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

DEPARTMENT: **Parks and Recreation**

AGENDA DATE: **March 8, 2011**

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

DISTRICT(S) AFFECTED: **District 6**

SUBJECT:

A Resolution authorizing the City Manager to sign an Interlocal Agreement between the City of El Paso and the Ysleta Independent School District for the development and joint use of recreational improvements to be located on District property located at Escobar Road.

BACKGROUND / DISCUSSION:

Ysleta Independent School District (YISD) has applied to the City for a CDBG grant, to construct a pathway from a residential area through school property and leading to the new elementary school that is being constructed on a portion of Blackie Chesher Park under lease to YISD. The proposed joint park and school site pathway would be available to the residents during all park hours.

The approval of an Interlocal Agreement indicating agreement for use and operations is required prior to the convening of the Community Development steering committee which meets on March 9, 2011 to discuss the available budget for the 37th Year CDBG grants. If YISD does not receive a grant award during the 37th year funding cycle, the Interlocal is simply cancelled with no further obligation by either party.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

CDBG funds, if approved, will pay for the cost of construction. YISD and COEP, through the annual operating budget, will be responsible for the cost of maintenance and operation as indicated by the Interlocal Agreement.

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)

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

Information copy to appropriate Deputy City Manager

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 Ysleta Independent School District (the "District"), for the purpose of the development and joint use of parks and recreational facilities including a public pathway on District lands, with the improvements being a part of a District project funded by a Community Development Block Grant.

PASSED AND APPROVED this _____ day of _____, 2011.

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

#61839 v1 - PARKS/1/YISD SAND BLUFF PEDESTRIAN ROUTE
Document Author: KCHO

STATE OF TEXAS)
) **INTERLOCAL AGREEMENT**
COUNTY OF EL PASO)

THIS INTERLOCAL GOVERNMENTAL AGREEMENT, (Agreement) is entered into this _____ day of _____, 20_____ ("Effective Date") by and between the **CITY OF EL PASO**, a Home Rule municipal corporation operating under the laws of the State of Texas, hereinafter referred to as "CITY," and the **YSLETA INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as "DISTRICT", collectively referred to as "Parties".

WITNESSETH

WHEREAS, the DISTRICT has applied to the CITY for funding available through the Department of Housing and Urban Development (HUD), Community Development Block Grant Program under the Community Development Act of 1974, as amended (CDBG), for construction of a public pathway adjacent to and in conjunction with school facilities and joint use recreational facilities of the Parties; and,

WHEREAS, the DISTRICT understands that all CDBG-funded activities must meet one of the national objectives set forth in Title 24 C.F.R. 570.208 and will be eligible for funding as an "area benefit activity" only if the benefits of the DISTRICT project is made available to all the residents in the particular area containing therein at least 51 percent residents who are low and moderate income persons, as defined by HUD; and,

WHEREAS, the CITY and DISTRICT have previously entered into agreements for Del Valle Elementary School (DVES) to be built on CITY property and for soccer fields to be built on DISTRICT property; and,

WHEREAS, residents and students desiring access to DVES and certain recreational facilities jointly used and maintained by the CITY and the DISTRICT currently lack a safe and efficient non-motorized means of access from the neighborhood to the south of the DISTRICT property; and

WHEREAS, the DISTRICT and the CITY desire to enter into this Interlocal Agreement to provide for a public pathway over the DISTRICT property, which will be made available for the joint use of the DISTRICT and the CITY as a Recreational Facility and to provide access for the students of DVES and the citizens of El Paso to various school and recreational amenities; and,

WHEREAS, the DISTRICT and the CITY are authorized to enter into this Agreement under the provisions of the Texas Government Code Section 791.011.

NOW THEREFORE, BE IT KNOWN THAT THE CITY AND THE DISTRICT HEREBY ENTER INTO THIS INTERLOCAL AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

A. **Description of the Project and Contingent Nature of the Interlocal:**

1. The purpose of this Agreement is for the development and use of a Recreational Facility located on DISTRICT property. The property is being improved for joint use and recreational purposes as part of a DISTRICT project to be funded by the Community Development Block Grant (CDBG) program, if awarded.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN THE EVENT THE DISTRICT IS UNABLE TO OBTAIN FUNDING FOR CONSTRUCTION OF THE DISTRICT PROJECT FROM THE CITY THROUGH ITS CDBG PROGRAM IN THE 37TH YEAR FUNDING CYCLE, AND FULLY EXECUTE ALL DOCUMENTS REQUIRED FOR SUCH FUNDING, INCLUDING A FORGIVABLE LOAN AGREEMENT, THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE WITHOUT ANY FURTHER ACTION REQUIRED AND WITH NO FURTHER OBLIGATIONS OR LIABILITIES EXISTING ON THE PART OF EITHER PARTY HERETO.

