

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

CITY CLERK DEPT.
07 JAN -3 AM 8:13

DEPARTMENT: Museums and Cultural Affairs Department

AGENDA DATE: 01/09/07

CONTACT PERSON/PHONE: Yolanda Alameda, 541-4896

DISTRICT(S) AFFECTED: All

SUBJECT:

That the Mayor be authorized to sign following Interlocal Agreements between the City of El Paso and the University of Texas at El Paso, which serve a public purpose and provide community partnership support for projects and special initiatives that help meet MCAD goals, on behalf of the Museums and Cultural Affairs Department (MCAD), to be funded through the municipal hotel occupancy tax: 1) Union Programs Office - Wednesday Music Café; 2) Language & Linguistics Department - 12th Annual Contemporary Mexican Literature Conference; and 3) Art Department - Visiting Artists and Exhibition Series

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City of El Paso Museums and Cultural Affairs Department (MCAD) provides support to arts and culture organizations annually to implement a series of arts and cultural programs for visitors and residents of the City of El Paso. MCAD provides management and technical assistance to artists and arts/cultural organizations to build artistic and administrative capacity; as well as funding for special initiatives that help meet the MCAD goal to support the development of quality arts experiences, arts education, community arts development, cultural heritage and cultural tourism initiatives and performing/visual arts events that provide a variety of opportunities to engage in arts and cultural activities that enliven and celebrate the City of El Paso and the region.

PRIOR COUNCIL ACTION

Has the Council previously considered this item or a closely related one?

Strategic Plan developed for Museums and Cultural Affairs Department was reviewed and approved by City Council on July 19, 2005; MCAD ordinance #016196 restructuring department on November 2, 2005; Council approval of resolution for funding for FY2007 Direct Funding Programs on October 3, 2006; and approval of resolution on November 14, 2006 to have Nonprofit Enterprise Center and Genesis 21 provide management and technical assistance to artists and organizations for FY 2007.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

FY 2007 MCAD approved budget 15707/55010303/502215

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

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

DEPARTMENT HEAD:



(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: *Jayme A. Miller*

DATE: 1/2/07

CITY CLERK DEPT.
07 JAN -3 AM 8:13

RESOLUTION

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

That the Mayor be authorized to sign the following Interlocal Agreements between the City of El Paso and the University of Texas at El Paso, which serve a public purpose and provide community partnership support for projects and special initiatives that help meet MCAD goals, on behalf of the Museums and Cultural Affairs Department (MCAD), to be funded through the municipal hotel occupancy tax:

- 1) Union Programs Office - Wednesday Music Café;
- 2) Language & Linguistics Department – 12th Annual Contemporary Mexican Literature Conference;
- 3) Art Department – Visiting Artists and Exhibition Series

ADOPTED this _____ day of _____, 2007.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Yolanda R. Alameda, Director
Museums and Cultural Affairs
Department

07 JAN - 3 AM 8:13
CITY CLERK DEPT.

NOW, THEREFORE, the City and the UTEP do hereby mutually agree as follows:

1. The City hereby appropriates THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) in funding from the City's Museums and Cultural Affairs Department "MCAD") to provide UTEP with support to perform the services hereinafter described.

2. The Scope of Services is as described in Attachment "A" hereto, referenced for all purposes, and includes project dates, locations, size and scope, artistic nature and key participants. MCAD shall be informed of any modifications, reduction in the number of project dates or locations, or in the size or scope of services to the supported project. Any reduction in the number of project dates or locations, or in size or scope of the project shall result in a corresponding reduction of the consideration to be provided to UTEP. The parties hereby certify that the services to be provided by UTEP are properly within the statutory functions and programs of the respective state and local entities.

3. UTEP hereby agrees and binds itself to do whatever is necessary to perform and carry out the following:

- a. During the contract period, provide the services, activities, and performances in accordance with Attachment "A," which is attached hereto and hereby made a part of this Agreement and hereinafter referred to as "Project." Any reduction in the Scope of Services, as described in Attachment "A" shall be subject to a reduction in compensation to UTEP in accordance with the provisions of Paragraph 2 above.
- b. Complete and forward to MCAD an acceptable final report and numbered and dated invoice, dated no earlier than the completion of the Project or the completion of the final report including all receipts that document actual expenditures for the (i) total award of MCAD funds, and (ii) any cash match requirement, not later than September 15, 2007, or 30 days after the program is completed, whichever is first. Receipts should consist of one of the following: (i) supporting documentation such as invoices to substantiate the request (invoices shall include the name of the person or vendor, date, purpose of expenditure and check number, which paid the expenditure. Invoices should also be stamped as "paid" to ensure they are not paid more than once.); or (ii) photocopy of actual check, cancelled check or check stubs (photocopy should be of front and back of cleared check; if cancelled checks are not

available the City requires applicable bank statements as described below); or (iii) photocopy of applicable bank statements that reference the checks paid. The City must ensure that funds have been expended prior to reimbursing UTEP. UTEP will submit one (1) signed original and one (1) copy of each such report.

