

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

CITY CLERK DEPT.
06 JUL 27 PM 4:32

DEPARTMENT: Parks & Recreation and Library

AGENDA DATE: August 1, 2006

CONTACT PERSON/PHONE: Norman C. Merrifield (541-4001) Carol Bray-Casiano (543-5401)

DISTRICT(S) AFFECTED: City At-Large

SUBJECT:

Regular Agenda Item: Interlocal Agreement between the City and the Texas Cooperative Extension

BACKGROUND / DISCUSSION:

That the Mayor be authorized to sign an Interlocal Agreement with Texas Cooperative Extension to provide management and problem-solving services for the City's Public Library and Parks and Recreation Department. The Agreement will be for a one-year term with automatic renewals for up to five years total and shall not exceed a total cost of \$53,500.00.

PRIOR COUNCIL ACTION:

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

Yes, this is the second such agreement between the City and Extension

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 appropriated through the General Fund \$ 50,500.00 (Park Department 51010214; Account 502215)

Restricted Funds Library \$3,000.00 Total Funding Amount: \$53,500.00 No Transfers Necessary

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(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 Mayor be authorized to sign an Interlocal Agreement with Texas Cooperative Extension to provide management and problem-solving services for the City's Public Library and Parks and Recreation Department. The Agreement will be for a one-year term with automatic renewals for up to five years total and shall not exceed a total cost of \$53,500. Funding shall be from the following sources: Library/Restricted Funds; Parks/General Fund.

ADOPTED this _____ day of _____, 2006.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

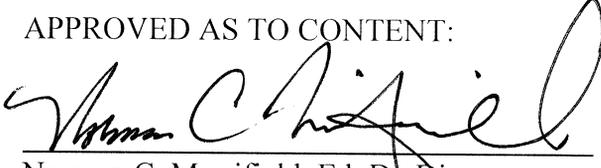
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed. D., Director
Parks and Recreation Department



The Agriculture Program

THE TEXAS A&M UNIVERSITY SYSTEM
Jack K. Williams Administration Bldg., Suite 113
2142 TAMU College Station, Texas 77843-2142

Office of the Vice Chancellor for Agriculture and Life Sciences

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FAX TRANSMISSION

THE AGRICULTURE PROGRAM
CONTRACTS & GRANTS
Room 5, Administration Bldg.
(979) 845-4781
Fax (979) 862-7775

To: *Josette Flores*

Date:

Fax #: 915-541-4710

Pages: (Including Cover)

From: *Sharon Gilliland*

Subject:

COMMENTS:

versities
New View A&M University—College of Agriculture and Human Sciences
Cooperative Agricultural Research Center, and Cooperative Extension Program
Ston State University—College of Agriculture and Technology
A&M University—College of Agriculture and Life Sciences, College of Veterinary Medicine
A&M University—Commerce—Department of Agricultural Sciences
A&M University—Kingsville—Department of Agriculture and Human Sciences
Texas A&M University—College of Agriculture and Human Sciences

Agencies
Texas Agricultural Experiment Station
Texas Agricultural Extension Service
Texas Forest Service
Texas Veterinary Medical Diagnostic Laboratory
Texas Wildlife Damage Management Service

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

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This Agreement, entered into this ___ day of _____, 2006 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 Cooperative Extension, a statewide educational agency and member of The Texas A & M University System, hereinafter referred to as "Extension,"

WITNESSETH

WHEREAS, two of the Quality of Life Departments of the City desire to obtain assistance in providing more effective management and problem solving in the Departments' program and operation sections; and,

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

WHEREAS, Extension is willing to provide such assistance to the City; 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. **SCOPE OF SERVICES & LOCATION**

Extension agrees to provide management and problem-solving services for the El Paso Public Library and the City's Parks and Recreation Department as set forth in Attachment "A" and made a part hereof for all purposes.

1.1 The place where such services are to be performed is in the City and County of El Paso, State of Texas, or such other places as may be directed by the City in order to fulfill the terms of this contract.

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1.2 The services to be provided for the horticulture aspect of the scope, as described in Attachment "A", shall be carried out in the El Paso Garden Club (the "Building"), located at 3105 Grant, El Paso, Texas, in Memorial Park. The Building shall be available to the public on an as-needed basis. The City shall provide office space in the Building for Extension and Master Gardener Volunteers. Extension shall provide office furniture and supplies, and office and garden equipment for the use of Extension, volunteers and City staff at the Building. The parties agree that the City will provide and be responsible for security and utilities at the Building. The Extension will provide either telephone, internet access, or both at the building. The Building space will also be used for City staff training, the City of El Paso Tree Board meetings, City events, and citywide education programs, among other City activities. The activities contemplated in this Agreement shall not interfere with the City's use of the Building.

2. TERM

The term of this Agreement shall begin August 1, 2006, and shall end July 31, 2007. This Agreement shall automatically renew for one (1) year periods after the initial period ends for up to five (5) years total, unless one or both of the parties request termination of the Agreement by written notice ninety (90) days prior to the expiration date of the initial term or renewal period.

