

TO: James L. App, City Manager

FROM: Julie Dahlen, Interim Director, Library and Recreation Services

SUBJECT: Uptown Family Park Grant—Proposition 84 Statewide Park Program

DATE: May 17, 2011

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**Needs:** For the City Council to consider accepting a Proposition 84 Statewide Park Development and Community Revitalization Grant in the amount of \$2,575,000 for the construction of a 1.3-acre park on the First 5 property at 641 Oak Street, authorizing a 30-year lease with the San Luis Obispo County Office of Education for use of the land and authorizing an agreement with the State of California.

**Facts:**

1. On February 16, 2010, City Council authorized staff to submit an application to the State for Proposition 84 Statewide Park Development and Community Revitalization Grant funds for construction of a park on the First 5 property at 641 36<sup>th</sup> Street.
2. The project area is adjacent to the First 5 Early Education Center, including two preschool classrooms, offices and the City Library Study Center. The Uptown Family Park will have a strong outdoor learning component, exploration areas and an amphitheater which will support Library programming. Grant funds will cover the entire cost of this project; there is no City match required.
3. On November 5, 2010, the California Office of Grants and Local Services awarded the City a grant for \$2,575,000 to construct the Uptown Family Park.
4. A 30-year lease has been negotiated with the San Luis Obispo County Office of Education, allowing the City to construct the Uptown Family Park on SLOCOE property with grant funds. Upon completion of park construction, an operating agreement will provide for shared park operation and maintenance as follows:
  - a. Day-to-day park maintenance: City of Paso Robles
  - b. Park operation: City of Paso Robles
  - c. Liability insurance: City of Paso Robles
  - d. Funding for utilities: SLOCOE will pay 70%, City will pay 30%.

**Analysis and Conclusion:**

The City of Paso Robles has been awarded a grant of \$2,575,000 to construct the Uptown Family Park on San Luis Obispo County Office of Education property at 641 Oak Street. To initiate the project, the City must enter into agreements with the State of California and SLOCOE. The grant performance period ends June 30, 2017; project duration is estimated at 3 years or less with a projected start date of March, 2012.

**Policy**

**Reference:** Resolution No. 10-021 authorizing the City to apply for Proposition 84 Statewide Park Development and Community Revitalization Grant funds

**Fiscal**

**Impact:** The City of Paso Robles will pay 30% of utilities expenses for future park maintenance and will carry liability insurance. The grant performance period ends June 30, 2017; estimated park completion date: June 2014.

**Options:**

- a. Adopt Resolution No. 11-xx authorizing the following:
  - 1) Acceptance of a Proposition 84 Statewide Park Development and Community Revitalization Grant in the amount of \$2,575,000;
  - 2) A 30-year lease with the San Luis Obispo County Office of Education for the property at 641 Oak Street;
  - 3) An agreement with the State of California to construct a park at 641 Oak Street.
- b. Amend, modify, or reject the above options.



**Concept drawing only—turf area to be greatly reduced**

[illegible]



November 5, 2010

James L. App, City Manager  
City of Paso Robles  
600 Nickerson Drive  
Paso Robles, CA 93446

RECEIVED  
HUMAN RESOURCES  
OFFICE

NOV 09 2010

CITY OF PASO ROBLES

Dear James L. App,

Congratulations! The Office of Grants and Local Services (OGALS) is pleased to announce its intention to award \$2,575,000 for your Paso Robles Uptown Family Park project.

Round One of the Statewide Park Program was intensely competitive and your project was one of the 62 selected for funding from a pool of almost 500 applications!

