

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

DEPARTMENT: Parks and Recreation
AGENDA DATE: March 23, 2010
CONTACT PERSON /PHONE: Nanette Smejkal, Director (541-4283)
DISTRICT(S) AFFECTED: District 8

SUBJECT:

A Resolution authorizing the City Manager to sign an Interlocal Agreement between the City of El Paso and the El Paso Independent School District for the joint development and use of recreational improvements to be located on the Guillen Middle School campus.

BACKGROUND / DISCUSSION:

El Paso Independent School District (EPISD) has applied to the City for a CDBG grant to improve the track at Guillen Middle School and thus create a joint park and school site that would be available to the residents during non-school hours.

The approval of an Interlocal Agreement, indicating agreement for use and operations, is required prior to March 25, 2010, which is the date the Community Development steering committee will meet to discuss the available budget for the 36th Year CDBG grants. If EPISD does not receive a grant award during the 36th year funding cycle, the Interlocal is simply cancelled with no further obligation by either party.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

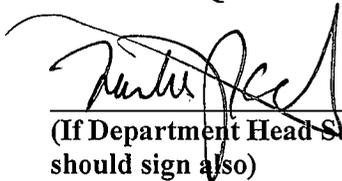
CDBG funds, if approved, will pay for the cost of construction. EPISD and COEP, through the Parks and Recreation annual operating budget, will be responsible for the cost of maintenance and operation as indicated by the Interlocal Agreement.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

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 El Paso Independent School District (the "District"), for the purpose of the development and joint use of parks and recreational facilities including track and field facilities and basketball courts at the joint park site located on Guillen Middle School lands, with the improvements being a part of a District project funded by the Community Development Block Grant.

PASSED AND APPROVED this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

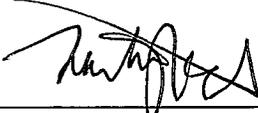
Richarda, Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette L. Smejkal, Director
Parks and Recreation Department

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

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 **EL PASO 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 certain DISTRICT improvements; and,

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

WHEREAS, the DISTRICT agrees to enter into an Interlocal Governmental Agreement with the CITY whereby six (6) acres of land, more or less, will be made available for the joint use of the CITY and the DISTRICT to provide parks and recreational improvements for the use of the students of Guillen Middle School and the citizens of El Paso; and,

WHEREAS, the CITY desires to provide parks and recreational improvements for its citizens, and has recognized the benefit of parks and recreational facilities adjacent to and in conjunction with school facilities; and,

WHEREAS, the DISTRICT desires to join with the CITY for the purpose of enhancing the quality of parks and recreational facilities incident to its school purposes, which serves a governmental function that Parties are authorized to perform; 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; and,

WHEREAS, the CITY and the DISTRICT recognize that an Agreement for the joint development and use of parks and recreational improvements at a joint park and school site to be located on the Guillen Middle School campus in El Paso, El Paso County, Texas would improve the efficiency and effectiveness of their respective local governments;

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

A. **Description of the Project:** The purpose of this Agreement is for the development and use of parks and recreational facilities including track and field and basketball courts at the joint park site located on Guillen Middle School lands. The facilities are being improved or renovated for parks and recreational purposes as part of a DISTRICT project funded by the Community Development Block Grant (CDBG) program through Guillen Middle School of the El Paso Independent School District.

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 36TH YEAR FUNDING CYCLE, AND FULLY EXECUTE 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 the property owned by the District referred to as Guillen Middle School, more particularly identified as "District Property" on the attached and incorporated herein by this reference, Exhibit "A", a portion of which shall be used jointly with the CITY as a recreational facility.

2. "Recreational Facility" shall mean that portion of the District Property that is governed by this Agreement for joint DISTRICT and CITY recreational use, with the respective improvements and which property is also more particularly identified as the "Recreational Facility" on the attached and incorporated herein by this reference Exhibit "A".

C. **Title and Use:**

1. Title to the District Property the subject of this Agreement and all improvements thereon, including fixtures used primarily for school purposes, shall at all times remain with the DISTRICT.

