

STATE OF TEXAS
COUNTY OF EL PASO

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INTER-GOVERNMENTAL AGREEMENT

This Inter-Governmental Agreement (hereinafter “Agreement”) is made this the _____ day of _____, 2005, by and between the City of El Paso, a home rule municipal corporation (hereinafter “CITY”) and El Paso Independent School District (hereinafter “EPISD”).

WHEREAS, the CITY provides recreational services, including educational opportunities and other services, to the citizens of El Paso through the Department of Parks and Recreation; and

WHEREAS, EPISD provides educational and recreational services to the students and citizens within the school district; and

WHEREAS, the CITY recognizes the benefit the parks and recreational facilities adjacent to school facilities would bring to citizens of El Paso; and

WHEREAS, EPISD desires to join the CITY for the purpose of enhancing the quality of recreational facilities incident to its school purposes; and

WHEREAS, the CITY and EPISD desire to enhance the quality of recreational programs and services by entering into this Agreement to share facilities within both organizations; and

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

WHEREAS, the CITY and EPISD recognize that this Agreement to share facilities for the enhancement of recreational and educational services available to the citizens of El Paso would improve the efficiency and effectiveness of their respective local governments; and

NOW, THEREFORE, THE CITY AND EPISD HEREBY ENTER INTO THIS INTERLOCAL GOVERNMENTAL AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 ATTACHMENTS

1.1 The attachment(s) listed herein and attached to this Agreement is incorporated herein by reference for all purposes as if set forth verbatim:

Attachment “A” Facilities owned by the City of El Paso and covered by this Agreement

Attachment “B” Facilities owned by the EPISD and covered by this Agreement

2.0 CONTRACTUAL RELATIONSHIP

2.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is

intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

2.1-1 As an independent contractor, EPISD understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to EPISD's officers, employees, agents or representatives who perform any service in connection with this Agreement.

2.1-2 As an independent contractor, the CITY understands and agrees that it will be responsible for its respective acts or omissions, and EPISD shall in no way be responsible as an employer to the CITY's officers, employees, agents or representatives who perform any service in connection with this Agreement.

2.2 EPISD 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 the EPISD to any obligation other than the obligations set forth in this Agreement.

2.3 The parties acknowledge and expressly agree that, in all things relating to this Agreement, the CITY and EPISD are performing governmental functions, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY and EPISD enter into this Agreement as governmental entities for the purpose of performing a governmental function.

3.0 SCOPE AND TERM OF AGREEMENT

3.1 Scope. The CITY and EPISD agree on the basis set out in this Agreement to share the use of all public indoor and outdoor physical athletic and recreational facilities, owned by each entity, as further described in **Attachments "A" and "B"** to this Agreement.

3.2 Term. This Agreement shall become effective on **August 9, 2005**, and shall be for a primary term of five (5) years from that date. Said Agreement shall automatically be extended for two additional one (1) year period under the same terms and conditions, unless terminated as hereinafter provided in Section 5.0 of this Agreement. In no event shall this Agreement extend beyond August 9, 2012.

4.0 JOINT USE AND FACILITY FEES

4.1 The CITY shall have the right of first use of all EPISD facilities, as further described in **Attachment "B,"** for activities officially sponsored by the City Parks & Recreation Department, when such use does not conflict with EPISD school activities or events, or with other non-school use activities which have been previously approved by the District in accordance with the District's board policies governing non-school use of its facilities.

4.1-1 The CITY shall provide its written intent to use an EPISD facility at least fifteen (15) calendar days before the intended use, on the prescribed form and in accordance with the District's Board Policy GKD, COMMUNITY USE OF SCHOOL FACILITIES, to the Associate Superintendent of Operations.

4.1-2 For indoor facilities, as further described in **Attachment “B,”** EPISD will arrange to provide access through its own staff to City Parks & Recreation Department staff to a given facility prior to the use by the CITY.

4.2 EPISD shall have the right of first use all CITY facilities, as further described in **Attachment “A,”** for activities officially sponsored by EPISD, when such use does not conflict with CITY activities or events, or with the other non-CITY use activities that have been previously approved by City Council or the Director of the Parks & Recreation Department or his designee.

4.2-1 EPISD shall provide its written intent to use a CITY facility at least fifteen (15) calendar days before the intended use, on the prescribed form, to the Director of the Parks & Recreation Department or his designee.

