

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

DEPARTMENT: Parks and Recreation

AGENDA DATE: May 15, 2018

CONTACT PERSON/PHONE: Tracy Novak, Director (212-1708)

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL:

Goal 4 – Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

SUBJECT:

A Resolution that the Mayor be authorized to sign an Interlocal/Project Development Agreement between the City of El Paso and El Paso Independent School District for a new parking lot to be constructed at Coronado High School. The City's cost will not exceed \$350,000.00. The parking lot will relieve traffic and parking congestion by providing additional parking for the users of the Irwin J. Lambka baseball facility.

BACKGROUND / DISCUSSION:

The El Paso Independent School District (EPISD) has requested that the City jointly fund the construction of a 124-space parking lot at Coronado High School, for the benefit of both entities and the public. There has been significant traffic concerns over the last several years related to heavy traffic and lack of available parking at Coronado High School and Irwin J. Lambka Park. Total estimated cost of the improvements is \$766,500, with a cap for the City of \$350,000, or 50% of the construction cost, whichever is less.

Implementation of the agreement will allow off-street parking on EPISD land for the benefit of all users, with EPISD having priority use during school hours, and City having priority use during non-school hours. EPISD will be responsible for construction, maintenance and repairs, as well as utility bills. The City will be responsible for repairs or trash from its use.

PRIOR COUNCIL ACTION: N/A

AMOUNT AND SOURCE OF FUNDING:

\$350,000 – 2010 Certificates of Obligation

BOARD / COMMISSION ACTION:

April 17, 2018 - The El Paso Independent School District Board took action approving the agreement in principle and authorizing EPISD staff to finalize the joint use agreement.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, El Paso Independent School District ("EPISD") needs additional parking for students, faculty and visitors at Coronado High School and the City of El Paso ("CITY") needs additional parking for patrons of Irwin J Lambka Park;

WHEREAS, EPISD plans to construct a new Parking Lot with lighting to serve the needs of both EPISD and City;

WHEREAS, the estimated cost to construct the Parking Lot will be \$750,000.00, excluding design, of which City proposes to contribute a maximum of \$350,000.00 or 50% of the actual construction costs (whichever is less) and EPISD proposes to pay for the design and the remaining construction costs for the Parking Lot;

WHEREAS, EPISD will remain the owner of the real property and improvements including the newly constructed Parking Lot;

WHEREAS, once constructed the Parking Lot will benefit the citizens of El Paso, EPISD, and area residents;

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

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

That the Mayor be authorized to sign the Interlocal/Project Development Agreement and all required documents and amendments necessary to carry out the intent of this resolution. Further, that the City Manager be authorized to make all budget transfers, transactions, and expenses to carry out the obligations of the City under the Interlocal/Project Development Agreement.

APPROVED this _____ day of _____, 2018.

(Signatures continue on the following page)


THE CITY OF EL PASO

ATTEST:

Dee Margo
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Tracy Novak
Parks and Recreation Director

**Interlocal/Project Development Agreement Between City of El Paso and El Paso
Independent School District for Construction of Parking Lot at Coronado High School**

This Interlocal/Project Development Agreement (“**Agreement**”) is made on _____, 2018 (“**Effective Date**”) and is between the City of El Paso (“**City**”) and the El Paso Independent School District (“**EPISD**”) for the construction of a parking lot at Coronado High School and subsequent use. City and EPISD are collectively referred to the Parties in this Agreement.

WHEREAS, EPISD is the owner of certain real property shown on **Exhibit A**, attached hereto and incorporated herein for all purposes, where Coronado High School is located;

WHEREAS, City is the owner of certain real property shown on **Exhibit B**, attached hereto and incorporated herein for all purposes, where Irwin J Lambka Park is located;

WHEREAS, EPISD needs additional parking for students, faculty and visitors at Coronado High School and City needs additional parking for patrons of Irwin J Lambka Park.

WHEREAS, EPISD proposes to construct a new parking lot with lighting to serve the needs of both EPISD and City generally as shown on **Exhibit C**, attached hereto and incorporated herein for all purposes (the “Parking Lot”). It is noted that Exhibit C does not reflect the actual design.

WHEREAS, the estimated cost to construct the Parking lot will be \$750,000.00, excluding design, of which City proposes to contribute a maximum of \$350,000.00 or 50% of the actual construction costs (whichever is less) and EPISD proposes to pay for the design and the remaining construction costs for the Parking Lot.

WHEREAS, EPISD will remain the owner of the real property and improvements including the newly constructed Parking Lot in Exhibit C;

WHEREAS, once constructed the Parking Lot will benefit the citizens of El Paso, EPISD, and area residents; and

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

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

I. EPISD’s Responsibilities. EPISD will perform the following:

City/EPISD- Joint Use Agreement
Coronado High School Parking Lot
18-1049-1121/773923/

1. Design and construct the Parking Lot.
2. Maintain and repair the Parking Lot after construction.
3. Pay for all utilities associated with the Parking Lot.
4. Perform maintenance and repairs to Parking Lot due to normal wear and tear, to include asphalt maintenance, cleaning of the Parking lot, signs, stripes and illumination repairs.
5. Grant City access and non-exclusive use of the Parking Lot and all other parking lots on the school grounds after school hours and on weekends, however, EPISD will have priority of use of the Parking Lot and all other parking lots on the school grounds at all times.

