

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

**DEPARTMENT:** STREET

**AGENDA DATE:** MARCH 23, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** DARYL COLE 621-6750

**DISTRICT(S) AFFECTED:** D-4

**SUBJECT:** That the Mayor be authorized to sign an Interlocal Cooperation Agreement by and between the City of El Paso ("City") and the El Paso County Community College District ("EPCC") allowing the City facilitate certain sidewalk improvements along part of the EPCC Transmountain campus perimeter in exchange for EPCC's payment for the full cost of those improvements.

**BACKGROUND / DISCUSSION:** As per attached interlocal cooperation agreement.

**PRIOR COUNCIL ACTION:** N/A

**AMOUNT AND SOURCE OF FUNDING:** N/A

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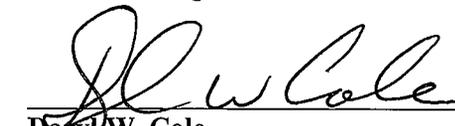
**BOARD / COMMISSION ACTION:** None

Enter appropriate comments or N/A

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

**DEPARTMENT HEAD:**

  
Daryl W. Cole  
Streets Director

**Cc:** Jane Shang, Deputy City Manager, Mobility Services

# RESOLUTION

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

THAT the Mayor be authorized to sign an Interlocal Cooperation Agreement by and between the City of El Paso ("City") and the El Paso County Community College District ("EPCC") allowing the City to facilitate certain sidewalk improvements along part of the EPCC Transmountain campus perimeter in exchange for EPCC's payment for the full cost of those improvements.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2010.

CITY OF EL PASO

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John F. Cook  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Daryl W. Cole, Director  
Streets Department

STATE OF TEXAS           §  
  §           **INTERLOCAL COOPERATION AGREEMENT**  
COUNTY OF EL PASO   §

This Interlocal Cooperation Agreement (the "Agreement") is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of El Paso, a home rule municipal corporation (the "City") and El Paso County Community College District ("EPCC").

**WHEREAS**, in order to facilitate certain sidewalk improvements along part of its Transmountain campus perimeter, EPCC wishes to fund said improvements; and

**WHEREAS**, the City is willing to accept said EPCC funding in order to contract with a service provider and oversee the work on said improvements at no cost to the City; and

**WHEREAS**, the Mayor and City Council recognize that said funding and improvements would serve the public purpose and governmental purpose of providing safety and quality of life benefits to the citizens of El Paso; and

**WHEREAS**, the City and EPCC are authorized to enter into this Agreement under the provisions of Chapter 791, Texas Government Code; and

**NOW, THEREFORE, THE CITY AND EPCC HEREBY ENTER INTO THIS INTERLOCAL COOPERATION AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:**

1.     Scope of Work. The City agrees to contract with one or more service providers for the construction and installation of a sidewalk along Kenworthy Drive from Cohen Stadium's southern property line to Diana Drive; and then along Diana Drive from Kenworthy Drive to Gateway North along EPCC southern property line, as illustrated on Attachment "A". The City agrees to oversee said sidewalk improvement work and to duly notify EPCC in writing of the project's completion. EPCC shall not be responsible for any part of the sidewalk improvement project during the construction and installation phase.

2.     Consideration. EPCC agrees to pay to the City NINETY THOUSAND SIX HUNDRED TWENTY FOUR DOLLARS AND NO/100 (\$ 90,624.00), which is the amount for the labor, materials and installation of said sidewalk improvements and is further detailed on Attachment "B". Prior to the construction and installation phase, EPCC shall solely be responsible for the monetary amount stated herein, with FORTY-FIVE THOUSAND THREE HUNDRED TWELVE DOLLARS AND NO/100 (\$45,312.00) being due and payable by EPCC to the City on or before 30 days following City Council approval of this Agreement and the remaining FORTY-FIVE THOUSAND THREE HUNDRED TWELVE DOLLARS AND NO/100 (\$45,312.00) being due and payable by EPCC to the City on or before 30 days after the project's completion. Upon receipt of EPCC's second and final payment described in this paragraph, the City shall verify to EPCC whether the entire amount paid by EPCC to the City for this project was utilized for the project's completion. In the event the entire amount paid by EPCC to the City for this project was not utilized for the project's completion, the City shall refund EPCC an

amount reflecting the unused funds which shall not exceed 10% of EPCC's total payment within 30 days of EPCC's second and final payment.