- c. Abide by the any relevant reporting requirements set forth in any statute of the State of Texas or municipal ordinance of the City.

4. UTEP shall keep complete and accurate books and records indicating when, how, by whom, and for what purposes the funds received under this Agreement are spent by UTEP, and UTEP shall make such books and records available to the City for examination upon request. All funds disbursed under this Agreement shall be handled by UTEP in accordance with the standards of the American Institute of Certified Public Accountants, which include provisions for sound fiscal practices and fiscal reporting. In addition, UTEP shall furnish the City at its request with balance sheets and statements of operation, which accurately account for the expenditure of agreement funds, and a written narrative report reflecting same. The City reserves the right to audit the books and records of UTEP, upon reasonable notice to UTEP and during regular working hours, in order to ensure fiscal and programmatic compliance with the assurances in this Agreement.

If any serious discrepancy should appear in such reports or statements, the City shall notify UTEP. If such discrepancy is not rectified to the satisfaction of the City within 30 days, the City may withhold all or part of the funds from UTEP. "Serious discrepancy" shall mean violation of an existing statute or ordinance or an expenditure of contract funds for a purpose, which is not authorized by this Agreement. **Should the City determine that any provision of this Agreement has been violated, the City may terminate this Agreement immediately. Written notice of termination will be sent to UTEP.**

5. The term of this Agreement shall run from the date of execution and shall terminate August 31, 2007, or thirty (30) days after the completion of the Project, whichever is first.

6. The final report form will be provided by the MCAD. Total compensation will be THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00). The City shall make all payments in accordance with its fiscal year and usual accounting procedures. The Contractor shall provide a numbered and dated invoice and one original and one copy of the final report accompanied by complete, detailed receipts documenting expenditure of the total award and cash match.

7. The entire compensation amount from MCAD will be payable upon submission of the final report and invoice due on September 15, 2007, or thirty days after the completion of program, whichever is first based on the entire fiscal year activity. The final report form is available from MCAD. Payment shall be authorized only after the Project has been completed and the final report and invoice for the contracted amount have been received by MCAD and the City Comptroller processes the invoice.

8. UTEP shall include in **ALL** printed programs, posters, and flyers the following credit line: **“WITH THE SUPPORT OF THE CITY OF EL PASO MUSEUMS AND CULTURAL AFFAIRS DEPARTMENT”**. **The credit line should be prominent, readable and equitable in size to other supporter/sponsor acknowledgments.** For all visual arts projects or events, the credit line must also be included on invitations and exhibition announcements. Any additional printed credit is optional. In the case of public art works (i.e. murals, outdoor sculpture) the credit line shall be included in invitations and as part of the work or as part of a permanent plaque or sign to be affixed to the artwork. Visual arts projects must also include the credit line in the invitations for such events. Neither the City’s seal nor logo may be used in any printed materials. However, the MCAD logo may be utilized in printed

materials and can be downloaded from the MCAD website. The MCAD staff will be available to review layouts of printed materials prior to printing, and UTEP is encouraged to confer with MCAD staff prior to printing in order to avoid any conflicts and ensure that contractual obligations outlined herein are complied with. When no printed program is used, **VERBAL CREDIT SHALL BE GIVEN PRIOR TO EACH PRESENTATION.** Copies of such printing and program materials as prepared for all activities must be forwarded to MCAD, as part of the mid-year report and the final report. **Failure to comply with this provision will constitute a breach of contract and result in the immediate cancellation of award.**

9. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and UTEP, and UTEP shall be deemed at all times to be an independent contractor. The City shall not be subject to any obligations or liabilities incurred by UTEP in the performance of the services described in this Agreement unless otherwise herein authorized.

10. In order to provide members of the **CITY OF EL PASO MCAD BOARD AND STAFF** an opportunity to evaluate the caliber of funded events, **UTEP SHALL SEND TO MCAD, IN A TIMELY MANNER, A SCHEDULE OF EVENTS AND OTHER PERTINENT INFORMATION ABOUT ALL FUNDED EVENTS, PRIOR TO THE EVENT.**

11. To the extent authorized by the laws of the State of Texas, UTEP agrees to indemnify and hold the City, its officers, employees, agents and servants harmless from any claims for injury, death, loss or damage of any kind or character, including negligence by the City, its employees or agents, and by whomsoever suffered or asserted occasioned by or in connection with any services performed by UTEP under this Agreement, either while its services are in progress or as a result of services performed by it.

