

Agenda Item Form

Agenda Date: 8/3/04

Districts Affected: **1**

Dept. Head/Contact Information: Juan Contreras, Program Manager - 2000 QOL Bond Program

Type of Agenda Item:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- General Fund
 Grant (duration of funds: _____ Months)
 Other Source: 2000 Quality Of Life Bond Program

Legal:

X Legal Review Required Attorney Assigned (please scroll down): John Nance Approved Denied

Timeline Priority: High Medium Low # of days: _____

Why is this item necessary:

That the Mayor be authorized to sign the Interlocal Agreement with El Paso County Community College District (EPCC) and Canutillo Independent School District (CISD) providing for access by the City, during grading and construction, to the proposed site of the Westside Sports Complex, to be located on a portion of Tract 1A, Nellie Mundy Survey No. 240, El Paso, El Paso County, Texas.

Interlocal Agreement for Westside Sports Complex: The interlocal agreement is required to provide construction access to the Westside Sports Complex site until the EPCC and CISD complete and dedicate a four lane road to the City which will serve as the primary access road to the sports complex. The Westside Sports Complex is located west of the EPCC Northwest Campus and the CISD high school under construction at I-10 / Transmountain Road. The sports complex has a \$5,800,000 program budget, will be developed on 35 acres of land purchased from PSB and will have a mix of sports fields.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
None

Statutory or Citizen Concerns:
None

Departmental Concerns:
None

RESOLUTION

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

That the Mayor be authorized to sign the Interlocal Agreement with El Paso County Community College District and Canutillo Independent School District providing for access by the City, during grading and construction, to the proposed site of the Westside Sports Complex, to be located on a portion of Tract 1A, Nellie Mundy Survey No. 240, El Paso, El Paso County, Texas.

ADOPTED this 3rd day of August, 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

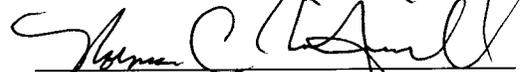
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director
Parks and Recreation Department

of the Parties shall attempt to assert, the authority to make commitments for or to bind another Party to any obligation.

ARTICLE TWO

Scope of Agreement and Consideration

CISD and EPCC intend to dedicate the Roadway, by metes and bounds, as public right-of-way; to bear the costs of and to provide improvements to the Roadway to meet public street standards; and to tender the improved Roadway to the City for acceptance for maintenance. During the term hereof, CISD and EPCC agree to permit use by the City, its employees, contractors, and agents of the Roadway for purposes of ingress to and egress from the Complex for that period of time prior to acceptance of the Roadway for maintenance by the City as a City street. CISD and EPCC further agree to coordinate with the City for the installation, at no cost to CISD and EPCC, of utilities within the right-of-way of the Roadway; provided, however, that the costs of the design and installation of a fiber optic cable beneath the Roadway connecting CISD and EPCC shall be borne by CISD. In consideration of the grant of access made by CISD and EPCC, together with coordination of utilities, the City agrees that it will provide to CISD and EPCC joint use of the City's facilities at the Complex, pursuant to the terms of an agreement to be negotiated among the Parties. It is the City's intent to follow its customary practice for utilizing the Architect and Engineer selection process, obtaining a design for the Complex, requesting bids, and awarding a contract for construction of the improvements for the Complex. Completion of the Complex is currently estimated to occur in late 2007. Further, the City will use its best efforts, in accordance with applicable law, to obtain voter approval of bond financing to secure additional City-street access to the Complex from a proposed extension of Loop 375 that will enable CISD and EPCC, at no cost to CISD and EPCC, to expand access to their respective campuses, as well.

ARTICLE THREE

Compliance with Laws

The Parties shall comply with all applicable laws in performance of their obligations under this Agreement.

ARTICLE FOUR

Risk Allocation - Limitation of Liability

4.1 *No Indemnification.* The Parties expressly agree that no Party shall have the right to seek indemnification or contribution from any other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

4.2 *Governmental Function.* The Parties expressly agree that, in all things relating to this Agreement, CISD, EPCC, and the City are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or

omission of CISD, EPCC, or the City which, in any way, pertains to or arises out of to this Agreement falls within the definition of governmental function.