3. Maintenance. Once installation of said sidewalk improvement is complete, EPCC shall maintain the sidewalk in accordance with City Code Subsection 13.04.050. The City shall not have any future maintenance responsibility for said completed sidewalk improvements. Acceptance of sidewalk maintenance in this Agreement in no way constitutes a waiver of any immunity or other protections available to EPCC under the laws of the State of Texas.

4. Independent Contractors. The City and EPCC are independent of one another; there is no landlord-tenant, employer-employee, or principal-agent relationship.

5. Termination and Notice. This Agreement is terminable by either party after thirty (30) days written notice to the other party, via certified mail, return receipt requested. All notices, communications, and reports under this Agreement shall be either hand delivered, faxed or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: City of El Paso  
Attention: Office of the City Manager  
Two Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901-1196

COPY TO: City of El Paso  
Department of Streets  
Attention: Director  
7968 San Paulo Dr.  
El Paso, Texas 79907

EPCC: El Paso Community College  
Attention: President  
P.O. Box 20500  
El Paso, Texas 79998-0500

6. Risk Allocation – Limitation of Liability

6.1 Limitation of Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Furthermore, **IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR**

**RIGHTS CLAIMED BY THE OTHER PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE BY THE ONE PARTY TO THE OTHER PARTY UNDER THE TERMS OF THIS AGREEMENT.**

6.2 Intentional Risk Allocation. The City and EPCC each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

6.3 No Indemnification. The Parties expressly agree that neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

7. Governmental Function and Immunity. Neither party waives sovereign immunity and similar rights or any protection available to them under the Texas Tort Claims Act. The parties expressly agree that every act or omission of the parties, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function as defined by the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

## 8. General Provisions

8.1 Governing Law; Venue. This Agreement has been made in and shall be construed 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, and EPCC Board Policies. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

8.2 Compliance with Law. EPCC shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

8.3 Assignment; Amendment. The duties of either party to this Agreement cannot be assigned, delegated or amended without the prior written consent of the other party.

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 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.

8.6 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of EPCC warrants that he/she has the authority to do so and to bind EPCC to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF EL PASO**

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

**ATTEST:**

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

**EL PASO COUNTY COMMUNITY  
COLLEGE DISTRICT**

  
\_\_\_\_\_  
Richard M. Rhodes, President  
El Paso Community College

**APPROVED AS TO FORM:**

  
\_\_\_\_\_

Edward W. Dunbar  
Attorney for EPCC

**APPROVED AS TO FORM:**



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Josette Flores  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

