

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

DEPARTMENT: OMB

AGENDA DATE: April 20, 2010

CONTACT PERSON/PHONE: David Almonte - 541-4777

DISTRICT(S) AFFECTED: All

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.

Authorize the City Manager to sign an Inter-local Agreement by and between the City of El Paso and the University of Texas at El Paso in an amount not to exceed \$112,000 for the University of Texas at El Paso to provide a Masters in Public Administration degree as related to the graduate certificate program in Urban and Regional Planning to employees of the City. The term of this Agreement shall begin May 1, 2010, and shall end May 31, 2012.

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 February 3, 2009 Council approved an Inter-local agreement between the City of El Paso and The University of Texas at El Paso (UTEP) which provided a thirty session training and development program for City of El Paso staff in Urban and Regional Planning. The Masters in Public Administration degree from UTEP will further assist the City in the development of staff and enhance the employees' knowledge and skills and the service quality and efficiency within the Planning Division of the Development Services Department.

PRIOR COUNCIL ACTION:

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

Yes, Council approved the Inter-local agreement appropriating up to \$75,000 on February 3, 2009 for the graduate certificate program in Urban and Regional Planning. Additionally, on October 20, 2009 Council approved the First Amendment to the Inter-local Agreement to extend the program for one year with no additional costs.

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?

\$14,000 99010273-01101-504405 Contingency Reserve
\$98,000 09010030-01101-504424 Tuition Reimbursement

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

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

DEPARTMENT HEAD: David Almonte
(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 Agreement by and between the City of El Paso and the University of Texas at El Paso in an amount not to exceed One Hundred Twelve Thousand and No/100 Dollars (\$112,000.00) for the University of Texas at El Paso to provide a Masters in Public Administration degree as related to the graduate certificate program in Urban and Regional Planning to employees of the City in order to enhance the employees knowledge and skills and the service quality and efficiency of the department staff, and that the City Manager may increase the number of City employee participants and pay additional compensation at the amounts set forth in the Agreement.

APPROVED this _____ day of _____, 2010.

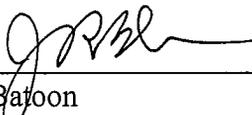
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

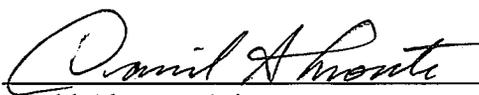
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John Baroon
Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management and Budget

STATE OF TEXAS)
)
COUNTY OF EL PASO) INTERLOCAL AGREEMENT WITH
 THE UNIVERSITY OF TEXAS AT EL PASO

This Interlocal Agreement with The University of Texas at El Paso (this "*Agreement*"), entered into this _____ day of April, 2010, by and between the City of El Paso, (the "*City*"), a Texas Municipal Corporation, and The University of Texas at El Paso, a Texas institution of higher education ("*UTEP*").

RECITALS:

WHEREAS, the City's Development Services Department Planning Division ("*Planning Division*") provides planning, zoning and other urban planning functions for the City;

WHEREAS, in order to further develop and enhance the service quality and efficiency of the services provided by the Planning Division, the City desires to provide certain educational opportunities to the Planning Division employees to enhance their knowledge and skills in Urban and Regional Planning;

WHEREAS, UTEP offers a high quality education program that will enable City employees to obtain a certificate in Urban and Regional Planning and prepare City employees to take a certification exam offered by the American Institute of Certified Planners;

WHEREAS, the City has a policy to encourage an educated and skilled workforce that pays for a portion of an employee's tuition when an employee is pursuing a higher education degree;

WHEREAS, the City desires to retain UTEP, and UTEP desires to provide to the City at a City facility, a graduate certificate program in Urban and Regional Planning to certain City employees designed to enhance the services provided by the Planning Division;

WHEREAS, the Texas Interlocal Cooperation Act, TEXAS GOVERNMENT CODE, §§791.001, *et seq.*, allows local governments and political subdivisions of the state to contract among each other for governmental functions and services; and

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

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. SCOPE OF SERVICES

UTEP hereby agrees that it will provide to designated City Planning Division employees and other city personnel eight (8) classes in order to complete a Master's in Public Administration degree, further described in Exhibit A, Scope of Work. UTEP shall design and develop the curriculum, develop all educational materials, and provide to City employees successfully completing the program. Services shall be provided at a City facility mutually designated by the City and UTEP. This program will be for individuals that are in the current program for the Urban and Regional Planning Certificate program.

2. TERM

The term of this Agreement shall begin May 1, 2010, and shall end May 31, 2012. The term of this Agreement may be extended upon the written approval of both parties.

3. COMPENSATION

The City hereby agrees to compensate UTEP and UTEP hereby agrees to be compensated in an amount not to exceed One Hundred Twelve Thousand Dollars (\$112,000.00) (the "**Compensation**") for the services provided pursuant to the terms of this Agreement and at the amounts per employee/participant set forth in **Exhibit A**, provided that the total amount of Compensation may be increased without further amendment by the amounts set forth in **Exhibit A** if City Manager increases the number of City employee participants and notifies UTEP in writing of such increase. Compensation shall be paid as follows: the first payment of \$14,000.00 shall be made on the week the course commences; and a payment of \$14,000.00 shall be made at the beginning of each pursuant class until completion of all courses based upon the number of City employee participants. The parties agree that the Compensation includes all expenses incurred by UTEP in its performance of this Agreement. UTEP agrees that at no time shall it make a claim against the City for more than the Compensation provided under the terms

of this Agreement. Payment will be made to UTEP within thirty (30) days following submittal of invoices to the City.