12. For the purpose of this Agreement, **UTEP SHALL BE HELD RESPONSIBLE FOR OBTAINING APPROPRIATE PERMISSION TO USE AND INCORPORATE COPYRIGHTED MATERIALS INTO THE PERFORMANCE.** In addition, and to the extent authorized by the laws of the State of Texas, UTEP shall indemnify, defend, and hold the City harmless from any claims or causes of action, which might arise from use of any such materials.

13. For the purpose of determining place of agreement and law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas, and venue shall lie in El Paso County.

14. This Agreement may be modified by the parties by written amendment and mutual agreement of the parties hereto. Should either party wish to modify this Agreement, the party shall give thirty (30) days' written notice to the other party as follows:

CITY:	City of El Paso Attention: Office of the City Manager 2 Civic Center Plaza 10 th Floor El Paso, Texas 79901-1196
COPY TO:	Museums and Cultural Affairs Department 2 Civic Center Plaza 6 th Floor El Paso, Texas 79901-1196
UTEP:	University of Texas at El Paso Office of Research and Sponsored Projects ATTN: Roberto Osegueda Vice-President for Research 500 West University Avenue Administration Bldg., Room 209 El Paso, Texas 79968

COPY TO:

University of Texas at El Paso/
Union Programs
ATTN: Carol Roberts-Spence
500 West University Avenue
502 E. Union
El Paso, Texas 79968

15. This Agreement may be terminated in whole or in part by the City by giving thirty (30) days written notice of termination to UTEP, and specifying the extent to which performance under the Agreement is terminated. Such right of termination is in addition to and not in lieu of rights of the City set forth in Paragraph 19, herein.

16. This Agreement supersedes any prior agreement between the parties hereto and constitutes and expresses the whole agreement of the parties hereto in reference to the services provided by UTEP for the City and in reference to any of the matters or things herein provided for or herein before discussed or mentioned in reference to such services, all promises, representations, and understandings relative thereto being herein merged.

17. UTEP shall comply with all applicable federal, state, and local laws and regulations, including City ordinances, including, but not limited to the following: Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.), as amended; Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 794), as amended; the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213), as amended; Drug Free Workplace Act of 1988 (41 U.S.C. §§ 702 et seq.), as amended; Debarment (45 C.F.R. Part 1154), Federal Debt Status (OMB Circular A-129) Native American Graves Protection and Reparation Act of 1990 (25 U.S.C. 3001 et seq.), Texas State Tax Code, Section 351.101, regulating expenditure of hotel/motel tax revenues; and the **City of El Paso Ordinance #9779**, regarding Accessibility. UTEP shall not, on the grounds of race, creed, color, national origin, sex, age, or handicap,

exclude from participation in, deny the benefits of, or subject to discrimination under, any person through any programs or activity funded in whole or in part with funds made available to UTEP pursuant to the terms of this Agreement, or any written amendment hereto.

18. It is understood and agreed that the terms and conditions of the request for funding contained in Attachment "A" submitted by UTEP, which are incorporated herein and made a part hereof, will be complied with by UTEP in all respects.

19. Failure to comply with all provisions outlined in this Agreement may constitute a breach of contract as well as an inability to qualify for future City Funding. Financial penalties for breach of contract will be assigned and may include but not be limited to the withholding of payments or immediate cancellation of the Agreement.

20. Assignment. The services to be provided under this Agreement cannot be assigned or delegated by UTEP without the prior written consent of the City.

21. Waiver. Action or inaction by either party regarding any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

22. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, of each provision which is found to be illegal, invalid or unenforceable, there will be added as part of this Agreement a provision which preserves the intention of the unenforceable provision, but which complies with the law.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

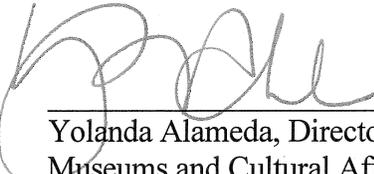
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Yolanda Alameda, Director
Museums and Cultural Affairs Department

UNIVERSITY OF TEXAS AT EL PASO

Diana S. Natalicio, Ph.D., President

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 200_,
by John F. Cook, as Mayor of the City of El Paso, Texas on behalf of said City.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 200_,
by Diana S. Natalicio, as President of the University of Texas at El Paso.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

Attachment A
Scope of Services

UTEP: Union Programs Office - Wednesday Music Café

Services: To coordinate and implement the Wednesday Music Café a year round music program at UTEP which is open to the general public and held Wednesdays at Noon. The program employs local musicians, and provides training and development for emerging event coordinators, technicians and arts administrators.

