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

**DEPARTMENT:** **Office of Economic Development**

**AGENDA DATE:** **August 5 2008**

**CONTACT PERSON/PHONE:** **Kathy Dodson, PhD, Director 541-4670**

**DISTRICT(S) AFFECTED:** **ALL**

**SUBJECT:**
That the City Manager be authorized to sign a Grant Agreement between the City of El Paso and Trans-Pecos/El Paso Regional Center of Innovation and commercialization (RCIC) in an amount not to exceed $12,500 for the public purpose of development and diversification of the economy of El Paso by supporting the establishment of a business technology services center in Downtown El Paso. The funding is dedicated in the Economic Development Department Budget.

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**BACKGROUND/DISCUSSION:**

Council's approved economic plan and policy statement includes technology measurables that enhance El Paso's ability to support high technology businesses into the future. The expansion of RCIC facilities downtown will advance the provision of professional guidance for early stage El Paso technology companies and help these firms with funding from sources such as the Texas Emerging Technology Fund.

**PRIOR COUNCIL ACTION:**
**Has the Council previously considered this item or a closely related one?**

None

**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?**

General Fund/Economic Development Admin. = 72010268

**BOARD/COMMISSION ACTION:**
**Enter appropriate comments or 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 City Manager be authorized to sign a Grant Agreement between the City of El Paso and Trans-Pecos/El Paso Regional Center of Innovation and Commercialization (RCIC), a 501(c)(3) tax exempt, non-profit Texas corporation, in an amount not to exceed $12,500, for the public purpose of development and diversification of the economy of El Paso by supporting the establishment of a business technology services center in Downtown El Paso to assist high technology entrepreneurs, and whereby the City will be promoting and accelerating the creation of high quality jobs in emerging high technology sectors for the benefit of El Paso residents.

**APPROVED this _____ day of _____ 2008.**

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Kathryn B. Dodson, Ph.D., Director
Economic Development Department

ECO/K-08/TransPecos-El Paso RCIC/Grant Agreement/Resolution
Document#: 40169v2/MTAY

**STATE OF TEXAS** )
)
**COUNTY OF EL PASO** )

**GRANT AGREEMENT**

This Grant Agreement is entered into this _____ day of _____, 2008, by and between **THE CITY OF EL PASO**, a home rule municipal corporation in the State of Texas, ("CITY") and **TRANS-PECOS/EL PASO REGIONAL CENTER OF INNOVATION AND COMMERCIALIZATION (RCIC)**, a 501(c)(3) non-profit corporation doing business in the State of Texas ("GRANTEE").

**RECITALS**

**WHEREAS**, on January 19, 2006, the City Council adopted the Strategic Plan-Economic Development Policy, which directs the CITY to support and promote quality job creation in El Paso, thereby adding to the tax base and fostering a healthy economy; and

**WHEREAS**, the CITY's Economic Development Department has identified the following objectives towards accomplishing City Council's Strategic Plan goals: promotion and support of export capable entrepreneurship in El Paso; and promotion of a regional technology infrastructure that will enhance El Paso's ability to support high technology businesses into the future; and

**WHEREAS**, the CITY desires to assist the development and diversification of the economy of El Paso and accelerate the expansion of a high technology economy in the City of El Paso by funding the establishment of a business technology services center in Downtown El Paso for high technology entrepreneurs, and whereby the City will be facilitating the creation of high-quality technology jobs in the region for El Paso residents; and

**WHEREAS**, GRANTEE is a private not-for-profit corporation whose purpose is to promote regional economic growth in the El Paso area by identifying, supporting, and accelerating the growth of regional high technology entrepreneurs; is qualified to provide high technology business services to high technology entrepreneurs located in or relocating to the City of El Paso; and is willing to establish a high technology

business technology services center in Downtown El Paso within the El Paso Empowerment Zone; and

**NOW THEREFORE,** the CITY and GRANTEE, in consideration of the terms, conditions and covenants contained herein hereby agree as follows:

## I. GRANTEE OBLIGATIONS

### Section A. Project Scope

1. The purpose of this grant is to provide GRANTEE with funds for actual and reasonable expenditures incurred in establishing a business technology services center in Downtown El Paso that will assist high technology entrepreneurs in applying for state-funded commercialization awards available through the ETF.

2. In consideration for the grant, GRANTEE expressly agrees to comply with all of the terms and conditions of the Project Scope, further specified and detailed in Project Statement of Work – Project Requirements ("Attachment 1"), attached hereto and referenced herein for all purposes. The grant shall be used by GRANTEE only for the purposes set forth in Project Scope and shall be expended by GRANTEE in accordance with the terms of this Contract.

