

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

**DEPARTMENT:** Planning and Economic Development Department

**AGENDA DATE:** Regular Agenda – February 07, 2012

**CONTACT PERSON/PHONE NUMBER:** Mathew McElroy, Interim Director, Planning and Economic Development Department, 541-4193

**DISTRICT(S) AFFECTED:** All Districts

**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.**

Discussion and action on a resolution that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement (Impact Fund) between the City of El Paso and the University of Texas at El Paso (the "Applicant"), in relation to the Applicant's development of technology innovation center, to be called the Regional Cyber and Energy Security (RCES) Center, in El Paso, Texas.

(All Districts) [Planning and Economic Development Department – Mathew McElroy, Interim Director 915-541-4193]

**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?**

On June 14, 2011 the City Council created the City of El Paso Economic Development Incentive Policy "Impact Fund" to assist the Medical Center of the Americas (MCA) Foundation and to create or assist technology-based businesses. The University of Texas at El Paso (UTEP) is proposing the establishment of a new technology innovation center. The new Regional Cyber and Energy Security (RCES) Center will focus on establishing cyber and energy security technology for alternative energy resources. RCES will focus on establishing cyber and energy security on Solar PV systems. Staff is recommending approval of this 380 agreement as it complies with the adopted "Impact Fund".

**PRIOR COUNCIL ACTION:**

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

The City Council previously approved the City of El Paso Economic Development Incentive Policy "Impact Fund".

**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?**

El Paso Electric Franchise Fee

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**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**

*Information copy to appropriate Deputy City Manager*

# RESOLUTION

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

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Grant Agreement (Impact Fund) between the City of El Paso and the University of Texas at El Paso (the "Applicant"), in relation to the Applicant's development of a technology innovation center, to be called the Regional Cyber and Energy Security (RCES) Center, in El Paso, Texas.

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2012.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Mathew S. McElroy, Deputy Director  
Planning and Economic Development



**MEMORANDUM**

**DATE:** February 7, 2012

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Mathew McElroy, Deputy Director Planning and  
Economic Development

**SUBJECT:** 380 Agreement – Regional Cyber and Energy Security

Through a joint proposal from its Center for Environmental Resource Management (CERM) and Research Institute for Manufacturing and Engineering Systems (RIMES), the University of Texas at El Paso (the "Applicant") has requested an economic development grant from the Impact Fund for the purpose of establishing a new technology innovation center to be called the Regional Cyber and Energy Security (RCES) Center in El Paso, Texas. The Grant, not to exceed \$3.44 million distributed over a maximum six-year start-up period, would provide the Applicant with capitalization funds for actual and reasonable costs incurred in establishing the RCES Center.

Intended to address the technical, regulatory, educational, and economic development challenges in cyber and energy security technologies for Alternative Energy Resources, especially Solar PV Systems, the RCES Center is anticipated to promote regional job creation and economic development in these emerging high technology areas. More specifically, by the close of its sixth year of operation, the RCES Center is expected to directly generate 85 high technology jobs in El Paso, compensated at an average annual rate of \$75 thousand per position. Supplementary activities, including vendor testing and certification, an annual conference, and the provision of training courses, are expected to yield an additional and considerable ancillary impact of \$12.12 million over the same six-year period. Staff is recommending approval of the grant to fund the creation of RCES Center.



Two Civic Center Plaza  
El Paso, TX 79901  
(915) 541-0000

Mayor  
John F. Cook

**City Council**

*District 1*  
Ann Morgan Lilly

*District 2*  
Susie Byrd

*District 3*  
Emma Acosta

*District 4*  
Carl L. Robinson

*District 5*  
Dr. Michiel R. Noe

*District 6*  
Eddie Holguin Jr.

*District 7*  
Steve Ortega

*District 8*  
Cortney Carlisle Niland

City Manager  
Joyce A. Wilson



B. **Applicant.** The word "Applicant" means The University of Texas at El Paso, a Texas institution of higher education.