4.2-2 For indoor facilities, as further described in **Attachment “A,”** the CITY will arrange to provide access through its own staff to EPISD staff to a given facility prior to the use by EPISD.

4.3 The parties shall have non-exclusive use of the parking areas adjacent to the facilities that are described in **Attachments “A” and “B.”**

4.4 In consideration of the use of EPISD facilities, as described in **Attachment “B,”** by the CITY, during the dates and hours that an EPISD employee would otherwise be on duty at said facility (“normal hours”), EPISD shall not assess facility fees and charges, with the exception of any CITY program that requires special services over and above normal facility operations to include security, staff, materials, and supplies.

4.4-1 The CITY shall charge a program fee to the participants, in accordance with the park user fee ordinance in the El Paso Municipal Code, for any program offered by the CITY under this Agreement.

4.5 In consideration of the use of CITY facilities, as described in **Attachment “A,”** by EPISD, during the dates and hours that a CITY employee would otherwise be on duty at said facility (“normal hours”), the CITY shall not assess facility fees and charges, with the exception of any EPISD program that requires special services over and above normal facility operations to include security, staff, materials, and supplies.

4.5-1 EPISD reserves the right to charge a program fee to participants, consistent with the park user fee ordinance in the El Paso Municipal Code, for any program offered by EPISD at CITY facilities, as further described in **Attachment “A,”** during the authorized use of such under this Agreement.

4.6 Swimming Pools. In the event that EPISD uses a CITY owned swimming pool, as further described in **Attachment “B,”** outside normal hours, then the EPISD shall have the appropriate number of certified lifeguards present during said use.

5.0 TERMINATION. This Agreement may be terminated as provided herein.

5.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

5.2 Termination by Either Party. It is further understood and agreed by the CITY and EPISD that either party may terminate this Agreement in whole or in part.

5.2-1 Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

5.2-2 Either party may terminate this Agreement effective at the end of its fiscal year upon giving ten (10) days written notice to the other party.

5.3 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

5.3-1 Except as otherwise provided herein, all duties and obligations of the CITY and EPISD shall cease upon termination or expiration of this Agreement.

6.0 GENERAL PROVISIONS

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

6.1-1 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 in Sections 6.1-2 and 6.2 below. 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.

6.1-2 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 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 UNDER THE TERMS OF THIS AGREEMENT, SUBJECT TO SECTION 6.2 BELOW.

6.1-3 Intentional Risk Allocation. The CITY and EPISD 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.

6.1-4 Sovereign Immunity. The CITY and EPISD 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.

6.2 Maintenance and Repairs. Each party agrees to be responsible for the maintenance of its own facilities, regardless of use, except in the case of repairs required to correct damage to facilities, which has occurred as a result of the other party's use of the facilities. Such cost of repairs shall be borne by the responsible party using the facility.

6.3 Utilities. Each party agrees to pay for the utilities at its own facilities, regardless of use, during the normal operating hours and dates for said facility. In the event that said facility is used outside the normal operating hours and dates, the party using said will be responsible for paying for the utilities consumed during use

6.4 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY (by authority by the City Council) and EPISD. No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

6.5 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. This Agreement supersedes all prior agreements, whether written or oral, regarding use of facilities between the parties, with the exception of the Inter-local Agreement (dated December 11, 2001) regarding softball fields located at Skyline Youth Park, Memorial Park, and Delta Park. 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.

6.6 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 of El Paso, and EPISD Board Policies.

6.7 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.

6.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address provided below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY:	City of El Paso Attention: Mayor's Office Two Civic Center Plaza, 10 th Floor El Paso, Texas 79901-1196
COPY TO:	Parks and Recreation Department Two Civic Center Plaza, 6 th Floor El Paso, Texas 79901-1196
EPISD:	El Paso Independent School District Attn: Superintendent 6531 Boeing Drive El Paso, Texas 79925
COPY TO:	El Paso Independent School District Attn: Associate Superintendent of Operations 6531 Boeing Drive El Paso, Texas 79925

6.9 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of EPISD warrants that he/she has the authority to do so and to bind EPISD 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 (including any and all Attachments); understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

(Signatures Follow on Next Page)

Executed this _____ day of _____, 2005.

