

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

DEPARTMENT: DEPARTMENT OF PUBLIC HEALTH
AGENDA DATE: JANUARY 27, 2009
CONTACT PERSON/PHONE: ANGELA MORA 771-5706
DISTRICT(S) AFFECTED: ALL CONSENT AGENDA

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign an Interlocal Agreement between the City of El Paso ("City") and New Mexico State Universtiy ("NMSU"), whereby the City shall pay an amount no to exceed THIRTY FOUR THOUSAND FORTY-SIX AND NO/100 DOLLARS (\$34,046.00) to NMSU for NMSU staff to provide evaluation services for the City's "CHOICES Two Should Know program, which services shall end on October 31, 2009.

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?

Said NMSU agreement is to assist the Department of Health with evaluation of the Choices Two Should Know program as funded by the Paso del Norte Health Foundation.

PRIOR COUNCIL ACTION:

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

No

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?

The funding is provided by the Paso del Norte Health Foundation.
41150004/06165/ G410904

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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: _____

DATE: _____

RESOLUTION

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

THAT the City Manager be authorized to sign an Interlocal Governmental Agreement between the City of El Paso ("City") and New Mexico State University ("NMSU") whereby the City shall pay an amount not to exceed THIRTY FOUR THOUSAND FORTY-SIX AND NO/100 DOLLARS (\$34,046.00) to NMSU for NMSU staff to provide evaluation services for the City's "CHOICES Two Should Know" program, which services shall end on October 31, 2009.

ADOPTED this _____ day of _____, 2009.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josefte Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Michael Hill, Director
Department of Health

CITY CLERK DEPT.
09 JAN 20 AM 11:26

THE STATE OF TEXAS
COUNTY OF EL PASO

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INTERLOCAL GOVERNMENTAL AGREEMENT

This Interlocal Governmental Agreement (the "Contract") is entered into on _____, 2009 between the following parties:

The **CITY OF EL PASO**, hereinafter called the "CITY" and **NEW MEXICO STATE UNIVERSITY**, hereinafter called "NMSU", witnesseth:

WHEREAS, the Texas Interlocal Cooperation Act, V.T.C.A., Government Code, §791.001, *et seq.* allows local governments and political subdivisions of the state of Texas or another state to contract among each other for governmental functions and services, including all or part of a function in the area of public health and welfare; and,

WHEREAS, it is the intent of the parties that the services and functions to be performed pursuant to this Contract constitute solely governmental functions and services;

NOW, THEREFORE, for and in consideration of the following mutual promises, the parties agree to the following:

ARTICLE 1

NMSU shall provide professional services, specifically the services of Dr. Rebecca Palacios, to the CITY'S Department of Public Health (the "DOPH"). The following services will be provided by Dr. Palacios and/or NMSU faculty who have expertise in program evaluation services and by supervised students, for the CITY'S "CHOICES Two Should Know" ("CHOICES") program:

- 1.1 NMSU will conduct process evaluation of the CHOICES program, to include assessment of program delivery, program outreach, participation and retention, and cultural appropriateness of the program. Feedback and trouble shooting will be conducted at bi-weekly meetings with program staff throughout the duration of this Contract.
- 1.2 NMSU will evaluate program outcomes, to include participant demographics, knowledge, outcome expectancies, self-efficacy, and behavioral intentions related to abstinence, STDs, relationship violence, and contraception. NMSU will develop all evaluation tools to include consent and assent forms, assessment surveys for the CHOICES school curriculum, parental component, and contraceptive component of the program. All forms will be translated from English to Spanish using translation services obtained through the CITY'S DOPH. **Completion date for program forms is January 30, 2009.**

- 1.3 NMSU shall manage all data collected for the CHOICES program, including pre, post, and 3 month follow up assessments for the CHOICES school curriculum, and assessments for the parental and contraceptive components of said program. NMSU shall also store all consent and assent forms for the program. NMSU will provide mid-year and annual reports. Mid year reports shall include statistical analysis of survey data, along with tables and graphics, and a progress summary. The yearly report will include an executive summary, introduction (background, descriptions of the programs including activities, goals, and objectives), methodology (administrative issues associated with sampling, research methodology, intended plan), research design and data analysis, summaries of outcomes for each of the program components (with tables and graphs), and implications for program change and future research. **The mid-year report is due on May 20, 2009. The annual report is due October 31, 2009.**

ARTICLE II

The CITY will pay NMSU in monthly installments within 30 days of receipt of a monthly statement from NMSU during the term of this Contract. Payment shall be on a cost reimbursement basis. Total compensation to NMSU for actual costs for services rendered pursuant to this Contract shall not exceed THIRTY FOUR THOUSAND FORTY-SIX and NO/100 DOLLARS (\$34,046.00).