C. **City.** The word "City" means the City of El Paso, Texas.

D. **Full-Time Employee.** The words "Full-Time Employee" mean a person holding a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits.

E. **Grant.** The word "Grant" means any payment to Applicant under the terms and conditions of this Agreement and being payable from general revenue funds available from the City's Impact Fund account derived from the El Paso Electric Company franchise fee paid to the City of El Paso pursuant to the Franchise Agreement adopted by Ordinance No. 017460.

F. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to the City on a monthly basis as a condition of receipt of any Grant payment, with such documentation more fully described in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

## SECTION 2. TERM

The term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur: (i) six (6) years from the Effective Date, plus such additional time thereafter as may be necessary to process the final quarterly Grant payment pursuant to the procedures described in Sections 4 and 5 below; or (ii) the proper termination of this Agreement in accordance with the applicable provisions contained herein, or (iii) termination by mutual consent of the parties in writing. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement.

## SECTION 3. AGREEMENT PURPOSE

The purpose of the Grant is to provide Applicant with capitalization funds for actual and reasonable costs incurred in establishing a new technology innovation center to be called the Regional Cyber and Energy Security (RCES) Center for the El Paso and South Central New Mexico region that addresses the technical, regulatory, educational, and economic development challenges in Cyber and Energy Security technologies for Alternative Energy Resources, especially Solar PV Systems (the "Project"). The Project is anticipated to promote job creation and economic development in the region and foster economic and business development opportunities in the City of El Paso.

## SECTION 4. OBLIGATIONS OF APPLICANT

A. Project Requirements. Applicant agrees to cost share and provide initial research and space infrastructure and faculty salaries and specifically, to perform the following obligations with respect to the establishment of the RCES:

1. During the term of this Agreement, Applicant will document the performance metrics identified in Section 4(B)(5)(a) below in order to complete the documentation required for each Grant Submittal Package request.
2. Applicant will develop a workable selection process for renewable energy vendors, which is well communicated and appropriate to the mission and test and certify these vendors' system products.
3. Applicant agrees to use its best good faith efforts to partner with New Mexico State University (NMSU) and to obtain funding from external funding sources as those funding opportunities become available from industry, state and national agencies with cyber and energy security programs.
4. Applicant agrees to seek out opportunities for collaboration and partnership with entities involved in expansion of the targeted industries in El Paso, Texas, and specifically, (i) collaborate with NMSU's Institute for the Environment and Energy (IEE) on local, state and national funding projects in cyber and energy security; and (ii) build partnerships with Department of Energy (DOE) national laboratories, Smart Grid test centers, industry product and service vendors to work on cyber and energy security projects.

### B. Compensation, Reporting and Compliance.

1. Applicant will perform services for the Project within the monetary limits contained in Exhibit "B" (the "Project Budget"), attached hereto and incorporated by reference herein for all purposes. In no event shall compensation to the Applicant exceed the lesser of Applicant's costs attributable to the work performed in the budget year, or the monetary limits described in Section 5 of this Agreement nor shall the City pay for expenses or services which are or will be reimbursed by another funding source or for services which are not performed. However, Applicant may make transfers of funds between or among budget categories for the given budget year as contained in Exhibit "B", subject to the approval of the City Manager or designee, provided that:

(a) The dollar amount of all transfers among existing categories is equal to or less than ten percent (10%) of the total amount of the Grant funding allocated for the budget year;

(b) The transfer will not change the scope or objective of the Project funded under this Agreement; and

(c) Applicant submits a written request for the revision of the Project Budget, which must contain a complete explanation and justification of changes made, and is subject to the approval of the City Manager or designee. The revised Project Budget will substitute the original Project Budget (or any prior revised Project Budget) upon the City Manager or designee's approval and acceptance thereof, without the need for a written amendment to this Agreement.

