

LEASE AGREEMENT

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

WITNESSETH:

WHEREAS, Keller is building new schools on property owned by the District situated in the 3600 block of Keller Hicks Road in Fort Worth, Texas;

WHEREAS, as part of the construction of the aforementioned schools, Keller is required to install Off-Site Improvements including the installation of water and sewer mains, a storm sewer, and roadway improvements to Keller Hicks Road. These improvements are more specifically described in a Community Facilities Agreement previously executed by and between the two parties herein;

WHEREAS, City is the owner of the street known as Keller Hicks Road;

WHEREAS, City has agreed to enter into a non-exclusive Lease Agreement with Keller for the Lease of a portion of Keller Hicks Road in order that Keller may construct the Off-Site Improvements described above. The location of the Leased Area is described on Exhibit "A" attached hereto and made a part hereof ("Leased Premises").

NOW, THEREFORE, for and in consideration of Keller constructing the aforementioned Off-Site 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 Keller constructing the Off-Site Improvements and of the covenants and agreement to be performed by Keller herein set forth, does hereby grants to Keller a non-exclusive lease of 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 or 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 Keller.
3. Term of Lease. The term of this lease shall be for no less than 18 months commencing on October 25, 2005 and ending on April 24, 2007.
4. Acceptance of the Leased Premises by Keller. Keller taking of 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) Keller waives any and all defects

in and to the Leased Premises, its appurtenances, and in all the appurtenances thereto. Further, Keller 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 Keller, Keller’s agents, employees, contractors, invitees, licensees, or guests for any damage to any person or property due to Keller’s actions or Keller’s contractor’s actions on the Leased Premises.

5. No Services. City shall not furnish Keller with any utilities, cleaning, lighting, security, fence, gate or any other items or services for the Leased Premises. Any services or utilities needed by Keller will be provided by Keller at its sole cost.
6. Road Closures. If Keller requires any road closures or partial road closure in order to construct the Off-Site Improvements, Keller 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, Keller shall contact _____.
7. Use and occupancy. Keller 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). Keller shall use and occupy the Leased Premises in order to construct the Off-Site Improvements and for no other purpose. Keller 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 Keller 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, Keller 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 Keller.
7. 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..
8. Alterations, Additions, and Improvements. Other than Keller constructing the Off-Site Improvements, which will begin within sixty days or less from execution of this Lease which City hereby agrees to, Keller 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.

9. **INSURANCE.** Keller 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:

A. Commercial General Liability (CGL) Insurance Policy

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

B. 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.

C. 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 (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) 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

D. POLICY REQUIREMENTS

- i. 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.
- ii. Forty-five (45) 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 forty-five (45) days prior written notice has been given to Postal Service."
- iii. 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).

10. **Bonds:** Keller must provide performance and payment bonds covering the Off-Site Improvements in form acceptable to the City Attorney.

11. Liens. Keller 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, Keller must either cause it to be removed or, if Keller in good faith wishes to contest the lien, take timely action to do so, at Keller's sole expense.
12. No Hazardous Or Toxic Substances. Under no circumstances during the term of this License shall Keller 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.
13. Default by Keller. If Keller defaults in the performance of any term of this Agreement City may send Keller a certified letter explaining the deficiency in their performance of this Lease. Keller shall correct such deficiency.
14. 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 **KELLER:**

Keller ISD
Assistant Superintendent, Business Operations
350 Keller Parkway
Keller, Texas 76248
Telephone (817) 744-1000
Facsimile: (817) 337-3275

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.

15. 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.

16. 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.
17. 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.
18. 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 or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.
19. Independent Contractor. Keller shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the City. Keller shall have exclusive control of, and the exclusive right to control the details of the work performed for the Off-Site 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 Keller, its officers, agents, employees and subconsultants (*or subcontractors*), and doctrine of respondent superior has no application as between the City and Keller.
20. Compliance With Law. Keller, 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 Keller to any such violations on the part of Keller, its officers, agents, employees, contractors or subcontractors, then Keller shall immediately desist from and correct such violation.
21. Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.
22. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one and the same agreement.

23. Entire Agreement. It is expressly agreed by **KELLER**, 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