

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

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: September 14, 2010

CONTACT PERSON NAME AND PHONE NUMBER:
Victor Morrison-Vega, Deputy Director
(915) 541-4556

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve an Interlocal Agreement between the City of El Paso and the Clint Independent School District whereby the City will provide plan review and inspection services to the district for the construction of the new Clint High School to be located at 13890 Alameda Avenue, El Paso County, Texas 79836.

BACKGROUND / DISCUSSION:

Texas Government Code Chapter 791 authorizes local governments and political subdivisions to contract with each other to perform governmental services.

Texas Administrative Code, Chapter 61.1036 (School Facilities Standards for Construction) requires that a school district located in an area that has not adopted local building codes, adopt and use the building codes from the latest edition of the family of International Codes as published by the International Code Council (ICC) and retain qualified, independent third party review of its plans and specifications for all new construction. Clint ISD desires to retain the services of the City of El Paso for its required plan review and inspections.

PRIOR COUNCIL ACTION:

No previous council consideration or action on this item.

AMOUNT AND SOURCE OF FUNDING:

Clint Independent School District shall pay the required permit and inspection fees as outlined in the 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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO, TEXAS:

That the City Manager be authorized to sign an Interlocal Agreement by and between the **CITY OF EL PASO** (City) and **CLINT INDEPENDENT SCHOOL DISTRICT** (Clint ISD) whereby the City shall perform plan review and inspections services for Clint ISD for the construction of the new Clint High School.

ADOPTED this _____ day of _____, 2010.

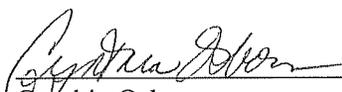
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is entered into this _____ day of _____ 2010, by and between the **CITY OF EL PASO** (the "City") and the **CLINT INDEPENDENT SCHOOL DISTRICT** ("Clint ISD").

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the City and Clint ISD, to contract with each other to perform governmental functions and services; and

WHEREAS, the Board of Trustees for Clint ISD has approved construction for a new Clint High School to be located at 13890 Alameda Avenue, El Paso County, Texas 79836; and

WHEREAS, in reference to the construction of new facilities, the Texas Administrative Code, Chapter 61.1036 School Facilities Standards for Construction on or after January 1, 2004, requires that a school district located in an area that has not adopted local building codes, shall adopt and use the building codes from the latest edition of the family of International Codes as published by the International Code Council ("ICC"), or in the alternative, a school district may adopt and use the building codes of a nearby municipality or county; and

WHEREAS, the County of El Paso has not adopted local building codes; and

WHEREAS, Clint ISD has adopted the 2009 building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as published by the ICC and the 2008 National Electric Code as published by the National Fire Protection Association ("NFPA"); and

WHEREAS, the Texas Administrative Code, Chapter 61.1036, further requires that a qualified, independent third party, not employed by the design architect or engineer, shall review the district's plans and specifications for compliance with the requirements of the adopted building codes; and

WHEREAS, the City and Clint ISD believe that a cooperative agreement between the parties whereby City inspectors, as qualified, independent third parties, shall review the plans and specifications for compliance with the requirements of the adopted building codes, will provide a mutual benefit to those persons served by the parties and serve the governmental purpose of enhancing the public health, safety and welfare; and

WHEREAS, the City and Clint ISD have each entered into this Agreement by the action of their respective governing bodies in the appropriate manner prescribed by law.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

**SECTION I
SCOPE OF SERVICES**

1.1 Responsibilities of the City.

The City hereby agrees to conduct plan review and inspection services for the construction of the new Clint High School to be located at 13890 Alameda Avenue, El Paso County, Texas 79836.

A. Plan Review Services.

Qualified building code inspectors shall review the plans and specifications for compliance with the requirements of the 2009 family of International Codes as published by the ICC, subject to the exception noted below, and the National Electric Code as published by the NFPA ("the codes"). The plan review shall examine compliance conditions for emergency egress, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction.

The reviewers shall prepare a summary list of any conditions not in conformance with the provisions of the codes and shall send a copy to the school district, design architect or engineer.

The design architect or engineer shall revise the plans and specifications as necessary prior to the issuance of a permit.

A qualified building code inspector is a person who maintains, as a minimum, a current certification from the ICC.

Conditions not in conformance with the provisions of the City of El Paso Building Codes will be brought to the attention of the school district and design architect or engineer through plan review comments.

The plan review by the City shall not include plan review for compliance with the International Fire Code. It is understood by the City that Clint ISD has retained the services of Emergency Service District #2 for that plan review.

B. Inspection Services.

Qualified building code inspectors shall perform a maximum of two inspections per trade, per week, during regular business hours, for the term of this agreement, for compliance with the requirements the codes, subject to the exceptions noted below. The inspections shall examine compliance conditions for emergency egress, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design.

The reviewers shall prepare a summary list of any conditions not in conformance with the provisions of the codes and shall send a copy to the school district and the school district's contractor.

Conditions not in conformance with the provisions of the codes, shall be brought into compliance prior to passing inspection.

A qualified building code inspector is a person who maintains, as a minimum, a current certification from the ICC.

The City shall not perform any inspections required by the International Fire Code. It is understood by the City that Clint ISD has retained the services of Emergency Service District #2 for those inspections.

