EG/efg
04/07/2016
Item #9

AN ORDINANCE 2016-04-07-0238

AUTHORIZING A FIVE-YEAR NO COST GROUND LEASE WITH THE SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL DEVELOPMENT CORPORATION (PRE-K 4 SA) FOR A TERM BEGINNING ON APRIL 7, 2016 AND ENDING ON JUNE 30, 2021 FOR A 4.476 ACRE PARCEL OF LAND LOCATED AT 1243 ENRIQUE M. BARRERA PARKWAY (STATE HIGHWAY 151) FOR CONSTRUCTION AND ADDITIONAL OPERATIONS OF THE PRE-K 4 SA WEST EDUCATION CENTER.

* * * * *

WHEREAS, the San Antonio Early Childhood Education Municipal Development Corporation (Corporation) was created by the San Antonio City Council in 2012 to oversee the Pre-K 4 SA early childhood development program; and

WHEREAS, the Corporation has an education center located adjacent to a City-owned lot at 1243 Enrique M. Barrera Parkway that can be used for additional parking, playground areas, or other operational needs; and

WHEREAS, The Board for the Corporation approved the ground lease on April 5, 2016 that is now being considered by City Council; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Transportation and Capital Improvements or his designee, is authorized to execute a five-year no cost ground lease with the San Antonio Early Childhood Education Municipal Development Corporation for a term beginning on April 7, 2016 and ending on June 30, 2021 for a 4.476 acre parcel of land located at 1243 Enrique M. Barrera Parkway (State Highway 151) for construction and additional operations of the Pre-K 4 SA West Education Center. A copy of the ground lease, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**.

SECTION 2. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 7th day of April, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**9 (in consent vote: 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 19, 20)**
Date:	04/07/2016
Time:	11:21:42 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a no cost five-year lease agreement with the San Antonio Early Childhood Education Municipal Development Corporation ending June 30, 2021 for a 4.476 acre parcel of land located at 1243 Enrique M. Barrera Parkway (State Highway 151) to be utilized for additional playground area and staff parking for the Pre-K 4 SA West Education Center. [Peter Zanoni, Deputy City Manager; Kathleen Bruck, CEO, Pre-K 4 SA]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1	x					
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				x
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Ground Lease
(San Antonio Early Childhood Education Municipal Development Corporation)

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Authorizing Ordinance:

Landlord:	City of San Antonio
Landlord's Address:	City of San Antonio Leasing Division P.O. Box 839966 San Antonio TX 78283-3966
Tenant:	San Antonio Early Childhood Education Municipal Development Corporation
Tenant's Address:	7031 S. New Braunfels San Antonio, TX 78223
Premises:	A 4.476 acre site located at 1243 Enrique M. Barrera Parkway (State Highway 151), San Antonio, Bexar

	County, TX 78227, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	All of the improvements constructed on the Premises must be used in a manner that supports the educational purpose of the Tenant.
Lease Commencement Date:	The lease commencement date shall be effective as of the date this Lease is executed by the City of San Antonio, which date shall not be sooner than 10 days after the City of San Antonio City Council authorizes execution of the lease.
Term:	Lease term is the Lease Commencement Date through July 31, 2021.
Construction Commencement Date	The date that Tenant, or its designated representative, applies for a permit to construct the improvements detailed in Section 7 herein, or portion thereof. In no event shall the Construction Commencement Date occur any later than April 30, 2018.
Consideration:	Consideration for use of the Premises is Tenant improvement construction outlined in Section 7 herein and obligation to utilize premises for a public purpose. There shall be no other compensation paid by Tenant.

1. Demise of Premises.

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them.

2. Lease Term.

Fixed Beginning and Termination Date

2.01. Lease term commences upon the Lease Commencement Date through July 31, 2021.

Termination

2.02. Unless renewed, this lease terminates without further notice when the Term expires. If renewed, it terminates without further notice when the renewed Term

expires. Tenant's holding over expiration is not a renewal of the lease and does not give Tenant rights under the Lease in or to the Premises.

