

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

**DEPARTMENT:** Parks and Recreation

**AGENDA DATE:** June 13, 2017

**CONTACT PERSON/PHONE:** Paula Powell, Assistant Director Parks and Recreation (212-1709)

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:**

Goal 4 - Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments;

**SUBJECT:**

Discussion and action on a Resolution authorizing the City of El Paso to enter into a Facility Use agreement with the County of El Paso, allowing the County to provide nutrition program services for Senior Adults at City facilities.

**BACKGROUND / DISCUSSION:**

The senior nutrition programs provides a noon time meal to El Pasoans 60 years of age or older. These meals are provided at senior centers and certain recreation centers throughout the City. This resolution will enable the program to continue without interruption. There is no fiscal impact to the City anticipated with the proposed action.

**PRIOR COUNCIL ACTION:**

11 Dec 2001-City Council approved the Advisory Council by-laws formulated by El Paso City-County Nutrition program

22 Aug 2006-City Council approved adding Happiness Senior Center to the Lease Agreement between the City of El Paso and the County of El Paso.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_ *T. Nade*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**RESOLUTION**

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

That the City Manager be authorized to sign a Facility Use Agreement by and between the City of El Paso and the County of El Paso in connection with the El Paso City-County Nutrition Program to senior citizens who reside in El Paso County.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2016.

**CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leecer  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Juan S. Gonzalez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Tracy A. Novak, Director  
Parks and Recreation Director

THE STATE OF TEXAS           §  
COUNTY OF EL PASO           §

**FACILITY USE AGREEMENT**

This Agreement ("Agreement") is made by and between the CITY OF EL PASO, TEXAS, a home rule municipal corporation ("CITY"), and the COUNTY OF EL PASO, TEXAS ("COUNTY").

WHEREAS, the City is the owner of the premises and improvements located in El Paso, Texas, listed by location on Attachment "A," and hereinafter referred to as the "Premises;"

WHEREAS, the COUNTY desires to enter into a facilities use agreement ("Agreement") with the CITY for the use of the Premises;

WHEREAS, the COUNTY intends to use the Premises to serve meals on-site as part of the El Paso City-County Nutrition Program to senior citizens who reside in the COUNTY (hereinafter the "Program"); and

WHEREAS, the CITY believes the services contemplated herein would further the objectives of all parties by increasing the availability of nutrition alternatives for seniors in the El Paso area.

NOW, **THEREFORE**, for and in consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the CITY hereby grants COUNTY a non-assignable license to use the Premises.

**1. TERM AND CONSIDERATION**

1.1 Term of Agreement. This Agreement shall be effective on the date executed as shown below and shall be for a primary term of one (1) year from that date. Said Agreement will automatically renew for an additional year unless terminated in accordance with the terms set out in Section 6 of this Agreement. Each subsequent year will be based upon the same consideration, terms and conditions as approved by the parties..

1.2 Consideration. Consideration by the COUNTY is non-monetary and consists of the public benefit of meals and related nutrition services that will be provided by the COUNTY to senior citizens at the Premises, as well as performance of the other services and duties listed herein. Consideration by the CITY will be to provide the non-assignable license to use the Premises to the COUNTY.

**2. USE OF PREMISES**

2.1 Premises. The City owns and controls the Premises, while the COUNTY will only use the Premises for operation of the El Paso City-County Nutrition Program. The COUNTY understands and agrees the Premises are to be free and open to the public on a non-discriminatory basis, yet the general services offered through the Program may be limited to senior citizens of the CITY and COUNTY and their spouses (hereinafter "Participants") as determined appropriate by the COUNTY. The COUNTY may impose reasonable restrictions on admission consistent with the circumstances, including number of eligible Participants, need to preserve and protect the Premises, or the safety and welfare of any Participants or occupants, at each location.

It is understood the COUNTY directly or through a qualified contractor will use the Premises to provide/serve meals during week days to Program Participants at times when the Premises are open to the public. The County will not serve meals on weekends or County holidays. The COUNTY expressly agrees not to use the Premises for any other purpose without first obtaining the CITY'S consent in writing. The CITY reserves the right to use the Premises for such purposes or activities not incompatible with the COUNTY'S use of the Premises hereunder.