OGALS urges you to immediately start the project to take advantage of low construction prices. To ensure that your project will be completed without significant delays and that grant funds are spent on eligible costs, the grant contract will not be sent to you until the following obligation(s) is completed:

- **Mandatory Workshop.** Your project manager/grant administrator must attend the grant administration workshop on **Wednesday, December 8, 2010**, from 10:00 a.m. to 4:00 p.m. The workshop location is 1110 West Capitol Ave, West Sacramento, CA 95691. The workshop will cover the grant administration process, including audit requirements. Travel costs to the workshop can be charged to the grant.
- **CEQA Pending.** CEQA must be completed within one year of this grant award announcement. OGALS will issue a CEQA-pending contract for funds that can only be spent on CEQA compliance. Once CEQA compliance is completed, OGALS will issue a contract for the balance of the grant amount. If CEQA is not completed within one year, OGALS may rescind the grant award and unspent CEQA-pending contract funds must be returned.
- **Lease or Other Agreement Pending.** OGALS understands that the land owner's process to complete the land tenure agreement is time consuming. OGALS views this process and agreement similarly to its acquisition pending process. Therefore, before the grant contract will be issued, **the agreement must be signed by both parties, submitted to, and approved by OGALS within one year.** OGALS may rescind the grant award and will not issue the contract if the agreement is not signed within one year from the date of this letter. As a reminder, the agreement must include the requirements listed on the Land Tenure Form found on page 23 in the Application Guide.

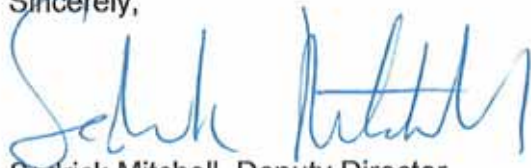


City of Paso Robles  
Paso Robles Uptown Family Park  
Page Two

By signing the grant contract, your agency agrees to complete the project as described in the successful application. Payments can be made after the grant contract is signed by your agency's authorized representative and the state. You may refer to the Proposition 84 "Grant Administration Guide" for grant process information. It is available at [www.parks.ca.gov/grants](http://www.parks.ca.gov/grants). OGALS has assigned Project Officer Bill Meyer to assist you with the grant administration process. If you have questions please contact Bill Meyer at (916) 651-1406 or [bmeyer@parks.ca.gov](mailto:bmeyer@parks.ca.gov).

Our partnership will deliver this exciting and much needed project to your community in a timely manner and within budget. Welcome to the State Parks family of Proposition 84 grantees!

Sincerely,

A handwritten signature in blue ink, appearing to read "Sedrick Mitchell", is written over a horizontal line.

Sedrick Mitchell, Deputy Director  
External Affairs

cc: Project File

## **GROUND LEASE (SLOCOE Park)**

This Ground Lease (SLOCOE Park) ("**Lease**") is made as of \_\_\_\_\_, 2010 (the "**Commencement Date**"), by and between the San Luis Obispo County Office of Education, a public body, corporate and politic ("**SLOCOE**"), and the City of El Paso de Robles, a California municipal corporation ("**City**").

### **RECITALS**

A. SLOCOE is the owner of that certain real property, consisting of approximately \_\_\_\_\_ acres of land in the City of El Paso de Robles, as further described in the "Site Description" attached hereto as Exhibit A and incorporated herein by reference (the "**Site**").

B. SLOCOE desires to construct a \_\_\_\_\_ [**preschool facility**]\_\_\_\_\_ and public park (the "**Park**") upon the Site. City is prepared to assist SLOCOE with the construction and operation of the Park, upon that certain portion of the Site consisting of approximately \_\_\_\_\_ acres of land, as shown on the "Park Site Map" attached hereto as Exhibit B and incorporated herein by reference, and having the legal description in the "Park Site Legal Description" attached hereto as Exhibit C and incorporated herein by reference (the "**Park Site**").

C. The City has applied to the California Department of Parks and Recreation for funds from the Statewide Park Program, and has been awarded \_\_\_\_\_ (\$\_\_\_\_\_) for the development of the Park as contemplated herein (the "**SPP Grant**"). This Lease shall constitute the Land Tenure Form for purposes of the City's SPP Grant application.

NOW, THEREFORE, SLOCOE and City hereby agree as follows:

### **AGREEMENT**

1. Lease of Park Site. SLOCOE, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of City to be paid, kept, performed and observed by City, hereby leases to City, and City hereby leases from SLOCOE, the Park Site, together with any improvements now or hereafter located on the Park Site, upon the terms and conditions of this Lease.

2. Term of Lease.

2.1 Initial Term. City shall lease the Park Site from SLOCOE, and SLOCOE shall lease the Park Site to City, for a term of thirty (30) years commencing on the Commencement Date (the "**Initial Term**"), upon the terms and condition herein.

