

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

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: May 8, 2012

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Shubert, P.E., City Engineer (X4423)

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

That the City participate with the County in conducting a survey of wages received by classes of workers employed on public works projects within the City of El Paso for the purpose of examining and providing recommendations to City Council on Wage Rate issued.

BACKGROUND / DISCUSSION:

For construction projects that consist of horizontal construction, streets, bridges, etc., the City used the applicable federal wage (Davis Bacon) rates which are updated on a regular basis. However for federally funded construction of vertical structures (buildings) the City must use the higher of the federal wage rate or the City wage rate. When a project is funded solely with City funds the established City building wage rate is used. The current City wage rate was established in 1999.

In order to keep the wage rate updated the City has some options. The first option is to use federal wage rates that are updated by the federal government on a regular basis. The second option is for the City to conduct its own wage rate survey. This is how the City established its wage rates dated 1999.

The County makes it a practice to update wage rates every three years, so their rates are more current than the wages set in 1999 by the City. The City has the option to conduct its own local survey of wages; however, with the County preparing to conduct a survey and in the interest of establishing current wage rates with a single rather than multiple surveys, participating with the County in conducting the survey is a viable approach. Approval of this resolution will allow the City to join with the County in the survey task.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

No funding required. The County has established funding for the administrative cost of the survey.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(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 Mayor be authorized to sign an Interlocal Agreement with the County of El Paso (the "County"), allowing the City to participate with the County in conducting a survey of the general prevailing rate of per diem wages in the City of El Paso, to comply with Texas Government Code Chapter 2258 which requires that workers employed on a public works project on behalf of the City not be paid less than the general prevailing rate of per diem wages in the City for work of a similar character.

ADOPTED THIS _____ DAY OF _____, 2012.

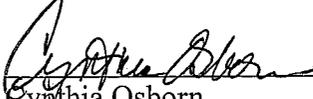
THE CITY OF EL PASO

John F. Cook,
Mayor

ATTEST:

Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



for R. Alan Shubert, P.E.
City Engineer

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is entered into this 9th day of April, 2012, by and between the **CITY OF EL PASO** (the "City"), and the **COUNTY OF EL PASO** (the "County").

WHEREAS, Texas Government Code Chapter 791 authorizes local governments and political subdivisions, including the City and the County, to contract with each other to perform governmental functions and services; and

WHEREAS, Texas Government Code Chapter 2258 requires that workers employed on a public works project by or on behalf of a political subdivision of the state shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

WHEREAS, that political subdivisions engaged in the construction of public works, determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute a public works contract; and

WHEREAS, that a political subdivision may determine the general prevailing wage rate by either 1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision or 2) adopting the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments; and,

WHEREAS, the City and the County desire to work together in conducting a survey of the general prevailing rate of per diem wages in El Paso County; and

WHEREAS, the City and the County believe that a cooperative agreement between the parties for the purpose of conducting a survey of the general prevailing rate of per diem wages in El Paso County will provide a mutual benefit to those persons served by the parties and serve a governmental purpose; and

WHEREAS, The City and County are authorized to enter into this Agreement under Texas Government Code Chapter 791; and

WHEREAS, the City and the County have each entered into this Agreement by the action of their respective governing bodies in the appropriate manner prescribed by law.

NOW THEREFORE, The City and the County for the consideration and mutual promises as herein set forth agree as follows:

1.0 CONTRACTUAL RELATIONSHIP

1.1 The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

1.2 The parties to this Agreement acknowledge and agree that they do not have, and will not assert any authority to make commitments for the other party or to bind the other party to any obligation other than the obligations set forth in this Agreement.

2.0 SCOPE OF SERVICES

2.1 The County, with the assistance of City personnel, will conduct a wage rate survey with the data and information compiled to be used by the City in determining the prevailing wage rate for public works projects within the city limits of El Paso.

2.2 For purposes of ascertaining the City's prevailing wage rate, the survey will use data compiled by the County and the City that is based on the wages actually received by classes of laborers and mechanics who have been employed on projects of a character similar to the contract work done within the City and based on projects within the corporate limits of the City.