### Section B. Compensation, Reporting, and Compliance

1. The CITY hereby agrees to provide GRANTEE funds in an amount not to exceed Twelve Thousand Five Hundred Dollars ($12,500.00), subject to the terms and conditions hereinafter specified, to be drawn from FY2008 Economic Development Department funds. In no event shall compensation to the GRANTEE exceed the lesser of GRANTEE's costs attributable to the eligible project expenditures incurred, or the monetary limits described in the Project Scope (Attachment 1). The Contract period will commence on the execution date of this Contract and expire on August 31, 2009, unless terminated sooner as provided herein.

2. The disbursement of public funds shall be made upon receipt by CITY of GRANTEE's written request for such, the documentation as required in the Project Scope has been provided, and upon the approval of the Director of the Economic Development Department of the CITY. Such first disbursement and subsequent disbursements may be withheld by the Director if, in the reasonable exercise of Director's discretion, GRANTEE has failed to fulfill the requirements of this Contract. Valid invoices or other supporting documentation of financial liability in the GRANTEE's files or other documentation acceptable to the CITY must support all

requisitions for disbursement payments submitted by the GRANTEE. Unless disputed, the CITY agrees to process any disbursement request within thirty (30) days after receipt. Under no circumstances shall the CITY advance or disburse funds for GRANTEE's project expenses or project activities for which GRANTEE has been or will be reimbursed for from any other source.

**Section C. Suspension or Termination**

1. The CITY may suspend or terminate this Contract should GRANTEE materially fail to comply with the terms of this Contract. The CITY shall give the GRANTEE ten (10) days written notice of the suspension or termination with the understanding that all obligations being performed under this Contract shall cease upon the date specified in such notice.

2. The CITY and GRANTEE may also terminate this Contract for convenience.

**Section D. Monitoring**

1. CITY reserves the right on its behalf to perform, or have its designees perform, a periodic on-site or desk audit monitoring of GRANTEE's compliance with the provisions of this Contract. The monitoring shall be conducted in a reasonable time, place and manner by the CITY. The GRANTEE shall provide the assistance and information needed by the CITY in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that the CITY, or its designee, will perform periodic fiscal and programmatic monitoring reviews, including a review of the audit conducted by the GRANTEE. The CITY, and/or its designees may request the copying, mailing, and/or electronic transmission of GRANTEE's records in connection with an on-site or desk audit monitoring.

2. Monitoring reviews will include a written report to the GRANTEE documenting findings and concerns that will require a written response to the CITY. The CITY must receive an acceptable response within 30 days from the GRANTEE's receipt of the monitoring report audit review letter, or otherwise future payments will be withheld under this Contract.

3. Failure of the GRANTEE to take all actions necessary to resolve and close monitoring or audit findings within 60 days of receipt of the monitoring report or audit review letter shall be considered a breach of this Contract and cause for termination of this Contract by City Council. If the Contract is terminated under these circumstances, it will be considered terminated for cause due to GRANTEE's non-compliance. Such termination will not be considered appealable.

The City shall have the discretion to extend the 60-day period for reasons the City may judge to be extenuating circumstances.

**Section E. Non-Religious Activities**

The GRANTEE will provide all services under this Contract in a manner that is exclusively non-religious in nature and scope. There shall be no religious services, proselytizing, instruction, or any other religious preference, influence, or discrimination in connection with providing the services hereunder.

## II. ADDITIONAL GRANTEE OBLIGATIONS

**Section A. Indemnification and Insurance**

1. **THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE GRANTEE INCURRED IN THE PERFORMANCE OF THIS CONTRACT. THE GRANTEE EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY AND ALL LIABILITIES AND OBLIGATIONS INCURRED DUE TO ITS NEGLIGENCE, ANY ACTIONS OUTSIDE ITS SCOPE OF AUTHORITY, ANY OF ITS NEGLIGENT ACTS OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ACTIONS OF THE GRANTEE OUTSIDE THE SCOPE OF THIS CONTRACT.**

