

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

**DEPARTMENT:** ZOO

**AGENDA DATE:** July 30, 2013

**CONTACT PERSON/PHONE:** RICK LOBELLO, EDUCATION CURATOR, 521-1881  
STEVE MARSHALL, ZOO DIRECTOR, 521-1855

**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.

The Zoo recommends that the City enter into a Affiliation Agreement between The University of Texas at El Paso and the City of El Paso by and through the El Paso Zoo to cooperate with the University to establish and implement from time to time one or more programs involving students and personnel of the University and the Zoo and personnel of the Zoo, and that the Director of the El Paso Zoo or a designee is authorized to enter into all Program Agreements encompassed by the Affiliation Agreement in substantial conformity with the Program Agreement attached as Exhibit "A."

**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?

This program will allow Students from UTEP to work at the Zoo as Student Interns providing opportunities to gain valuable experience important to their fields of study and their future careers. The Zoo has a long history of partnering with UTEP and this agreement will allow for more opportunities to collaborate in support of the mission of the Zoo and the goals of the UTEP educational program.

**SELECTION SUMMARY:**

N/A

**PRIOR COUNCIL ACTION:**

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

Department of Health Education Experience Affiliation Agreement of November 19, 2009.

**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?

Funding for student interns to work at the Zoo will come from UTEP and other outside sources.

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

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

**DEPARTMENT HEAD:** Steve Marshall  7/22/13  
Name Signature Date

## RESOLUTION

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

THAT the City Manager is authorized to enter into an Affiliation Agreement between The University of Texas at El Paso ("University") and City of El Paso ("Facility") to cooperate with University to establish and implement from time to time one or more Programs involving the students and personnel of University and the facilities and personnel of Facility, and that the City Manager or a designee is authorized to enter into all Program Agreements encompassed by the Affiliation Agreement in substantial conformity with the Program Agreement attached hereto as Exhibit "A."

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2013.

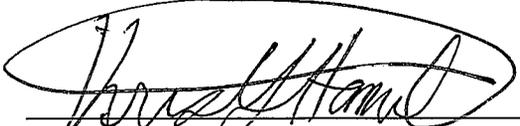
CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

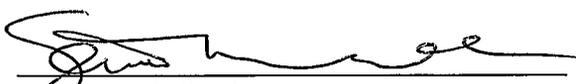
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kristen L. Hamilton  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Steve Marshall, Director  
El Paso Zoo

**EXHIBIT "A"**

**[USE THIS FORM ONLY IF AN AFFILIATION AGREEMENT IS ALREADY IN PLACE]**

**[Insert type of experience to be provided, e.g. Physical Therapy, Social Work]**

\_\_\_\_\_ **PROGRAM AGREEMENT**  
(Education Experience)

**Recitals**

- A. The University of Texas \_\_\_\_\_ ("University") and \_\_\_\_\_ ("Facility") have previously executed an Affiliation Agreement effective on \_\_\_\_\_; and
- B. University and Facility desire to implement the provisions of such Affiliation Agreement by providing students enrolled in University's \_\_\_\_\_ **[insert degree program]** with educational experience utilizing the personnel, equipment, and facilities of Facility.

**Agreement**

NOW THEREFORE, subject to the terms, conditions, and provisions of such Affiliation Agreement, the parties agree as follows:

1. **PROGRAM.** Facility Liaison and University Representative will design an educational experience in \_\_\_\_\_ **[insert degree program]** ("Program") for University students utilizing the personnel, equipment, and facilities of Facility.
- a. The duration of the Program and the educational experience provided will be consistent with the curriculum requirements of University and with the standards of the accrediting entity for the school or division of University in which the students are enrolled.
- b. The Program will be reviewed periodically by the Facility Liaison and University Representative and, when appropriate, will be revised to meet the University curriculum requirements and the standards of the accrediting entity.
- c. The educational experience for students in the Program will be an integral part of the services provided by Facility and students will be under the direct supervision of University personnel or Facility personnel who are licensed or otherwise qualified to perform such services.

## **2. UNIVERSITY OBLIGATIONS.**

- a. Assure that all students selected for participation in Program have satisfactorily completed all portions of the University curriculum that are a prerequisite for participation in the Program.
- b. Develop criteria for the evaluation of the performance of University students participating in the Program and provide those criteria, with appropriate reporting forms, to the Facility personnel and University personnel who are responsible for supervising those students.
- c. Assign grades to students participating in the Program on the basis of the performance evaluations submitted in the reporting forms.
- d. Inform all University students and personnel participating in the Program that they are required to comply with the rules and regulations of Facility while on premises of Facility and to comply with the requirements of federal and state laws and regulations regarding the confidentiality of information in records maintained by Facility.
- e. Provide information requested by Facility related to students participating in the Program unless prohibited by federal or state law.
- f. Remove a student from the Program when the Facility determines that the student has violated the rules and regulations of the Facility; has disclosed information that is confidential by law; or has engaged in conduct that disrupts the activities carried on by the Facility or threatens the safety of Facility personnel or patients.