3.0 TERM

The term of this Agreement shall begin once executed by both parties and shall end once the services have been provided, unless the parties otherwise mutually agree to terminate this Agreement sooner. The City Manager has the authority to exercise the termination provisions of this Agreement on behalf of the City.

4.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

4.1 **Governmental Function.** The City and the County expressly agree that, in all things relating to this Agreement, the parties enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

4.2 **Sovereign Immunity.** The City and the County reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against

claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

5.0 RISK ALLOCATION – LIMITATION OF LIABILITY

5.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

5.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

5.1.2 Intentional Risk Allocation. The City and the County 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.

5.1.3 No Indemnification. The Parties expressly agree that, except as provided herein, 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.

5.1.4 Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

6.0 GENERAL PROVISIONS

6.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

6.2 **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the existing City Charter and/or any existing ordinance of the City.

6.3 **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. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

6.4 **Current Revenues.** Pursuant to Section 791.011(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

6.5 **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

6.6 **Amendment; Assignability.** This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

6.7 **Severability.** All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which 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.

6.8 **Section Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

6.9 **Representation of Counsel; Mutual Negotiation.** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

6.10 **Notices.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below:

CITY: City of El Paso
Attention: City Engineer
Two Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196

COUNTY: County of El Paso, Texas
Attn: County Judge
500 E. San Antonio, Room 301
El Paso, Texas 79901

WITH A COPY TO: Office of the County Attorney
Attention: Cygne Nemir
500 E. San Antonio
5th Floor Suite 503
El Paso, Texas 79901

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

6.11 Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

6.12 Complete Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

6.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

(Signatures begin on following page)

IN WITNESS WHEREOF, the City has executed this Agreement in the City of El Paso on the _____ day of _____, 2012.

THE CITY OF EL PASO:

ATTEST:

John Cook,
Mayor

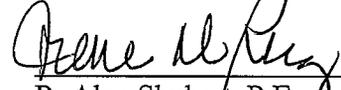
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

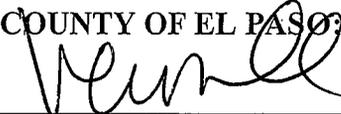
APPROVED AS TO CONTENT



for R. Alan Shubert, P.E.
City Engineer

IN WITNESS WHEREOF, the County has executed this Agreement in the City of El Paso on the 9th day of April, 2012.

COUNTY OF EL PASO:



Veronica Escobar
County Judge

APPROVED AS TO FORM:



Cygne Nemer
Assistant County Attorney



City/County Interlocal Agreement

Prevailing Wage Rate Survey



May 8, 2012



Interlocal Agreement

- Interlocal Agreement with the County of El Paso (the “County”), allowing the City to participate with the County in conducting a survey of the general prevailing rate of per diem wages in the City of El Paso.
- Requirement to comply with Texas Government Code Chapter 2258.
 - Requires that workers employed on a public works project on behalf of the City not be paid less than the general prevailing rate of per diem wages in the locality for work of a similar character.
 - A prevailing wage is defined as the hourly wage, usual benefits and overtime, paid to the majority of workers, laborers, and mechanics within a particular area
 - Critical element in ensuring that public construction projects do not destabilize the local construction industry.
 - The listing of City prevailing wage rates for Heavy and or Highway Construction and Building Construction Trades are included in every City construction contract; contractor’s certified payrolls are reviewed by Engineering compliance staff to ensure prevailing wages paid.



Scope of Wage Rate Survey

- The County, with assistance of City personnel, will lead the survey using data and information compiled to determine the prevailing wage rates for local public works projects; data includes information gathered from the construction industry for calendar years 2010 and 2011.
- Two methods used to establish prevailing wage rates:
 1. Conducting a survey of wages received by classes of workers in our locality;
 2. Using the prevailing wage rates as determined by the U.S. Department of Labor (Davis-Bacon).
- As a matter of practice on City projects, both the local and federal wage rates are identified in City construction contracts for respective job classifications, the City requires that the higher wage type shall be paid.
- Local prevailing wage rates will be established for each participating jurisdiction (City and County).
 - Only work done within the “City jurisdiction” will be included in the City prevailing wage rates.
 - As the County has jurisdiction in the City, City wage rate surveys will be included in the County’s database, but surveys outside the City limits are not inclusive to the City’s survey data.



Questions and Comments