WHEREAS, the City Council has approved and adopted a budget for the fiscal year beginning September 1, 2006 and ending August 31, 2007;

NOW, THEREFORE, the City and UTEP do hereby mutually agree as follows:

1. The City hereby appropriates FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00) in funding from the City's Museums and Cultural Affairs Department ("MCAD") to provide UTEP with support to perform the services hereinafter described.

2. The Scope of Service is as described in Attachment "A" hereto, referenced for all purposes, and includes project dates, locations, size and scope, artistic nature and key participants. MCAD shall be informed of any modification, reduction in the number of project dates or locations, or in size or scope of services to the supported project. Any reduction in the number of project dates or locations, or in size or scope of the project shall result in a corresponding reduction of the consideration to be provided to UTEP. The parties hereby certify that the services to be provided by UTEP are properly within the statutory functions and programs of the respective state and local entities.

3. UTEP hereby agrees and binds itself to do whatever is necessary to perform and carry out the following:

- a. During the contract period, provide the services, activities, and performances in accordance with Attachment "A," which is attached hereto and hereby made a part of this Agreement and hereinafter referred to as "Project." Any reduction in the Scope of Services, as described in Attachment "A" shall be subject to a reduction in compensation to UTEP in accordance with the provisions of Paragraph 2 above.
- b. Complete and forward to MCAD an acceptable final report and numbered and dated invoice, dated no earlier than the completion of the Project or the completion of the final report including all receipts that document actual expenditures for the (i) total award of MCAD funds, and (ii) any cash match requirement, not later than September 15, 2007, or 30 days after the program is completed, whichever is first. Receipts should consist of one of the following: (i) supporting documentation such as invoices to substantiate the

request (invoices shall include the name of the person or vendor, date, purpose of expenditure and check number, which paid the expenditure. Invoices should also be stamped as “paid” to ensure they are not paid more than once.); or (ii) photocopy of actual check, cancelled check or check stubs (photocopy should be of front and back of cleared check; if cancelled checks are not available the City requires applicable bank statements as described below); or (iii) photocopy of applicable bank statements that reference the checks paid. The City must ensure that funds have been expended prior to reimbursing UTEP. UTEP will submit one (1) signed original and one (1) copy of each such report.

- c. Abide by the any relevant reporting requirements set forth in any statute of the State of Texas or municipal ordinance of the City.

4. UTEP shall keep complete and accurate books and records indicating when, how, by whom, and for what purposes the funds received under this Agreement are spent by UTEP, and UTEP shall make such books and records available to the City for examination upon request. All funds disbursed under this Agreement shall be handled by UTEP in accordance with the standards of the American Institute of Certified Public Accountants, which include provisions for sound fiscal practices and fiscal reporting. In addition, UTEP shall furnish the City at its request with balance sheets and statements of operation, which accurately account for the expenditure of agreement funds, and a written narrative report reflecting same. The City reserves the right to audit the books and records of UTEP, upon reasonable notice to UTEP and during regular working hours, in order to ensure fiscal and programmatic compliance with the assurances in this Agreement.

If any serious discrepancy should appear in such reports or statements, the City shall notify UTEP. If such discrepancy is not rectified to the satisfaction of the City within 30 days, the City may withhold all or part of the funds from UTEP. “Serious discrepancy” shall mean violation of an existing statute or ordinance or an expenditure of contract funds for a purpose, which is not authorized by this Agreement. **Should the City determine that any provision of**

this Agreement has been violated, the City may terminate this Agreement immediately.

Written notice of termination will be sent to UTEP.

5. The term of this Agreement shall run from the date of execution and shall terminate August 31, 2007, or thirty (30) days after the completion of the Project, whichever is first.

6. The final report form will be provided by the MCAD. Total compensation will be FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00). The City shall make all payments in accordance with its fiscal year and usual accounting procedures. The Contractor shall provide a numbered and dated invoice and one original and one copy of the final report accompanied by complete, detailed receipts documenting expenditure of the total award and cash match.

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or as part of a permanent plaque or sign to be affixed to the artwork. Visual arts projects must also include the credit line in the invitations for such events. Neither the City's seal nor logo may be used in any printed materials. However, the MCAD logo may be utilized in printed materials and can be downloaded from the MCAD website. The MCAD staff will be available to review layouts of printed materials prior to printing, and UTEP is encouraged to confer with MCAD staff prior to printing in order to avoid any conflicts and ensure that contractual obligations outlined herein are complied with. When no printed program is used, VERBAL CREDIT SHALL BE GIVEN PRIOR TO EACH PRESENTATION. Copies of such printing and program materials as prepared for all activities must be forwarded to MCAD, as part of the mid-year report and the final report. **Failure to comply with this provision will constitute a breach of contract and result in the immediate cancellation of award.**

9. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and UTEP, and UTEP shall be deemed at all times to be an Independent Contractor. The City shall not be subject to any obligations or liabilities incurred by UTEP in the performance of the services described in this Agreement unless otherwise herein authorized.

