

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

DEPARTMENT: Streets and Maintenance

AGENDA DATE: 12/11/2018

PUBLIC HEARING DATE: 12/18/2018

CONTACT PERSON NAME AND PHONE NUMBER: Richard Bristol, Director, 915-212-0151

DISTRICT(S) AFFECTED: 4

STRATEGIC GOAL: 6 - SET THE STANDARD FOR SOUND GOVERNANCE AND FISCAL MANAGEMENT.

SUBJECT:

APPROVE AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A FIRST AMENDMENT TO LEASE BETWEEN THE CITY OF EL PASO ("LESSOR") AND SUN CITY COMMUNITY DEVELOPMENT CORPORATION ("LESSEE") FOR THE ASSIGNMENT OF THE LEASE OF PROPERTY AT 9135 STAHALA DRIVE, EL PASO, TEXAS ("PREMISES") AND REVISING THE USES PERMITTED ON THE PREMISES AND TO ALLOW LESSEE TO GRANT LICENSES TO USE THE PREMISES

BACKGROUND / DISCUSSION:

The City of El Paso has a land lease with YWCA for property at 9135 Stahala which was renewed Feb. 12, 2012. The original lease was Nov. 3, 1981. Though the City owns and leases the land to YWCA – YWCA has constructed buildings and improvements on it at their own cost. This Amendment would allow YWCA to assign the land lease with the City to Sun City Development Corporation - who will assume use of the land and buildings from the YWCA. By way of this amendment, Sun City Development Corporation may also enter into a license agreement to lease portions of the buildings on the land to other entities at a fair market rate – and any license agreement will pay the City a share of \$2.50/sqft. of leased space.

PRIOR COUNCIL ACTION:

11-03-1981 – Lease to YWCA – expired 2011

02-21-2012 – Lease to YWCA

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:



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

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A FIRST AMENDMENT TO LEASE BETWEEN THE CITY OF EL PASO ("LESSOR") AND SUN CITY COMMUNITY DEVELOPMENT CORPORATION ("LESSEE") FOR THE ASSIGNMENT OF THE LEASE OF PROPERTY AT 9135 STAHALA DRIVE, EL PASO, TEXAS ("PREMISES") AND REVISING THE USES PERMITTED ON THE PREMISES AND TO ALLOW LESSEE TO GRANT LICENSES TO USE THE PREMISES

WHEREAS, on February 21, 2012, Lessor entered into a Lease with Young Women's Christian Association ("YWCA") El Paso del Norte Region, a Texas nonprofit corporation for the lease of property at 9135 Stahala Drive, El Paso, Texas;

WHEREAS, on _____, the Lessor approved a Lessor's Approval of Assignment of the Lease to the Lessee;

WHEREAS, Lessee has requested that the Lease be amended to revise the uses permitted on the Premises and to allow Lessee to grant licenses to use the Premises; and

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

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a First Amendment of Lease upon the following terms to Sun City Community Development Association:

- (1) The First Amendment of Lease shall be in a form that is attached and incorporated as Exhibit "A".
- (2) The Approval of Assignment shall be attached as Exhibit "B".
- (3) The First Amendment to Lease is to revise the uses permitted on the Premises and to allow Lessee to grant licenses to use the Premises.
- (4) As consideration for the Amendment to Lease the Lessee shall pay to the City rent set forth in the First Amendment to Lease for both the Lease and any Licenses.

PASSED AND APPROVED this _____ day of _____ 2018

THE CITY OF EL PASO

Dee Margo
Mayor

APPROVED AS TO FORM:



Russell Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Ted Marquez
Deputy City Manager of Public Works

STATE OF TEXAS
COUNTY OF EL PASO

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LESSOR'S APPROVAL OF ASSIGNMENT

WHEREAS, the City of El Paso ("Lessor") entered into a Commercial Real Property Lease, effective February 21, 2012 (the "Lease"), between Lessor and the Young Women's Christian Association Paso del Norte Region, a Texas non-profit corporation ("Lessee" and "Assignor"), for the property legally described as:

Five acres of land, more or less, out of Lot 3, Block 1,
Castner Range Subdivision No. 1 in the City of El Paso,
El Paso County, Texas, said land being more commonly
Known as 9135 Stahala Drive, El Paso, Texas; and

WHEREAS, Assignor now desires to assign its interest in the Lease to Sun City Community Development Corp., a Texas non-profit corporation ("Assignee").