II. City's Responsibilities. The City will perform the following:

1. Pay to EPISD \$350,000.00 for City's portion of the construction costs of the Parking Lot within 30 days after the EPISD Board of Trustees has awarded the competitive sealed proposal for the construction of the Parking Lot. If 50% of the actual construction costs are less than \$350,000.00, EPISD will refund to City amounts paid over 50% percent thirty days after construction is completed.
2. Repair damage to the Parking Lot, which occurs as a result of City's use.
3. Clean the Parking lot of trash after special events or excessive accumulation from City use.

III. Term and Termination.

1. This Agreement may be terminated by mutual written agreement of the Parties upon such terms as agreed.
2. This Agreement commences on the Effective Date and shall be for a primary term of ten (10) years and shall be extended automatically for ten (10) additional one (1) year term extensions under the same terms and conditions, unless either party provides a thirty-day notice in writing of its intention not to extend. In no event shall this Agreement extend beyond April 16, 2038.

IV. Contractual Relationship

Nothing contained herein shall be construed as creating an employer/employee relationship, a partnership, a joint venture or joint obligations between the parties hereto. Each party retains the right to conduct its business as it sees fit. All parties, at all times, are deemed to be independent contractors.

V. Reservation of Rights, Immunity and Governmental Function

The Parties agree that the performance of this Agreement is for the purpose of performing governmental functions and that, in all things related to this Agreement, parties are performing governmental functions as defined by the Texas Tort Claims Act. Nothing herein or in the performance of this Agreement shall be construed as a waiver of sovereign immunity or similar rights. Parties agree that no party waives any immunity or defense that would otherwise be available to it pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules or regulations against claims arising from the exercise of its powers or functions. No provision of this Agreement that imposes an obligation or restriction on EPISD or City not permitted by applicable law shall be enforceable. Records relating to this Agreement may be subject to disclosure pursuant to the Texas Public Information Act, Section 552.001 et. seq. of the Texas Government Code.

VI. General Provisions

1. Disputes: If any dispute concerning any fact, interpretation, allowable costs, etc. arise during performance of this Agreement, reasonable efforts shall be made to resolve said dispute(s) through informal discussions between the Parties.
2. Amendment and Assignment: Any changes to this Agreement may only be made by mutual written agreement of the parties. This Agreement may not be assigned by either party without the express written consent of the other party. Any attempt to assign without such consent shall be void, and shall be deemed a material breach of this Agreement.
3. Notice to parties: Any notice required by this Agreement shall be given by prepaid first class certified mail, return receipt requested to:

EPISD at:

Superintendent
El Paso Independent School District
6531 Boeing Dr.
El Paso, Texas 79925

With Copy to:

Jeanne C. Collins – General Counsel
El Paso Independent School District
6531 Boeing Drive
El Paso, TX 79925

City at:

City Manager
300 N. Campbell Street
El Paso, Texas 79901

With Copy to:

City Attorney's Office
300 N. Campbell Street
El Paso, Texas 79901

or such other address as later provided by a party through written notice to the other party.

4. Applicable Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, as well as any applicable federal law. If any legal action or dispute resolution is necessary to enforce the terms of this Agreement, exclusive venue shall lie in El Paso County, Texas. Further, and for any project that is in whole or in part funded through the Federal government, the applicable program or appropriation statute(s), federal agency regulations, and Circulars of the U.S. Office of Management and Budget shall apply.
5. Binding effect: This Agreement, and every provision thereof, shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.
6. No Waiver: The consent or waiver, express or implied, by a party to a breach of any provision, or the failure, or apparent failure, of either party at any time to require performance by the other of any provision of this Agreement, shall in no way affect the right of such party to require performance of that provision or any other provision of this Agreement.

7. Mutual Negotiation: This Agreement has been prepared at the joint request, direction, and construction of the Parties, at arms' length, and shall be construed without favor to any party.
8. Contract language: Wherever the context shall require, the singular shall include the plural, and the female gender shall include the male, the neuter, and vice versa. This Agreement may be executed in original or facsimile signatures, in multiple counterparts. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
9. Severability: All agreements and covenants contained in this Agreement are severable. Any provision, or part thereof, of this Agreement held by a court of competent jurisdiction to be illegal, invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision, or part thereof, so held to be illegal, invalid or unenforceable. In lieu of any provision so held, there will be added a provision that preserves the intention of the unenforceable provision and complies with the law.
10. Warranty of Capacity to Execute Contract: The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement.
11. No Real Property Interest. This Agreement does not grant the City or EPISD any property interest over the City Property, EPISD Property, or other property belonging to the parties other than the interests specified in this Agreement.
12. Non-Appropriation. The Parties agree they have the continuing right to terminate this Agreement without notice at the end of a budget period in which funds for this Agreement are not appropriated. In such event the Agreement may be terminated as soon as practicable after the event of non-appropriation or upon 30-days' prior written notice whichever provides the longest notice.
13. Assignment. No party to this Agreement may assign the Agreement without the prior written consent of all parties.
14. Authorized Agents. For purposes of this Agreement, the City Manager is the agent of the City and the Superintendent is the agent of EPISD, who are authorized to provide any approvals under this Agreement. The City Manager and the Superintendent may designate a person in writing to exercise the rights conferred under this Agreement of City or EPISD, respectively.