10. In order to provide members of the **CITY OF EL PASO MCAD BOARD AND STAFF** an opportunity to evaluate the caliber of funded events, **UTEP SHALL SEND TO MCAD, IN A TIMELY MANNER, A SCHEDULE OF EVENTS AND OTHER PERTINENT INFORMATION ABOUT ALL FUNDED EVENTS, PRIOR TO THE EVENT.**

11. To the extent authorized by the laws of the State of Texas, UTEP agrees to indemnify and hold the City, its officers, employees, agents and servants harmless from any claims for injury, death, loss or damage of any kind or character, including negligence by the

City, its employees or agents, and by whomsoever suffered or asserted occasioned by or in connection with any services performed by UTEP under this Agreement, either while its services are in progress or as a result of services performed by it.

12. For the purpose of this Agreement, **UTEP SHALL BE HELD RESPONSIBLE FOR OBTAINING APPROPRIATE PERMISSION TO USE AND INCORPORATE COPYRIGHTED MATERIALS INTO THE PERFORMANCE.** In addition, and to the extent authorized by the laws of the State of Texas, UTEP shall indemnify, defend, and hold the City harmless from any claims or causes of action, which might arise from use of any such materials.

13. For the purpose of determining place of agreement and law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas, and venue shall lie in El Paso County.

14. This Agreement may be modified by the parties by written amendment and mutual agreement of the parties hereto. Should either party wish to modify this Agreement, the party shall give thirty (30) days' written notice to the other party as follows:

CITY: City of El Paso
Attention: Office of the City Manager
2 Civic Center Plaza
10th Floor
El Paso, Texas 79901-1196

COPY TO: Museums and Cultural Affairs Department
2 Civic Center Plaza
6th Floor
El Paso, Texas 79901-1196

UTEP: UTEP: University of Texas at El Paso
Office of Research and Sponsored Projects
ATTN: Roberto Osegueda
Vice-President for Research
500 West University Avenue

Administration Bldg., Room 209
El Paso, Texas 79968

COPY TO:

University of Texas at El Paso/
Language & Linguistics Department-12th Annual
Contemporary Mexican Literature Conference
ATTN: Fernando N. Garcia
500 West University Avenue, Rm. 137
El Paso, Texas 79968

15. This Agreement may be terminated in whole or in part by the City by giving thirty (30) days written notice of termination to UTEP, and specifying the extent to which performance under the Agreement is terminated. Such right of termination is in addition to and not in lieu of rights of the City set forth in Paragraph 19, herein.

16. This Agreement supersedes any prior agreement between the parties hereto and constitutes and expresses the whole agreement of the parties hereto in reference to the services provided by UTEP for the City and in reference to any of the matters or things herein provided for or herein before discussed or mentioned in reference to such services, all promises, representations, and understandings relative thereto being herein merged.

17. UTEP shall comply with all applicable federal, state, and local laws and regulations, including City ordinances, including, but not limited to the following: Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.), as amended; Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 794), as amended; the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213), as amended; Drug Free Workplace Act of 1988 (41 U.S.C. §§ 702 et seq.), as amended; Debarment (45 C.F.R. Part 1154), Federal Debt Status (OMB Circular A-129) Native American Graves Protection and Reparation Act of 1990 (25 U.S.C. 3001 et seq.), Texas State Tax Code, Section 351.101, regulating expenditure of hotel/motel tax revenues; and the **City of El Paso Ordinance #9779**, regarding Accessibility.

UTEP shall not, on the grounds of race, creed, color, national origin, sex, age, or handicap, exclude from participation in, deny the benefits of, or subject to discrimination under, any person through any programs or activity funded in whole or in part with funds made available to UTEP pursuant to the terms of this Agreement, or any written amendment hereto.

18. It is understood and agreed that the terms and conditions of the request for funding contained in Attachment "A" submitted by UTEP, which are incorporated herein and made a part hereof, will be complied with by UTEP in all respects.

19. Failure to comply with all provisions outlined in this Agreement may constitute a breach of contract as well as an inability to qualify for future City Funding. Financial penalties for breach of contract will be assigned and may include but not be limited to the withholding of payments or immediate cancellation of the Agreement.

20. Assignment. The services to be provided under this Agreement cannot be assigned or delegated by UTEP without the prior written consent of the City.

