which insurance companies are duly authorized or admitted to transact business in Texas). The insurance provided under this section must be in the amount of not less than \$1,000,000 for property damage, not less than \$1,000,000 for personal injury to any one person and not less than \$2,000,000 for any one accident for personal injury. Tenant may provide a self-insurance letter.

Construction Liability Insurance.

§ 10.03 In the event of construction approved by the Landlord, Tenant will obtain and maintain construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Leased Premises. (All Builder's Risk). This insurance must be carried by insurance companies authorized or admitted to transact business in Texas, selected by Tenant and approved by Landlord, and must be paid for by Tenant. The insurance will have limits of not less than the full value as provided for All Builder's Risk against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the Leased Premises.

All Insurance Coverage Primary.

§ 10.04 The limits of the insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance required under this Lease to be carried by Tenant shall, to the extent of the risks and liabilities assumed by Tenant hereunder, be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. The Landlord agrees that with the insurance carried by the District as set out in Section 10.01 above shall be primary as to claims for damage to or destruction of the Leased Premises.

Waiver of Subrogation.

§ 10.05 To the extent allowable under the laws and regulations governing the writing of insurance within the state in which the Leased Premises is located, Tenant releases Landlord and its agents and employees from all liability to the Landlord, or anyone claiming through or under it, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Lease, pursuant to insurance policies carried by Tenant which is in force at the time of the loss or damage. Tenant will each request its insurance carrier to include in policies provided pursuant to this Agreement an endorsement recognizing this waiver of subrogation. The provision of this Section shall survive termination of this Lease.

Insurance Certificates.

§ 10.06 Tenant must furnish Landlord with certificates for all insurance required by Tenant under this article. If Tenant does not keep this insurance in full force, Landlord may notify Tenant of this failure, and if Tenant does not deliver to Landlord certificates showing all such insurance to be in full force within ten (10) days after such notice, Landlord may, at its option,

take out or pay the premiums on the insurance needed to fulfill Tenant's obligations under this article. On Landlord's demand, Tenant must reimburse Landlord the full amount of any insurance premiums paid by Landlord under this section.

Indemnification of Landlord.

§ 10.07

THE EXTENT ALLOWED BY THE LAWS OF THE STATE OF TEXAS, SUBJECT TO THE WAIVER SET FORTH IN SECTION 10.05, TENANT SHALL RELEASE, PROTECT, DEFEND, AND HOLD LANDLORD, ITS OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS AND ELECTED OFFICIALS ("LANDLORD PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS ("CLAIMS"), ASSERTED BY ANY PERSON AGAINST LANDLORD PARTIES FOR LOSS OF OR DAMAGE OR INJURY TO PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY ACT, FAULT, OMISSION OR NEGLIGENCE OF TENANT OR ANY EMPLOYEE, AGENT, CONTRACTOR OR INVITEE OF TENANT (EXCLUDING, HOWEVER, ANY OF THE LANDLORD PARTIES) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, TENANT'S DUTY UNDER THIS SECTION 10.07 SHALL NOT APPLY TO THE EXTENT OF ANY JOINT OR CONCURRENT NEGLIGENCE OF THE LANDLORD PARTIES OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ALLOCABLE TO THE LANDLORD PARTIES. The provisions of this Section 10.07 shall survive the expiration or earlier termination of this Lease.

ARTICLE 11. ASSIGNMENT AND SUBLEASE.

§ 11.01 Tenant may not sell or assign its Leasehold estate, or any portion of it, or sublet the Leased Premises or any portion of them, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Each such transfer, assignment, or sale so approved, shall be subject to Tenant's obligations to Landlord under this Lease and will not release Tenant from its obligations under this Lease.

ARTICLE 12. TERMINATION, DEFAULT AND REMEDIES

Termination on Default.