Holdover
2.03. If Tenant holds over and continues in possession of the Premises after the Initial Term (or any extension) expires, Tenant's occupancy will be at will, subject to all the terms of this lease.

3. Consideration.

Consideration for use of the Premises is Tenant improvement construction outlined in Section 7 below and obligation to 1) utilize the premises for a public purpose; and 2) maintain it.

4. Taxes.

Landlord acknowledges that Tenant is a Municipal Development Corporation created by the City of San Antonio pursuant to the Texas Local Government Code, considered a government entity, and a 501(c)(3) non-profit organization exempt from the payment of taxes. Notwithstanding this, Tenant must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, if any, whether belonging to Landlord or to Tenant.

5. Utilities.

Tenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the lease term, including any connection fees.

6. Use of Premises.

Permitted and Prohibited Use of Premises
6.01. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

Illegal Use Not Permitted
6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation. Tenant is not considered to have violated this provision unless:

a. Landlord has notified Tenant in writing specifying the alleged violation;

b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, rule or regulation; and

c. Tenant has had a reasonable time after final adjudication to cure the specified violation.

7. Construction by Tenant.

General Conditions

7.01. Tenant may, at its sole cost and expense, erect, maintain, alter, remodel, reconstruct, rebuild, replace, demolish and remove buildings and other improvements on the Premises, including, but not limited to playground and parking areas, subject to the following requirements:

a. All such work must be necessary to support the educational mission consistent with the permitted use.

b. Tenant must perform any environmental due diligence necessary and to remediate any substances discovered as a result of such due diligence. Such performance shall include, but not be limited to, asbestos detection and removal in accordance with Chapter 6, Article XI. Asbestos Health Protection Survey of the City Code of the City of San Antonio, Texas.

c. Tenant must comply with all applicable federal, state and local regulations including, without reservation, the City of San Antonio Tree Ordinance.

Easements, Dedications, Zoning, and Restrictions

7.02. Landlord will offer reasonable cooperation to Tenant concerning easements, dedications, zoning, and restrictions of the Premises as follows:

a. Easements and Dedications. On Tenant's request, Landlord will join with Tenant in executing and delivering the documents, from time to time and throughout the lease term, as may be reasonable, appropriate, necessary, or required by the several governmental agencies, public utilities, and companies to grant easements and make dedications consistent with Landlord's long-term plans for the Premises.

b. Zoning. On Tenant's request, Landlord will execute the documents, petitions, applications, and authorizations as are appropriate or required to submit the Premises, or any part of them, for the purposes of obtaining conditional use permits, zoning and. rezoning, tentative and final tract approval, precise plan approval, and further, for the purposes of

annexation to or the creation of districts and governmental subdivisions, if such actions are consistent with Landlord's long-term plan for the Premises.

c. Restrictions. At Tenant's request, Landlord will execute and deliver or join in the execution and delivery of the documents appropriate and necessary to impose on the Premises covenants, conditions, and restrictions (1) regulating use of the Premises, or any part of them, (2) establishing common and parking areas; establishing party walls; (3) providing for enlarging common and parking areas by mutual and reciprocal parking rights, (4) providing for rights of ingress and egress; and (5) providing for other matters. All such items must be conducive to orderly development of the Premises as a commercial unit and consistent with Landlord's long-term plan for the Premises.

d. Expenses. Tenant exclusively bears the cost and expense of any action required of Landlord under subparagraphs a through c above.

Beginning Construction
7.03. Tenant expects to begin construction not later than the Construction Commencement Date or after all necessary permits and other authorizations are issued, whichever is later. Tenant must begin construction within 6 months after the lease commencement date.