21. Waiver. Action or inaction by either party regarding any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

22. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, of each provision which is found to be illegal, invalid or unenforceable, there will be added as part of this Agreement a provision which preserves the intention of the unenforceable provision, but which complies with the law.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

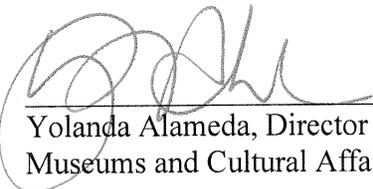
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Yolanda Alameda, Director
Museums and Cultural Affairs Department

UNIVERSITY OF TEXAS AT EL PASO

Diana S. Natalicio, Ph.D., President

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

 This instrument was acknowledged before me on the ____ day of _____, 200_,
by John F. Cook, as Mayor of the City of El Paso, Texas on behalf of said City.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

 This instrument was acknowledged before me on the ____ day of _____, 200_,
by Diana S. Natalicio, as President of the University of Texas at El Paso.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

Attachment A
Scope of Services

UTEP: Language & Linguistics Department
12th Annual Contemporary Mexican Literature Conference

Services: To coordinate and implement the 12th Annual Mexican Literature Conference between March 1-3, 2007. The annual conference brings approximately 150 speakers, writers and participants from around the world to the city of El Paso and the UTEP campus. Contractor will conduct up to 30 sessions and panel discussions around the topic of contemporary Mexican literature. In addition, the participants will attend events off-site at the El Paso Museum of Art and the Mexican Consulate in El Paso. A journal *Revista de Literatura Mexicana Contemporánea* will also be published and distributed nationally and internationally.

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

INTERLOCAL AGREEMENT

CITY CLERK DEPT.
07 JAN -3 AM 8:13

This Interlocal Agreement (the "Agreement") is made this ____ day of _____, 200__, by and between the **CITY OF EL PASO**, a Texas municipal corporation, hereinafter referred to as the "City," pursuant to the Interlocal Cooperation Act, Art. 791.001, et seq., Texas Government Code, and **UNIVERSITY OF TEXAS AT EL PASO/ART DEPARTMENT-VISITING ARTISTS AND EXHIBITION SERIES**, an institution exempt from federal income taxation, hereinafter referred to as "UTEP".

WHEREAS, the City desires to provide its local citizens with a variety of high quality cultural programs; and

WHEREAS, the City desires to respond to the needs and encourage the creativity of local artists and cultural organizations; and

WHEREAS, the City desires to respond to the cultural needs of the local ethnic and distinct communities and to promote the development of arts based in those communities; and

WHEREAS, the City desires to encourage artistic interchanges and cooperative ventures that bring together distinct communities and organizations, and in so doing, reflect the diversity of the City's cultural heritage; and

WHEREAS, the program for which UTEP seeks funding is related to the encouragement, promotion, improvement, and application of the arts, including creative writing and other arts related to the presentation and execution of this major art form, thus directly enhancing and promoting tourism, in accordance with Chapter 351 of the Tax Code of the State of Texas; and

WHEREAS, the City Council has approved and adopted a budget for the fiscal year beginning September 1, 2006 and ending August 31, 2007;

NOW, THEREFORE, the City and UTEP do hereby mutually agree as follows:

1. The City hereby appropriates THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) in funding from the City's Museums and Cultural Affairs Department ("MCAD") to provide UTEP with support to perform the services hereinafter described.

2. The Scope of Services is as described in Attachment "A" hereto, referenced for all purposes, and includes project dates, locations, size and scope, artistic nature and key participants. MCAD shall be informed of any modifications, reduction in the number of project dates or locations, or in the size or scope of services to the supported project. Any reduction in the number of project dates or locations, or in size or scope of the project shall result in a corresponding reduction of the consideration to be provided to UTEP. The parties hereby certify that the services to be provided by UTEP are properly within the statutory functions and programs of the respective state and local entities.

3. UTEP hereby agrees and binds itself to do whatever is necessary to perform and carry out the following:

- a. During the contract period, provide the services, activities, and performances in accordance with Attachment "A," which is attached hereto and hereby made a part of this Agreement and hereinafter referred to as "Project." Any reduction in the Scope of Services, as described in Attachment "A" shall be subject to a reduction in compensation to UTEP in accordance with the provisions of Paragraph 2 above.
- b. Complete and forward to MCAD an acceptable final report and numbered and dated invoice, dated no earlier than the completion of the Project or the completion of the final report including all receipts that document actual expenditures for the (i) total award of MCAD funds, and (ii) any cash match requirement, not later than September 15, 2007, or 30 days after the program is completed, whichever is first. Receipts should consist of one of the following: (i) supporting documentation such as invoices to substantiate the request (invoices shall include the name of the person or vendor, date, purpose of expenditure and check number, which paid the expenditure. Invoices should also be stamped as "paid" to ensure they are not paid more than once.); or (ii) photocopy of actual check, cancelled check or check stubs (photocopy should be of front and back of cleared check; if cancelled checks are not

available the City requires applicable bank statements as described below); or (iii) photocopy of applicable bank statements that reference the checks paid. The City must ensure that funds have been expended prior to reimbursing UTEP. UTEP will submit one (1) signed original and one (1) copy of each such report.