2. GRANTEE agrees to maintain for the life of this Contract, liability insurance in the minimum amounts of $250,000.00 for each person and $500,000.00 for each single occurrence covering bodily injury or death and $100,000.00 for each single occurrence of damage to or destruction of property. Such insurance shall name the CITY as an **additional insured** with regard to all suites, actions, demands, claims and liabilities arising out of, occasioned by or relating to this Contract or the activities carried out hereunder. It shall also contain a provision that it may not be canceled or lapse without a 30-days' prior written notice to CITY. GRANTEE shall produce a copy of its liability insurance policy, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to CITY within 30 days of the signing of this Contract.

   a. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.

b. The CITY reserves the right to review the insurance requirements of this section during the effective term of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of the GRANTEE.

c. CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by CITY, GRANTEE shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. GRANTEE remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

3. Notwithstanding any suspension or termination hereof, GRANTEE shall not be relieved of any liability to CITY for damages or indemnification due to CITY by virtue of breach of this Contract by GRANTEE or by virtue of this Section. CITY may withhold payments to GRANTEE until such time as the exact amount of damages due to the CITY from GRANTEE is agreed upon or is otherwise determined.

**Section B. Independent Contractor**

CITY and GRANTEE understand that GRANTEE is an independent contractor and that no term or provision hereof or act of GRANTEE in performance of this Contract shall be construed as making GRANTEE an agent or employee of the CITY. All officers and employees of GRANTEE shall be solely responsible to GRANTEE, and the CITY shall not have any authority, responsibility, or liability with respect thereto.

**Section C. Authority to Contract**

GRANTEE represents and warrants that the person executing this Contract and all documents related thereto has the authority to commit the GRANTEE to the obligations, financial and otherwise, required by this Contract.

## Section D. Discrimination Prohibited

1. No person in the United States shall, on the grounds of race, creed, color, national origin (including immigration status where an alien holds proper work authorization), sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the GRANTEE pursuant to this Contract.

2. GRANTEE must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner, which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Contract.

## Section E. Conflict of Interest

GRANTEE covenants that during the term of this Contract, GRANTEE, its associates, officers and employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Contract and that none of its paid personnel shall be employees of the CITY or have any contractual relationship with the CITY.

## Section F. Hatch Act

Neither the funds advanced pursuant to this Contract, nor any personnel who may be employed by the GRANTEE with funds advanced pursuant to this Contract shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

## Section G. Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Contract between CITY and GRANTEE or to any benefits arising therefrom.

## Section H. Political and Lobbying Activities Prohibited

1. None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.

2. GRANTEE hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Contract as Addendum A, and if necessary, the Disclosure of Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as Addendum A, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to CITY. GRANTEE shall require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

**Section I. Grantee's Composition**

GRANTEE shall notify the CITY in writing within thirty (30) days in the event of any change in GRANTEE's ownership, organization, control, management, and non-profit or tax status. GRANTEE shall periodically, or at least annually, submit to the CITY a list of its current membership and board of directors with their appropriate titles.

**Section J. Assignment**

GRANTEE may not assign or otherwise transfer this Contract either as to obligations or benefit without the prior written consent of the CITY.

**Section K. Warranty**

GRANTEE represents that the information furnished to the CITY, upon which CITY relied to make this grant, is correct and true.

**Section L. Liability**

GRANTEE shall be liable to the CITY for the full amount of any funds received pursuant to the terms of this Contract, which GRANTEE knowingly accepts or disburses in violation of the terms and conditions herein.

**Section M. Acknowledgment in Printed Materials**

GRANTEE is encouraged to acknowledge the CITY for its support of the provision of services under this Contract in all appropriate printed materials. However, the CITY reserves the right to approve, in whole or in part, the form of such acknowledgments, which GRANTEE proposes to include in any printed materials.

## III. GENERAL PROVISIONS

**Section A. Texas Corporation and Venue**

GRANTEE warrants that it is incorporated in and otherwise entitled to do business in the State of Texas as a non-profit corporation. If GRANTEE is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk must be provided to the CITY. This Contract is entered into in the CITY and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

**Section B. Waiver**

Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

**Section C. Severability**

All agreements, covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Contract shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.

**Section D. Captions**

The captions of various sections of the Contract are for convenience of reference only, and shall not alter the terms and conditions of this Contract.

**Section E. Notices**

All notices, communications and reports under this Contract shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is notified in writing:

**CITY:** City of El Paso
Economic Development Department
2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196
ATTN: Luci Ponticelli,
Economic Development Manager

**GRANTEE:** Trans-Pecos/El Paso Regional Center for Innovation and Commercialization (RCIC)
201 E. Main Street, Suite 1514,
El Paso, Texas 79901
ATTN: Ebetuel (Beto) Pallares, Executive Director

**Section F. Entire Contract**

This Contract reflects the final, complete and exclusive understandings of the parties hereto, and may not be waived, altered or modified except by written agreement of both parties.

