

STATE OF TEXAS §

COUNTY OF HIDALGO §

PARK LEASE AGREEMENT

This lease (the "Lease") is made on this ___ day of _____, 2019, by and between Valley View Independent School District referred to in this Lease as Lessor, and County of Hidalgo, referred to in this Lease as Lessee.

WHEREAS, Lessor and Lessee are authorized to enter into this Park Lease Agreement for a public purpose and in accordance with Section 272.005 of the Texas Local Government Code;

WHEREAS, the Lessor owns vacant land next to Early College High School which Lessor desires to be developed as a park for its students needs and additional public park space for recreational facilities to benefit the citizens of the County;

WHEREAS, Lessee operates parks and desires to locate a park in the vicinity of Lessor's school to serve Lessor's students as well as the residents of the area;

WHEREAS, the development of Lessor's real property as a public park serves a public purpose of recreation for the parties;

WHEREAS, Lessor and the Lessee believe it is in their best interests to enter into this Agreement to facilitate the public purpose of providing park facilities to the public in this area of Hidalgo County, Texas;

WHEREAS, Lessor demises and leases to Lessee, and Lessee leases from Lessor that certain real property described on Exhibit "A" attached hereto for the purpose of establishing a public park for Hidalgo County Precinct Two (the "All Inclusive Park"). These premises leased hereunder are referred to in this Lease as the "Premises" or the "Leased Premises"; and

WHEREAS, Lessor will have exclusive use of the Leased Premises when school is in session. Lessee will have use of the Leased Premises and the Leased Premises will be open to the public from 4:30 p.m. to 9:00 p.m. on weekdays and school holidays and 10:00 a.m. to 9:00 p.m. on weekends.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

PURPOSE

The purpose of this Agreement is to specify terms of Lessee's use of the Park under a lease with the Lessor.

ARTICLE 1. TERM

1.1 Except as otherwise herein provided, the term of this Lease shall be for a period of twenty-five (25) years commencing on April 1, 2019 and ending on March 31, 2044 unless sooner terminated as provided in this Lease, or unless renewed and extended in accordance with Article 1.2 hereof. Lessor will have exclusive use of the Leased Premises when school is in session. Lessee will have use of the Leased Premises and the Leased Premises will be open to the public from 4:30 p.m. to 9:00 p.m. on weekdays and school holidays and 10:00 a.m. to 9:00 p.m. on weekends.

RENEWAL OR TERMINATION

1.2 Lessee shall have the right and option to renew and extend the term of this Lease for one additional twenty (20) year term. If Lessee desires to renew and extend the term of this Lease for such renewal period, Lessee must give Lessor written notice of such renewal at least sixty (60) days prior to the termination of the initial lease term if Lessee desires to renew for the renewal period. Any renewal or extension of this Lease shall be on the same terms and conditions as provided herein. This Lease shall terminate and become null and void without further notice on the expiration of the term specified in Article 1.1, unless sooner terminated or renewed and extended in accordance with this Article 1.2, and any holding over by Lessee after the expiration of that term shall not constitute a renewal of the Lease or give Lessee any rights under the Lease in or to the Leased Premises.

HOLDOVER

1.3 If Lessee holds over and continues in possession of the Leased Premises after expiration of the term of this Lease, Lessee will be deemed to be occupying the Premises on the basis of a tenancy at sufferance, subject to all of the terms and conditions of this Lease. The inclusion of this Article 1.3 shall not be construed as Lessor's consent for Lessee to hold over.

LESSOR'S WARRANTY OF QUIET ENJOYMENT

1.4 Lessor covenants and agrees that Lessee on paying the rent herein provided for and observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of his Lease other than those certain scheduled instructional days Lessor's schools are in session without hindrance or molestation of Lessor or any person claiming under the power of eminent domain.

ARTICLE 2. RENT

BASE RENT

2.1 Lessee agrees to pay to Lessor, during the term hereof, an annual rental equal to One and no one hundredths Dollars (\$1.00) payable in advance for the term of this Lease, the payment which is acknowledged by Lessor.

2.2 Lessor and Lessee acknowledge they are both tax exempt entities.

ARTICLE 3. USE OF PREMISES

PERMITTED USE

3.1 Lessee may use the premises for park purposes and no other lawful purposes.

WASTE, NUSIANCE, OR ILLEGAL USE

3.2 Lessee shall not use, or permit the use of, the Premises in any manner that results in waste of the Premises or constitutes a nuisance or violates any statute, ordinance, rule or regulation applicable to the premises or for any illegal purpose.