B. **Definitions:** For the purposes of this Agreement, the following definitions shall apply:

1. "District Property" shall mean approximately four (4) acres of land, more or less owned by the DISTRICT and identified as the Archaeological Site on Exhibit A, which is attached hereto and incorporated herein by reference.

2. "Recreational Facility" shall mean the footprint of the Public Pathway as shown on Exhibit A, as well as the Public Pathway and its assorted amenities constructed thereon pursuant to this Agreement.

C. **Ownership and Conditions of Use:**

1. Title to the District Property and all improvements thereon, shall at all times remain with the DISTRICT.

2. Except for the joint use rights permitted under this Agreement, the DISTRICT shall have all rights and responsibilities of an owner with respect to the District Property. This includes the operation and maintenance of all unimproved portions of the District Property.

3. Upon completion of construction, the CITY and DISTRICT shall have joint use of the Recreational Facility, which shall normally be open to the public between 6:00 a.m. and 10:00 p.m. MST each day, including weekends and holidays.

D. **District Duties:**

1. The DISTRICT, through its CDBG application, will cause to be constructed on the District Property the following items, including site development work:

a) Public Pathway generally constructed along the route shown on Exhibit A;

b) Lighting along the Public Pathway;

c) Hardscape connections at the base of the entrance to the Public Pathway and at the walkway at the soccer fields;

d) Park rules signs for the Recreational Facility. (minimum of two)

2. Construction of the Public Pathway and improvements listed above shall be completed in compliance with all CITY and HUD requirements for use of CDBG funds, notwithstanding the foregoing.

3. The DISTRICT shall provide construction drawings prepared by an Architect, Landscape Architect or engineer licensed in the State of Texas to the Director of the City Parks Department and Recreation for review, comment and approval prior to the advertisement of bids for the construction of the Recreational Facility. Such approval shall not be unreasonably withheld or delayed by CITY.

4. The DISTRICT agrees to grant to the CITY, its employees, agents and contractors full right of access to the Recreational Facility for all purposes necessary to the fulfillment of this Agreement, to include reasonable inspection. Prior to completion of construction, access will be coordinated with a DISTRICT representative. Such access shall not be unreasonably withheld or delayed by DISTRICT.

5. The DISTRICT shall post signs as part of the project at DISTRICT cost and at locations mutually agreeable to both the DISTRICT and the CITY, containing language substantially similar to the following language as agreed by the Parties prior to opening of Recreational Facility:

Ysleta Independent School District and City of El Paso

Joint Use Public Pathway

Please keep on the Trail

General public admitted 6:00 a.m. to 10:00 p.m.

all days, including weekends and holidays.

Alcoholic beverages, tobacco, and firearms

are not permitted at anytime

E. **City Duties:**

1. Upon completion of the construction of the Recreational Facility, the CITY agrees to be responsible at CITY cost for the following:

a) Operation and routine maintenance of the Recreational Facility. The CITY shall carry out its maintenance and operating obligations in the same manner and standard used for similar CITY parks and recreational amenities;

b) Ongoing provision and cost of electricity and other utilities used in connection with the Recreational Facility;

2. The CITY shall employ the same safety measures and protocols with regard to the Recreational Facility as with its other recreational facilities.

3. The CITY agrees that the use of alcoholic beverages, tobacco, and any prohibited weapons will be prohibited in, on or around the Recreational Facility as provided by Texas law, including but not limited to the Texas Controlled Substances Act, TEX. HEALTH AND SAFETY CODE, Chapter 481, TEX. ALCOHOLIC BEVERAGE CODE, or the TEXAS PENAL CODE, § 46.03 in the same manner and practice as the City prohibits such activities at all other similar locations.

F. **Recreational Facility Replacement:**

The DISTRICT and CITY agree to share equally (50/50) in the cost of repair or replacement of the Public Pathway, or its lighting, and hardscape as necessitated by acts of God, vandalism, or other extraordinary circumstances. DISTRICT shall be responsible for determining methodology for replacement; however, DISTRICT will coordinate any replacements deemed necessary with CITY. Normal use and wear and tear shall be covered under paragraph E.1.a.