2. The control and use of the Recreational Facility shall be as provided in this Agreement.

3. The DISTRICT shall have the exclusive use of the Recreational Facility during all regular school days between the hours of 6:00 a.m. and 5:00 p.m.; and exclusive use during scheduled school activities. The scheduled school activities will be coordinated with the City prior to the events.

4. The CITY shall have the exclusive use of the Recreational Facility during the days and times that the DISTRICT does not have exclusive use of the Recreational Facility, which shall normally be 5:00 p.m. to 10:00 p.m. on regular school days and 6:00 a.m. to 10:00 p.m. on weekends, holidays, and other non-school days.

5. The DISTRICT shall have exclusive use of the parking areas adjacent to the Recreational Facility at all times except during the time of the City's exclusive use of the Recreational Facility during which the CITY and the DISTRICT will have non-exclusive use of the same. The parking area(s) adjacent to the Recreational Facility shall remain open to the public during the CITY exclusive use hours.

D. **District Duties:**

1. The DISTRICT agrees to cause to be constructed on the property in a good and workmanlike manner the following scope items, to include site development work, in accordance with the site plan as attached and incorporated herein by this reference as Exhibit "A":

a) New 8 lane 400 meter running track with synthetic surface for the RECREATIONAL FACILITY;

b) Basketball courts, goals and nets for the RECREATIONAL FACILITY;

- c) Lighting, including parking areas, for the RECREATIONAL FACILITY;
- d) Sidewalks and ramps for the RECREATIONAL FACILITY;
- e) Stormwater retention pond and other drainage for the RECREATIONAL FACILITY;
- f) Park rules signs for the RECREATIONAL FACILITY.

2. Construction of the parks and recreation improvements listed above shall be completed in accordance with the site plan attached hereto as Exhibit "A" and incorporated herein by this reference for all purposes, and any associated FLA.

3. The DISTRICT shall provide to the Director of the City Parks & Recreation Department, construction drawings prepared by a Landscape Architect or engineer licensed in the State of Texas for review, comment and approval prior to advertising for bid the construction of the Recreational Facility.

4. The DISTRICT hereby grants to the CITY, its employees, agents and contractors full right of access to include reasonable ingress and egress to the Recreational Facility for all purposes necessary to the fulfillment of this Agreement to include reasonable inspection.

5. The DISTRICT shall post signs at DISTRICT cost and at a location mutually agreeable to both the DISTRICT and the CITY, containing the following language:

El Paso Independent School District and City of El Paso
GUILLEN SCHOOL PARK

General public admitted 5:00 p.m. to 10:00 p.m. on school days; 6:00 a.m. to 10:00 p.m. on weekends, holidays and other non-school days. Closed to the general public during school activities. Alcoholic beverages are not permitted at anytime.

6. The DISTRICT shall inspect the RECREATIONAL FACILITY in the same manner as it would those other facilities owned and administered by the DISTRICT.

7. The DISTRICT shall pay the cost of water, electricity, and all other utilities used for the RECREATIONAL FACILITY.

8. Upon completion of construction improvements to the Recreational Facility, the DISTRICT shall maintain the track and field, basketball courts, lighting, sidewalks, retention pond and other drainage of the RECREATIONAL FACILITY in a safe and good condition at all times.

E. **City Duties:**

1. During its use time, the CITY shall administer the RECREATIONAL FACILITY for public use and for CITY programming in the same manner as the CITY presently administers other park and recreational facilities.

2. The City agrees to not permit the consumption or possession of alcoholic beverages in or about the Recreational Facility.

F. Recreational Facility Replacement:

1. The CITY agrees to equally share (50/50) with the DISTRICT the cost of running track, basketball courts, lighting, sidewalk, ramp, retention pond and drainage replacements for repairs necessitated by Acts of God, vandalism, or other extraordinary circumstances.

2. The DISTRICT shall be fully responsible for the cost of running track, basketball courts, lighting, sidewalk, ramp, retention pond and drainage replacements as required due to normal use and wear and tear.