ARTICLE 4.

MAINTENANCE

4.1 The Leased Premises shall be maintained by Lessee. Lessor will be responsible for opening and closing the Leased Premises to the public throughout the term hereof as defined in Article 1.

ARTICLE 5. UTILITIES

INTENTIONALLY DELETED

ARTICLE 6. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

6.1 Lessee may make any alterations, additions, or improvements to the Leased Premises to enhance the Leased Premises as a public park.

PROPERTY OF LESSOR

6.2 All alterations, additions, or improvements made by Lessee shall become the property of Lessor at the termination of this Lease. Lessor may, however, require that Lessee remove any or all alterations, additions, and improvements installed or made by Lessee, and any other property on the Premises by Lessee, upon termination of the Lease. In the event that Lessor requires Lessee to remove such alterations, additions, or improvements, Lessee shall repair any damage to the Premises caused by such removal.

ARTICLE 7. SIGNS

SIGNS

7.1 Lessee shall have the right to install signs (with Lessor's input of the wording of the signs) on the Leased Premises. Lessee must remove all signs at the termination of this Lease and repair any damage resulting from the erection or removal of the signs.

ARTICLE 8.

MECHANIC'S LIEN

8.1 Lessee will not permit any mechanic's lien or liens to be placed upon the Leased Premises or improvements on the Premises, Lessee will promptly pay the lien. If default in payment of the lien continues for sixty (60) days after written notice from Lessor Lessee, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by the Lessor to remove a mechanic's lien caused to be filed against the Premises or improvements on the Premises by Lessee, including expenses and interest, shall be due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of notice, together with interest at ten percent (10%) per annum until repaid.

ARTICLE 9.

INSURANCE AND LIABILITY

9.1 Lessor and Lessee are both governed by the Texas Tort Claims Act, Chapter 101.001 et seq., as amended, of the Texas Civil Practice and Remedies Code which sets limits of liability for certain causes of action. Each party to this Agreement warrants and represents that it is insured under a commercial insurance policy or its self-insured for all claims falling within the Texas Tort Claims Act.

9.2 Each party is solely responsible for the actions and omissions of its employees and officers. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its elected officials, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

ARTICLE 10. DAMAGE OR DESTRUCTION OF PREMISES

NOTICE TO LESSOR

10.1 If the Leased Premises, or any structures or improvements on the Leased Premises, should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to Lessee, the cause of the damage.

10.2 If any building or park improvement on the Leased Premises should be totally destroyed by fire, tornado, or other casualty, or if they should be so damaged that rebuilding or repairs occurrence of the damage, this Lease, at the option of the Lessee, shall terminate and rent shall be abated for the unexpired portion of this Lease, effective as of the date of said occurrence.

10.3 If the Leased Premises should be damaged by fire, tornado, or other casualty, but not to such an extent that rebuilding or repairs cannot be reasonably completed within thirty (30) working days from the date of the occurrence of the damage, Lessee may terminate this Lease upon a thirty (30) day written notice to Lessor.

ARTICLE 11. CONDEMNATION

TOTAL CONDEMNATION

11.1 If during the term of this Lease all of the Leased Premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, the Lease shall terminate, and the rent shall be abated during the unexpired portion of this Lease, effective as of the date of the taking of the premises by the condemning authority. Lessor agrees Lessor will not condemn Valley View Park during the term or any renewal term of this Agreement.

PARTIAL CONDEMNATION

11.2 If less than all, but more than ten percent (10%) of the Leased Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, Lessee may terminate the Lease by giving written notice to Lessor within thirty (30) days after possession of the condemned portion is taken by the entity exercising the power of condemnation.

If the Leased Premises are partially condemned and Lessee fails to exercise the option to terminate the Lease under this section, or if less than ten percent (10%) of the Leased Premises are condemned, this Lease shall not terminate, but Lessee may, at its sole expense, restore and reconstruct the improvements situated on the Leased Premises to make them reasonably suitable for the uses for which the Premises are leased.

CONDEMNATION AWARD

11.3 Lessor and Lessee shall each be entitled to receive and retain such separate awards, and portions of lump sum awards, as may be allocated to their respective interest in any condemnation proceedings. The termination of this Lease shall not affect the rights of the respective parties to such awards.

ARTICLE 12. DEFAULT

DEFAULT BY LESSEE

12.1 If Lessee shall default under any other condition of this Lease for a period of forty-five (45) days after written notice from Lessor, Lessor may at its option, without notice to Lessee, terminate this Lease.