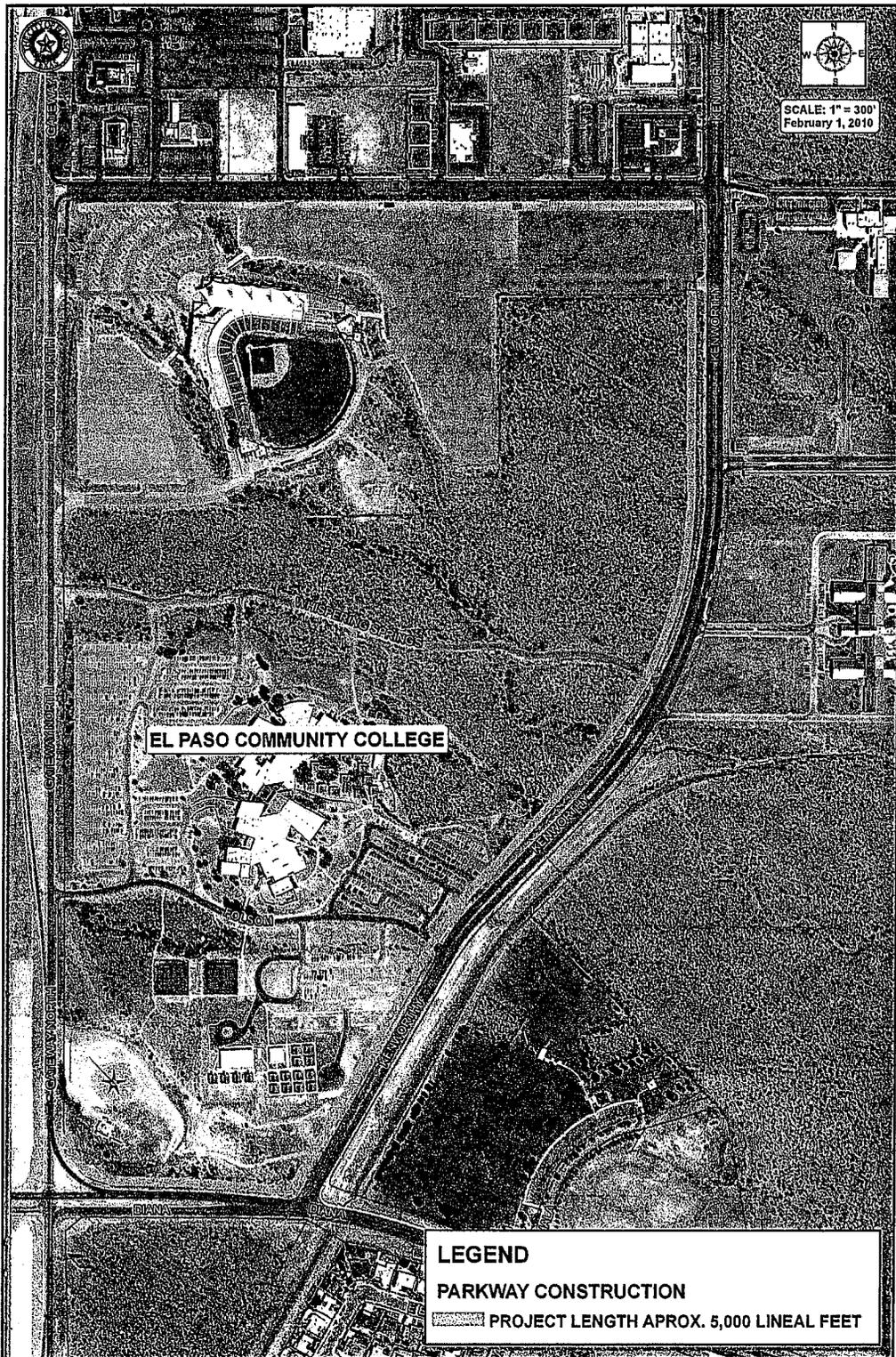


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Daryl W. Cole, Director  
Department of Streets

# ATTACHMENT “A”

ATTACHMENT "A"



# ATTACHMENT "B"

## Kenworthy Drive Parkway Improvements along EPCC Frontage

Scope: Parkway improvements placement of sidewalk along Kenworthy Drive from southern most Cohen Stadium Property line to Diana Drive and along Diana Drive from Kenworthy Drive to Gateway North (approx. 4500 lineal feet).

NO.	ITEM	QUANTITY	U/M	UNIT RATE	EXT. COST
1	Sidewalk Placement	45000	SF	\$1.20	\$54,000
2	Ramp Placement	200	SF	\$6.00	\$1,200
3	ADA Tiles	40	SF	\$22.00	\$880
4	Stem wall placement	80	SF	\$8.00	\$640
5	Backfill material	240	CY	\$70.00	\$16,800
6	Handrail	100	LF	\$20.00	\$2,000
7					\$0
8					\$0
9					\$0
<b>CONSTRUCTION TOTAL</b>					<b>\$75,520</b>

DESIGN	\$	75,520		0%	\$0
PROJECT/CONSTRUCTION MANAGEMENT	\$	75,520		0%	\$0
TESTING AND INSPECTION	\$	75,520		10%	\$7,552
CONTINGENCY	\$	75,520		10%	\$7,552

**DESIGN/PM TOTAL \$15,104**

**PROJECT TOTAL \$90,624**

**Notes**

1 Sidewalk to be 10 feet wide.