2. On a quarterly basis, Applicant will complete and submit a Grant Submittal Package in the form attached hereto as Exhibit "A", together with the requisite verifiable documentation, in order to request disbursement of Grant funds as a reimbursement for the costs of services provided pursuant to this Agreement in the prior quarter. In order to receive a disbursement of the Grant, Applicant must submit a Grant Submittal Package. Only Grant payments reflecting those actual costs which are allowable under the terms of this Agreement and the approved Project Budget shall be disbursed and in no event may the total aggregate of Grant payments for the given budget year exceed the maximum amount of the Grant allocated for that budget year. Budget line items in the Project Budget represent the maximum amount which may be reimbursed under each line item for the given budget year, subject to the capped maximum amount of Grant payment allotted for the budget year.

Further, Applicant will comply with the following additional terms and conditions:

(a) All requests for disbursement of Grant funds submitted by Applicant must be supported by valid invoices or other supporting documentation of financial liability in the Applicant's files or other documentation acceptable to the City. Documentation obtained by Applicant for employees of client companies may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and positions filled;

(b) All line items reported in the Project Budget and requested for Grant disbursement must reconcile with the corresponding line item in the Applicant's general ledger accounts, on a current basis, and with year to date balances. Accounting records required to be maintained in the Applicant's files in relation to payment under this Agreement include, but are not limited to:

- (i) Balance Sheet (both monthly and year to date);
- (ii) Income Statement;
- (iii) General Ledger;
- (iv) Payroll Check Register, as applicable; and
- (v) Spreadsheet that details the amounts requested for Grant disbursement.

(c) Grant payments will be made on the basis of reimbursement of actual allowable expenditures, provided, however, failure to achieve the Performance Indicators specified in Section 4(B)(5) will result in a proportional reduction of the maximum allowable Grant payment for the budget year, as further described in Section 5(B).

3. The City's determination of the amount of the Grant payment due to Applicant is final so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however, Applicant may appeal to the City Council within thirty (30) days of payment, in which event the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the Grant payment shall be final so long as such determination is made in accordance with the terms and conditions of this Agreement. Nothing herein shall limit Applicant's rights and remedies as described in Sections 8 and 11 of this Agreement.

4. It is expressly understood that all costs and expenses incurred by Applicant are Applicant's sole liability. The City shall not be liable to Applicant or any other entity for any costs incurred by Applicant in performance of this Agreement.

5. Applicant agrees to submit reports to the City, utilizing the form attached hereto as Exhibit "C", which will provide quarterly progress and annual year-end reports on the year-end performance milestones and metrics below (collectively, the "Performance Indicators") that Applicant must meet to remain eligible for receipt of a total year-end Grant payment amount that is not subject to any reduction, as specified in Section 5(B):

(a) Performance Metrics.

## Data for RCES Center Benefits and Metrics



RCES Benefits/Metrics	Year						Total or Average	Notes
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6		
Number of jobs created in El Paso at RCES Center	14	10	10	16	17	18	85	Based on total RCES revenue at \$16M at year six, five level funding model
Average dollar compensation per job	84,000	86,000	89,000	92,000	95,000	97,000	90,500	Based on 3% yearly growth
Number of UTEP graduates and trainees in power cyber security	5	15	20	25	40	50	155	Colleges of Engineering & Business Administration
Number of industrial and government units that become sponsors and partners	10	10	10	10	10	10	60	Sponsors includes monetary commitment, Partners are collaborators
Number of cyber and energy security training courses and workshops	4	4	4	8	8	8	28	Offered as part of the Re-Energize Americas Conference sponsored by UTEP & NMSU
Number of cyber and energy security courses at UTEP and NMSU	2	4	6	8	8	8	36	Colleges of Engineering & Business Administration
Number of start-up cyber security companies in region	0	1	1	1	1	1	5	In collaboration with CREIE and Hub of Innovation
Number of power grid products and services tested and certified by the RCES	5	5	10	10	10	20	60	Based on national standards developed by DOE/NIST cyber security working groups
Number of Solar PV T&E industry funded projects at the RCES	5	10	20	20	20	20	95	RCES performs T&E of vendor products and services
Number of external funding grants and contracts	4	8	10	10	10	10	52	Competitive awards by DoD, DOE, EPA, USDA, EPRI and other agencies or foundations
Number of attendees to the Annual RCES Conference	50	80	100	200	200	200	830	Only attendees concentrating in the cyber and energy security sessions of Re-Energize the Americas Conference
Number of papers and presentations at national cyber security for power grid conferences	5	10	15	20	20	20	90	Papers, presentations, and panel sessions at national conferences