**2.2 Premises Condition.** The COUNTY shall keep the Premises in good and clean condition during and after each use for meal delivery or nutritional services. The COUNTY shall not be responsible for utilities, maintenance, or repair of the Premises, including the parking area, grounds, or landscaping. The COUNTY shall promptly notify the CITY of any repair, defect, hazard, or problem with the Premises that may require the City's attention.

**2.3 Garbage and Trash.** Using the Premises bins or dumpsters, the COUNTY shall properly dispose of all trash, garbage, and other refuse caused by the County's use of the Premises.

**2.4 Improvements and Fixtures.** The COUNTY shall not, without first obtaining the written consent of the CITY, or its designee, make any alterations, additions or improvements in, to, or about the Premises. All such alterations, if any, shall be made at the COUNTY's and/or its contractor's expense and may, at the CITY's option, become the property of the CITY at the end of the Agreement without reimbursement by the CITY. Depending on the circumstance, the County and the City may agree in writing to share or appropriately allocate responsibility for the repair and maintenance of an alteration, addition, or improvement installed for use in the nutrition operation under this Agreement.

**2.5 Improper Use.** The COUNTY shall not engage in or bring onto the Premises any use or activity that violates any federal, state and local laws and regulations.

**2.6 Non Profit Use.** The COUNTY expressly agrees the Premises will only be used for government or non-profit community outreach activities that are in compliance with this Agreement as well as applicable law or regulation.

### **3. CONTRACTUAL RELATIONSHIP**

**3.1** The COUNTY and the CITY are contracting parties under this Agreement. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents, or contractors.

**3.1.1** The parties understand and agree each will be responsible for its respective acts or omissions and shall in no way be responsible as an employer to or for the other party's officers, employees, agents, representatives or contractors who perform any service in connection with this Agreement.

**3.1.2** The COUNTY shall use its own employees or qualified contractors. County employees shall be under the exclusive supervision and control of the COUNTY.

**3.2** Each party will not receive any compensation or benefits from the other except as may be described herein.

3.3 The CITY and COUNTY understand and expressly agree that, in all things relating to this Agreement, the CITY and the COUNTY are performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree the parties enter into this Agreement each as a governmental entity for the purpose of performing a governmental function. Nothing in this Agreement modifies or waives any sovereign immunity, lien or indemnity prohibition, defense, or limitation of liability enjoyed by City or County, its elected officials, or employees at common law, under Texas tort or other law.

#### **4. LIABILITY AND INSURANCE**

4.1 Mutual Self Insurance. For the term of this Agreement, the COUNTY and CITY will be adequately self-insured.

4.2 No Indemnification. The parties expressly agree that neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or in part, from this Agreement.

4.3 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by either the County, the City or their past or present officers, elected officials, employees, or agents. Nothing herein shall be construed as consent to suit by the either Party.

#### **5. CLAIMS**

5.1 The parties shall promptly advise each other in writing of any claim or demand against the CITY and/or the COUNTY related to or arising from the COUNTY'S use of the Premises or from a condition, activity, or hazard on the Premises.

5.2 Each party understands and agrees it will cooperate with the other party in any investigation, as applicable and appropriate, of any accidents, claims, or occurrences involving such use by the County, activity on, or condition of the City Premises.

#### **6. TERMINATION**

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

6.2 Termination by Either Party. It is further understood and agreed by the COUNTY and the CITY that either party may terminate this Agreement by providing the other party with ninety (90) days written notice.

6.3 Termination by CITY. If the COUNTY ceases to use the Premises for the purposes herein contemplated for more than six (6) continuous months, or if either party defaults in any of its obligations under this Agreement and fails to correct such default within thirty (30) days written notice, the other party may terminate said Agreement by written notice. In such an event, all rights of

the COUNTY to use the Premises shall then terminate.