§ 12.01 If Tenant defaults in performing any covenant or term of this Lease that Tenant is required to observe and to perform under this Lease and Tenant does not correct such default or make reasonable progress toward correction within three (3) days after Tenant's receipt of written notice of such default from Landlord, an "Event of Default" has occurred under this Lease. Should an Event of Default occur under this Lease, Landlord may declare this Lease, and all the rights and interest created by it, terminated. If Landlord elects to terminate, this Lease will cease as if the day of the Landlord's election were the day originally fixed in the Lease for the expiration of the then current Term. Landlord or its agent or attorney may resume possession of the Leased

Premises change the locks and re-let them for the remainder of the term at the best rent obtainable for the account of Tenant, who must make good any deficiency.

§ 12.02 Tenant and Landlord agree that, for the purpose of posting the notice required by Texas Property Code Section 93.002(f), the “front door” of the Leased Premises is 5625 Confetti Drive, El Paso, Texas 79912.

Termination for Convenience.

§ 12.03 Either party may terminate with or without cause upon thirty (30) days written notice to Tenant.

Other Remedies.

§ 12.04 Any termination of this Lease as provided in this article will not relieve Tenant from paying any sum or sums due and payable to Landlord under the Lease at the time of termination. Any such termination will not prevent Landlord from enforcing the payment of any such sum or sums due and payable to Landlord under the Lease at the time of termination. Landlord or its agent or attorney may resume possession of the Leased Premises following a termination of this Lease by Landlord in accordance with the provisions herein and change the locks. The provisions of this Section 12.04 shall survive the termination of this Lease.

Alternative Dispute Resolution.

§ 12.05 Landlord and Tenant agree that any dispute arising out of this Lease shall be submitted in good faith to mediation as a condition precedent to filing suit. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) days or more than ninety (90) days following the date of the request, except upon agreement of both parties. In the event the Landlord and Tenant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent to filing suit in this article shall be deemed to have occurred.

Failure to Remove Property.

§ 12.06 In the event Tenant fails to remove any of its property from the Leased Premises at the termination or expiration of the Lease, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not claim such property (and pay for the cost of storing such property) within sixty (60) days following notice of such storage by Landlord, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Except as specifically described in this Section, nothing in this

Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

ARTICLE 13. LANDLORD'S COVENANT

Warranty of Quiet Enjoyment.

§ 13.01 Subject to the Reservation of Rights set out in Article 1, Landlord covenants that as long as an Event of Default has not occurred under this Lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Leased Premises during the Lease Term without being disturbed by Landlord, or any person claiming under Landlord, except for any portion of the Leased Premises that is taken under the power of eminent domain.

ARTICLE 14. GENERAL PROTECTIVE PROVISIONS

Right of Entry and Inspection.

§14.01 Tenant must permit Landlord or its agents, representatives, or employees to enter the Leased Premises during normal business hours for the purposes of inspection; determining whether Tenant is complying with this Lease; maintaining, repairing, or altering the Leased Premises; or for any other purpose related to the Lease or the Real Estate Sales Contract, but not for the exploration of the presence of minerals on the Leased Premises. Landlord will give Tenant twenty-four (24) hours' notice to enter the Premises. Notwithstanding the foregoing, any entry by Landlord or its agents, representatives or employees must not unreasonably interfere with Tenant's operations at the Leased Premises.

No Partnership or Joint Venture.

§ 14.02 The relationship between Landlord and Tenant is at all times solely that of landlord and Tenant and may not be deemed a partnership or joint venture.

Force Majeure.

§ 14.03 If curing any default (other than failure to pay Rent, insurance premiums, or ad valorem taxes) or performing any other covenant or term of this Lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond Tenant's control or that of the party obligated or permitted under this Lease to do or perform the term or covenant, each party so delayed is excused from performance during the delay period.

No Termination on Bankruptcy.

§ 14.04 Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver will not affect this Lease as long as Tenant and Landlord and their respective successors, authorized assigns or legal representatives continue to perform all covenants of this Lease.

No Waiver.

§ 14.05 No waiver by either party of an Event of Default or Landlord Event of Default, as applicable, may be treated as a waiver of any subsequent Event of Default or Landlord Event of Default, as applicable, of the same or other covenant or term of this Lease.