(b) Revenue From RCES

Projected Revenue	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
External Funding	\$250,000	\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$8,250,000
RCES Memberships		\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,500,000
Vendor Test Fees		\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$500,000

Submission of the required reports is a condition of continued receipt of the Grant. If the quarterly progress report or the annual year-end report is due, then it should accompany the Applicant's Grant Submittal Package, but if not submitted together, the report(s) may be submitted ten (10) business days in advance.

6. Applicant understands and agrees that failure to meet the Performance Indicators in the manner set forth in Section 5(B) below, will result in the reduction described therein and additionally, that failure to meet the required Performance Indicator scoring threshold stated in Section 5(B) for two consecutive funding years shall constitute an event of default under this Agreement.

**SECTION 5. OBLIGATIONS OF CITY**

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), the City shall comply with the following terms and conditions:

A. Consideration. In consideration for satisfactory performance of the activities required by Section 4 of this Agreement, the City will disburse grant funds not to exceed Three Million Four Hundred Forty Thousand Dollars (\$3,440,000.00), subject to the terms and conditions contained herein.

1. The City agrees to process any Grant payments to Applicant within ten (10) business days after approval of Applicant's Grant Submittal Package, which must be submitted on a quarterly basis.

2. It is expressly understood by the parties of this Agreement that, except as otherwise provided herein, payment of the Grant in no way obligates the City's general fund or any monies or credits of the City and creates no debt of, nor any liability to, Applicant or third parties. All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

B. Performance Indicator Evaluation. City shall evaluate Applicant's performance based upon the Performance Indicators stated in Section 4(B)(5) and shall score each indicator as either Favorable (meaning Applicant has met or exceeded the Performance Indicator) or Unsatisfactory (meaning Applicant has failed to meet the Performance Indicator by twenty-five percent (25%) or more). Grantee must score "Favorable" in at least 50% of (a) Performance Indicators and meet at least 75% of each Performance Indicator in (b) (the "scoring threshold"):

1. If Applicant fails to meet the above "Favorable" scoring threshold by the year-end reporting period, the Grant payment amount requested for the fourth quarter of that funding year shall be reduced by twenty-five percent (25%), as a reduction against the prior Grant payment disbursements for that year.

2. Notwithstanding the foregoing, if Applicant fails to meet the "Favorable" scoring threshold for two consecutive funding years, such failure shall constitute an event of default, subject to the provisions stated in Section 8.

C. Maximum Grant Amount. Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all payments made that would exceed Three Million Four Hundred Forty Thousand Dollars (\$3,440,000.00), nor shall Applicant be entitled to receive the Grant unless it satisfies the requirements of Section 4 of this Agreement.

## **SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS**

A. Applicant shall maintain the fiscal records and supporting documentation for all expenditures of funds to be reimbursed or credited to Applicant under this Agreement in a manner that conforms to this Agreement. Applicant shall retain such records, and any supporting documentation for the greater of three (3) years from the end of the Agreement term period, or (2) the period required by other applicable laws and regulations.

B. Applicant shall give City, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit records, files, documents, written or photographic material, videotape, and other papers, things, or property belonging to or in issue by Applicant pertaining to the funds expended by Applicant which are reimbursed or credited under this Agreement. Copying and auditing will be performed at a reasonable time and place, such as during the Applicant's usual business hours, and at Applicant's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Agreement. The City or its designee may additionally request the copying, mailing and/or electronic transmission of records by Applicant.