**IN WITNESS WHEREOF**, the Parties have executed this Contract on the date first written above.

**THE CITY OF EL PASO**

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn Dodson, Director
Economic Development Department

**GRANTEE:**
**TRANSPECOS/ EL PASO REGIONAL CENTER FOR INNOVATION AND COMMERCIALIZATION**

By: _____
Printed Name: Ebetuel (Beto) Pallares
Title: Executive Director

*(The foregoing representative of GRANTEE expressly represents that execution of this Contract has been lawfully authorized by the GRANTEE.)*

## ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, the best of his or her knowledge and belief, that:

(1) No Municipal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person of influencing or attempting to influence an officer or employee of any agency, Federal, State, or Municipal, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of a Federal loan, the entering into of any cooperative agreement and the extension, continuation renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**GRANTEE:**
**TRANSPECOS/EL PASO REGIONAL CENTER FOR INNOVATION AND COMMERCIALIZATION**

By: _____
Printed Name: Ebetuel (Beto) Pallares
Title: Executive Director

# ATTACHMENT 1
# PROJECT SCOPE
# STATEMENT OF WORK - PROJECT REQUIREMENTS

## SECTION 1 - Project Abstract

**Establishment of a High Technology Business Technology Services Center in Downtown El Paso**

**City's Objective:** Develop a regional technology infrastructure that will enhance El Paso's ability to support high technology businesses into the future

**Strategy:** Support the establishment of a high technology services center program in Downtown El Paso

The purpose of this grant is to provide Grantee with funds for actual and reasonable expenditures incurred in establishing a business technology services center in Downtown El Paso that will assist high technology entrepreneurs in applying for state-funded research and commercialization awards available through the Governor's Texas Emerging Technology Fund (ETF). By assisting the establishment of the business technology services center, the City will be promoting and accelerating the development and expansion of a high technology economy in the City of El Paso, which will facilitate the creation of high-quality technology jobs in the region for the benefit of El Paso residents.

Grantee will qualify high technology entrepreneurs (the "prospects") who meet one of the following criteria:

1. Frequently affiliation with a university
2. technology businesses that represent high growth opportunities
3. projects that enhance economic development goals

Glossary of Terms:

A "Technology Services Center" provides dedicated space and programs designed to accelerate the successful development of entrepreneurial companies through an array of business support resources and services. This center will also act as the launch pad for U.S. and Mexico technology companies.

"Technology entrepreneur" means an individual or company that seeks to develop a tangible product or service or other early stage technology that is not currently available in the marketplace.

"Angel Investor" means an individual investor that provides capital for start-up businesses.

"Professional Guidance" means expert advice and assistance on launching the start-up business.

**SECTION 2 - Activities and Performance Measures**

Grantee will be held responsible for the following Performance Measurements and substantial completion of the targeted Performance Indicators set out below.

| **Performance Measurements:** | **Performance Indicators:** |
|---|---|
| Establish a High Technology Business Technology Services Center in Downtown El Paso located within the boundaries of the El Paso Empowerment Zone | Copy of Lease Agreement at a location in Downtown El Paso or a Commitment Letter to Lease Space within thirty (30 days) from the execution date of the Grant Agreement |
| Provide Professional Guidance to help develop early stage El Paso technology companies | At least 10 prospects will be provided Professional Guidance |
| Assist high technology entrepreneurs apply for state-funded awards from Governor's Texas ETF | Submit two applications from prospects to the EFT for funding support |
| Facilitate Introductions to Angel Investors | At least 1 technology entrepreneur project vetted before Angel Investors |
| Provide Outreach and marketing of ETF funding opportunities | Participation at one BizTek event |

**SECTION 3 - Reporting Requirements**

3.1 In addition to any reports required by the General Grant Terms, the Grantee shall provide monthly written reports to the City on the status of performance measures described in Section 2 of this Statement of Work by the 20th of the of the month following the report month.

3.2 The Grantee shall also provide a written comprehensive final report to the Economic Development Department regarding the outcome of the grant. The final report shall include a description of the project, review of the activities accomplished and performance indicators achieved during the grant period. This report is due not later than 60 days after the grant end date.

3.3 The specified reports shall be mailed to the following address:

City of El Paso
Office of Economic Development
2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196
Attention: Kathryn Dodson, Director