

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 Texas AgriLife Extension Service to provide horticulture and agronomy technical assistance and services for the City's Parks and Recreation Department at no cost to the City. The Agreement will effective from August 1, 2009 through August 31, 2010 with automatic one-year renewals for up to four additional years.

ADOPTED this _____ day of _____, 2009.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette L. Smejkal, Director
Parks and Recreation Department

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

This Agreement, entered into this _____ day of _____, 2009 by and between the City of El Paso, a municipal corporation situated in El Paso County, Texas, hereinafter referred to as “the City,” and Texas AgriLife Extension Service, a statewide educational agency and member of The Texas A & M University System, hereinafter referred to as “Extension,”

WITNESSETH

WHEREAS, the Parks and Recreation Department of the City desires to obtain assistance in providing more effective delivery of park maintenance horticulture and agronomy services; and

WHEREAS, the City has determined that Extension is qualified to provide such assistance; and

WHEREAS, Extension is willing to provide such educational assistance to the City; and

WHEREAS, Extension is willing to provide Master Gardener education and administration; and

WHEREAS, the City is willing to provide Extension with use of the Garden Center building in Memorial Park to support Master Volunteers training, extension education and other services; and

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.

NOW THEREFORE, the City and Extension, for the consideration set forth herein, agree as follows:

1. LOCATION & SCOPE OF SERVICES

1.1 The services to be provided for the horticulture and agronomy technical support shall be carried out primarily in the Garden Center building, located at 3105 Grant, El Paso, Texas in Memorial Park, the Rose Garden, and other appropriate locations.

1.2 The City shall provide office space in the Garden Center building for Extension staff and Master Gardener volunteers. Extension shall provide office furniture and supplies, and office and gardening equipment for the use of Extension staff, volunteers, and City staff at the Garden Center building. The parties agree that the City will provide and be responsible for the utilities at the building. Extension will provide either telephone, internet access, or both at the Garden Center building.

1.3 The Garden Center building will also be used for, but not limited to, City staff training, City advisory board meeting, City events, city Parks and Recreation summer programs, among other City activities. The Garden Center building shall be available to the public on an as needed basis through the Parks and Recreation Department. Scheduling of events and use of the building will be prioritized according to the El Paso City Code.

1.4 Extension shall provide volunteer support of selected projects and programs through Master Gardeners and Master Naturalists, and provide community horticulture programs through public education programs and seminars regarding gardening and horticulture.

1.5 Assistance provided by Extension to park maintenance horticulture and agronomy shall include, but not be limited to, education of park personnel and consultation in the areas of basic agronomy and horticulture, turf management, irrigation management, soil fertility, and integrated pest management.

2. TERM

The term of this Agreement shall begin August 1, 2009, and shall end August 31, 2010. This Agreement shall automatically renew on September 1st for one (1) year periods after the initial period ends for up to four (4) years additional, unless one or both of the parties request termination of the Agreement by written notice sixty (60) days prior to the expiration date of the initial term or renewal period.

3. CERTIFICATION

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

4. APPLICABLE LAWS

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

5. INDEPENDENT CONTRACTOR

The Parties are independent contractors. Except as may be expressly provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. 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.

6. ASSIGNMENT

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

7. TERMINATION

7.1 Either Party may terminate this Agreement, if the other is in default, upon five (5) days' written notice to the other Party. The City or Extension may terminate this Agreement without cause upon thirty (30) days' written notice to the other Party.

7.2 Termination shall be without prejudice to any obligation by one Party to the other, which shall have accrued and be owing prior thereto.

8. NOTICES

All notices, communications and reports under this Agreement shall be hand delivered or mailed, certified, return receipt requested, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing by the other party:

City: City Manager
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: Parks and Recreation Director
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

AgriLife: Texas AgriLife Extension Service
County Extension Director
9521 Socorro Road, Ste. A2, Box 2
El Paso, Texas 79927

9. 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.

10. DISCRIMINATION

10.1 *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 Extension pursuant to the terms of this Agreement, or any written amendment hereto.

10.2 *Specific Discriminatory Actions Prohibited:* Extension 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.

11. NO VERBAL 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 an authorized representative of both Parties hereto.

12. VENUE

Venue for any legal action against the City shall lie in El Paso County, Texas. Venue for any legal action against Extension shall lie in Brazos County, Texas.

13. 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.

14. 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.

15. RISK ALLOCATION - LIMITATION OF LIABILITY

15.1 *No Indemnification.* The Parties 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.

15.2 *Governmental Function.* The Parties 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 Extension is entering into this Agreement as part of its duty to provide educational and community services.

15.3 *Exclusion of Incidental and Consequential Damages.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, and to the extent permitted by law, 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.

15.4 *Maximum Aggregate Liability.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, and to the extent permitted by law, **IN NO EVENT SHALL THE CITY OF EL PASO'S AGGREGATE LIABILITY TO EXTENSION (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY EXTENSION), 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.

15.5 *Intentional Risk Allocation.* Extension 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.

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

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

TEXAS AGRILIFE EXTENSION
SERVICE

Name (Printed) _____
Title _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Kristen L. Choi
Assistant City Attorney

Nanette L. Smejkal, Director
Parks and Recreation Department