

LEASE AGREEMENT

This Lease Agreement is made and entered into between Keller Independent School District acting by and through _____ herein designated as "KISD" and the City of Fort Worth acting herein by and through _____ is Assistant City Manager herein designated as "City".

WITNESSETH:

WHEREAS, KISD is building two new schools adjacent to Timberland Road in the City of Fort Worth, Elementary No. 20 and High School No. 4;

WHEREAS, as part of the construction of the school sites, KISD is required to perform water, sewer, storm drainage and street improvements ("Improvements") on property owned by City in and adjacent to Timberland Road, Grey Twig Drive and an unnamed street currently labeled "Street A", ("Leased Premises");

WHEREAS, City has agreed to enter into a non-exclusive Lease Agreement with KISD for the Lease of the Leased Premises in order that KISD may construct the Improvements on those streets, such Improvements being for the benefit of KISD and City, as are more particularly described on the sheets attached hereto and made a part hereof as the attached Exhibit "A". The location of the Leased Premises is described on the sheets attached hereto and made a part hereof as Exhibit "B".

NOW, THEREFORE, for and in consideration of KISD constructing the Improvements and other good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Leased Premises. City, in consideration of KISD constructing the Improvements and of the covenants and agreement to be performed by KISD herein set forth, does hereby grants to KISD a non-exclusive lease of, and temporary construction easement in, the Leased Premises.
2. Non-Exclusivity. This Lease and other rights and benefits herein created are not exclusive, and City hereby reserves the right to grant such other leases, licenses, easements, rights, benefits, or privileges to such persons and for such purposes as City in its discretion may elect, so long as such purposes do not materially interfere with the rights and benefits granted herein to KISD.
3. Term of Lease. The term of this lease shall be until completion of the Improvements by KISD and approval and acceptance of the Improvements by City or December 31, 2009, whichever is sooner.
4. Acceptance of the Leased Premises by KISD. KISD taking possession of the Leased Premises shall be conclusive evidence that (a) the Leased Premises are suitable for the

purposes and uses for which same are leased; and (b) KISD waives any and all defects in and to the Leased Premises, its appurtenances, and in all the appurtenances thereto. Further, KISD takes the Leased Premises and all appurtenances, in "AS IS" condition without warranty, expressed or implied, on the part of City. City shall not be liable to KISD, KISD's agents, employees, contractors, invitees, licensees, or guests for any damage to any person or property due to KISD's actions or KISD's contractor's actions on the Leased Premises.

5. No Services. City shall not furnish KISD with any utilities, cleaning, lighting, security, fence, gate or any other items or services for the Leased Premises. Any services or utilities needed by KISD will be provided by KISD at its sole cost.
6. Road Closures. If KISD requires any road closures or partial road closure in order to construct the Improvements, KISD agrees to coordinate any road closures or partial road closures with City and obtain City's consent before any closure. To obtain City's consent, KISD shall contact _____.
7. Use and occupancy. KISD shall, at its expense, use and maintain the Leased Premises in a neat, clean, careful, safe, and proper manner and comply with all applicable laws, ordinances, orders, rules, and regulations of all governmental bodies (state, county, federal, and municipal). KISD shall use and occupy the Leased Premises in order to construct the Improvements and for no other purpose. KISD agrees not to use or to allow or permit the Leased Premises to be used for any purposes(s) prohibited by any law of the United States or the State of Texas or by any ordinance of the City of Fort Worth; and KISD agrees not to commit waste or permit waste to be committed or to allow, or permit any nuisance on or in the Leased Premises. At the termination of this lease, whether by lapse of time or otherwise, KISD shall deliver the Leased Premises to City in as good condition as the same was as of the date of the taking of possession thereof by KISD.
8. Assignment and Subletting. Neither party hereto shall assign, sublet or transfer its interest herein without prior written consent of the other party, and any attempted assignment, sublicense or transfer of all or any part hereof without such prior written consent shall be void..
9. Alterations, Additions, and Improvements. Other than KISD constructing the Improvements, KISD shall make no alterations in, or additions to, the Leased Premises without the prior written consent of City. All alterations, additions and improvements made to or fixtures or other improvements placed in or upon the Leased Premises shall be deemed a part of the Leased Premises and the property of City at the end of the term of the Lease. All such alterations, additions, improvements, and fixtures shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Lease.
10. Insurance. KISD shall not enter the Leased Premises and commence construction of the Improvements until its contractors have obtained the following insurance coverage and shown proof of such coverage to City:

Commercial General Liability (CGL) Insurance Policy

\$1,000,000 each occurrence
\$2,000,000 aggregate limit

Automobile Liability Insurance Policy

\$1,000,000 each accident on a combined single limit basis
or
\$250,000 Property Damage
\$500,000 Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

Workers' Compensation Insurance Policy

Statutory limits
Employer's liability
\$100,000 Each accident/occurrence
\$100,000 Disease - per each employee
\$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Sec. 401.001 et seq. Texas Labor Code) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

City, its Officers, Employees and Volunteers shall be named as an Additional Insured. Exception; the additional insured status does **not** apply to Workers' Compensation policies. Thirty (30) days notice of cancellation or non-renewal: The following clause is required: "This insurance shall not be canceled, limited in scope or coverage, cancelled or non-renewed, until after thirty (30) days prior written notice has been given to the City of Fort Worth by U.S. mail." The insurers for all policies must be licensed/approved to do business in the State of Texas and have a minimum rating of A: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of City).

