

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

DEPARTMENT: Parks and Recreation

AGENDA DATE: September 25, 2012

CONTACT PERSON/PHONE: Nanette Smejkal, Director (541-4283)

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.

Approve a Resolution that the City Manager be authorized to sign an Agreement (the "Agreement") by and between the City of El Paso and the AARP Foundation ("AARP"), to provide an AARP Drivers Safety Program to people ages 16 and older at designated senior centers and recreational facilities of the City at no cost to the City, with no rental fee, which serves the public purpose of providing quality of life benefits to the residents of El Paso and provides opportunity for increased public safety.

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?

The AARP provides Drivers Safety Training techniques for participants 16 years of age and older. Participants learn the benefits of defensive driving techniques and receive a certificate that can be used to present to their insurance company for a possible premium discount.

AARP provides these services to the participants at a low cost only to cover the value of the materials required for the course. This agreement will allow the AARP to provide this training at designated senior centers and recreational facilities, thereby expanding available programs and important services for citizens.

PRIOR COUNCIL ACTION:

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

N/A

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?

N/A

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 City Manager be authorized to sign an Agreement (the "Agreement") by and between the City of El Paso and the AARP Foundation ("AARP"), to provide an AARP Drivers Safety Program to people ages 16 and older at designated senior centers and recreational facilities of the City at no cost to the City, with no rental fee, which serves the public purpose of providing quality of life benefits to the residents of El Paso and provides opportunity for increased public safety.

ADOPTED this ___ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:



Nanette L. Smejkal, Director
Parks and Recreation Department

STATE OF TEXAS §
 § **AGREEMENT**
COUNTY OF EL PASO §

This Agreement (hereinafter "Agreement") is entered into on this the _____ day of _____, 2012, by and between the City of El Paso, a home rule municipal corporation (the "CITY") and AARP Foundation ("AARP").

WHEREAS, the CITY provides recreational services to the citizens of El Paso through the Department of Parks and Recreation (the "Department") at its recreational facilities; and

WHEREAS, the CITY offers a variety of recreational programs to seniors at senior centers; and

WHEREAS, the AARP Foundation desires to provide a AARP Drivers Safety Program to people ages 16 and older at designated senior centers and recreational facilities of the CITY (the "Program") at no cost to the CITY; and

WHEREAS, the City recognizes that the Program would serve the public purpose and governmental purpose of providing quality of life benefits to the residents of El Paso, would provide safety benefits by making the participant drivers more aware of safety issues while driving and will encourage citizens to visit their local senior center or recreation center and learn about its classes, programs and events, and finds that the value of the Program is equal to the value of the facilities that will be made available for use under this Agreement.

NOW, THEREFORE, THE CITY AND AARP HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 CONTRACTUAL RELATIONSHIP

1.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously 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 between the parties or any of their officers, employees, agents or representatives.

1.1.1 As an independent contractor, AARP understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to AARP's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.1.2 AARP shall select its own employees, volunteers and other assistants and such employees, volunteers and other assistants shall be and shall act under the exclusive and complete supervision and control of AARP.

1.1.3 AARP will not receive any compensation or benefits from the CITY except as specifically provided for herein.

1.2 AARP acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind AARP to any obligation other than the obligations set forth in this Agreement.

2.0 SCOPE OF SERVICES

2.1 AARP will provide the Drivers Safety Program to citizens, which includes free drivers safety classes in English and Spanish and will teach defensive driving techniques to the participants (the "Program") as scheduled in coordination with the Director of the Parks and Recreation Department or a designee. The program will include teaching of defensive techniques to participants 16 and older, awareness of personal and physical changes due to aging that effect driving and how to adjust driving response, inform drivers of the importance of vehicle fit to the driver's requirements and limitations, provide information on community-specific resources that enhance driver safety, increased awareness of driving laws and regulations. Upon completion of the course, participants receive a certificate that can be presented to their insurance agency to be utilized toward a possible premium discount. These certificates are good for three years; however, they do not dismiss a traffic citation. AARP Membership is not required for participation in the Program.

2.2 AARP will provide all volunteers and workers ("Staff"), related paper work and equipment to carry out the Program. All AARP Staff must sign in and out and report all incidents and accidents to the Senior Center Office or Recreation Center Office at the respective location.

2.3 The City will provide the space at each location as available and after the Senior Center or Recreation Center activity schedule has been set. AARP services will be provided during normal operation hours.

2.4 AARP must respond to any programming or building issues to the Senior Center or Recreation Center staff within 24 hours of notice. If requested by any Parks and Recreation staff member, AARP Representatives must immediately remove any Staff who is not following the Senior Center's rules or not acting professionally.

3.0 TERM. This Agreement shall be for a period of three (3) years and may be renewed for one (1) successive period of two (2) years thereafter upon written notice issued from the AARP Foundation to City at least ninety (90) days prior to the end of the initial term or any renewal period, unless or until otherwise cancelled or terminated as provided for herein.