ARTICLE 15. MISCELLANEOUS

Delivery of Notices.

§ 15.01 All notices are deemed to have been delivered when received by personal delivery or (whether or not actually received) when deposited in the US Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to Landlord or Tenant at the address provided in the signature block below or any other address provided in writing to the other following execution of this Lease.

Multiple Parties.

§ 15.02 If this Lease names more than one Landlord or Tenant, service of any notice on any one Tenant or Landlord is considered service on all Tenants or Landlords, respectively.

Parties Bound.

§ 15.03 This agreement binds, and inures to the benefit of, the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

Texas Law to Apply.

§ 15.04 This agreement is to be construed under Texas law, and all obligations of the parties created by this Lease are performable in El Paso County, Texas.

Legal Construction.

§ 15.05 If any one or more of the provisions contained in this agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the Lease, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

Amendment.

§ 15.06 No amendment, modification, or alteration of this Lease is binding unless in writing, dated subsequent to the date of this Lease, and duly executed by the parties.

Rights and Remedies Cumulative.

§ 15.07 Except as otherwise set forth herein, (i) the rights and remedies provided by this Lease agreement are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy and (ii) the rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence.

§ 15.08 Time is of the essence of this agreement.

Further Documents.

§ 15.09 Landlord will from time to time and at any reasonable time execute and deliver to Tenant, when Tenant reasonably requests, other instruments and assurances approving, ratifying, and confirming this Lease and the Leasehold estate created by it and certifying that the Lease is in full force and that no default or Event of Default under the Lease on Tenant's part exists. But if any default or Event of Default on Tenant's part does exist, Landlord must specify in any such instrument each such default or Event of Default.

Entire Agreement.

§ 15.10 The terms and provisions of all Exhibits described herein and attached hereto are hereby made a part hereof for all purposes. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior correspondence, memoranda, agreements or understandings (written or oral) with respect hereto are merged into and superseded by this Lease.

Brokers.

§ 15.11 Each of the parties represents and warrants to the other that it has not caused any broker, agent, finder or other party to be entitled to a fee or commission by reason of this Lease.

OFAC.

§ 15.12 Tenant represents, warrants and covenants to Landlord that neither it nor any of its affiliates, nor any of their respective partners, members, managers, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not transfer this

Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

§ 15.13 Landlord represents, warrants and covenants to Tenant that neither it nor any of its affiliates, nor any of their respective partners, members, managers, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not transfer this Lease or all or any portion of the Leased Premises to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

Counterparts; Electronic Means.

§ 15.14 This Lease may be executed in counterparts, each of which is deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Lease may be executed by a party's signature transmitted by electronic means, including by facsimile or e-mail ("Electronic Means"), and copies of this Lease executed and delivered by Electronic Means have the same force and effect as copies executed and delivered with original signatures. All parties hereto may rely upon signatures transmitted by Electronic Means as if such signatures were originals. Any party executing and delivering this Lease by Electronic Means, at the request of any other party, shall promptly deliver a counterpart signature page of this Lease containing said party's original signature. A signature page transmitted by Electronic Means may be introduced into evidence in any proceeding arising out of or related to this Lease as if it were an original signature page.

THIS LEASE has been executed by the parties on the date and year first above written.

[Signatures on next page]

CITY OF EL PASO:

Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Josette Flores
Deputy City Attorney

APPROVED AS TO CONTENT:

Mary Lou Espinoza, Real Estate
Capital Assets Manger

(Acknowledgement)

STATE OF TEXAS)

COUNTY OF EL PASO)

This Instrument was acknowledged before me on the ____ day of _____, 2023, by Cary Westin, as Interim City Manager of the City of El Paso, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires: _____

Notary's Name (printed)

**BOARD OF TRUSTEES OF THE EL PASO
INDEPENDENT SCHOOL DISTRICT**, a political
subdivision of the State of Texas

APPROVED AS TO FORM:

Jeanne C. Collins
General Counsel

By: _____
Israel Irrobali, President Board of Trustees
Date: _____