2.2 Option Term. City is granted the option to extend the Initial Term as follows (the "**Option Term**" and collectively with the Initial Term, the "**Term**") for five (5) independent consecutive periods of five (5) years each following the expiration of the Initial Term (each, a "**Five Year Option Term**"). To exercise its options granted under this Section 2.2, City shall provide notice to SLOCOE on or before the expiration of (i) the Initial Term; and (ii) each Five Year Option Term thereafter, indicating City's desire to extend the

Initial Term, or any subsequent Five Year Option Term then in effect, by another Five Year Option Term.

3. Rent.

3.1 Rent. City agrees to pay in advance yearly rent in the amount of ONE AND NO/100 DOLLAR (\$1.00) (the "**Rent**"). The Rent shall be paid on the Commencement Date and each subsequent \_\_\_\_\_ during the Term.

3.2 Payment of Rent. All Rent that becomes due and payable pursuant to this Lease shall be paid to SLOCOE at the address of SLOCOE listed in Section 19.6 or such other place as SLOCOE may from time to time designate by written notice to City without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction.

4. Development of Park.

4.1 Demolition of Existing Improvements upon Park Site. Prior to the commencement of the this Lease, SLOCOE shall be responsible for completing any demolition of improvements on the Park Site and for relocating any tenants on the Park Site, in accordance with the requirements of law.

4.2 Construction of Park Improvements. City shall develop the Park (collectively, the "**Park Improvements**") in accordance with (i) the "Scope of Development" attached hereto as Exhibit D and incorporated herein by reference; and (ii) the plans, drawings and documents submitted by City to SLOCOE for development of the Park, as reasonably approved by SLOCOE and in accordance with the City's application for SPP Funds. City shall enter into a contract with one or more qualified general contractors for the construction of the Park Improvements. All costs and expenses associated with the planning, design, development and construction of the Park Improvements shall be borne solely by City, provided, however, that the parties agree that City's obligations hereunder shall be expressly limited to the amount of SPP Grant received by City. City also recognizes that the Park shall be used in conjunction with the existing Paso Robles First 5 Early Education Center operated by SLOCOE.

4.3 Schedule of Performance. City shall submit all required plans and drawings, commence and complete all construction of the Park Improvements, and satisfy all other obligations and conditions of City under this Lease within the times established therefor in the "**Schedule of Performance**" attached hereto as Exhibit E and incorporated herein by reference. SLOCOE shall satisfy all of its obligations under this Lease within the times established therefor in the Schedule of Performance.

4.4 Right of Inspection. SLOCOE reserves and shall have the right during reasonable hours to enter the Park Site for the purpose of ensuring City's compliance with this Section 4, subject to the SLOCOE's indemnification obligations under Section 15.

5. Use of Park Site. City covenants and agrees for itself, its successors and assigns, that during the Term, the Park Site and the Park shall be devoted to use as a public park in accordance with this Lease and the SPP Grant, and no other uses. City shall not use the Park Site

or the Park for any purpose that is in violation of any law, ordinance or regulation of any federal, state, SLOCOE or local governmental agency, body or entity.

6. Maintenance and Repair. City agrees to assume full responsibility for the maintenance and repair of the Park and the Park Site throughout the Term, and to perform all repairs and replacements necessary to maintain and preserve the Park and the Park Site in good repair, in a neat, clean, safe and orderly condition consistent with its operation as a public park, reasonably satisfactory to SLOCOE and in compliance with all applicable laws. City shall maintain the Park, all buildings, all exterior facades, all sidewalks, and all exterior areas, in a safe and sanitary fashion. The City agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are necessary for the maintenance of the entire Park. The City shall manage and maintain the Park on the Park Site in conformity with the El Paso de Robles Municipal Code. Parking lots, lighting fixtures, trash enclosures, and all areas which can be seen from the adjacent streets shall be kept free from any debris or waste materials by regularly scheduled maintenance.