4. CERTIFICATION

The CITY and UTEP hereby certify that the services to be provided by UTEP are necessary and essential activities that are properly within the statutory functions and programs of the respective state and local entities.

5. APPLICABLE LAWS

UTEP shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

6. INDEPENDENT CONTRACTOR

Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities of UTEP incurred in the performance of this Agreement unless otherwise herein authorized. Except to the extent expressly provided in this Agreement, neither of the parties has, and neither of the parties shall attempt to assert, the authority to make commitments for or to bind the other Party to any obligation.

7. ASSIGNMENT

The services to be provided under this Agreement are personal to UTEP and cannot be assigned or delegated without the prior written consent of the CITY.

8. TERMINATION

- (A) Either party may terminate this Agreement if the other is in default, upon five (5) days' written notice to the other party.
- (B) The CITY or UTEP may terminate this Agreement without cause upon thirty (30) days written notice to the other party.
- (C) Termination shall be without prejudice to any obligation by one Party to the other, which shall have accrued and owed prior thereto.

9. NOTICES

Any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the City or UTEP at the following addresses:

CITY: Director, Office of Management and Budget
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

UTEP: Dennis L. Soden, Ph.D.
Institute for Policy and Economic Development
University of Texas at El Paso
El Paso, Texas 79968-0703

10. 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.

11. DISCRIMINATION

- (A) *Discrimination Prohibited:* No person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, 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.
- (B) *Specific Discriminatory Actions Prohibited:* UTEP may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, national origin, age or disability, or having the effect of defeating or substantially impairing accomplishment of the objectives of the programs funded pursuant to this Agreement or any written amendment hereto with respect to individuals of a particular race, color, national origin, creed, sex, age or disability.

12. FINAL AGREEMENT

This Agreement contains all commitments and agreements of the parties hereto, and no verbal or written commitment shall have any force or effect if not contained herein. This Agreement may not be amended unless reduced to writing and executed by authorized representative of both parties hereto.

13. VENUE

The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas.

14. CONTRACT INTERPRETATION

In interpreting the various provisions of this Agreement in a court of law, any court having jurisdiction shall apply the laws of the State of Texas to interpret the terms and provisions in this Agreement.

15. SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected; and in lieu 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.

16 RISK ALLOCATION - LIMITATION OF LIABILITY

- (A) 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 Agreement;
- (B) Governmental Function. The parties hereto expressly agree that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas 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 Agreement,

falls within the definition of governmental function. The Parties also agree that UTEP is entering into this Agreement as part of its duty to provide educational and community services;

- (C) Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind – including lost profits, loss of business, 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 Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof;
- (D) Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL THE CITY OF EL PASO'S AGGREGATE LIABILITY TO UTEP (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY UTEP), 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; and**
- (E) Intentional Risk Allocation. UTEP and the City each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended to limit the forms of relief available to the Parties.

(Signatures appear on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO) **INTERLOCAL AGREEMENT**

(Signature Page)

IN WITNESS WHEREOF, the parties have executed this Agreement in the City of El Paso, Texas on the date first above written.

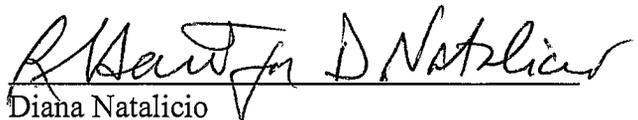
CITY OF EL PASO

Joyce A. Wilson
City Manager

ATTEST:

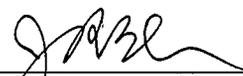
Richarda Duffy Momsen
City Clerk

UNIVERSITY OF TEXAS AT EL PASO



Diana Natalicio
President

APPROVED AS TO FORM:



John Batoon
Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management and Budget

EXHIBIT "A"

MPA Co-Hort Program Schedule

Course Title	Cost Per Class/Participant	Tentative Course Dates	Meeting Times
PAD 5350 Organizational Theory and Behavior	\$875	July 23-Aug. 27, 2010	Every Friday, 8:30-5:00
PAD 5373 Land Use Investment Analysis (Elective)	\$875	Fridays: Sept. 10, 17, 24, Oct. 8, 22; Sat. Oct. 9 and 23	Fridays, 8:30-5:00; Sat. 8:30-1:15
PAD 5310 Public Policy Process and Institutions	\$875	Nov. 5-Dec. 18, 2010	Fridays, 8:30-5:00; Sat. 8:30-1:15
PAD 5311 Economic Analysis for Public Administrators	\$875	Jan. 7-Feb. 19, 2011	Fridays, 8:30-5:00; Sat. 8:30-1:15
PAD 5353 Human Resource Management	\$875	Mar. 4- Apr. 16, 2011	Fridays, 8:30-5:00; Sat. 8:30-1:15
PAD 5351 Applied Statistics for Public Administrators	\$875	April 29-June 3, 2011	Every Friday, 8:30-5:00
PAD 5352 Public Budgeting and Financial Management	\$875	June 24-July 29, 2011	Every Friday, 8:30-5:00
PAD 5365 Policy Analysis and Decision Making	\$875	Aug. 12-Sept. 16, 2011 Graduate Fall 2011	Every Friday, 8:30-5:00