- c. Abide by the any relevant reporting requirements set forth in any statute of the State of Texas or municipal ordinance of the City.

4. UTEP shall keep complete and accurate books and records indicating when, how, by whom, and for what purposes the funds received under this Agreement are spent by UTEP, and UTEP shall make such books and records available to the City for examination upon request. All funds disbursed under this Agreement shall be handled by UTEP in accordance with the standards of the American Institute of Certified Public Accountants, which include provisions for sound fiscal practices and fiscal reporting. In addition, UTEP shall furnish the City at its request with balance sheets and statements of operation, which accurately account for the expenditure of agreement funds, and a written narrative report reflecting same. The City reserves the right to audit the books and records of UTEP, upon reasonable notice to UTEP and during regular working hours, in order to ensure fiscal and programmatic compliance with the assurances in this Agreement.

If any serious discrepancy should appear in such reports or statements, the City shall notify UTEP. If such discrepancy is not rectified to the satisfaction of the City within 30 days, the City may withhold all or part of the funds from UTEP. "Serious discrepancy" shall mean violation of an existing statute or ordinance or an expenditure of contract funds for a purpose, which is not authorized by this Agreement. **Should the City determine that any provision of this Agreement has been violated, the City may terminate this Agreement immediately. Written notice of termination will be sent to UTEP.**

5. The term of this Agreement shall run from the date of execution and shall terminate August 31, 2007, or thirty (30) days after the completion of the Project, whichever is first.

6. The final report form will be provided by the MCAD. Total compensation will be THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00). The City shall make all payments in accordance with its fiscal year and usual accounting procedures. The Contractor shall provide a numbered and dated invoice and one original and one copy of the final report accompanied by complete, detailed receipts documenting expenditure of the total award and cash match.

7. The entire compensation amount from MCAD will be payable upon submission of the final report and invoice due on September 15, 2007, or thirty days after the completion of program, whichever is first based on the entire fiscal year activity. The final report form is available from MCAD. Payment shall be authorized only after the Project has been completed and the final report and invoice for the contracted amount have been received by MCAD and the City Comptroller processes the invoice.

8. UTEP shall include in ALL printed programs, posters, and flyers the following credit line: **“WITH THE SUPPORT OF THE CITY OF EL PASO MUSEUMS AND CULTURAL AFFAIRS DEPARTMENT”**. **The credit line should be prominent, readable and equitable in size to other supporter/sponsor acknowledgments.** For all visual arts projects or events, the credit line must also be included on invitations and exhibition announcements. Any additional printed credit is optional. In the case of public art works (i.e. murals, outdoor sculpture) the credit line shall be included in invitations and as part of the work or as part of a permanent plaque or sign to be affixed to the artwork. Visual arts projects must also include the credit line in the invitations for such events. Neither the City’s seal nor logo may be used in any printed materials. However, the MCAD logo may be utilized in printed

materials and can be downloaded from the MCAD website. The MCAD staff will be available to review layouts of printed materials prior to printing, and UTEP is encouraged to confer with MCAD staff prior to printing in order to avoid any conflicts and ensure that contractual obligations outlined herein are complied with. When no printed program is used, VERBAL CREDIT SHALL BE GIVEN PRIOR TO EACH PRESENTATION. Copies of such printing and program materials as prepared for all activities must be forwarded to MCAD, as part of the mid-year report and the final report. **Failure to comply with this provision will constitute a breach of contract and result in the immediate cancellation of award.**

9. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and UTEP, and UTEP shall be deemed at all times to be an Independent Contractor. The City shall not be subject to any obligations or liabilities incurred by UTEP in the performance of the services described in this Agreement unless otherwise herein authorized.

10. In order to provide members of the **CITY OF EL PASO MCAD BOARD AND STAFF** an opportunity to evaluate the caliber of funded events, **UTEP SHALL SEND TO MCAD, IN A TIMELY MANNER, A SCHEDULE OF EVENTS AND OTHER PERTINENT INFORMATION ABOUT ALL FUNDED EVENTS, PRIOR TO THE EVENT.**

11. To the extent authorized by the laws of the State of Texas, UTEP agrees to indemnify and hold the City, its officers, employees, agents and servants harmless from any claims for injury, death, loss or damage of any kind or character, including negligence by the City, its employees or agents, and by whomsoever suffered or asserted occasioned by or in connection with any services performed by UTEP under this Agreement, either while its services are in progress or as a result of services performed by it.