11. Bonds: KISD must provide performance and payment bonds covering the Improvements, in form acceptable to the City Attorney.
12. Liens. KISD will not cause or permit any mechanics' liens or other liens to be filed against City's Property by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Licensee. If such a mechanic's lien or materialman's lien is recorded against the City's Property, KISD must either cause it to be removed or, if KISD in good faith wishes to contest the lien, take timely action to do so, at KISD's sole expense.

13. No Hazardous Or Toxic Substances. Under no circumstances during the term of this License shall KISD use or cause to be used or any hazardous or toxic substances or materials, or store or dispose of any such substances or materials on the Property.
14. Default by KISD. If KISD defaults in the performance of any term of this Agreement City may send KISD a certified letter explaining the deficiency in their performance of this Lease. KISD shall correct such deficiency.
15. Notice. All notices, requests, and other communication under this Lease shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, addressed as follows:

If intended for **CITY:**

City Manager
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102
Telephone (817) 392-6111
Facsimile: (817) 392-6134
E-Mail:

If intended for **KISD:**

Mark Youngs
Keller ISD-Business Operations
350 Keller Parkway
Keller, TX 76248
Telephone: 817.744.1000
Fax: 817.337.3264

or at such other address, and to the attention of such other person, as the parties shall give notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof, whether actually received or not, upon deposit of both the original and copy in a post office or official depository of the United States Postal Service.

16. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

17. Contract Construction. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
18. No Third-Party Beneficiaries. This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its own contracts or commitments.
19. Venue And Jurisdiction. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
20. Independent Contractor. KISD shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the City. KISD shall have exclusive control of, and the exclusive right to control the details of the work performed for the Improvements, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees and subconsultants (*or subcontractors*). Nothing herein shall be construed as creating a partnership or joint venture between the City and KISD, its officers, agents, employees and subconsultants (*or subcontractors*), and doctrine of respondent superior has no application as between the City and KISD.
21. Compliance With Law. KISD, its officers, agents, employees, contractors and subcontractors, shall abide by and comply with all laws, federal, state and local, including the Charter and all ordinances, rules and regulations of the City. It is agreed and understood that, if City calls the attention of KISD to any such violations on the part of KISD, its officers, agents, employees, contractors or subcontractors, then KISD shall immediately desist from and correct such violation.
22. Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.
23. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one and the same agreement.
24. Entire Agreement. It is expressly agreed by KISD, as a material consideration for the execution of this Lease, that there are and were no verbal representations, understandings, stipulations, agreements, or promises pertaining thereto not incorporated in writing herein, and it is likewise agreed that this Lease shall not be altered, waived, amended, modified, or extended otherwise than as provided herein, except same may be done in writing signed by each of the parties hereto.

In witness whereof, the parties hereto have caused this Lease to be executed as the day and year first above set forth.

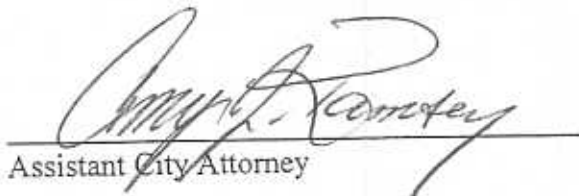
CITY OF FORT WORTH

KELLER INDEPENDENT SCHOOL DISTRICT



Assistant City Manager

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:

City Secretary

COUNCIL ACTION: Approved on 1/15/2008

DATE:	1/15/2008	REFERENCE NO.:	L-14453	LOG NAME:	30KISD LEASE
CODE:	L	TYPE:	NON-CONSENT	PUBLIC HEARING:	NO
SUBJECT: Authorize Execution of a Non-Exclusive Lease Agreement with the Keller Independent School District to Accommodate the Installation of Community Facilities Required by the Construction of Elementary School No. 20 and High School No. 4					

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a non-exclusive lease agreement with the Keller Independent School District for a portion of City property in and around Timberland Road, Grey Twig Drive, and an unnamed street referred to in the Lease as "Street A" to accommodate the installation of water, sewer, storm drainage and street improvements required by the construction of Keller Independent School District Elementary School No. 20 and High School No. 4 in the City of Fort Worth.

DISCUSSION:

Keller Independent School District (KISD) is building Elementary School No. 20 and High School No. 4 in the City of Fort Worth. KISD must install community facilities in and around portions of City property related to Timberland Road, Grey Twig Drive and an unnamed street referred to in the Lease as "Street A" to serve the new schools. Said improvements will be upon property adjacent to KISD property in the City of Fort Worth. State law requires that a school district can only make improvements on property the school district owns or leases. KISD has requested a non-exclusive lease of the aforementioned City property in order to make the improvements necessitated by its construction of the schools.

Staff recommends that the City enter into a non-exclusive lease agreement for a term beginning upon execution and terminating when the improvements are completed and accepted by the City. At the termination of the lease, all improvements made by KISD will be owned by the City.

This property is located in COUNCIL DISTRICT 2.

FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that this action will have no material effect on city funds.

TO Fund/Account/Centers**FROM Fund/Account/Centers**

Submitted for City Manager's Office by: Marc A. Ott (8476)

Originating Department Head: A. Douglas Rademaker (6157)

Additional Information Contact: LaTrice Tatum Forbes (8362)