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Assignee, on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
4. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignors shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Young Women's Christian Association
El Paso del Norte Region
201 E. Main. Suite 400
El Paso, TX 79901

**ASSIGNOR: YOUNG WOMEN’S CHRISTIAN
ASSOCIATION EL PASO DEL NORTE REGION,
A TEXAS NON-PROFIT CORPORATION**

By: _____
Printed Name: Dr. Sylvia Acosta, Ph.D.
Title: Chief Executive Officer

ACKNOWLEDGMENT

**THE STATE OF TEXAS)
)
COUNTY OF EL PASO)**

 This instrument was acknowledged before me on this _____ day of
_____, 2018 by Dr. Sylvia Acosta, Chief Executive Officer, Young Women’s
Christian Association El Paso del Norte Region. (Assignor).

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

By: _____
Printed Name: Rev. Earl B. Payton
Title: President

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

Notary Public, State of Texas

My Commission Expires:

FIRST AMENDMENT TO LEASE

This **First Amendment to Lease** ("Amendment") is by and between the **City of El Paso**, a home rule municipal corporation, ("Lessor") and **Sun City Community Development Corp.**, a Texas nonprofit corporation, ("Lessee") is made this ____ day of _____, 20__.

WHEREAS, on Feb. 21, 2012, Lessor entered into a Lease with Young Women's Christian Association (YWCA) El Paso del Norte Region, a Texas nonprofit corporation, ("Lease") for the following described property:

Five acres of land, more or less, out of Lot 3, Block 1, Castner Range Subdivision No. 1 in the City of El Paso, El Paso County, Texas, said land being more commonly known as 9135 Stahala Dr., El Paso, El Paso County, Texas ("Premises");

WHEREAS, on _____, the Lessor approved a Lessor's Approval of Assignment of the Lease to Lessee; and

WHEREAS, Lessee has requested that the Lease be amended to revise the uses permitted on the Premises and to allow Lessee to grant licenses to use the Premises,

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1.03, **Restriction of Privileges, Uses and Rights**, of the Lease is hereby deleted in its entirety and replaced with the following:

1.03 Restriction of Privileges, Uses and Rights. The rights and privileges granted Lessee are subject and expressly limited to use for educational programs and community programs, including but not limited to, educational development for low income families and underserved communities, through after school programs for school aged children through tutoring and homework help, computer labs, and multimedia projects and for community development programs to combat community deterioration and juvenile delinquency.

Lessee's use of the Premises shall be for the use of the public, subject to security protocols for programs involving children, and therefore, no person shall be denied entrance thereto, nor will anyone be refused the use of the same, although charges may be assessed by the Lessee for the use of said facilities in line with charges commonly fixed for other similar facilities in the community.

In addition, as further described in Section 3.12, Lessee may enter into a license agreement with another entity to use the identified areas of the Premises.

Subject to the provisions of Section 3.12, as amended, any change of use will require the prior written approval of the City Council. Subject to the provisions of Section 3.12, as amended, failure to obtain the prior written approval of the City Council prior to using the Premises for anything other than the purposes set forth herein shall constitute an event of default and may result in termination of the Lease.

2. Section 1.04, **Conditions of Granting Lease**, of the Lease is hereby deleted in its entirety and replaced with the following:

1.04 Conditions of Granting Lease. The granting of this Lease and its acceptance by Lessee is conditioned upon the following covenants:

A. Except as otherwise permitted by this Lease that no functional alteration of the Premises or improvements located thereon or functional change in the uses of such Premises shall be made without the prior written consent of Lessor.

B. That the right to use the Premises shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated by their authority and all reasonable and applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.”

C. On or before the ninetieth day after the execution of this First Amendment, Lessor and Lessee will conduct a joint inspection of the Premises and its improvements to identify repairs or maintenance to the Premises and improvements in order to ensure compliance with all federal, state and local laws and regulations. Within thirty (30) days of the joint inspection, Lessee will submit to Lessor’s City Manager or his designee (“City Manager”), a proposed schedule for completion of required repair and maintenance items for Lessor’s review and approval. Lessee will complete the required repair and maintenance items in accordance with the schedule approved by Lessor. Failure to complete such repairs shall be an event of default and may result in termination of the Lease and a suit for collection of the sums necessary to make said repairs and court costs and attorney’s fees for the collection action.

D. By January 1 of each year, Lessee will submit a written report to the City Manager describing Lessee’s programing and uses of the Premises during the prior year, which report will include information on the number of individuals participating in the educational and community programs, and building maintenance reports.

3. Section 3.12, **Permitted Uses**, of the Lease is hereby deleted in its entirety and replaced with the following:

3.12 Permitted Uses. Except as set forth in this Section, Lessee will not permit any use on the Premises other than those permitted in Section 1.03.

However, Lessee may enter into a license agreement with another entity to use an identified portion of the Premises, for any lawful purpose whether authorized in Section 1.03 of this First Amendment to Lease or otherwise, during the term of the Lease. Lessee must give prior written notice to the City Manager of any proposed license. The notice shall identify the proposed licensee, the proposed use (which is not limited to the uses identified in Section 1.03 of this First Amendment to Lease) and the total square footage a licensee will be using.