CITY OF EL PASO

ATTESTED:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

El Paso Independent School District

ATTESTED:

Robert Ortega
Interim Superintendent

Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jennifer F. Callan
Assistant City Attorney

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

APPROVED AS TO FORM:

S. Anthony Safi
Attorney for El Paso Independent School District

ATTACHMENT "A"

Parks and Recreation Sport Facilities Inventory

5/10/2005

RECREATION CENTERS

<u>Recreation Facility</u>	<u>address</u>	<u>Gym</u>	<u>other large areas</u>
Armijo Center	700 E. 7th st	1 gym	
Chihuahita Center	429 Charles Rd	n/a	
Delta center	4321 Delta	2 gyms	
Galatzan Center	650 Wallenberg	1 gym	
L. F. Washington	3400 Missouri	1 gym*	
Lincoln Center	4001 Durazno	n/a	
Multipurpose center	9031 Viscount	1 gym	large multipurpose hall
Nations Tobin	8831 Railroad		
Nolan Richardson	4435 Maxwell	1 gym	
Veterans center	5301 Salem	1 gym	
Rae Gilmore center	8501 Diana	n/a	
Seville center	6700 Sambrano	1 gym*	
San Juan center	701 Durazno	1 gym	1 boxing gym

SWIMMING POOLS

INDOOR POOLS			
Armijo	911 Ochoa	25 yards	aquatics playground
Delta	201 Washington	25 yards	
Hawkins	1500 Hawkins	25 yards	
Leo Cancellare	650 Wallenberg	25 yards	
Memorial	3200 Federal	25 yards	
T&I pool	9031 viscount	20 x 20 ft	
Veterans	5301 Salem	25 yards	

OUTDOOR POOLS		POOLS	
Chelsea	819 Chelsea		
Grandview	3100 Jefferson		
Nations	8831 Railroad		slide

PARKS / FIELDS

			baseball	soccer	handball	tennis	basketball	football
Altavista Field		3501 Morenci	1					
Chihuahuita	Alta Vista Field	417 Charles			2			
Delta		4321 Delta	2					
Grandview		3100 Jefferson	1			2		
Lincoln		4001 Durazno			4		3	
Loretto/Lincoln		4500 E. Yandell				1	1	
Mary Webb		3401 Missouri		1				1
Memorial		1701 Copia	1	1		4		

Modesto Gomez	4600 Edna	3	2	1	1	1	
Pera Luna	3300 Pera					1	
Roger Brown	1200 Alabama	1					
Tula Irruballi	601 S. Park	1				1	
Washington	200 Washington	1				1	
Chester Jordan	Nolan Richardson	1	6				
Cielo Vista	9030 Cosmos		1			4	
Palm Grove	10001 Sumatra		1				
Ponder Park	7500 Burges	3	1				1
Vista Del Valle	1288 Hawkins		6			1	
Arlington	10350 Pasadena				2	1	
Colonia Verde	5452 Ketchikan ST.					1	
Franklin	6050 Quail	1	3		2	1	
Milagro	5310 Annette				2	1	
Nations Tobin	8831 Railroad	2	3			1	2
Skyline Youth	5050 Yvette Ave.	2	5		2	1	
Sue Young	9730 Diana	2	5				
Sunrise	3800 Sunrise				1	4	
Todd Ware	4600 Stahala		2				
Veterans	5301 Salem	5	5	2	2	1	
Wellington Chew	4430 Maxwell					1	
Alethea	901 Alethea						1
Borderland	6327 Modesta					1	
Buena Vista	420 Nopal Ave					1	
Crestmont	515 Chermont		1				
Doniphan	1800 W. Paisano					1	
Galatzan	650 Wallenberg		3				
Lambka/Cloudview	6600 Cloudview	4					
Madeline	900 E. Baltimore					1	
Marwood	4325 Riverbend	1	1			1	2
Mission Hills	3800 O'keefe Dr.		1			1	
Pacific	3905 Hidden Way					1	
Paul Harvey	6220 Belton				2	1	
Thorn	5260 Mace		1			1	
TOTAL:		32	49	9	21	34	7

ATTACHMENT "B"