7. [Reserved]

8. Utilities and Taxes.

8.1 Utilities. In recognition of the fact that a major portion of the usage of the Park Site and the Park shall be in conjunction with the operation of the First 5 Early Education Center, SLOCOE and City agree that they shall share in the payment of charges for water, gas, electricity, heating and cooling, sewer, garbage collection, and other utilities furnished to the Park Site and the Park and all hookup or similar charges or assessments for utilities levied against the Park Site and the Park for any period included within the Term. Each month, SLOCOE shall pay Seventy Percent (70%) and City shall pay Thirty Percent (30%) of such utility charges. SLOCOE agrees to pay its share of such utility costs to City within ten (10) days of written notification from the City. Upon request, City shall provide documentation to SLOCOE of such costs. SLOCOE reserves the right to reopen the allocation of utility charges set forth in this Section 8.1 after the 20th year of the term of this Lease.

8.2 Taxes, Permits and Licenses. In the event that any real estate taxes, assessments for improvements to the Park Site, municipal or county water and sewer rates and charges, or any other assessments or taxes are levied against the Park Site, the Park, the Park Improvements, the personal property located in the Park, or any interest therein, City shall be responsible for the payment of such amounts. City shall be responsible, at its sole expense, for obtaining and paying the cost of any permits and licenses required by governmental agencies with respect to the construction of the Park Improvements.

9. Stop Notices and Liens. City shall not suffer or permit any liens or stop notices to be enforced against the fee simple estate of SLOCOE as to the Park Site and Park, nor against City's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to City or anyone holding the Park Site and the Park, or any part thereof, through or under City. City agrees to defend, indemnify, and hold SLOCOE and its officers, officials, employees, agents, and representatives, harmless against such liens or stop notices. If any such lien or stop notice shall at any time be filed against the Park Site or the Park,



City shall, within thirty (30) days after notice to City of the filing thereof, cause the same to be discharged of record; provided, however, that City shall have the right to contest the amount or validity, in whole or in part, of any such lien or stop notice by appropriate proceedings but in such event, City shall notify SLOCOE and promptly bond such lien or stop notice in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to SLOCOE. City shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of SLOCOE, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Park Site, the Park, or any part thereof. Prior to commencement of construction of the Park on the Park Site, or any repair or alteration thereto, City shall give SLOCOE not less than thirty (30) days advance notice in writing of its intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws.

10. Environmental Matters. City acknowledges that it has had an opportunity, prior to the Commencement Date, to engage its own environmental consultant to make such investigations of the Park Site as City has deemed necessary, and City has approved the environmental condition of the Park Site. City shall take all commercially reasonable precautions to prevent the release of any hazardous materials from the Park Site into the environment. Upon and after the Commencement Date, City agrees to indemnify, defend and hold SLOCOE harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the release, use, generation, discharge, storage or disposal of any hazardous materials on, under, in or about, or the transportation of any such hazardous materials to or from, the Park Site that are directly caused by City during the Term. City's obligations under this Section shall survive the expiration of this Lease.

11. Alteration of Park Improvements. Upon completion of the Park Improvements pursuant to the requirements of Section 4, City shall not make or permit to be made any structural alteration of the exterior of the Park, nor demolish all or any part of the Park Improvements, without obtaining the prior written consent of SLOCOE, which consent shall not be unreasonably withheld. In requesting such consent of the SLOCOE, City shall submit to SLOCOE detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of City under this Lease to maintain the Park and the Park Site in a clean and safe condition, including structural repair and restoration of damage to the Park. City shall not commit or suffer to be committed any waste or impairment of the Park Site or the Park, or any part thereof, except as otherwise permitted pursuant to this Lease.

12. Damage or Destruction. If the Park shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty (a "**Casualty**"), City shall promptly proceed to take all steps necessary to begin reconstruction and to promptly and diligently commence the repair or replacement of the Park to substantially the same condition as the Park is required to be maintained in pursuant to this Lease (the "**Required Condition**"), so long as such repair or replacement does not exceed the amount of the insurance proceeds

received in connection with such casualty. If the cost to repair or restore the Park to the Required Condition exceeds the value of the insurance proceeds received in connection with such casualty, City may elect to terminate this Lease and both parties shall have no further obligations hereunder, except where expressly provided herein. Disbursement of all insurance proceeds shall as set forth in Section 16.3.