3. COMPENSATION AND METHOD OF PAYMENT

The cost of the services hereunder shall not exceed FIFTY-THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$53,500.00) during the initial term of this Agreement. The parties acknowledge that compensation for services provided hereunder shall be in accordance with the schedule of Fees for Services set forth in Attachment "A" and made a part hereof for all purposes. Partial billings may be made by Extension for work in progress. Extension agrees that at no time shall it make a claim against the City for more than the rate provided under the terms of this Agreement. Payment will be made to Extension within thirty (30) days following receipt of invoices by the City.

4. 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.

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5. APPLICABLE LAWS

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

6. 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.

7. 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.

8. TERMINATION

8.1 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.

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

9. 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: Deputy City Manager for Quality of Life Services
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

Extension: Texas Cooperative Extension Service
County Extension Director
1030 North Zaragosa Road, Suite A
El Paso, Texas 79907

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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

11.1 *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.

11.2 *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.

12. 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.

13. 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.

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

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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

16.1 *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.

16.2 *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.

16.3 *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.

16.4 *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.

16.5 *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.

(Signatures on following page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

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SIGNATURE PAGE

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Morsen
City Clerk

TEXAS COOPERATIVE EXTENSION



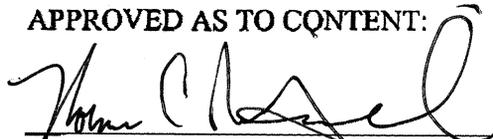
Name (Printed) _____
Title Diane M. Gilliland
Asst. Director for Research Administration
Agriculture Program

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D., Director
Parks and Recreation Department

ATTACHMENT "A"CITY CLERK DEPT.
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The **El Paso Public Library**, which shares a common mission with Extension for providing informal public education, would like support in the following areas:

- Literacy programs, using library facilities & computer labs
- Child development classes
- Translation services
- Linking of Library/City websites with Extension and Texas A&M University websites

Based on the information we have about the general nature of support needed, Extension is prepared to provide, at a minimum, the following technical support and educational programs in furtherance of our collective mission in public education.

- Monthly schedule and reporting of educational programs to be delivered via selected library locations in the City
- Training for library staff on issues of child development, psychology, and principles of child and adult education
- Limited translation of promotional materials as mutually agreed upon

The **El Paso Parks & Recreation Department**, which shares a common mission with Extension in providing informal education through park and recreation services and is supported by a campus-based academic unit, would like support with the following:

- Support turf and irrigation management for approximately 186 city parks, to include water conservation management linked with a sound agronomy/irrigation program
- Training and education for park personnel in the applied and theoretical aspects of parks and recreation
- Recreation and athletic program training, research and staff development
- Developing and assisting in the implementation of public information and public relations program

Based on the information we have about the general nature of support needed Extension is prepared to provide, at a minimum, the following technical support and educational programs in furtherance of our collective mission in public education.

- Quarterly training for recreation staff in academic subjects related to youth development, essential services and assets training, parks, and recreation
- Provide support and technical assistance in identifying community needs as related to community recreation (especially pertaining to youth, after-school programs and community center programming), community sports and aquatics

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- Assist with development and implementation of certification program for parents of youth in City programs
 - Assist with development of research and evaluation instruments to assess effectiveness of City youth programs and adult sports programs
 - Provide intensive training and develop comprehensive program for parks staff as necessary to develop site-specific turf grass management protocols (estimated 2-3 year program), to include basic agronomy, turf management, irrigation, soil fertility, and others as needed
 - Provide three seasonal (Spring, Summer, Winter) certification programs for maintenance staff and supervisors to set minimum knowledge thresholds for parks and facilities maintenance
 - Continue to develop water auditing training to develop the necessary human capacity to measure for water use efficiency; begin the implementation of "state of the art" computerized software program/system for water efficiency
 - Integrated pest management training and continuing education for licensed pesticide/herbicide applicators on subjects related to insect identification, weed management, diseases, fungi, and other pest affecting turf, trees, and landscaping
 - Limited on-call technical support for issues/problems
 - Limited translation of promotional materials/flyers/brochures
 - Limited preparation and distribution of news releases to mass media for major Parks & Recreation Department events
 - Support and assistance in marketing/public relations meetings to develop marketing strategies
 - Master Volunteer support of selected projects and programs through Master Gardeners and Master Naturalists
 - Provide community horticulture program through public education programs and seminars regarding gardening and horticulture

Minimum Hours Provided

The minimum number of hours the Cooperative Extension Service will provide the Quality of Life Departments shall be the equivalent of the time as would benefit the City through the hiring of two (2) full time employees ("FTEs"). The maximum service hours anticipated may total closer to three (3) FTEs. The combined financial support for the minimum service level totals \$53,500. Flexible office hours will be arranged between Extension Specialists and City Department Heads.

Funding: Library/Restricted Funds - \$3,000
Parks/General Fund - \$50,500