The CITY shall direct all payments pursuant to this Contract as follows:

The Regents of New Mexico State University
Attn: Associate Controller
P.O. Box 30001 MSC SPA
Las Cruces, NM 88003-8001

NMSU'S use of and payment of faculty, employees, subcontractors or students shall be in accordance with all applicable laws.

ARTICLE III

NO AGENCY RELATIONSHIP

Nothing contained herein shall be construed as creating the relationship of employer and employee between the CITY and NMSU. NMSU shall be deemed at all times to be an independent contractor.

IV RISK ALLOCATION

4.1 RISK ALLOCATION - LIMITATION OF LIABILITY

4.1.1 No Indemnification. The parties hereto expressly agree that 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 Contract.

4.1.2 Governmental Function. The parties hereto expressly agree that, in all things relating to this Contract, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The CITY does not waive any immunity under the Texas Tort Claims Act. NMSU does not waive any immunity under the New Mexico Tort Claims Act. The parties further expressly agree that every act or omission of the CITY, which in any way pertains to or arises out of this Contract, falls within the definition of governmental function. The parties also agree that NMSU is entering into this Contract as part of its duty to provide educational and community services.

4.1.3 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Contract, 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, or other economic damage, and further including injury to property, mental anguish and emotional distress – as a result of breach of any term of this Contract, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof.

4.1.4 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Contract, **IN NO EVENT SHALL THE CITY OF EL PASO'S AGGREGATE LIABILITY TO NMSU (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY NMSU), 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 BY THE CITY UNDER THE TERMS OF THIS AGREEMENT.** NMSU acknowledges and represents that it will be responsible to the extent determined by a court of competent jurisdiction for any claim or damages by third parties to the extent they result from its negligent acts or omissions in the performance of this contract, subject to the limitations and provisions of the New Mexico Tort Claims Act, Section 41-4-1 et. seq., N.M.S.A. 1978 where applicable.

4.1.5 Intentional Risk Allocation. NMSU and the CITY each acknowledge that the provisions of this Contract were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Contract. The disclaimers and limitations in this Contract 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.

ARTICLE V

This Contract shall become effective January 1, 2009 and continue in full force until October 31, 2009, subject to any limitations set forth herein. Either party may terminate this Contract by giving the other parties thirty (30) days written notice.

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

CITY OF EL PASO: City Manager
 2 Civic Center Plaza
 El Paso, TX 79901-1196

Copy to: City of El Paso
 Department of Public Health
 Attn: Director
 5115 El Paso Drive
 El Paso, Texas 79905

NMSU: NEW MEXICO STATE UNIVERSITY
 Office of Grants & Contracts
 P.O. Box 30001 MSC OGC
 1620 Acad. Res. Bldg. A., Room 110
 Las Cruces, New Mexico 88003-8001

If any term or provision of this Contract is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this Contract, provided that any invalid portions are not material to the overall purpose and operation of this Contract. The remainder of the provisions of this Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

For purposes of determining the place of the contract and the law governing the same, it is agreed that this Contract shall be governed by applicable federal and state law as determined in a court of competent jurisdiction.

This Contract may be amended in writing to include such provision(s) as the parties may agree upon.

Neither party shall have the right to assign or transfer their right to any third parties under this Contract without prior written consent of the non-transferring party.

ARTICLE VII

MEDICAL RECORDS

NMSU shall not have access to medical records of CHOICES program participants.

ARTICLE VIII

COMPLIANCE

The parties acknowledge that each is subject to applicable federal and state laws and regulations, and policies and requirements of various accrediting organizations. Accordingly, each party will enforce compliance with all applicable laws, regulations, and requirements and will make available such information and records as may be reasonably requested in writing by the other party to facilitate its compliance, except for records that are confidential and privileged by law or as ordered by a court of competent jurisdiction.

ARTICLE IX

INTERLOCAL CONTRACT PROVISION

The CITY shall pay for services received from current revenues available to the CITY.

ARTICLE X

The undersigned contracting parties bind themselves to the faithful performance of this Contract.

(signatures to follow on next page)

APPROVED this _____ day of _____, 2009.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

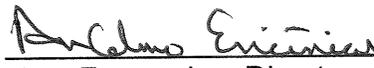


Michael Hill, Director
Department of Health



Josette Flores
Assistant City Attorney

THE REGENTS OF
NEW MEXICO STATE UNIVERSITY



ba Neta Fernandez, Director
Office of Grants and Contracts

Date: 1/12/09

APPROVED AS TO FORM:

Not Applicable