13. Sale, Assignment, Lease or Other Transfer. City shall not sell, assign, sublease, or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease, or transfer in any other mode or form of the whole or any part of the Park Site or the Park (each, an "**Assignment**"), without prior written approval of SLOCOE. Any purported Assignment without the prior written consent of SLOCOE shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee. SLOCOE may assign or transfer any of its rights or obligations under this Lease with the approval of the City, which approval shall not be unreasonably withheld. Notwithstanding the restrictions contained in this Section, SLOCOE hereby consents to the execution of the Maintenance Agreement.

14. Financing. Neither party shall, without the prior written consent of the other party, which may be given or withheld in such other party's sole discretion, obtain any loan or other conveyance for financing secured by the Park or this Lease.

15. Indemnity.

15.1 City. City shall defend, indemnify, assume all responsibility for, and hold SLOCOE and its officers, employees, agents, and representatives harmless from, all claims, demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for any damages to property or injuries to persons, including accidental death, which may be caused by or arise out of City's performance or failure to perform its obligations pursuant to this Lease, whether such activities or performance thereof be by the City or by anyone employed or contracted with by the City and whether such damage shall accrue or be discovered before or after termination of this Lease, or from any defect in the Park Site or the Park, due to the acts of City hereunder. City shall not be liable for property damage or bodily injury occasioned by the negligence of, willful misconduct of, or breach of this Lease by SLOCOE or its officers, employees, agents, or representatives.

15.2 SLOCOE. SLOCOE shall defend, indemnify, assume all responsibility for, and hold City and its officers, employees, agents, and representatives harmless from, all claims, demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for any damages to property or injuries to persons, including accidental death which may be caused by or arise out of SLOCOE's performance or failure to perform its obligations pursuant to this Lease, whether such activities or performance thereof be by SLOCOE or by anyone employed or contracted with by SLOCOE and whether such damage shall accrue or be discovered before or after termination of this Lease. SLOCOE shall not be liable for property damage or bodily injury occasioned by the negligence of, willful misconduct of, or breach of this Lease by City or its officers, employees, agents, or representatives.

16. Insurance.

16.1 General Insurance Provisions. City shall provide insurance coverage for the Park as is provided for all City-owned or leased property under a Memorandum of Liability Coverage administered by the California Joint Powers Insurance Authority. All policies of insurance provided for in this Section 16.1, except for the workers' compensation insurance, shall name City as the insured or an additional insured, and SLOCOE, and its respective officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. City agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. City agrees to submit policies of all insurance required by this Section 16, or certificates evidencing the existence thereof, to SLOCOE on or before the Commencement Date, indicating full coverage of the contractual liability under this Section. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to SLOCOE. All policies shall be written by good and solvent insurers qualified to do business in California and reasonably acceptable to the SLOCOE Superintendent or designee. All policies or certificates of insurance shall also: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to SLOCOE; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by SLOCOE and shall contain a waiver of subrogation for the benefit of the City and SLOCOE. City agrees that provisions of this Section as to maintenance of insurance shall not be construed as limiting in any way the extent to which City may be held responsible for the payment of damages to persons or property resulting from City's activities, activities of its sublessees or the activities of any other person or persons for which City is otherwise responsible

16.2 Failure to Maintain Insurance. If City fails or refuses to procure or maintain insurance as required by this Lease, SLOCOE shall have the right, at SLOCOE's election, and upon ten (10) days prior notice to City, to procure and maintain such insurance. SLOCOE shall give prompt written notice to City regarding the payment of any insurance premiums paid on behalf of City under this Section, stating the amounts paid and the name of the insured(s), and City shall immediately reimburse SLOCOE for such premiums paid.

16.3 Insurance Proceeds Resulting from Loss or Damage to Park. All proceeds of insurance with respect to loss or damage to the Park during the Term shall be payable, under the provisions of the policy of insurance, to City, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Park to the Required Condition. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, the excess proceeds shall become the sole property of City.