## **3. FACILITY OBLIGATIONS.**

- a. Assign appropriate space on Facility premises for offices, lectures, and other non-experience related activities of the Program.
- b. Provide the equipment, supplies, qualified personnel, and supervised access to patients or clients required for the experience related activities of the Program.
- c. Obtain and maintain all licenses required for Facility and assure that all Facility personnel are appropriately licensed.
- d. Assume sole responsibility for the quality of patient or client care.
- e. Provide orientation sessions to inform University students and personnel concerning the rules and regulations of Facility.
- f. Permit representatives of the accrediting entity for the school or division of University in which students participating in the Program are enrolled to have

reasonable access to premises of Facility for purposes related to the accreditation process.

#### **4. GENERAL PROVISIONS.**

- a. University students and personnel will be responsible for their own transportation, meals, and health care while participating in the Program.
- b. This Program Agreement and the Affiliation Agreement constitute the entire agreements between the parties with respect to the subject matter and no prior or contemporaneous agreement, written or oral, will be effective to vary the terms of those Agreements. No amendment to this Program Agreement shall be effective unless reduced to writing and signed by an authorized representative of each party.
- c. University and Facility will comply with all applicable federal, state, and local laws, ordinances, and regulations in the performance of this Program Agreement.
- d. The Program and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law, including but not limited to: race, color, national origin, religion, sex, age, veteran status, or disability.
- e. The initial Program shall begin on \_\_\_\_\_ and end on \_\_\_\_\_. Subsequent Programs shall begin and end on dates determined by written agreement of Facility Liaison and University Representative. Either party may terminate this Program Agreement effective with the end of a Program by giving thirty (30) days written notice to the other party; otherwise this Program Agreement will terminate upon the termination of the Affiliation Agreement between the parties.

*Signatures appear on the following page*

UNIVERSITY:

FACILITY:

By: \_\_\_\_\_  
\_\_\_\_\_, President  
(Name)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Name and Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
**[Insert EVC Name]**  
Executive Vice Chancellor for [Academic/Health]  
Affairs  
The University of Texas System

Date: \_\_\_\_\_

# EDUCATIONAL EXPERIENCE AFFILIATION INTERLOCAL AGREEMENT

THIS EDUCATIONAL EXPERIENCE AFFILIATION INTERLOCAL AGREEMENT ("Agreement" or "Interlocal Agreement"), effective \_\_\_\_\_, is between The University of Texas at El Paso, ("University"), a component institution of The University of Texas System, ("System"), and the City of El Paso ("City"), a Texas Municipal Corporation having its principal office at 2 Civic Center Plaza, El Paso, State of Texas.

WHEREAS, the City owns and operates the El Paso Zoo located at 4001 E. Paisano, El Paso, Texas, and thereat provides educational services and opportunities in a variety of areas of sciences (biology, zoology, animal sciences, etc.) and environmental and wildlife management;

WHEREAS, the University provides academic courses with respect to biology, zoology and environmental management and the like, and periodically desires to provide students enrolled in such courses with educational and hands-on practical experience by utilizing appropriate facilities and personnel of third parties; and

WHEREAS, City desires to cooperate with University to establish and implement from time to time one or more Educational Experience Affiliation Programs ("Program") involving the students and personnel of University and the facilities and personnel of City.

WHEREAS, the City finds that such programs will produce highly trained individuals interested in entering fields related to the services provided by and through a zoo and will serve the public purpose of enhancing the quality of the local workforce by offering practical training at the El Paso Zoo for the benefit of the community and the University's students; and

WHEREAS, the Texas Interlocal Cooperation Act of the Texas Government Code §§791.001, *et seq.*, allows a local government and a state institution of higher education to contract among each other for governmental functions and services.

NOW, THEREFORE, in consideration of the mutual promises herein, University and City agree that any Program established and implemented by University and City during the term of this Agreement shall be covered by and subject to the following terms and conditions:

1. **Program Agreement:** To become effective, all agreements with respect to a Program ("Program Agreement"), shall be reduced to writing, and executed by authorized representatives of City and University.

2. **Conflict:** In the event of conflict between the text of the Program Agreement and the text of this Agreement, this Agreement shall govern.

3. **Amendment of Program Agreement:** No amendment to a Program Agreement shall be effective unless reduced to writing, and executed by the authorized representatives of City and University.

