

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Parks and Recreation

**AGENDA DATE:** February 9, 2010

**CONTACT PERSON/PHONE:** Nanette Smejkal, Director (541-4283)

**DISTRICT(S) AFFECTED:** District 2

**SUBJECT:**

A Resolution authorizing the City Manager to sign an Interlocal Agreement between the City of El Paso and the Texas Parks and Wildlife Department, Franklin Mountains State Park (FMSP) for the operation of the restroom at McKelligon Park.

**BACKGROUND / DISCUSSION:**

FMSP has agreed to maintain and operate the park restroom at McKelligon Canyon Park. The restroom has been closed for several years. The FMSP Visitor Center is directly across the street from restroom; therefore, FMSP staff will be able to monitor the restrooms and are willing to do so.

**PRIOR COUNCIL ACTION:**

No.

**AMOUNT AND SOURCE OF FUNDING:**

FMSP will provide all cleaning and paper supplies and furnish routine maintenance at their cost.

**BOARD / COMMISSION ACTION:**

N/A.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**  \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the City Manager is hereby authorized to sign, on behalf of the City of El Paso, an Interlocal Agreement between the City of El Paso (the "City") and the Texas Parks and Wildlife Department, Franklin Mountains State Park (the "FMSP"), for the purpose of FMSP to operate and maintain a public restroom facility owned by the City of El Paso located across the road from the FMSP office facility ("the facility"), which fulfills a governmental function and service included in providing parks and recreation services to the citizens of the City of El Paso

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda, Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Nanette L. Smejkal, Director  
Parks and Recreation Department

THE STATE OF TEXAS

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§  
§

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (“effective date”) by and between the Texas Parks and Wildlife Department, Franklin Mountains State Park (“FMSP”) and the City of El Paso, a home rule municipal corporation, through its Parks and Recreation Department (“the City”), collectively referred to as the “the Parties”.

WHEREAS, FMSP, on behalf of the State of Texas, staffs and maintains an office facility in McKelligon Canyon;

WHEREAS, the parties wish to allow FMSP to operate and maintain as described herein a public restroom facility as shown on Attachment A owned by the City of El Paso located across the road from the FMSP office facility (“the facility”), which fulfills a governmental function and service included in providing parks and recreation services to the citizens of the City of El Paso;

WHEREAS, the City owns and operates McKelligon Canyon Park as an unmanned site; and

WHEREAS, the organizations believe that cooperation will yield mutual benefits to FMSP and the City as well as to the citizens of El Paso and park visitors.

NOW THEREFORE, the parties, for the consideration set forth herein, agree as follows:

1. FMSP shall:

a. Perform ordinary and standard maintenance tasks at the restroom. These tasks shall include opening and closing the facility during normal hours of FMSP operation and cleaning the facility on a regular basis.

b. FMSP shall notify the City of any repair needs or other situations that require closure of the facility.

c. FMSP shall furnish all necessary cleaning supplies and paper goods for the facility.

2. The City shall:

a. At its option, maintain the facility structure and perform all necessary repairs to the interior and exterior of the facility structure, as funds are available.

b. Provide all utilities necessary for the operation of the facility.

c. Allow FMSP to use the facility in the “as is” condition as of the effective date, and shall have no obligation to make improvements to the facility.

3. The term of this Agreement shall begin on the effective date and be for a term of one year. This Agreement may be renewed on a yearly basis, with the mutual written consent of both parties. The City Manager of the City of El Paso is authorized to sign such renewal.

4. This Agreement may be amended in writing as agreed to by both parties and the City Manager is authorized to sign such amendment.

5. Notices: Either party may terminate this Agreement at any time with 30 days written notice.

6. Notice shall be given at the following address:

If to FMSP:  
Parks Superintendent  
1331 McKelligon Canyon Rd.  
El Paso, Texas 79930

If to the City:  
City of El Paso  
Parks and Recreation Director  
2 Civic Center Plaza  
El Paso, Texas 79901

7. **GOVERNMENTAL FUNCTION AND IMMUNITY.**

7.1 Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the CITY enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the CITY, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

7.2 Sovereign Immunity. The CITY reserves, and does not waive, its rights of sovereign immunity and similar rights and do not waive its rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on the CITY not permitted by applicable law shall be enforceable.

8. **GENERAL PROVISIONS**

8.1 Comply With All Laws. Parties shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

8.2 Discrimination Prohibited. No person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, the Program.

8.3 Assignment. The services to be provided under this Agreement by PROVIDER cannot be assigned or delegated without the prior written consent of the CITY.