If the respective cost and expense to restore the Park to the Required Condition exceeds the value of the insurance proceeds received by City or SLOCOE for an insured loss or damage, City may terminate this Lease and both parties shall have no further obligations hereunder, except where expressly provided. Upon termination of this Lease pursuant to this Section, all insurance proceeds received from such insured loss or damage shall become the sole property of City.

17. Compliance with Law. City shall, at City's sole cost and expense, comply with all of the requirements of all municipal, State and Federal laws and regulations now in force, or

which may hereafter be in force, pertaining to City's use and occupancy of the Park Site or the Park. In addition, City shall comply with all terms and conditions of the SPP Grant.

18. Events of Default and Remedies.

18.1 Events of Default by City. Subject to the force majeure provisions of Section 19.20, the occurrence of any one (1) or more of the following shall constitute an event of default hereunder:

(a) City shall fail to construct the Park Improvements in accordance with Section 4 and within the times set forth herein, within thirty (30) days of notice from SLOCOE that such construction has not been completed within the required time;

(b) City shall abandon or surrender the Park Site or the Park;

(c) City shall fail or refuse to pay, within thirty (30) days of notice from SLOCOE that the same is due, any installment of Rent or any other sum required by this Lease to be paid by City; or

(d) City shall fail to materially perform any covenant or condition of this Lease, other than as set forth in subparagraphs (a) or (b) above, and any such failure is not cured within thirty (30) days following the service on City of a written notice from SLOCOE specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then City shall not be deemed to be in default if City shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion.

18.2 Remedies of SLOCOE.

In the event of any such default as described in Section 18.1, SLOCOE may, at its option:

(a) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by SLOCOE in enforcing this provision) to the account of City, which charge shall be due and payable within thirty (30) days after presentation by SLOCOE of a statement of all or part of said costs;

(b) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by SLOCOE in enforcing this provision) from the proceeds of any insurance;

(c) Exercise its right to maintain any and all actions at law or suits in equity to compel City to correct or cause to be corrected said default; or

(d) Maintain and operate the Park Site and the Park in accordance with the SPP Grant, without terminating this Lease.

In the event that City's default has not been cured within ninety (90) days from the date of SLOCOE's notice pursuant to Section 18.1, in addition to the foregoing remedies

SLOCOE shall also be entitled to terminate this Lease and immediately regain possession of the Park Site for the operation of the Park in accordance with the SPP Grant.

18.3 Rights and Remedies are Cumulative. The remedies provided by this Section 18 are not exclusive and shall be cumulative to all other rights and remedies possessed by SLOCOE. The exercise by SLOCOE of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by City.

19. Miscellaneous.

19.1 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Lease.

19.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Luis Obispo County, State of California.

19.3 Acceptance of Service of Process. In the event that any legal action is commenced by City against SLOCOE, service of process on SLOCOE shall be made by personal service upon the SLOCOE Clerk, or in such other manner as may be provided by law.

In the event that any legal action is commenced by SLOCOE against City, service of process on City shall be made by personal service upon the City Manager or City Clerk or in such other manner as may be provided by law.

19.4 Attorneys' Fees And Court Costs. In the event that either SLOCOE or City shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor in addition to whatever other relief such prevailing party may be entitled.

19.5 Interest. Any amount due SLOCOE that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

19.6 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

To SLOCOE: San Luis Obispo County Office of Education  
3350 Education Drive,



San Luis Obispo, CA 93405  
Attention: Superintendent

To City: City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attention: City Manager

or to such other address as either party shall later designate for such purposes by written notice to the other party. Notices shall be deemed effective upon personal delivery or within three (3) days after mailing thereof as provided above; provided, however that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice to the delivering party shall be effective on the third day after the attempted delivery or deposit in the United States mail.

19.7 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Lease.

19.8 Non-Merger of Fee And Leasehold Estates. If both SLOCOE's and City's estates in the Site or the Park or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of SLOCOE and City. The voluntary or other surrender of this Lease by City, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of SLOCOE, terminate all or any existing subleases or subtenancies or may, at the option of SLOCOE, operate as an assignment to SLOCOE of any or all such existing subleases or subtenancies.