If City Manager approves of the proposed use, the City Manager will advise Lessee of the fair market value of the inside of the building located on the Premises to be charged to a licensee. Lessor and Lessee agree that \$2.50 per square foot is the fair market value of the portion of the Premises subject to the license fee described in this paragraph, as determined by an appraisal, as of the date of this First Amendment to Lease. Lessee shall charge a licensee the fair market value of the inside of the building located on the Premises for its use of the Premises as identified by the City Manager, and Lessee will pay Lessor this amount on the first day of each month of the term of the license agreement.

Any license agreement shall not be for an initial term which extends beyond February 20, 2027, or four (4) additional five (5) year Extension Period options as defined in the Lease. License agreements shall be subject to the terms and provisions of the Lease, including but not limited to the insurance and indemnity requirements. Lessee shall be responsible for the observance by its licensees of the terms and covenants contained in this Lease. Upon request of Lessor, Lessee shall furnish Lessor with a copy of a license agreement.

Except in the case of a License Agreement authorized under this Section, the Premises shall not be used for any purpose except as contemplated by this Lease, unless written permission of the City Council is first obtained. Lessee may make reasonable rules for use of the Premises to protect the rights of the public and to provide for the proper, orderly and non-discriminatory use of the facilities thereon which shall be made available to every member of the community.

The Lessee shall not permit on the Premises any entertainment, amusement or other activity, which violates any statute or ordinance, and will use Lessee's best efforts to prevent disorder and conduct amounting to a nuisance.

4. Section 4.02, **Option to Extend**, of the Lease is hereby deleted in its entirety and replaced with the following:

4.02 Option to Extend. In the event Lessee is not in default of any terms of this Lease, this Lease may be extended for four (4) additional five (5) year terms upon the mutual agreement of the parties. The Lease may be extended for each extension period ("Extension Period") by Lessee's notifying Lessor in writing of Lessee's election at least one hundred and twenty (120) days prior to the expiration of the previous term and Lessor's consent to such extension. In the event the election is so exercised, the Lease shall be extended for five years (the "Extended Term") on the same terms and conditions.

5. Section 5.01, **Rent**, of the Lease is hereby deleted in its entirety and replaced with the following:

5.01 Rent. As monetary consideration for this Lease, Lessee will deliver to the Lessor the sum of ONE AND NO/100 DOLLARS (\$1.00) per year in advance on the first day of December in each year of the initial term of this Lease and each year of any extended terms in which the Lessee has exercised its option to extend pursuant to Section 4.02.

In addition, Lessee will pay Lessor the fair market value of the Premises that may be identified in a license agreement pursuant to Section 3.12.

6. Section 5.02, **Place of Payment**, of the Lease is hereby deleted in its entirety and replaced with the following

5.02 Place of Payment. All rent payments provided herein shall be paid to Lessor at the following address or any other address Lessor gives to Lessee in writing:

City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
ATTN: Financial Services Department

7. Section 5.03, **Additional Consideration, Services Permitted Uses**, of the Lease is hereby deleted in its entirety and replaced with the following:

5.03 Additional Consideration, Services. Lessee's proposed use of the Premises as described in Section 1.03 is of general benefit to the citizens of El Paso.

8. The Lease is amended to add a new Section 10.07, **Conveyance to Nonprofit Corporation for Public Use**, which will read as follows:

10.07 Conveyance to Nonprofit Corporation for Public Use. If permitted pursuant to the framework provided in the Texas Local Government Code Chapter 253, as amended, prior to the end of the initial term or any of the extensions of the Lease, the parties agree to explore the possibility of the conveyance of the Premises from Lessor to Lessee, if they are interested in such a transfer.

9. The Lease is amended to add a new Section 11.18, **Municipal Purpose**, which will read as follows:

11.18 Municipal Purpose. The parties agree that Lessor, a political subdivision of the State of Texas, enters into this Lease to serve a municipal purpose and government function under the authority of and for the benefit of the sovereign state.

10. Except as expressly modified herein, all other terms and conditions of the Lease shall remain in full force and effect and shall remain as written.

LESSOR: CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Ted Marquez
Deputy City Manager of Public Works

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by Tomás González, the City Manager of the City of El Paso, Texas.

Notary Public – State of Texas

My commission expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE: SUN CITY DEVELOPMENT CORP.,
a Texas Non-Profit Corporation

Rev. Earl B. Payton

LESSEE'S ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF ELPASO §

 This instrument was acknowledged before me on the ____ day of _____, 20__, by
_____, the _____ of Sun City Development Corp., a Texas Non-Profit
Corporation.

Notary Public – State of Texas

My commission expires: _____