

DRAFT B FOR DISCUSSION ONLY

STATE OF TEXAS
COUNTY OF ECTOR

INTERLOCAL FACILITY USE AND LEASE AGREEMENT

The **City of Odessa**, a municipal corporation, located in Ector County, Texas, hereinafter referred to as ACity,@ does hereby enter into the following Interlocal Facility Use and LeaseAgreement with the **Ector County Independent School District**, hereinafter referred to as AECISD,@ to provide for the use of a certain portion of the City of Odessa parks system facilities as outlined on **Exhibit A** attached hereto (AFacilities@) pursuant to the following terms and conditions:

I. RECITALS

WHEREAS, Chapter 791 of the Government Code of the State of Texas, authorizes interlocal contracts between two governmental entities; and

WHEREAS, the parties to the interlocal agreement are independently authorized to perform the functions or services contemplated by the agreement; and

WHEREAS, the agreement is approved by the governing bodies of each participating entity; and

WHEREAS, the agreement states the purpose, terms, rights, and duties of the contracting parties; and

WHEREAS, in addition to certain monetary consideration stated below, the general benefit to the public shall serve as consideration to both parties.

NOW, THEREFORE, for and in consideration of the mutual premises, covenants, obligations, and benefits in this Agreement, including the above recitals, ECISD and City agree as follows:

II. LEASE AND USE AGREEMENT

2.1 City does hereby grant to ECISD a non-exclusive lease for the use of the Facilities as outlined on **Exhibit A**. ECISD shall have the right to exclusive use of the basketball courts for the benefit of its students and patrons during all school hours of the school year. At all other times, the Facilities shall be available to the general public.

2.2 The term of this lease shall commence when executed by both parties and continue for a period of fifteen (15) years or as long as the Facilities are being used and maintained as provided herein or unless terminated by mutual agreement of the parties. After the initial fifteen (15) year term this lease shall continue on a year to year basis until terminated by providing written notice to the other party. In the event that the Director of Parks and Recreation determines after the initial fifteen (15) year term that maintenance costs are excessive or a determination is made that the Facility is an unsafe condition the City may at its option terminate this Agreement by providing ECISD with sixty (60) days written notice of termination.

2.3 As partial consideration for the terms of this lease, ECISD does agree to the following:

- a. To construct on the Facilities a concrete basketball court, with specifications as agreed to by both City and ECISD. City shall have the right to approve designs and specifications before the construction process begins.
- b. To be responsible for retaining an Engineer to address and consider the drainage on the Facilities. ECISD shall supply the drawings to the City for approval by the Director of Public Works. The cost of any improvements required shall be the responsibility of ECISD and shall be constructed according to the plans, as approved by the City and ECISD.
- c. To ensure that all improvements to the Facilities fully comply with the standards set forth in the Americans With Disabilities Act and are contiguous with the park development design, concrete sidewalks of the same specifications as existing shall be installed for the newly developed basketball court area joining the existing hike and bike concrete trail. ECISD shall supply the drawings to the City for approval by the Director of Public Works, and all improvements shall be constructed according to the plans approved by the City.

2.4 During the term of this lease, City shall be responsible for maintaining the Facilities.

2.5 Upon final inspection/acceptance of the ECISD construction contract and the completion of the appropriate warranty period, the constructed improvements shall be the sole and exclusive property of the City.

III. GENERAL PROVISIONS

3.1 No term or provision of this Agreement or act of either party in the performance of this Agreement shall be construed as making a party the agent, servant, or employee of the other party.

3.2 This Agreement is for the benefit of the parties to this Agreement, and no third party shall be used to benefit from said Agreement. Said Agreement shall be unenforceable by any third party.

3.3 This Agreement is contingent upon ECISD, in its sole and absolute discretion, receiving bids within its projected budget and scope of the project. Should said bids exceed such expectations, then ECISD shall notify City of its intention to not move forward, and this Agreement shall be null and void.

EXECUTED the _____ day of _____, 2011, by the duly authorized representatives of City and ECISD.

ACITY@

AECISD@

By: _____
Richard Morton
City Manager

By: _____
Hector Mendez
Superintendent of Schools