Landlord's Approval of Plans
7.04. The following rules govern Landlord's approving construction, additions, and alterations of buildings or other improvements on the Premises:

a. Written Approval Required. No building or other improvement may be constructed on the Premises unless the plans, specifications, and proposed location of the building or other improvement has received Landlord's written approval. All buildings or other improvements must comply with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Landlord.

b. Submission of Plans. Tenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing any buildings or improvements or additions or alterations to any buildings or, improvements that require Landlord's approval under Subsection (a) above. Tenant must submit three copies of detailed working drawings, plans, and specifications for all improvements for

Landlord's approval within 30 days after this lease is executed, but not later than 30 days before construction is to begin.

c. Landlord's Approval. Landlord will promptly review and approve all plans submitted to it or note in writing any required changes or corrections. Tenant must comply with changes or corrections required by Landlord, and Tenant must resubmit plans showing the changes and corrections within days 15 after the corrections or changes have been noted. Landlord's failure to object to the resubmitted plans and specifications within 15 days constitutes its approval. Minor changes in work or materials not affecting the general character of the building project may be made at any time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

d. Exception to Landlord's Approval. The following items do not require submission to, and approval by, Landlord

i. Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.

ii. Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements to comply with legal requirements.

e. Effect of Approval. Landlord's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises, and Landlord may not unreasonably withhold approval. It does not excuse Tenant from any governmental permits, licenses, or other requirements of general applicability. Further, Landlord's approval does not constitute approval of the architectural or engineering design. By approving the plans and specifications, Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Improvements and Fixtures

7.05. Any improvements, additions, alterations, and fixtures constructed, placed, or maintained on any part of the Premises during the lease term become part of the real property of the Premises and must remain on the Premises and become Landlord's property when the lease terminates, subject to Landlord's discretion to require Tenant to remove said improvements, additions, alterations, and fixtures. Any removal shall be made at Tenant's expense and completed within 30 days of termination.

Right to Remove Improvements
7.06. Tenant may, at any time while it occupies the Premises, or within 30 days if requested to do so by Landlord upon expiration of the Term pursuant top Section 7.05 above, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant in, under, or on the Premises. Before the lease terminates, or in the event that Landlord requests such removal upon termination, Tenant must repair any damage to any buildings or improvements on the Premises resulting from removal. Any such items not removed by Tenant prior to termination become Landlord's property.

8. Encumbrance of Leasehold Estate.

Tenant's Right to Encumber
8.01. Tenant may encumber its leasehold interest without obtaining Landlord's consent, but no such encumbrance is or can be a lien on Landlord's fee title. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this lease and to all Landlord's rights under this lease. References in this lease to "Lender" refer to any person to whom Tenant has encumbered its leasehold interest.

Notices to Lender
8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Tenant's leasehold interest, Lender may notify Landlord in writing that the mortgage or deed of trust has been given. On Lender's request, Landlord will deliver duplicate notices under this Lease to Lender at an address or agent it specifies.

Lender's Consent Required for Modification
8.03. Landlord and Tenant will neither modify nor terminate this lease by mutual consent without Lender's written consent.

Lender's Right to Prevent Forfeiture
8.04. Lender may do any act required of Tenant to prevent forfeiture of Tenant's leasehold interest. All such acts are as effective to prevent a forfeiture of Tenant's rights under this lease as if done by Tenant.

Lender's Right to Foreclose
8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Tenant's title to the leasehold estate created by this lease to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Tenant's interest under this lease by virtue of a foreclosure sale. Lender will not be or become liable to Landlord as an assignee of this lease or otherwise, unless it assumes such liability in writing. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action

or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Tenant under which the buyer at foreclosure or grantee acquires Tenant's rights and interest under this lease. Any buyer at a foreclosure sale, including Lender, becomes obligated to Landlord as the Tenant under the lease.

9. Repairs, Maintenance, and Restoration.

Tenant's Duty to Maintain and Repair

9.01. Tenant must keep and maintain any and all improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Tenant's own expense. Tenant, at Tenant's option, shall only be responsible for landscaping and maintenance of those grounds immediately surrounding improvements erected on the Premises. Landlord will maintain all other areas of the Premises, as identified in coordination with Tenant.