The City shall not perform any inspections that may be required by the County Health Code.

The City shall not perform any inspections that may be required by the El Paso City Code pursuant to Chapter 15.20 Stormwater Management, Chapter 18.44 Grading, Chapter 18.46 Landscape, Chapter 18.47 Irrigation Systems, Chapter 19.19 Stormwater Management Requirements, Chapter 20.18 Sign Regulations, or Title 20 Zoning.

1.2 Responsibilities of Clint ISD.

Clint ISD hereby agrees to the following in conjunction with the plan review and inspection services to be provided by the City for the construction of the new Clint High School to be located at 13890 Alameda Avenue, El Paso County, Texas 79836.

A. Clint ISD shall pay the required fee of **SEVENTY FIVE THOUSAND TWO HUNDRED TWO AND 45/100 DOLLARS (\$75,202.45)** for the plan review, any review of plan revisions, and the twice weekly inspections to be performed during regular business hours during the term of the agreement. The fee shall be paid at the time the permit is issued.

B. Additional inspections will result in additional fees as follows, which shall be paid at the time of the request for additional inspection:

- a. Additional inspection, regular business hours, \$72.00 per hour, plus travel time.
- b. After hours or weekend inspection, \$150.00 per hour, plus travel time.

C. After hour inspections, weekend inspections, and re-inspections, and any inspections required during option period, must be scheduled 24 hours in advance.

D. Clint ISD, through its Contractor, shall provide access to the facility to be inspected and a contact person on site, for all inspections. Any re-inspection required as a result of lack of access to the facility or lack of contact person required for inspection, shall result in an additional fee.

E. Clint ISD shall comply with the provisions of the codes as interpreted by the qualified building code inspectors from the City.

SECTION II TERM

2.1 The initial term of this Agreement shall be Eighteen (18) months from the date this Agreement is fully executed, subject to the termination provisions noted herein. In addition to

the initial term, Clint ISD shall have two (2) six month options to extend this Agreement. Clint ISD may exercise either option to extend by notifying the City in writing of Clint ISD's election at least thirty (30) days prior to the expiration of the prior term. In the event either option to extend is so exercised, this Agreement shall be extended on the same terms and conditions as noted herein, subject to any applicable amendments.

SECTION III TERMINATION

3.1 If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least **thirty (30) days** in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the thirty-first (31st) day after receipt of such notice. Such termination shall result in a reimbursement to Clint ISD of the unused portion of the required fee set forth above, paid by Clint ISD to the City.

SECTION IV CONTRACTUAL RELATIONSHIP.

4.1 The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

4.2 Clint ISD acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind Clint ISD to any obligation other than the obligations set forth in this Agreement.

SECTION V RISK ALLOCATION – LIMITATION OF LIABILITY

5.1 Liability.

This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.2 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, 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. Neither party hereto shall be liable to the other 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.

5.3 Intentional Risk Allocation.

The City and Clint ISD 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.

5.4 No Indemnification.

The parties expressly agree that, except as provided herein, 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.

5.5 Fines and Penalties.

Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

**SECTION VI
GOVERNMENTAL FUNCTION AND IMMUNITY.**

6.1 Governmental Function.

The parties expressly agree that, in all things relating to this Agreement, the City and Clint ISD enter into this Agreement for the purpose of performing a governmental function and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

6.2 Sovereign Immunity.

The City and the County 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. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

**SECTION VII
GENERAL PROVISIONS**

7.1 Compliance with Laws.

The City and Clint ISD shall comply with all applicable local, state, and federal laws in performance of their obligations under this Agreement.

7.2 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.

7.3 Amendment/Assignment.

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

7.4 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.

7.5 Venue.

The Parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in El Paso County, Texas.

7.6 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.

7.7 Section Headings.

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

7.8 Current Revenues.

Pursuant to Texas Government Code §791.011(d)(3), each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

7.9 Notices.

All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: City Clerk Copy to: Director
City of El Paso Development Services Department
2 Civic Center Plaza 2 Civic Center Plaza, 5th Floor
El Paso, Texas 79901 El Paso, Texas 79901

Clint ISD: Mr. James R. Pendell
President, Board of Trustee
Clint Independent School District
14521 Horizon Boulevard
El Paso, Texas 79928

Architect: Mijares Mora Architects
111 N. Festival Dr.
El Paso, Texas 79912

Contractor: CF Jordan Construction LLC
7700 CF Jordan Dr.
El Paso, Texas 79912

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

7.10 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 any party.

7.11 Execution and Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

7.12 Warranty of Capacity to Execute Contract.

The person signing this Agreement on behalf of the County warrants that he/she has the authority to do so and to bind the County to this Agreement and all the terms and conditions contained herein.

(Signatures begin on following page)

EXECUTED this _____ day of _____ 2010.

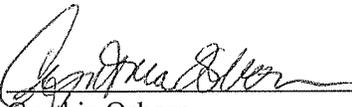
CITY OF EL PASO

Joyce A. Wilson
City Manager

ATTEST:

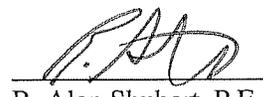
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.
City Engineer

(Signatures continue on following page)

EXECUTED this 18 day of August 2010.

**CLINT INDEPENDENT SCHOOL
DISTRICT**



James R. Pendell, President
Board of Trustees