

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

DEPARTMENT: Public Health

AGENDA DATE: CCA 052212

CONTACT PERSON NAME AND PHONE NUMBER: Michael Hill, 771-5702

DISTRICT(S) AFFECTED: All

SUBJECT:

THAT the Mayor be authorized to sign and submit an Interlocal Agreement with the University of Texas Health Sciences Center at Houston and the City of El Paso, to develop information specialist training for cancer risk assessment and referrals.

BACKGROUND / DISCUSSION:

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

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

DEPARTMENT HEAD:

Subscribed for Michael Hill

RESOLUTION

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

THAT the Mayor be authorized to sign and submit an Interlocal Agreement with the University of Texas Health Sciences Center at Houston and the City of El Paso, to develop information specialist training for cancer risk assessment and referrals.

PASSED AND APPROVED this _____ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

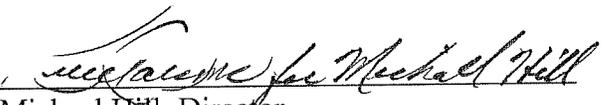
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Michael Hill, Director
Department of Public Health

THE STATE OF TEXAS
COUNTY OF EL PASO

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INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into on this 22nd day of May, 2012, by and between The University of Texas Health Science Center at Houston on behalf of its Department of School of Public Health (“University”), an agency of the State of Texas and governed by the Board of Regents of The University of Texas System (“System”), and City of El Paso (“Contractor”) to develop information specialist training for cancer risk assessment and referrals.

RECITALS

WHEREAS, University desires to engage the services of Contractor;

WHEREAS, Contractor is competent to provide such services and desires to work with University;

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 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 Agreement constitute solely governmental functions and services.

NOW, THEREFORE, University and Contractor agree that the following terms, conditions and limitations shall govern this Agreement:

1. Scope of Work: Contractor will perform the scope of the work to the satisfaction of University as described below:
 - Contribute management time to participate in planning for materials development, information specialist training and design of the precise protocols for taking calls and administering the cancer risk assessment and referrals.
 - Provide Information & Referral (I&R) Specialist time for their training, recruitment of study participants, and administering the consent procedure, cancer risk assessment, and baseline assessment with study participants.
 - Dedicate navigator time for their training, maintaining records and databases pertaining to the study, and working with participants to enable them to obtain cancer control services.

Time is of the essence in connection with this Agreement. University will have no

obligation to accept late performance or waive timely performance by Contractor.

2. Duration of Agreement: This Agreement shall be effective May 22, 2012 and shall terminate on February 28th, 2015. Either party may terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other party.
3. Compensation: University shall compensate Contractor as tasks are completed which shall be measured by on the number of **surveys conducted, caller navigation records, and staff training.**

For the duration of the first project year through February 28, 2013, Contractor shall be compensated at \$71,855.44. For year 2, Contractor shall be paid \$78,366, and for year 3, Contractor shall be paid \$58,834 for the period ending on February 28, 2015.

The total value of this Agreement shall not exceed \$ 209,055.00.

4. Independent Contractor: It is understood and expressly agreed upon by the parties that Contractor is acting as an independent contractor in performing the services hereunder. Neither Contractor nor its employees shall hold themselves out as employees or agents of University. Neither Contractor nor its employees shall make any statements, representations, or commitments of any kind, or to take any action which shall be binding upon the University, except as may be expressly provided for herein or authorized in writing. University shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits that might be expected in an employer-employee relationship.
5. Assignment: This Agreement is entered into in reliance upon and in consideration of the singular skill and qualifications of Contractor. Contractor shall therefore not voluntarily or by operation of law assign or otherwise transfer its rights or obligations pursuant to the terms of this Agreement to any party without the prior written consent of University. Any attempted assignment or transfer by Contractor of its rights or obligations without such consent shall be void. Furthermore, Contractor shall not subcontract any of the services to be provided hereunder to another entity without the prior written consent of University.
6. Amendment: This Agreement may not be changed or modified in any respect except by means of a written document executed by both parties.
7. Ownership and Use of Work Material.
 - 7.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.

- 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not to be used by any person other than University on other projects unless expressly authorized by University in writing.
- 7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 7.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.
8. Provisions of Law: This Agreement is subject to and shall be governed by the laws of the State of Texas, without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in Harris County, Texas. Any earnings derived from services rendered by Contractor are subject to income taxes; such earnings shall be reported to the government at the end of each calendar year by the University's accounting department. It is understood that Contractor is responsible for paying all applicable federal or state taxes on the compensation paid to Contractor by University.
- 8.1 Compliance with law. 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.

8.2 Governmental function. The Parties expressly agree that, in all things relating to this Agreement, University and Contractor are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of University or of Contractor that, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

8.3 Binding agreement. The undersigned signatories assert that they have the authority to execute this Agreement and to bind the party for which they are signing to the faithful performance of this Agreement.

9. Notices: Notices, correspondence, billings, payments, and all other communications shall be addressed as follows:

To University:

The University of Texas
Health Science Center at Houston
P.O. Box 20036
Houston, Texas 77225

To Contractor:

City of El Paso
Department of Health
5115 El Paso Drive,
El Paso, Texas 79905

10. Indemnification: To the extent permitted under applicable law, Contractor shall indemnify and hold harmless University, System, its regents, officers, agents and employees from any liability or loss resulting from claims, demands, or injury, including death, that they may suffer as a result of the performance of this Agreement.