Damage or Destruction

9.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Tenant must within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement. Tenant must pursue the repair, reconstruction or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. If beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Tenant's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

10. Mechanic's Liens.

Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action to do so at Tenant's sole expense. If Tenant contests the lien, Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Tenant loses the contest, Tenant must cause the lien to be discharged and removed before any judgment is executed.

11. Condemnation.

Parties' Interests

11.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of

condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this lease.

Total Taking-Termination
11.02. If the entire Premises are taken or so transferred, this lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. All proceeds of condemnation are Landlord's.

Partial Taking-Termination
11.03. If only part of the Premises is taken or transferred, this lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Tenant's permitted use cannot be effectively and practicably operated on it. In such case, this lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. All proceeds of condemnation are Landlord's.

Partial Taking-Continuation With Rent Abatement
11.04. If part of the Premises is taken or transferred and, in Tenant's opinion, the remainder of the Premises is in such a location that Tenant's permitted use can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred. All proceeds of condemnation are Landlord's.

Separate Condemnation Award
11.05. In any case, Tenant is free to seek a separate condemnation award for any loss of or diminishment to its leasehold.

12. Insurance

Allocation of Claims
12.01. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Tenant.

Required Insurance
12.02. Tenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the

State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Employer's Liability	$500,000/$500,000/$500,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of $1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of the Tenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements.

Required Clauses

12.04. Each insurance policy required by this Lease must contain the following clauses:

"This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

(a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) City of San Antonio Leasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Leasing Manager

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

Required Deliveries

12.05. Tenant must require its insurance carrier(s) to deliver to Landlord's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Landlord. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will provide 30 days' prior notice to Tenant and an opportunity to discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof.

Additional Insurance for Improvement Work

12.06. If Tenant makes leasehold improvements, Tenant must further provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Landlord's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase. Also, payment and performance bonds naming Landlord as indemnitee must be provided by Tenant or its contractors or subcontractors. If the

construction is minor, Tenant may send a written request to the City's Director of Capital Improvement Management Services to waive the requirements in this Section, but a waiver may be granted only by Landlord's Risk Manager, whose decision is final.

Certificates
12.07. Within 30 days after the Commencement Date, Tenant must deliver certificates to Landlord's Risk Manager and the City Clerk from Tenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

Address for Delivery
12.08. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancelation.

Liability Not Limited
12.09. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees under this Lease.

Waiver of Claims Against Landlord
12.10. Tenant waives all claims against Landlord for injury to persons or property on or about the Premises, whether or not caused by Landlord's negligence.

13. Reserved

14. Assignment and Subletting

Consent Required
14.01. Any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent, is void and terminates this Lease. Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Landlord's notice to Tenant.

Limitations on Consent
14.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

15. Default and Remedies.

Termination on Default

15.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 10 days after receipt of written notice to Tenant and any lender, notice to whom is required by this lease, Landlord may terminate this lease.

Other Remedies

15.02. Termination of this lease does not relieve Tenant from paying any claim for damages against Tenant under this lease. Termination does not prevent Landlord from enforcing payment by any remedy provided for by law or from recovering from Tenant for any default. Landlord's rights, options, and remedies under this lease are cumulative, and no one of them is exclusive of the other. Landlord may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Landlord of a breach of any covenant or condition of this lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this lease.

16. Reserved

17. General Protective Provisions.

Right of Entry and Inspection

17.01. Tenant must permit Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, or mortgagees.

No Partnership or Joint Venture

17.02. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

Force Majeure

17.03. If constructing the building, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war, civil commotion, act of God, fire or other casualty, or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Termination on Bankruptcy

17.04. Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.