4. **Responsibility of City:** Except for acts to be performed by University pursuant to the provisions of this Agreement, City will furnish the premises, personnel, services, and all other items necessary for the educational experience specified in the Program Agreement. In connection with such Program, City will:

(a) comply with all applicable federal, state, and municipal laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by University;

(b) permit the authority responsible for accreditation of University's curriculum to inspect the facilities, services, and other items provided by City for purposes of the educational experience; and

(c) appoint a person to serve for City as liaison ("City Liaison") by the following procedure:

1. City shall submit to University the name and professional and academic credentials of the person proposed as City Liaison in writing at least thirty (30) days prior to the date the appointment is to become effective;

2. University shall notify City of University's approval or disapproval of such person within ten (10) days after receipt of such notice;

3. No person shall act as City Liaison without the prior written approval of University;

4. In the event the City Liaison approved by University later becomes unacceptable and university so notifies City in writing, City will appoint another person in accordance with the procedure outlined in paragraph 4 (c).

5. **Responsibilities of University:** University will:

(a) furnish City with the names of the students assigned by University to participate in the Program;

(b) assign only those students who have satisfactorily completed those portions of University curriculum that are prerequisite to Program participation; and

(c) designate a member of the University faculty ("University Representative") to coordinate the educational experience of students participating in the Program with the City Liaison. University shall give City written notice of the name of the University Representative.

**6. Consideration:** In exchange for the City providing access to the City Zoo and its facilities, as well as the personnel, services and other needed items for a Program(s), the University, at no cost beyond what is detailed herein and in the Program Agreements, is providing students who will enhance the workforce and services provided at the City's zoo facilities for the benefit of the City clientele and the community as a whole.

**7. Notices:** All notices under this Agreement or a Program Agreement shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested. Such notices shall be deemed given when received by such party's designated representative.

UNIVERSITY:           The University of Texas at El Paso  
                              Attn: Provost  
                              500 W. University Ave.  
                              El Paso, Texas 79968

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

COPY TO:              City of El Paso  
                              Attn: Director, El Paso Zoo  
                              4001 E. Paisano  
                              El Paso, Texas 79905

**8. Oral Representations:** No oral representations of any officer, agent, or employee of City, University, or System shall affect or modify any obligations of either party under this Agreement or any Program Agreement.

**9. Amendment to Agreement:** No amendment to this Agreement shall be valid unless reduced to writing, signed by an authorized representative of each party.

**10. Assignment:** Neither this Agreement nor a Program Agreement may be assigned by either party without prior written approval of the other party.

**11. Performance:** A delay in or failure of performance of either party that is caused by occurrences beyond the control of either party shall not constitute default hereunder, or give rise to any claim for damages.

**12. Term and Effective Date:** This Agreement shall continue in effect for an initial period ending one (1) year after the date and year stated in the first paragraph ("Term").

After such initial Term, this Agreement shall continue from year to year unless one party shall give the other one hundred eighty (180) days prior written notice of intention to terminate. If such notice is given, this Agreement shall terminate: (a) at the end of such one hundred eighty (180) days; or (b) when all students enrolled in the Program at the time such notice is given have completed their respective courses of study under the Program, whichever event occurs last.

13. **Applicable Law:** The validity, interpretation, performance, and enforcement of this Agreement and any Program Agreement shall be governed by the laws of the State of Texas.

14. **FERPA.** For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), the University hereby designates the City as a school official with a legitimate educational interest in the educational records of the Students who participate in the Program to the extent that access to the records are required by the City to carry out the Program. City agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA.

15. Participating students are not employees of either University or the City and are not entitled to any employee benefits or compensation of either party, which includes not providing Worker's Compensation coverage.

**16. RISK ALLOCATION-LIMITATION OF LIABILITY (as applicable)**

- A. *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.
- B. *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 University 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 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 the 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 AGREGATE LIABILITY TO UNIVERSITY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY UNIVERSITY), 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.

17. *Intentional Risk Allocation.* As applicable, University 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 the following page*

CITY OF EL PASO

By: Jayce G. Miller  
(Name)

City Manager  
(Title)

7/2/13  
(Date)

THE UNIVERSITY OF TEXAS AT EL PASO

By: Junius J. Gonzales  
Junius J. Gonzales, M.D., M.B.A.

Provost and Vice President of Academic Affairs  
(Title)

6/24/13  
(Date)

Approved as to Form:

Kristen L. Hamilton

Kristen L. Hamilton  
Assistant City Attorney

Approved as to Content:

Steve Marshall

Steve Marshall, Director  
El Paso Zoo