15. Payments. Each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.
16. No Indemnification. The Parties expressly agree that, except as provided herein, no 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.
17. Entire Agreement: This Agreement and any subsequent amendments constitute the entire and only agreement between the parties relating to the matters described herein, and supersedes all prior agreements and discussions, whether written or oral. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

[Signatures follow on the next page]

City Signature Page

City of El Paso

Dee Margo

Mayor

Date: _____

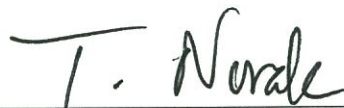
APPROVED AS TO FORM



Leslie B. Jean Pierre

Assistant City Attorney

APPROVED AS TO CONTENT



Tracy Novak

Parks and Recreation Director

EPISD Signature Page

El Paso Independent School District

Juan Cabrera
Superintendent

Date: _____

APPROVED AS TO FORM

APPROVED AS TO CONTENT



Jeanne C. Collins
General Counsel

Name:
Title:

Exhibit "A"



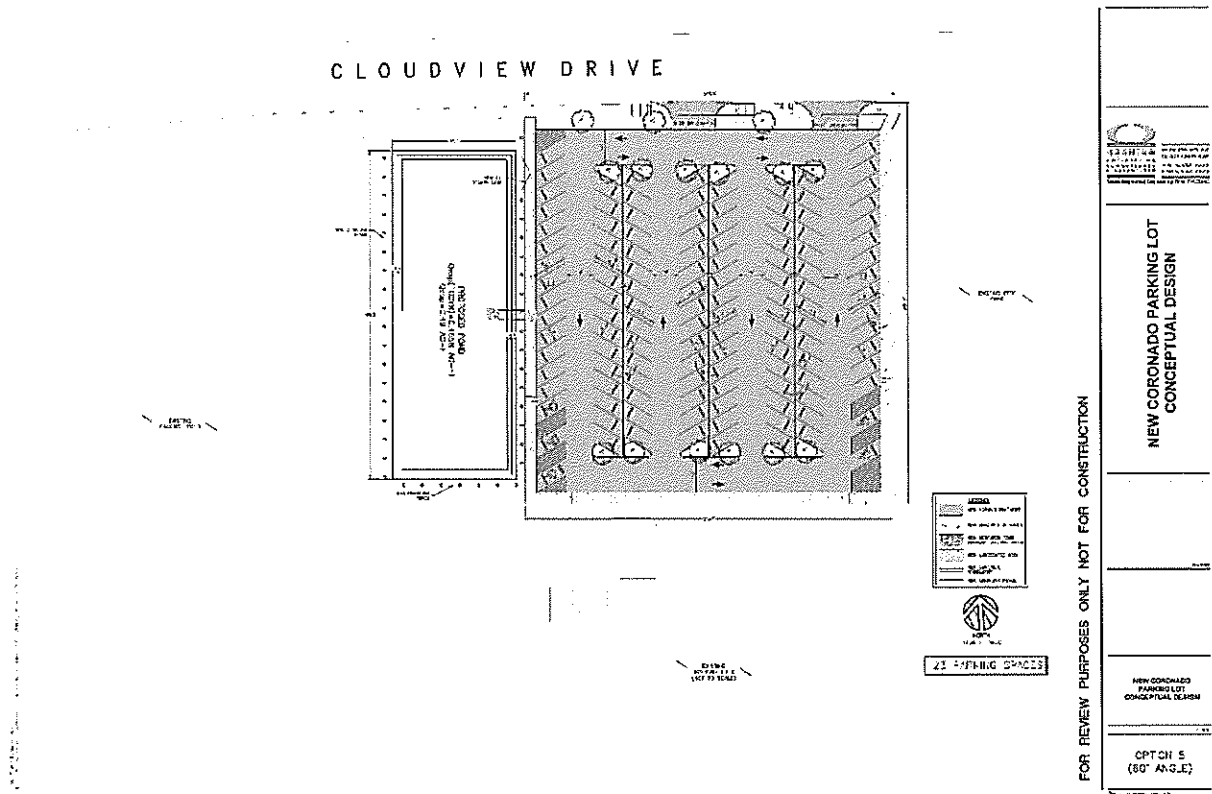
[End of Exhibit A]

Exhibit "B"



[End of Exhibit B]

Exhibit "C"



[End of Exhibit C]