8.4 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

8.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

8.6 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

CITY OF EL PASO

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Joyce A. Wilson  
City Manager

TEXAS PARKS AND WILDLIFE  
DEPARTMENT, STATE PARKS

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Walter D. Dabney  
Director

APPROVED AS TO FORM:

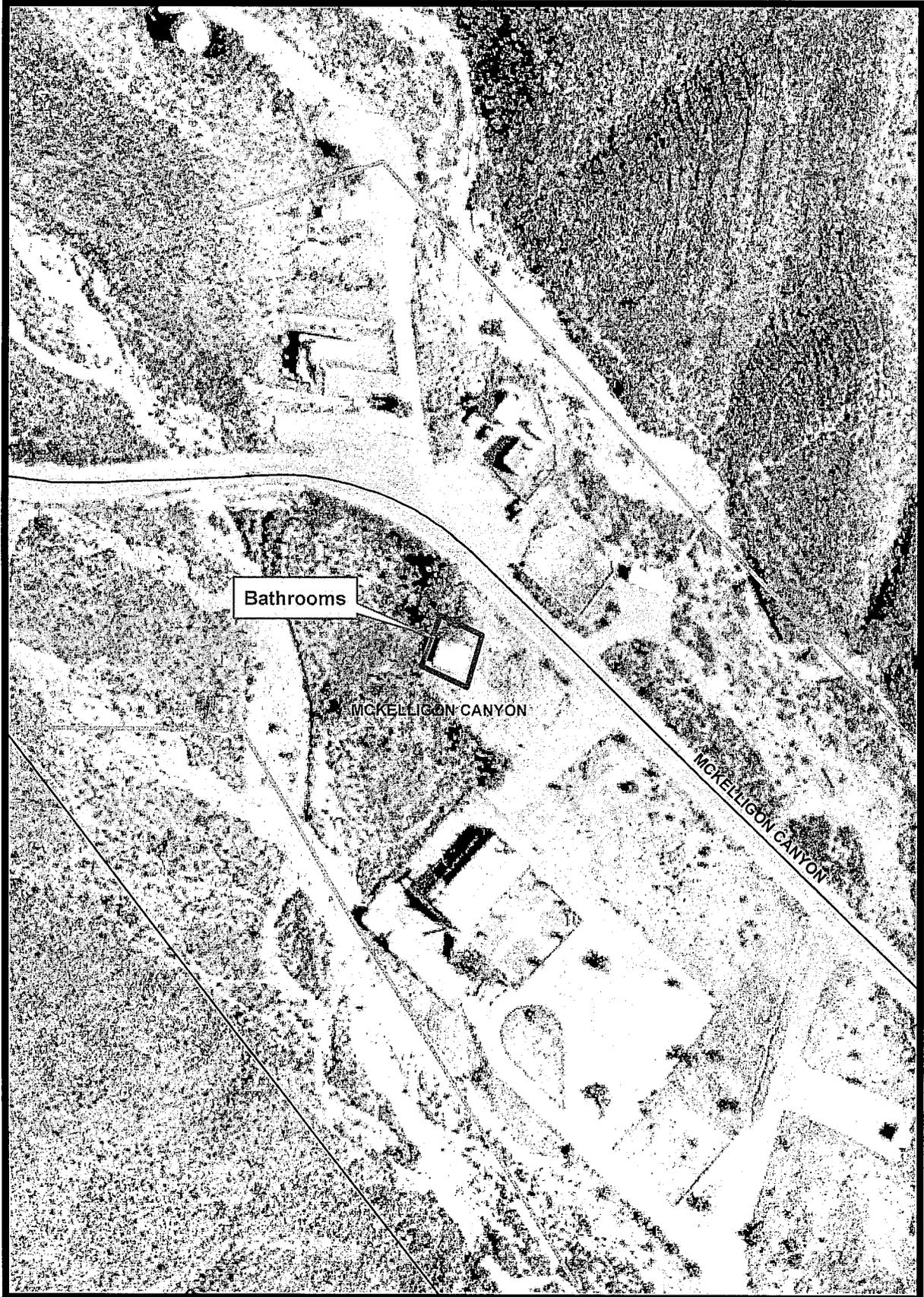
APPROVED AS TO CONTENT:

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Kristen L. Choi  
Assistant City Attorney

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Nanette L. Smejkal, Director  
Parks and Recreation Department



Bathrooms

MCKELLIGON CANYON

MCKELLIGON CANYON