4.3 *Exclusion of Incidental and Consequential Damages.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, no Party shall be liable to another 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, or other economic damage, and further including injury to property, 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 in Section 4.4 below. No Party hereto shall be liable to another Party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other Party regardless of whether the Party receiving said information from the other Party was advised, had other reason to know, or in fact knew thereof.

4.4 *Maximum Aggregate Liability.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY TO ANOTHER 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 UNDER THE TERMS OF THIS AGREEMENT.**

4.5 *Intentional Risk Allocation.* CISD, EPCC, and the City 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.

4.6 *Sovereign Immunity.* CISD, EPCC, and the City reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under 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.

ARTICLE FIVE

Term and Termination

5.1 *Term.* The Term of this Agreement shall be for an initial term of two (2) year from the Effective Date.

5.2 *Termination.* This Agreement shall continue in effect from year to year following the initial term; provided, however, that any Party may terminate this Agreement for any reason, or for no reason whatsoever, by giving written notice of intention to terminate to the other Parties no less than 30 days prior to expiration date of the initial term or any subsequent anniversary of the initial term, and provided, further that this Agreement shall terminate immediately upon the occurrence of either of the following events: (i) the acceptance of the Roadway for maintenance by the City as a City street, or (ii) the failure of the City to acquire from the El Paso Water Utilities Public Service Board the tract of land designated herein as the proposed site for the Complex.

ARTICLE SIX

General Terms and Conditions

6.1 *Amendment.* No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of the Parties.

6.2 *Effect of Partial Invalidity.* If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then:

- (a) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected;
- (b) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling;
- (c) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein; and
- (d) if the ruling, and/or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

6.3 *No Waiver.* The failure of any Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by a Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

6.4 *Binding on Successors.* This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns permitted by this Agreement.

6.5 *Section Headings.* The article headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

6.6 *Representation of Counsel; Mutual Negotiation.* Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to either Party.

6.7 *Counterparts.* This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. The Parties stipulate that a photostatic copy of an executed original will be admissible in evidence for all purposes in any proceeding as between the Parties.

Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Schedules and Exhibits); understands its terms; is duly authorized to execute this Agreement on behalf of the Party indicated below by his or her name; and agrees on behalf of such Party that such Party will be bound by those terms.

6.8 *Notices.* Notices required herein shall be sent, postage prepaid, to the following:

City: City of El Paso
Attn: Mayor
2 Civic Center Plaza
El Paso, Texas 79901

CISD: Canutillo Independent School District
Attn: John P. Kessinger, Ed.D.
P.O. Box 100
Canutillo, Texas 79835

EPCC: El Paso Community College
Attn: Tim Nugent, Vice President
P.O. Box 20500
El Paso, Texas 79998-0500

EXECUTED this 3RD day of AUGUST, 2004 ("Effective Date").

(Signatures continued on following page)

ATTEST:

CITY OF EL PASO

Richarda Duffy Momsen
City Clerk

Joe Wardy, Mayor

APPROVED AS TO FORM:

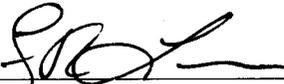
APPROVED AS TO CONTENT:


John F. Nance
Assistant City Attorney

Norman C. Merrifield, Ed.D.
Director
Parks and Recreation Department

ATTEST:

CANUTILLO INDEPENDENT SCHOOL
DISTRICT:

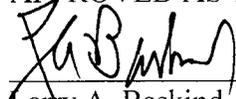
By 

Frank Lerma
Secretary

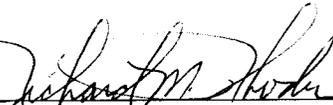
By 

José Villarreal
President

APPROVED AS TO FORM:

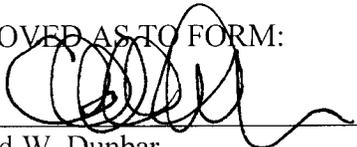

Larry A. Baskind
Attorney

EL PASO COUNTY COMMUNITY
COLLEGE DISTRICT:

By: 

Richard M. Rhodes, Ph.D.
President of the College

APPROVED AS TO FORM:


Edward W. Dunbar
Attorney