INTER-GOVERNMENTAL AGREEMENT

Facility Name	Address	Zip
Alamo Elem	500 S. Hills Street	79901
Alta Vista Elem	1000 N. Gramma Street	79903
Andress High	5400 Sun Valley	79924
Aoy Elem	901 S Campbell	79901
Austin High	3500 Memphis	79930
Barron Elementary	11155 Whitey Road	79934
Basset Middle	4400 Elm	79930
Beall Elem	320 S. Piedras	79905
Bliss Elem	4401 Sheridan Rd. Bldg 2038	79906
Bond Elementary	250 Lindbergh	79932
Bonham Elem	7024 Cielo Vista Drive	79925
Bowie High	801 S. San Marcial	79905
Bradley Elementary	5330 Sweetwater Drive	79924
Burges High	7800 Edgemere	79925
Burleson Elementary	4440 Blanco	79905
Burnet Elementary	3700 Thomason	79904
Canyon Hills Middle	8930 Eclipse	79904
Center for Career & Tech	1170 Walnut	79930
Chapin High School	7001 Gateway South	79904
Charles Middle	4909 Trojan	79924
Cielo Vista Elementary	9000 Basil	79925
Clardy Elementary	5508 Delta	79905
Clendenin Elementary	2701 Harrison	79930
Coldwell Elementary	4101 Altura	79903
Collins Elementary	4860 Tropicana	79924
Cooley Elementary	107 N. Collingsworth	79905
Cordova Middle	2231 Arizona	79930
Coronado High	100 Champions Place	79912
Crockett Elementary	3200 Wheeling	79930
Crosby Elementary	5411 Wren	79924
Douglass Elementary	101 S. Eucalyptus	79905
Dowell Elementary	5249 Bastille	79924
El Paso High	800 E. Schuster	79902
Fannin Elementary	5425 Salem	79924
Franklin High	900 N. Resler	79912
Green Elementary	5430 Buckley	79912
Guerrero Elementary	7530 Lake Hurst	79912
Guillen Middle	900 S. Cotton	79901
H.R. Moye	Corner of Dyer & Alps	79904
Hart Elementary	1110 S. Park	07901
Hawkins Elementary	5816 Stephenson	79905
Henderson Middle	5505 Robert Alva	79905
Hillside Elementary	4500 Clifton	79903
Hornedo Middle	825 E. Redd Rd.	79912
Houston Elementary	2851 Grant	79930

Facility Name	Address	Zip
Hughey Elementary	6201 Hughey	79925
Irvin High	9465 Roanoke	79924
Jefferson High	4700 Alameda	79905
Johnson Elementary	499 Cabaret	79912
Kohlberg Elementary	1445 Nardo Goodman	79912
Lamar Elementary	1440 E. Cliff	79902
Lee Elementary	7710 Pandora	79904
Lincoln Middle	500 Mulberry	79932
Logan Elementary	3200 Ellerthorpe	79904
MacArthur Elementary	8101 Whitus	79925
Magoffin Middle	4931 Hercules	79904
Mesita Elementary	500 Alethea Park	79902
Milam Elementary	5000 Luke	79908
Morehead Middle	5625 Confetti	79912
Moreno Elementary	2300 San Diego	79930
Newman Elementary	10275 Alcan	79924
Nixon Elementary	11141 Loma Rojas	79934
Park Elementary	3601 Edgar Park	79904
Polk Elementary	940 Belvidere	79912
Putnam Elementary	6508 Fiesta	79912
Richardson Middle	11350 Loma Franklin Drive	79934
Rivera Elementary	6445 Escondido	79912
Roberts Elementary	341 Thorn	79932
Roosevelt Elementary	616 Father Rahm	79901
Ross Middle	6101 Hughley	79925
Rusk Elementary	3601 Copia	79930
Schuster Elementary	5515 Will Ruth	79924
Stanton Elementary	5414 Hondo Pass	79924
Terrace Hills Middle	4835 Blossom	79924
Tippin Elementary School	6541 Bear Ridge	79912
Travis Elementary	5000 N. Stevens	79930
Vilas Elementary	220 Lawton	79902
Wainwright Elementary	4500 Lawrence	79904
Western Hills Elementary	530 Thunderbird	79912
Whitaker Elementary	4700 Rutherford	79924
Wiggs Middle	1300 Circle	79902
Zach White Elementary	4256 Roxburg	79922
Zavala Elementary	51 N. Hammett	79905