CUMULATIVE REMEDIES

12.2 All rights and remedies of Lessor and Lessee under this Article shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this Lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

WAIVER OF BREACH

12.3 A waiver by either Lessor or Lessee of a breach of this Lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the Lease.

ARTICLE 13.

ASSIGNMENT AND SUBLETTING

ASSIGNMENT AND SUBLETTING BY LESSEE

13.1 Lessee may not sublet, assign, encumber, or otherwise transfer this Lease, or any right or interest in this Lease or in the Leased Premises or the improvements on the Leased Premises, without the written consent of Lessor. If Lessee sublets, assigns, encumbers, or otherwise transfers its rights or interest in this Lease or in the Leased Premises or the improvements on the Leased Premises, other than as specified herein, without the written consent of Lessor, Lessor may, at its option, declare this Lease terminated and Lessee and Lessor shall have no further obligation to each other under this Lease. In the event Lessor consents in writing to an assignment, sublease or other transfer of all or any of Lessee's rights under this Lease, the assignee or sublessee, must assume all of Lessee's obligations under this Lease, and Lessee shall remain liable for every obligation under the Lease. Lessor's consent under this section will not be arbitrarily or unreasonably withheld.

ASSIGNMENT BY LESSOR

13.2 Lessor may assign or transfer any or all of its interests under the terms of this Lease.

ARTICLE 14. MISCELLANEOUS

NOTICES AND ADDRESSES

14.1 All notices required under this Lease will be deemed delivered when deposited in certified or registered mail, addressed to the proper party, at the following addresses:

Lessor:

Valley View Independent School District
Attention: Superintendent Rolando Ramirez
9701 S. Jackson Road
Pharr, Texas 78577

Lessee:

County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78540

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this section.

PARTIES BOUND

14.2 This agreement shall be binding upon, and inure to the benefit of, the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this agreement.

TEXAS LAW TO APPLY

14.3 This agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this Lease are performable in Hidalgo County, Texas.

LEGAL CONSTRUCTION

14.4 In case any one or more of the provisions contained in this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of the agreement, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the agreement.

PRIOR AGREEMENTS SUPERSEDED

14.5 This agreement constitutes the sole and only agreement of the parties to the agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement.

14.6 No amendment, modification, or alteration of the terms of this agreement shall be binding unless it is in writing, dated subsequent to the date of this agreement, and duly executed by the parties to this agreement.

RIGHTS AND REMEDIES CUMULATIVE

14.7 The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Lease are in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

ATTORNEYS' FEES AND COSTS

14.8 If, as a result of a breach of this agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this Lease, then the breaching or defaulting party agrees to pay the other party the reasonable attorneys' fees and costs incurred to enforce the Lease.

FORCE MAJEURE

14.9 Neither Lessor nor Lessee shall be required to perform any term, conditions, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

REAL ESTATE COMMISSION AND FINDER'S FEES

14.10 Neither Lessor nor Lessee has entered into any real estate commission or finder's fee agreements with any broker, agent or finder in respect of this transaction, and Lessor and Lessee each agree to indemnify and hold harmless the other from and against

any and all claims, losses, damages, costs or expenses of any kind, or arrangement or understanding alleged to have been made by the indemnifying party or on its behalf with any broker, salesman or finder in connection with this Lease or the transactions contemplated hereby.

ESTOPPEL INFORMATION

14.11 Lessee shall, at the request of Lessor, provide any and all information with respect to this Lease to any person designated by Lessor.

COMMITMENT OF CURRENT REVENUES ONLY

14.12 In the event that, during any term hereof, the Commissioners Court of Lessee does not appropriate sufficient funds to meet the obligations of Lessee under this Agreement, Lessee may terminate this Agreement upon ninety (90) days written notice to Lessor. Lessee agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

TIME OF ESSENCE

14.13 Time is of the essence of this agreement.

THE UNDERSIGNED Lessor and Lessee execute this Lease on the ____day of _____, 2019.

LESSOR:

ATTEST:

VALLEY VIEW INDEPENDENT SCHOOL DISTRICT

By: _____
Susana Arredondo, Board Secretary

By: _____
Name: Jose A. Rosillo
Board President

ATTEST:

LESSEE:

By: _____
Arturo Guajardo, Jr., County Clerk

HIDALGO COUNTY
By: _____
Richard F. Cortez, County Judge

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, L.L.P.

By: _____
Stephen L. Crain