12. For the purpose of this Agreement, **UTEP SHALL BE HELD RESPONSIBLE FOR OBTAINING APPROPRIATE PERMISSION TO USE AND INCORPORATE COPYRIGHTED MATERIALS INTO THE PERFORMANCE.** In addition, and to the extent authorized by the laws of the State of Texas, UTEP shall indemnify, defend, and hold the City harmless from any claims or causes of action, which might arise from use of any such materials.

13. For the purpose of determining place of agreement and law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas, and venue shall lie in El Paso County.

14. This Agreement may be modified by the parties by written amendment and mutual agreement of the parties hereto. Should either party wish to modify this Agreement, the party shall give thirty (30) days' written notice to the other party as follows:

CITY: City of El Paso
Attention: Office of the City Manager
2 Civic Center Plaza
10th Floor
El Paso, Texas 79901-1196

COPY TO: Museums and Cultural Affairs Department
2 Civic Center Plaza
6th Floor
El Paso, Texas 79901-1196

UTEP: University of Texas at El Paso
Office of Research and Sponsored Projects
ATTN: Roberto Osegueda
Vice-President for Research
500 West University Avenue
Administration Bldg., Room 209
El Paso, Texas 79968

COPY TO:

University of Texas at El Paso/
Union Programs
ATTN: Kate Bonansinga
500 West University Avenue
Stanlee & Gerald Rubin Center for the Visual Arts
El Paso, Texas 79968

15. This Agreement may be terminated in whole or in part by the City by giving thirty (30) days written notice of termination to UTEP, and specifying the extent to which performance under the Agreement is terminated. Such right of termination is in addition to and not in lieu of rights of the City set forth in Paragraph 19, herein.

16. This Agreement supersedes any prior agreement between the parties hereto and constitutes and expresses the whole agreement of the parties hereto in reference to the services provided by UTEP for the City and in reference to any of the matters or things herein provided for or herein before discussed or mentioned in reference to such services, all promises, representations, and understandings relative thereto being herein merged.

17. UTEP shall comply with all applicable federal, state, and local laws and regulations, including City ordinances, including, but not limited to the following: Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.), as amended; Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 794), as amended; the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101-12213), as amended; Drug Free Workplace Act of 1988 (41 U.S.C. §§ 702 et seq.), as amended; Debarment (45 C.F.R. Part 1154), Federal Debt Status (OMB Circular A-129) Native American Graves Protection and Reparation Act of 1990 (25 U.S.C. 3001 et seq.), Texas State Tax Code, Section 351.101, regulating expenditure of hotel/motel tax revenues; and the **City of El Paso Ordinance #9779**, regarding Accessibility. UTEP shall not, on the grounds of race, creed, color, national origin, sex, age, or handicap,

exclude from participation in, deny the benefits of, or subject to discrimination under, any person through any programs or activity funded in whole or in part with funds made available to UTEP pursuant to the terms of this Agreement, or any written amendment hereto.

18. It is understood and agreed that the terms and conditions of the request for funding contained in Attachment "A" submitted by UTEP, which are incorporated herein and made a part hereof, will be complied with by UTEP in all respects.

19. Failure to comply with all provisions outlined in this Agreement may constitute a breach of contract as well as an inability to qualify for future City Funding. Financial penalties for breach of contract will be assigned and may include but not be limited to the withholding of payments or immediate cancellation of the Agreement.

20. Assignment. The services to be provided under this Agreement cannot be assigned or delegated by UTEP without the prior written consent of the City.

21. Waiver. Action or inaction by either party regarding any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

22. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, of each provision which is found to be illegal, invalid or unenforceable, there will be added as part of this Agreement a provision which preserves the intention of the unenforceable provision, but which complies with the law.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Yolanda Alameda, Director
Museums and Cultural Affairs Department

UNIVERSITY OF TEXAS AT EL PASO

Diana S. Natalicio, Ph.D., President

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 200_,
by John F. Cook, as Mayor of the City of El Paso, Texas on behalf of said City.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 200_,
by Diana S. Natalicio, as President of the University of Texas at El Paso.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

Attachment A
Scope of Services

UTEP: Art Department – Visiting Artists and Exhibition Series

Services: To coordinate and implement the UTEP Visiting Artists and Exhibition Series which brings up to 10 contemporary art exhibitions and/or visiting artists to UTEP and the city of El Paso. The visiting artists and exhibition series will present exhibits, lectures and/or workshops during the contract period. All events are open to the general public and are free of charge. The exhibits and events drew 10,000 visitors in FY 2005-06.