## **SECTION 7. MONITORING**

A. The City reserves the right on its behalf to perform, or have its designees perform, a periodic on-site or desk audit monitoring of Applicant's compliance with the provisions

of this Agreement. The monitoring shall be conducted in a reasonable time, place and manner by the City. Applicant shall provide the assistance and information needed by the City in monitoring and evaluating the performance of the Project. It is understood that the City, or its designee, will perform periodic fiscal and annual programmatic monitoring reviews including a review of any financial audit conducted by the Applicant. The City, and/or its designees may request the copying, mailing, and/or electronic transmission of Applicant's records in connection with an on-site or desk audit monitoring.

B. Monitoring reviews will include a written report to Applicant documenting findings and concerns that will require a written response to the City. An acceptable response must be received by the City within 30 days from the Applicant's receipt of the monitoring report audit review letter, or otherwise future Grant payments will be withheld under this Agreement.

C. Failure of Applicant to take all actions necessary to resolve and close monitoring or audit findings within 60 days of receipt of the monitoring report or audit review letter shall be considered an event of default under this Agreement. The City Manager or designee shall have the discretion to extend the 60-day period for reasons the City Manager or designee may judge to be extenuating circumstances.

#### **SECTION 8. EVENTS OF DEFAULT**

Each of the following shall constitute an Event of Default under this Agreement:

A. Failure to Establish the RCES. Applicant's failure or refusal to establish the RCES pursuant to the Project requirements during the term of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.

B. Failure to Favorable Perform. In the event Applicant fails to meet the "Favorable" scoring threshold as described in Section 5(B), for two consecutive funding years, such failure to perform, shall be deemed an event of default following Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure.

C. False Statements. In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the City describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant fails to commence such cure within such thirty (30) day period or fails to

continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.

D. Insolvency. The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

E. Other Defaults. Failure of Applicant or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or City fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicant or City also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.

F. Failure to Cure. If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

G. Effect of Termination. Upon receipt of the City's notice of termination, Applicant shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement and shall cease to incur costs thereunder. The Applicant agrees and understands that the City will not be liable to Applicant or to third parties for any costs incurred subsequent to receipt of a notice of termination. Further, it is understood and agreed that upon notice of termination and following the applicable cure period, Applicant shall provide one final Grant Submittal Package request within thirty (30) days, which will include only those reimbursable expenses incurred prior to the notice of termination.

## **SECTION 9. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT**

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

## **SECTION 10. CONFLICT OF INTEREST**

A. Applicant shall ensure that no employee, officer, board member or agent of Applicant shall participate in the selection or awarding of any contract or agreement which will be reimbursed by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when (1) the employee, officer, board member or agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the work. Applicant shall adhere to ethics rules comparable to Title 2, Section 2.92.050 Standards of Conduct, City of El Paso Ethics Code, available for review on the City's official website or at the Office of the City Clerk.

B. Except for eligible administrative costs, no employee, agent, or officer of Applicant, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in the client companies, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are a part of this Agreement:

A. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

B. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

C. Assignment. Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or any assignment of this Agreement without the City's prior

written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.

D. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.

E. Captions. The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.

F. Confidentiality Obligations. The confidentiality of employment records and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant or other third party as a basis for nondisclosure.

G. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

H. Employment of Undocumented Workers. During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. The City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.

I. Execution of Agreement. The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.

J. Independent Contractor. City and Applicant understand that Applicant is an independent contractor and that no term or provision hereof or act of Applicant in performance of this Agreement shall be construed as making Applicant an agent or employee of the City. All officers and employees of the Applicant shall be solely responsible to the Applicant, and the City shall not have any authority, responsibility, or liability with respect thereto.

K. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso  
City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy To: City of El Paso  
Economic Development Department Director  
2 Civic Center Plaza  
El Paso, Texas 79901

APPLICANT: The University of Texas at El Paso.  
Center for Environmental Resource Management  
(CERM)  
El Paso, TX 79968-0697

Copy To: The University of Texas at El Paso.  
Research Institute for Manufacturing and  
Engineering Systems (RIMES)  
El Paso, TX 79968-0697

L. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.

M. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

N. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

O. Waiver. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)



**ACKNOWLEDGMENT**

**STATE OF TEXAS**       §  
  §  
**COUNTY OF EL PASO**   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Diana Natalicio**, as **President of THE UNIVERSITY OF TEXAS AT EL PASO**, on behalf of said entity (APPLICANT).

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
  
\_\_\_\_\_

**EXHIBIT A**  
**[Grant Submittal Package Form]**

**The University of Texas at El Paso** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and signed by \_\_\_\_\_ of **The University of Texas at El Paso**.

This Grant Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of \_\_\_\_\_ expenses detailed and attached hereon representing eligible expenses incurred from \_\_\_\_\_ to \_\_\_\_\_.

1. Exhibit C – Current Performance Indicators Reporting Form (if being also submitted on a quarterly or yearly due date).
2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by **The University of Texas at El Paso** that the City of El Paso has up to ten (10) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

**THE UNIVERSITY OF TEXAS AT EL PASO**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF EL PASO**   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of **THE UNIVERSITY OF TEXAS AT EL PASO**, on behalf of said entity (APPLICANT).

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

### Exhibit B – PROJECT BUDGET

Table 1. Regional Cyber and Energy Security (RCES) Center Projected Revenue, 6 Years							
	2012	2013	2014	2015	2016	2017	Total
CITY OF EL PASO BUDGET	\$540,000	\$580,000	\$580,000	\$580,000	\$580,000	\$580,000	\$3,440,000
UTEP IN-KIND COST SHARE	\$320,223	\$325,497	\$330,916	\$336,206	\$341,430	\$346,809	\$2,001,081
EXTERNAL FUNDING	\$250,000	\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$8,250,000
RCES MEMBERSHIPS		\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$2,500,000
VENDOR TEST FEES		\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$500,000
<b>TOTAL PROJECTED REVENUE</b>	<b>\$1,110,223</b>	<b>\$2,505,497</b>	<b>\$2,510,916</b>	<b>\$3,516,206</b>	<b>\$3,521,430</b>	<b>\$3,526,809</b>	<b>\$16,691,081</b>



**Exhibit C – YEAR END PROGRESS REPORT**

RCES Metric	REPORTED						REQUIRED					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
1 Number of jobs created in El Paso at RCES Center							14	10	10	16	17	18
2 Average dollar compensation per job							\$84,000	\$86,000	\$89,000	\$92,000	\$95,000	\$97,000
3 Number of UTEP graduates and trainees in power cyber security							5	15	20	25	40	50
4 Number of industrial and government units that become sponsors and partners							10	10	10	10	10	10
5 Number of cyber and energy security training courses and workshops							4	4	4	8	8	8
6 Number of cyber and energy security courses at UTEP and NMSU							2	4	6	8	8	8
7 Number of start-up cyber security companies in the region							0	1	1	1	1	1
8 Number of power grid products and services tested and certified by the RCES							5	5	10	10	10	20
9 Number of Solar PV T&E industry funded projects at the RCES							5	10	20	20	20	20
10 Number of external funding grants and contracts							4	8	10	10	10	10
11 Number of attendees to the Annual RCES Conference							50	80	100	200	200	200
12 Number of papers and presentations at national cyber security for power grid conferences							5	10	15	20	20	20

Note: The above progress report reflects the year end required totals; however, the Applicant is required to submit a quarterly report showing project progress. With each report, please include all applicable documents to demonstrate progress. For example, job advertisements, quarterly student enrollment, etc.

**Certification:** I hereby attest that the information contained in this form has been collected and compiled in good faith and is true and correct to the best of my abilities.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Date