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

## 7. GENERAL PROVISIONS

7.1 Assignments and Subletting. The COUNTY shall not assign this Agreement nor rent the Premises or any part thereof without the prior written consent of the CITY, except the COUNTY may grant permission for the use of the Premises consistent with the purposes of this Agreement, but such permission shall not impair or diminish the rights of the CITY hereunder. The CITY shall have the right to refuse any such permission or license when it authorizes a use not contemplated by this Agreement.

7.2 Liens and Encumbrances. COUNTY shall not give nor permit any liens or encumbrances on the Premises, including but not limited to the facilities, buildings and improvements. Upon termination of this Agreement, COUNTY shall peacefully surrender such Premises to the CITY free of any liens or encumbrances.

7.3 Inspections. The CITY shall have the right to enter the Premises at all reasonable times, on twenty-four hour (24) notice, including notice via email, to the COUNTY (except that no notice need be given in case of an emergency) for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

7.4 Compliance with Laws. The CITY shall observe and comply with all applicable federal, state and local law, codes and ordinances. The COUNTY shall observe and comply with all applicable federal, state and local laws, codes and ordinances including, but not limited to those related to the preparation, handling and distribution of food, and with such further reasonable rules and regulations as the CITY may prescribe, on written notice to the COUNTY, for the safety, care and cleanliness of the Premises.

7.5 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

7.6 Amendment. The parties may amend this Agreement or the Attachment at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of each party.

### ***7.7 [INTENTIONALLY DELETED]***

7.8 Complete Agreement. This Agreement constitutes the entire understanding between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement

confers no rights on any person(s) or business entity(ies) not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

7.9 Governing Law. This Agreement shall be governed by the laws of the State of Texas, its conflicts or choice of law provisions notwithstanding.

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

7.11 Notices. All notices required between the parties shall be in writing and sent to the address listed below. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY:	CITY OF EL PASO Attention: City Manager 300 N. Campbell El Paso, Texas 79901
COPY TO:	Parks and Recreation Department Attention: Director 801 Texas Avenue El Paso, Texas 79901
COUNTY:	COUNTY OF EL PASO Attention: County Judge 500 East San Antonio, Room 301 El Paso, Texas 79901

*[Signatures begin on the following page]*

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF EL PASO**

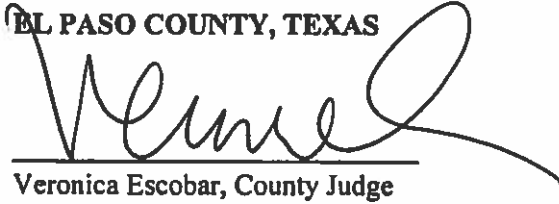
\_\_\_\_\_  
Tomás González, City Manager


**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

  
Juan S. Gonzalez  
Assistant City Attorney

  
Tracy A. Novak, Director  
Parks and Recreation Director

**EL PASO COUNTY, TEXAS**  
  
Veronica Escobar, County Judge

**APPROVED AS TO CONTENT:**  
  
Irene G. Valenzuela, Executive Director  
Community Services Department

**2016-0680**

ATTACHMENT "A"

EL PASO CITY/COUNTY NUTRITION PROGRAM  
LIST OF CITY OWNED PREMISES

<u>Name</u>	<u>Location</u>
CAROLINA	563 N. Carolina, El Paso, Texas 79915
CHIHUAHUITA	417 Charles, El Paso, Texas 79901
EASTSIDE	3200 Fierro, El Paso, Texas 79935
PAVO REAL	9311 Alameda, El Paso, Texas 79907
FRIENDLY/PAT O'ROURKE	901 Virginia, El Paso, Texas 79902
GRANDVIEW	3134 Jefferson, El Paso, Texas 79930
HILOS DE PLATA	4451 Delta Drive, El Paso, Texas 79905
MEMORIAL CENTER	1800 Byron, El Paso, Texas 79930
SAN JUAN	700 N. Glenwood, El Paso, Texas 79905
SOUTH EL PASO	600 S. Ochoa, El Paso, Texas 79901
WELLINGTON CHEW	4430 Maxwell, El Paso, Texas 79924
POLLY HARRIS (Westside)	650 Wallenberg, El Paso, Texas 79912