G. Term and Termination:

1. This Agreement shall be effective upon the effective date which shall be upon the execution of the last party to be affected and shall be for a primary term of fifteen (15) years from that date and shall automatically be extended for additional one (1) year periods unless terminated as hereinafter provided, or until April 2040, when this agreement shall terminate. The DISTRICT or the CITY may terminate this Agreement at its sole discretion upon thirty (30) days written notice to the other.

2. Notwithstanding the foregoing, the DISTRICT acknowledges and 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 pay to the CITY an amount equal to the current market value of the improvements funded hereunder less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition or improvement to the property.

3. Termination for Cause: Failure of the DISTRICT or the CITY to comply with or to perform any material term, obligation, covenant or condition contained in this Agreement and if DISTRICT or the CITY fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure

cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if DISTRICT or the CITY also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default. If any event of default shall occur, and after the non-defaulting party fails to cure same in accordance herewith, then this Agreement may be terminated at that time. If a default has not been cured within the time frame stated herein, the defaulting party shall have all rights and remedies under the law or in equity.

H. **Liability:**

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

Each party paying for the performance of governmental functions or services hereunder shall make such payments from current revenues available to the paying party.

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

Copy to: City of El Paso
 Attn: Director of Community Development
 2 Civic Center Plaza
 El Paso, Texas 79901-1196

DISTRICT El Paso Independent School District
 Attn: Superintendent
 PO Box 20100
 El Paso, Texas 79998

Copy to: El Paso Independent School District
Attn: Associate Superintendent for Operations
PO Box 20100
El Paso, Texas 79998

J. **Authority:**

Each of the signatories hereto expressly warrant 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/ Governing Law:**

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. 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.

M. **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.

N. **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.

O. **Assignability:**

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

P. **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.

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

EL PASO INDEPENDENT SCHOOL DISTRICT
BOARD OF TRUSTEES

THE CITY OF EL PASO



Patricia Hughes, President

Joyce A. Wilson, City Manager

DATE: _____

DATE: _____

ATTEST:

ATTEST:

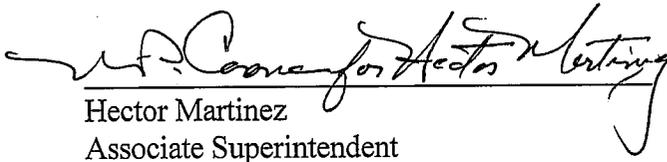


Lisa Colquitt-Munoz, Secretary

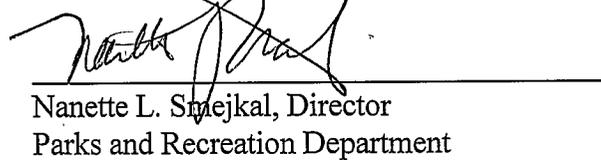
Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

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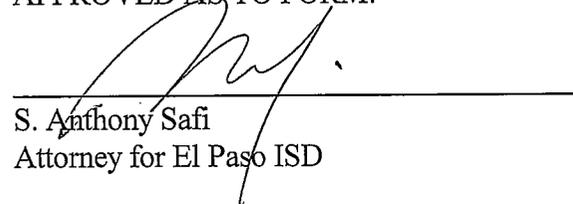
Hector Martinez
Associate Superintendent



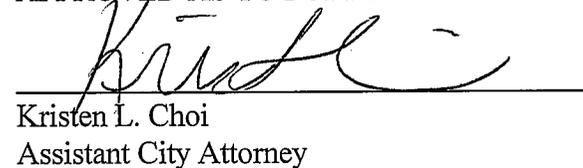
Nanette L. Smejkal, Director
Parks and Recreation Department

APPROVED AS TO FORM:

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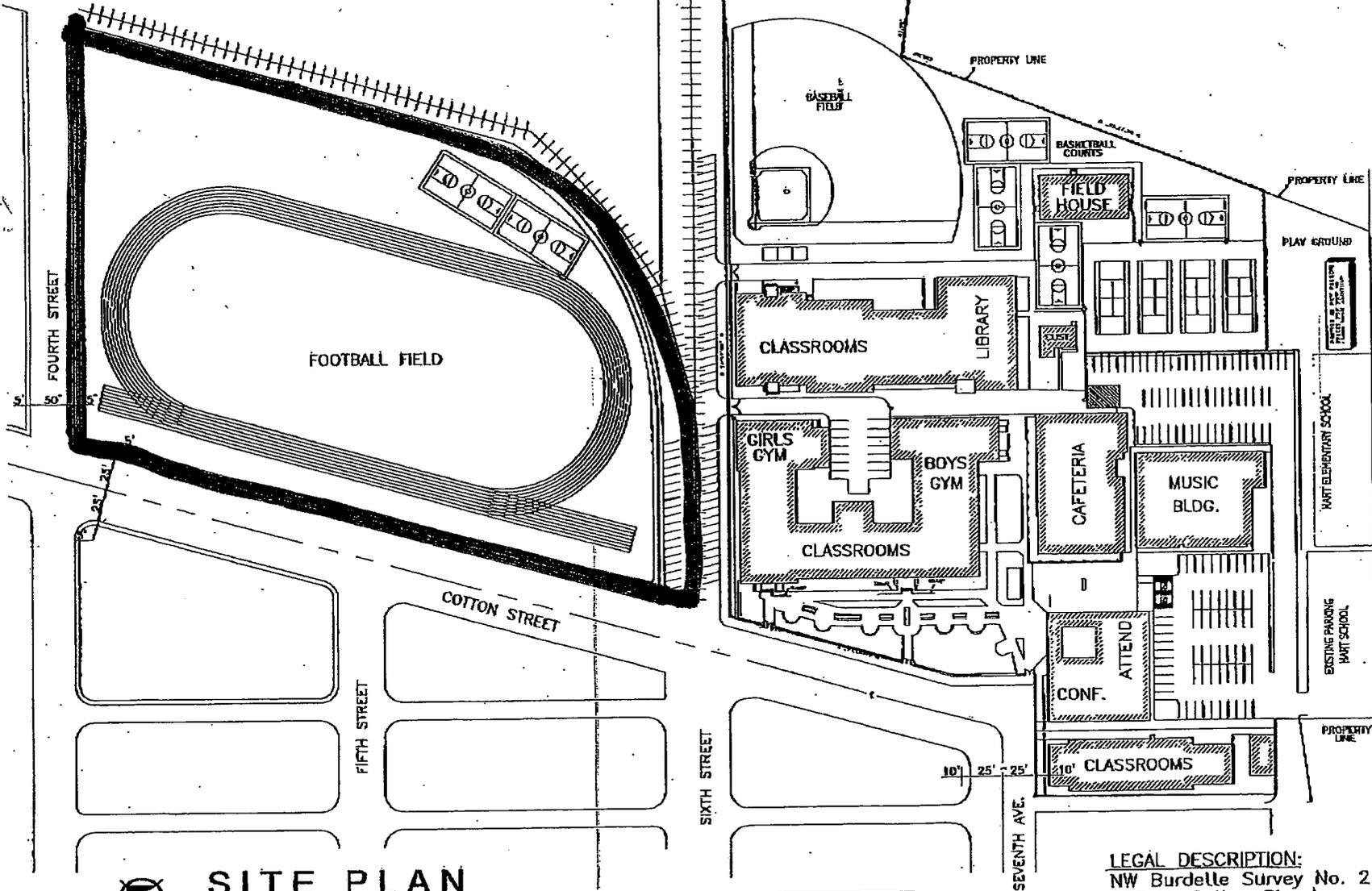


S. Anthony Safi
Attorney for El Paso ISD



Kristen L. Choi
Assistant City Attorney

NOTE: ALL DIMENSIONS ARE TAKEN FROM FACE OF CURB TO FACE OF CURB AND FROM FACE OF CURB TO EDGE OF SIDEWALK.



SITE PLAN

GUILLEN MIDDLE SCHOOL

LEGAL DESCRIPTION:
NW Burdette Survey No. 2,
900 S. Cotton Street