4.0 CONSIDERATION. In exchange for the use of the CITY facilities through the Program, AARP shall provide the services described in this Agreement at cost to the Program participants, which charge will not exceed the cost of materials required for the course. Other than as herein described, the Program shall be offered at no cost to the CITY. The parties agree

that the value of AARP's services offered through the Program are equal to the value of the City's facilities that will be made available for use under this Agreement.

5.0 RIGHT OF ENTRY. The CITY herein grants a right of entry to AARP, to include its designated agents, employees, and contractors, onto the designated CITY senior and recreational centers of the Program as scheduled in accordance with this agreement.

6.0 UTILITY USAGE. The CITY shall pay for all utilities provided at the Program facilities.

7.0 TERMINATION

7.1 Termination - Cause. The parties agree that either party may terminate this Agreement in whole or in part. Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

7.2 Termination - Convenience. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

7.3 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

7.3.1 Except as otherwise provided herein, all duties and obligations of the CITY and AARP shall cease upon termination or expiration of this Agreement.

8.0 MAINTENANCE AND REPAIRS. The CITY shall accept general maintenance and repair responsibilities except as herein identified.

8.1 Maintenance. The CITY and AARP agree that the CITY shall be responsible for general clearing of trash and debris in the CITY facilities following Program activities. However, AARP shall retain responsibility for additional clearing of trash and debris should the Director notify AARP that the Program activities have resulted in excessive trash and debris.

8.1.1 Repairs. The CITY and AARP shall keep the Program facilities in good condition and repair at all times during the effective period of this Agreement except that AARP shall repair damage to Program area when notified by the Director of substantial damage at any time provided that such damage is caused by an AARP Staff associated with the Program or by the Program participants at the direction of AARP's Staff in the Program. The CITY shall notify AARP of any such damage within seventy-two (72) hours of the incurrance of same.

9.0 **INSURANCE AND INDEMNIFICATION PROVISIONS.** AARP agrees to provide the following as a condition of its use of the Premises:

9.1 **LIABILITY INSURANCE.** AARP shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

9.1.1 AARP is required to purchase liability insurance on behalf of the CITY or, alternatively, may name the CITY as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the CITY, its agents, employees or independent groups, alleged or asserted by any individual, in connection with the performance of this Agreement.

9.1.2 AARP shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the CITY, its officers, agents, servants or employees and groups, its officers, agents, servants or employees.

9.1.3 The Premises shall not be made available by the CITY until AARP files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be grounds for cancellation of this Agreement.

9.2 **INDEMNITY.** As a condition of this Agreement, AARP or its insurer will INDEMNIFY, DEFEND AND HOLD the CITY, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. **THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF**

THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the CITY as required by the City Charter or any law, the CITY shall promptly forward to AARP every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein. AARP will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as AARP may deem expedient; and 3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. AARP shall pay all judgments in actions defended by AARP pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by AARP, and premiums on any appeal bonds. The CITY, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The CITY shall not be responsible for any loss of or damage to AARP's property from any cause.

10.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

10.1 Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the CITY enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. CITY does not waive 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.

10.2 Sovereign Immunity. The CITY reserves, and does not waive, its respective rights of sovereign immunity and similar rights and does not waive its rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

11.0 GENERAL PROVISIONS

11.1 The CITY shall have the right to enter the Premises at any time, without notice to AARP.

11.2 Security. The CITY shall generally retain responsibility for providing security personnel at its facilities in accordance with standard policy. AARP must provide security for the Program immediately preceding, during, and following any Program activities when the CITY determines and gives prior 24-hour notice of a need for additional security personnel.

11.3 Amendments and Waiver. AARP shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

11.4 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, the Program.

11.4.1 Specific Discriminatory Actions Prohibited. Neither party shall 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 Program or activities 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.

11.5 Assignment. The services to be provided under this Agreement by AARP cannot be assigned or delegated without the prior written consent of the CITY.

11.6 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

11.7 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

11.8 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the indemnification provisions hereof.

11.9 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and GROUP. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

11.10 Attorney's Fees. In any action brought by either party for the enforcement of any provision of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees.

11.11 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

11.12 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

11.13 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via personal delivery with signed receipt or via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address provided below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso
Attention: Office of the City Manager
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

COPY TO: City of El Paso
Attention: Parks and Recreation Department c/o
Director
Two Civic Center Plaza, 6th Floor
El Paso, Texas 79901-1196

AARP: AARP Foundation
Attn: Allen R. Bloch, Deputy State Coordinator
AARP Safety Program
6804 Steffers Lane
El Paso, Texas 79932-1055

11.14 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of AARP warrants that he/she has the authority to do so and to bind AARP to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

(Signatures appear on following page)

Executed this _____ day of _____, 2012.

CITY OF EL PASO

Joyce A. Wilson
City Manager

AARP FOUNDATION

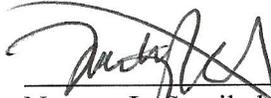
By: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Kristen L. Hamilton
Assistant City Attorney



Nanette L. Smejkal, Director
Parks & Recreation Department