19.9 Holding Over. The occupancy of the Park Site after the expiration of the Term shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

19.10 Conflict of Interest. No member, official or employee of City or SLOCOE shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested.

19.11 Non-Liability of SLOCOE and City Officials And Employees. No member, official, officer, employee, agent, or representative of SLOCOE shall be personally liable to City, or any successor in interest, in the event of any default or breach by SLOCOE or for any amount which may become due to City or its successor or on any obligations under the terms of this Lease. No member, official, officer, employee, agent, or representative of City shall be personally liable to SLOCOE, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to SLOCOE or its successor or on any obligations under the terms of this Lease.

19.12 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

19.13 Waivers and Amendments. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of SLOCOE or City. The waiver by SLOCOE of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by SLOCOE shall not be deemed to be a waiver of any preceding breach of City of any term, covenant or condition of this Lease, regardless of SLOCOE's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of SLOCOE to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent SLOCOE from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of SLOCOE and City. The City's mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without City's mortgagee giving its prior written consent.

19.14 Entire Agreement; Duplicate Originals; Counterparts. This Lease sets forth the entire understanding of the parties with respect to SLOCOE's ground lease of the Park Site to City. This Lease may be executed in two (2) or more duplicate originals and counterparts, each of which is deemed to be an original. This Lease includes seven exhibits, Exhibits A, B, C, D, E, F and G.

19.15 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

19.16 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself.

19.17 Recordation. A short form memorandum of this Lease, in the form attached hereto as Exhibit G, shall be recorded at or within five (5) working days after the time this Lease is executed.

19.18 Binding Effect. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

19.19 Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been

paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by City may be relied upon by SLOCOE or any successor in interest to SLOCOE. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

19.20 Force Majeure. In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Lease shall be extended, where delays or defaults are due to causes beyond the control or without the fault of the party claiming an extension of time to perform, which may include the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of SLOCOE or City which shall not excuse performance by that party). Notwithstanding anything to the contrary in this Lease, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of SLOCOE and City.

19.21 Quiet Enjoyment. SLOCOE does hereby covenant, promise and agree that City, for so long as City is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Park Site throughout the Term.

19.22 SLOCOE Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by SLOCOE, the SLOCOE Superintendent or his or her designee is authorized to act on behalf of SLOCOE unless specifically provided otherwise or the law otherwise requires.

19.23 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City unless specifically provided otherwise or the law otherwise requires.

19.24 Surrender of Park Site. City shall, upon the termination or expiration of this Lease, quit and surrender the Park Site, and all right, title and interest in and to all improvements and equipment constructed or installed on the Park Site, including the Park Improvements, to SLOCOE free and clear of any and all liens and encumbrances created or caused by the City.

19.25 Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Lease as if set forth in full.

*[Signatures to appear on the following page.]*

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

**SLOCOE:**

SAN LUIS OBISPO COUNTY OFFICE OF  
EDUCATION, a public body, corporate and politic

By: \_\_\_\_\_

Name: Julian Crocker

Its: Superintendent

**ATTEST:**

\_\_\_\_\_  
SLOCOE Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
SLOCOE Counsel

**CITY:**

CITY OF EL PASO DE ROBLES, a California  
municipal corporation

By: \_\_\_\_\_

Name: Duane Picanco

Its: Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



**EXHIBIT A**

**SITE LEGAL DESCRIPTION**

[to be inserted]

Exhibit A

**EXHIBIT B**

**PARK SITE MAP**

[to be inserted]

Exhibit B

## **EXHIBIT C**

### **PARK SITE LEGAL DESCRIPTION**

[to be inserted]

Exhibit C

## **EXHIBIT D**

### **SCOPE OF DEVELOPMENT**

[to be inserted]

Exhibit D

## **EXHIBIT E**

### **SCHEDULE OF PERFORMANCE**

[to be inserted]

Exhibit E



**EXHIBIT F**

**FORM MEMORANDUM OF GROUND LEASE**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
San Luis Obispo County Office of Education )  
3350 Education Drive, )  
San Luis Obispo, CA 93405 )  
Attention: Superintendent )  
 )

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Exempt From Recording Fee Pursuant to Government Code Section 27383

**MEMORANDUM OF GROUND LEASE**

This Memorandum of Ground Lease ("**Memorandum**") is hereby entered into as of \_\_\_\_\_, 2010 by and between the San Luis Obispo County Office of Education, a public body, corporate and politic, ("**SLOCOE**"), and the City of El Paso de Robles, a California municipal corporation ("**City**").