11. Responsibility for Individuals Performing Work; Criminal Background Checks: Each individual who is assigned to perform the Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement. Prior to commencing the Work, Contractor will have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

By signing this Agreement, Contractor certifies compliance with this Section. Contractor shall notify University when there is a change in the individuals assigned to perform the Work due to unsatisfactory background check results.

12. Compliance: Contractor certifies:

- that it and its employees comply with all federal and state laws and regulations, including without limitation, Medicare and Medicaid regulations and the Immigration Reform and Control Act of 1986; and
- That neither it nor its employee have been or are presently excluded from participating in, or have been sanctioned by, any federal or state healthcare program; and
- That it has conducted criminal background checks for prior convictions on its employees performing services hereunder.

Contractor agrees to immediately report to University if it becomes aware of the following: (1) A violation of any federal or state healthcare law, regulation or policy by Contractor, its employees or agents; (2) an inquiry or investigation by the government of Contractor, its employees or agents; or (3) if Contractor or its employees or agents are excluded from, or otherwise sanctioned by, any federal or state healthcare plan.

DISPUTE RESOLUTION - Long Form (for Agreements over \$25,000)

13. Dispute Resolution: To the extent that Chapter 2260 of the *Texas Government Code*, as it may be amended from time to time (“Chapter 2260”), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
- 13.1 Contractor’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor’s notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor’s filing of a contested case proceeding under subchapter C of Chapter 2260. The Executive Vice President for Administration and Business Affairs of University, or such other officer of University as may be designated from time to time by University by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, shall examine Contractor’s claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.
- 13.2 If the parties are unable to resolve their disputes under subparagraph (A) of this section, the contested case process provided in subchapter C of Chapter 2260 is Contractor’s sole and exclusive process for seeking a remedy for any and all of Contractor’s claims for breach of this Agreement by University, except as

permitted in the event that consent to sue has been obtained from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code, and as specified under Chapter 2260.005 of the Texas Government Code.

- 13.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of Contractor's, University's or the state's sovereign immunity to suit and (ii) neither Contractor nor University has waived their right to seek redress in the courts.
 - 13.3.1 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
 - 13.3.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.
14. Loss of Funding: University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents (the "Board") of System and/or other non-state Granting Authority ("Authority"). If the Legislature fails to appropriate or allot the necessary funds, or the Board or the Authority fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
15. Force Majeure: Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("Force Majeure Occurrence"). Provided, however, in the event of a Force Majeure Occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide services during the occurrence.
16. Confidentiality: Except as required by the Texas Public Information Act, all information owned, possessed or used by University that is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for University, that is

not generally known to the public, will be confidential and Contractor will not, beginning on the date of first association or communication between University and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any confidential information, unless required by law. Contractor will not make any press releases, public statements, or advertisement regarding this Agreement or to the services to be provided hereunder without the prior written approval of University. To the extent Contractor is permitted to subcontract services it shall ensure that the subcontractor complies with the provisions of this Agreement.

17. Limitation of Liability: Except for University's obligation (if any) to pay Contractor certain fees and expenses University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of University to Contractor or to anyone claiming through or under Contractor, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or System, or anyone claiming under University has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
18. Representations and Warranties by Contractor: If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
19. Franchise Tax Certification: If Contractor is a corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
20. Eligibility Certification: Pursuant to Section 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
21. Payment of Debt or Delinquency to the State: Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of

when it arises, until such debt or delinquency is paid in full.

22. Texas Family Code Child Support Certification: Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
23. Products and Materials Produced in Texas: Contractor covenants and agrees that as required by Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, the Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Access by Individuals with Disabilities.** Contractor represents and warrants (the "EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to University under the Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate the Agreement and Contractor will refund to University all amounts University has paid under the Agreement within thirty (30) days after the termination date.
25. Work Laws: Contractor shall comply with all labor and employment laws and regulations applicable to Contractor and its employees who will be performing services under this Agreement, including all laws and regulations pertaining to immigration, work status and eligibility (collectively, "Work Laws"). Contractor certifies that Contractor and Contractor's employees who will be performing services under this Agreement are, as of the effective date hereof, lawfully eligible to do so under applicable Work Laws.
26. Integration: This Agreement supersedes any and all other discussions, negotiations, and representations of any kind and represents the entire agreement of the parties hereinabove mentioned.

THIS AGREEMENT WILL BE IN EFFECT UPON FULL EXECUTION BY BOTH PARTIES. UNIVERSITY WILL NOT BE RESPONSIBLE FOR ANY PAYMENTS FOR SERVICES PERFORMED OR PRODUCTS DELIVERED BY CONTRACTOR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

In Witness Whereof, the parties have caused this Agreement to be executed as of the date first set forth above.

(Signatures follow on next page)

THE STATE OF TEXAS
COUNTY OF EL PASO

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INTERLOCAL AGREEMENT

Signature Page

PASSED AND APPROVED this _____ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

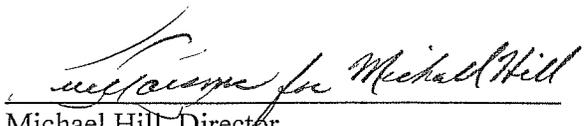
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Michael Hill, Director
Department of Public Health

THE UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT HOUSTON

Name Printed: _____
Title: _____