Release of Landlord
17.05. If Landlord sells or transfers all or part of the Premises and as a part of the transaction assigns its interest in this lease, of the effective date of the assignment, Landlord has no further liability under this lease, except with respect to matters that have accrued and are unsatisfied as of that date. Landlord's covenants and obligations under this lease will bind Landlord and its successors and assigns only during their respective, successive periods of ownership of the fee.

18. Prohibited Interests in Contracts

Prohibited Interest
18.01. Tenant is aware and understands that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

18.02. Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

19. Miscellaneous.

Rights and Remedies Cumulative
19.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence
19.02. Time is of the essence under this agreement.

Yielding Up
19.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

Applicable Law
19.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability
19.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Successors
19.06.This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

Integration
19.07. **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

Modification
19.08. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries
19.09. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices
19.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Captions
19.11. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

Counterparts
19.12. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances
19.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

San Antonio Early Childhood Education Municipal Development Corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

_____
Attorney for Tenant
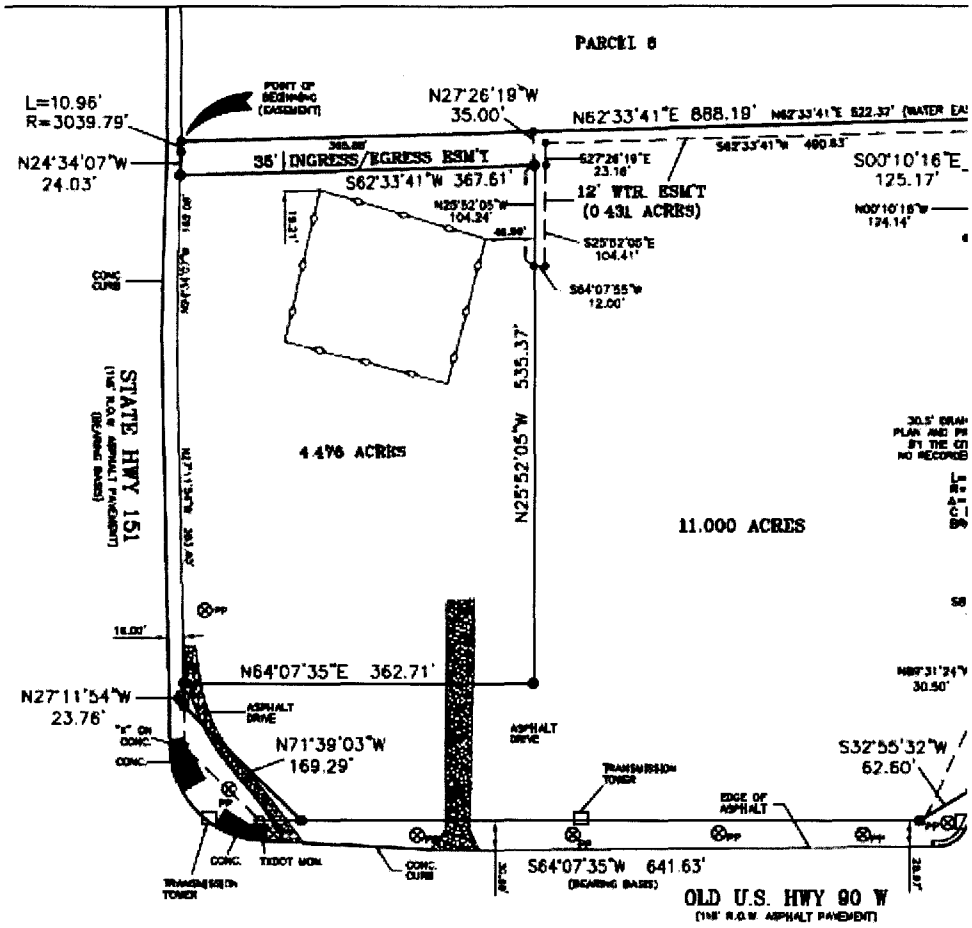
Exhibit A Depiction of Leased Premises