**RECITALS**

A. SLOCOE and City have entered into that certain Ground Lease (SLOCOE Park) (the "**Ground Lease**") dated concurrently herewith for that certain parcel of real property which is legally described in Exhibit A attached hereto and incorporated herein by reference (the "**Site**"). A copy of the Ground Lease is available for public inspection at SLOCOE's office at 3350 Education Drive, San Luis Obispo, CA 93405. The term of the Ground Lease is thirty (30) years, with options to extend for up to an additional twenty-five (25) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of San Luis Obispo County, California.

**NOW, THEREFORE**, the parties hereto certify as follows:

SLOCOE, pursuant to the Ground Lease, hereby leases the Site to the City upon the terms and conditions provided for therein. This Memorandum is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

*[Signatures to appear on the following page.]*

Exhibit F-1

**SLOCOE:**

SAN LUIS OBISPO COUNTY OFFICE OF  
EDUCATION, a public body, corporate and politic

By: \_\_\_\_\_  
Name: Julian Crocker  
Its: Superintendent

**ATTEST:**

\_\_\_\_\_  
SLOCOE Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
SLOCOE Counsel

**CITY:**

CITY OF EL PASO DE ROBLES, a California  
municipal corporation

By: \_\_\_\_\_  
Name: Duane Picanco  
Its: Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A TO MEMORANDUM OF LEASE**

**LEGAL DESCRIPTION**

[to be inserted]

Exhibit A to Exhibit F

## **PARK SITE MAP**

[to be inserted]

Exhibit A to Exhibit G

**EXHIBIT B**

**PARK SITE LEGAL DESCRIPTION**

[to be inserted]

Exhibit B to Exhibit G



**RESOLUTION NO. 11-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
AUTHORIZING THE ACCEPTANCE OF A PROPOSITION 84 STATEWIDE PARK  
DEVELOPMENT AND COMMUNITY REVITALIZATION GRANT IN THE AMOUNT  
OF \$2,575,000 FOR THE CONSTRUCTION OF A PARK AT 641 OAK STREET, A 30-YEAR  
LEASE WITH THE SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION AND AN  
AGREEMENT WITH THE STATE OF CALIFORNIA.**

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WHEREAS, on February 16, 2010, City Council authorized staff to submit an application to the State for Proposition 84 Statewide Park Development and Community Revitalization Grant funds for construction of a park on the First 5 property at 641 36<sup>th</sup> Street.

WHEREAS, the project area is adjacent to the First 5 Early Education Center, including two preschool classrooms, offices and the City Library Study Center. The Uptown Family Park will have a strong outdoor learning component, exploration areas and an amphitheater which will support Library programming. Grant funds will cover the entire cost of this project; there is no City match required.

WHEREAS, on November 5, 2010, the California Office of Grants and Local Services awarded the City a grant for \$2,575,000 to construct the Uptown Family Park.

WHEREAS, a draft 30-year lease has been negotiated with the San Luis Obispo County Office of Education, allowing the City to construct the Uptown Family Park on SLOCOE property with grant funds.

NOW, THEREFORE, BE IT RESOLVED, the City of El Paso De Robles (City) hereby authorizes the City Manager to enter into contracts with:

- The State of California, accepting a grant in the amount of \$2,575,000 for the construction of the Uptown Family Park at 641 Oak Street in the City of El Paso de Robles.
- The San Luis Obispo County Office of Education, for a 30-year Ground Lease Agreement for the construction and operation of the Uptown Family Park on the property at 641 Oak Street in the City of El Paso de Robles.

PASSED AND ADOPTED by the City Council of the City of El Paso De Robles this 17th day of May 2011.

I, the undersigned, hereby certify that the foregoing resolution was duly adopted by the City Council of the City of El Paso De Robles by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

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Duane Picanco, Mayor

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Caryn Jackson, Deputy City Clerk