G. **Term and Termination:**

1. This Agreement shall be effective upon the Effective Date and shall continue for a term of thirty (30) years.

2. Notwithstanding the foregoing, the DISTRICT understands that if for any reason, the DISTRICT project ceases to exist or fails to meet a national objective, as set forth in Title 24 C.F.R. 570.208, prior to the expiration of the designated reversionary period stated in the Forgivable Loan Agreement (FLA), the DISTRICT must comply with the requirements of related Federal Regulations.

3. Termination for Cause: If either the DISTRICT or the CITY fail to comply with or to perform any material term, obligation, covenant or condition contained in this Agreement, and if either DISTRICT or CITY fail to cure such failure within thirty (30) days after written notice from the other party describing such failure, such failure shall be considered an Event of Default. If such failure cannot be cured within such thirty (30) day period, the non-defaulting party shall have the right, without further notice, to terminate this Agreement. Such termination shall not limit, in any way, the right of either Party to seek damages from or otherwise pursue the defaulting party at law or at equity.

H. **Liability:**

1. This Agreement is not intended to waive, alter or reallocate any defense or immunity available to either party by law. It is expressly understood and agreed that the CITY is not operating, maintaining or otherwise providing school facilities and services, nor is the DISTRICT operating, maintaining or otherwise providing park and recreational facilities and services to the general public.

2. Each party paying for the performance of governmental functions or services hereunder shall make such payments from current revenues available to the paying party, and all obligations entered into by the Parties in the future will be subject to appropriation.

I. **Notices:**

Any notice to be given under this Agreement shall be effective if mailed, postage pre-paid, to the following addresses:

CITY City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: City of El Paso
Attn: Director of Parks & Recreation
2 Civic Center Plaza
El Paso, Texas 79901-1196

DISTRICT Ysleta Independent School District
Attn: Superintendent
9600 Sims
El Paso, Texas 79925

Copy to: Ysleta Independent School District
Attn: Associate Superintendent, Division of Finance
9600 Sims
El Paso, Texas 79925

J. **Authority:**

Each of the signatories hereto expressly warrants that he or she has been duly authorized to sign this Agreement for their principal and to bind their principal.

K. **Compliance with Law:**

The parties hereto agree to comply with all local, state and federal laws, ordinances, regulations and administrative orders.

L. **Entire Agreement:**

This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings whether verbal or written as to the joint use of the Recreational Facility on the District Property. This Agreement may be amended or supplemented only by a written instrument signed by the parties. Notwithstanding the foregoing, nothing in this Agreement shall be construed to bind the DISTRICT to any provisions of any other contractual documents related to the acceptance of CDBG funds, or construction of the Public Walkway. It is agreed that these agreements shall be covered in separate instruments subject to review and revision as agreed prior to execution.

M. **Governing Law:** This Agreement shall be governed in all respects, including effect, validity and interpretation and shall be enforceable in accordance with the laws of the State of Texas. Venue for all matters associated with this Agreement shall be in El Paso County, Texas.

N. **Time of the Essence:**

The parties agree and understand that time is of the essence to this Agreement and to each and every provision hereof.

O. **Severability:**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. This Agreement shall be interpreted so as to effectuate the intent of the parties as expressed herein with the invalid, illegal or unenforceable provision deleted.

P. **Assignability:**

This Agreement, its rights, duties and responsibilities may not be assigned by either party without the prior written consent of the parties themselves.

Q. **Workers:**

Each party agrees that it shall be solely responsible for its own officers, agents and employees while they are at or on the Recreational Facility and none shall be deemed borrowed servants or employees of the other party.

R. **No Third Party Beneficiary:**

This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

S. **No Joint Venture:**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

T. **Approval by Governing Bodies:**

This Agreement has been approved by the Governing bodies of the CITY and of DISTRICT.

(signatures follow on next page)

TO WITNESS WHICH, THE SIGNATURES OF THE PARTIES AND DATE:

YSLETA INDEPENDENT SCHOOL DISTRICT
BOARD OF TRUSTEES

Dr. Michael Zolkoski, Superintendent

DATE: 2/22/11

ATTEST:

Ann Miller, Executive Assistant
Board of Trustees

APPROVED AS TO CONTENT:

Santiago Loredo
Associate Superintendent

APPROVED AS TO FORM:

Attorney for Ysleta ISD

THE CITY OF EL PASO

Joyce A. Wilson, City Manager

DATE: _____

ATTEST:

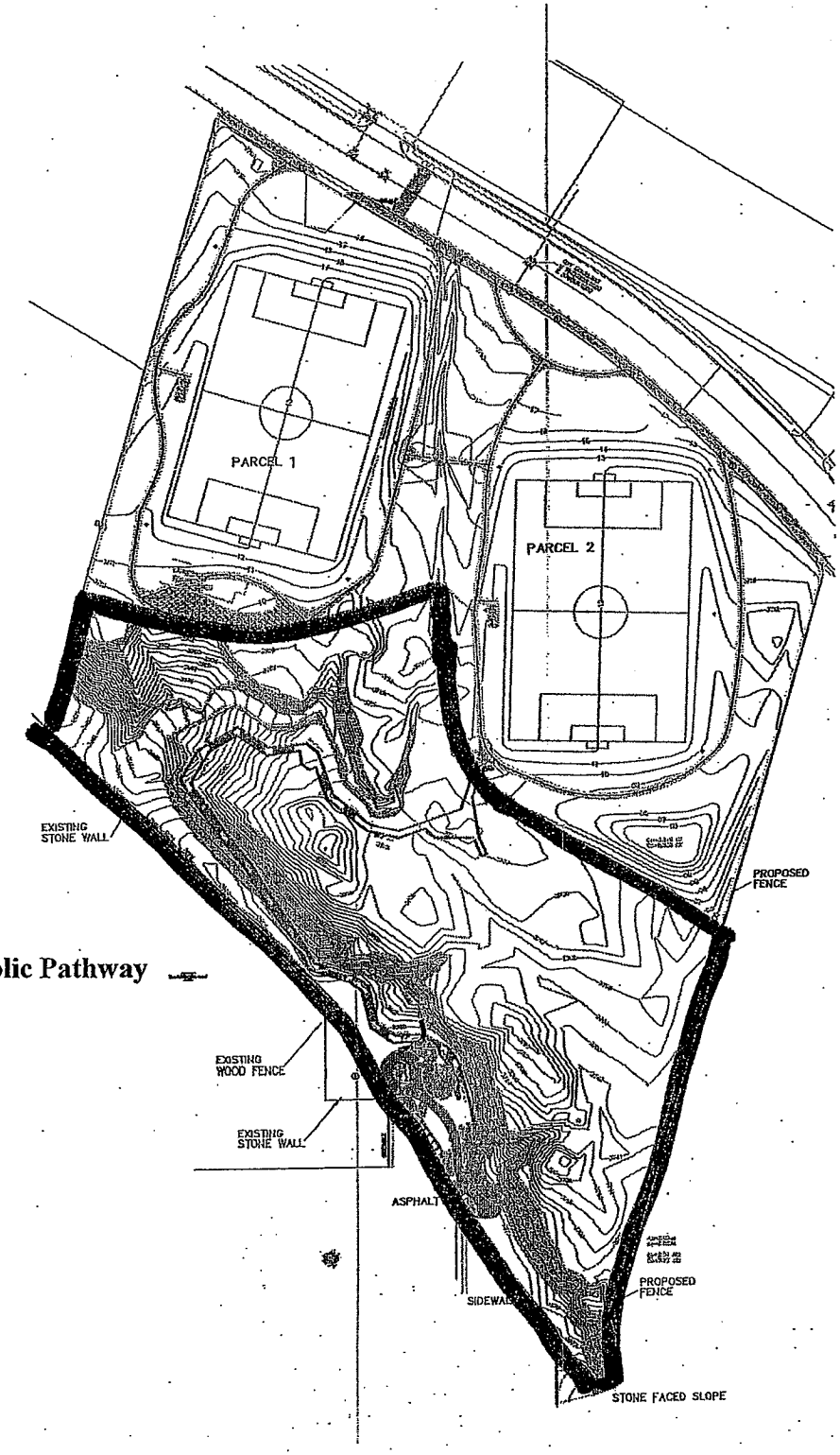
Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

Nanette L. Smejkal, Director
Parks and Recreation Department

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney



Recreational Facility/Public Pathway

Ysleta Independent School District

District Property

Exhibit A