

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

DEPARTMENT: OMB

AGENDA DATE: 11/06/07 Consent

CONTACT PERSON/PHONE: David Almonte, 541-4777

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.

A Resolution that the City Manager be authorized to sign an Interlocal Agreement between the City of El Paso and the University of Texas at El Paso's Institute for Policy and Economic Development to conduct updating a survey of City residents developed two year ago for the City of El Paso Strategic Plan.

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?

To update survey of City residents developed two years ago for the City of El Paso Strategic Plan. This survey provides valuable stakeholder input in the planning process.

PRIOR COUNCIL ACTION:

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

Yes.

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?

\$15,000 - Funding source: Non Departmental 99010273.

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BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

No

*****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 Interlocal Agreement by and between the City of El Paso and the University of Texas at El Paso in an amount of Fifteen Thousand and no/100 Dollars (\$15,000.00) for the University of Texas at El Paso's Institute for Policy and Economic Development to develop a survey of City residents regarding the Financial and Strategic plan for the City of El Paso.

APPROVED this _____ day of _____, 2007.

CITY OF EL PASO

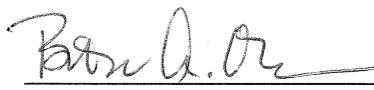
John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Bertha A. Ontiveros
Assistant City Attorney



David Almonte, Director
Office of Management and Budget

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STATE OF TEXAS)
)
COUNTY OF EL PASO) INTERLOCAL AGREEMENT WITH
 THE UNIVERSITY OF TEXAS AT EL PASO

This Interlocal Agreement with The University of Texas at El Paso (this "*Agreement*"), entered into this _____ day of October, 2007, by and between the City of El Paso, (the "*City*"), a Texas Municipal Corporation, and The University of Texas at El Paso, a Texas institution of higher education ("*UTEP*").

RECITALS:

WHEREAS, in creating the City's financial and strategic plan (the "Strategic Plan"), the City shall solicit public input and opinions regarding the following: (i) the service quality and efficiency of various City programs and services; (ii) the level of satisfaction of the impacts and results of various City programs and services; (iii) the level of information about City programs and services that citizens are currently aware of; and (iv) the types of programs and services that the citizens deem most critical to City government;

WHEREAS, the City has determined that the Institute for Policy and Economic Development ("*IPED*") of UTEP is qualified to perform a public survey regarding the City's Strategic Plan;

WHEREAS, the City desires to retain UTEP to perform a public survey regarding the City's Strategic Plan;

WHEREAS, UTEP desires to perform a public survey regarding the City's Strategic Plan;

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.

AGREEMENT:

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NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. SCOPE OF SERVICES

UTEP hereby agrees to have IPED do the following:

- (A) meet with City representatives to finalize plans and timeline for survey process;
- (B) draft survey instrument and work with City representatives on final instrument for use in telephone survey;
- (C) develop telephone survey (including translation – bilingual) for City review and approval;
- (D) provide survey sampling to the City;
- (E) tabulate survey results;
- (F) provide Executive Summary of survey results to the City including a Power Point Presentation; and
- (G) provide a final report to the City.

2. TERM

The term of this Agreement shall begin October 19, 2007, and shall end June 1, 2008. The term of this Agreement may be extended upon the written approval of both parties.

3. COMPENSATION

The City hereby agrees to compensate UTEP and UTEP hereby agrees to be compensated an amount equal to Fifteen Thousand Dollars (\$15,000) (the “*Compensation*”) for the services IPED provides pursuant to the terms of this Agreement. The parties agree that the Compensation includes all expenses incurred by UTEP in its performance of this Agreement. UTEP agrees that at no time shall it make a claim against the City for more than the Compensation provided under the terms of this Agreement. Payment will be made to UTEP within thirty (30) days following submittal of invoices to the City.

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4. CERTIFICATION

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

5. APPLICABLE LAWS

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

6. INDEPENDENT CONTRACTOR

Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities of UTEP incurred in the performance of this Agreement unless otherwise herein authorized. 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 UTEP and cannot be assigned or delegated without the prior written consent of the CITY.

8. TERMINATION

- (A) Either party may terminate this Agreement if the other is in default, upon five (5) days' written notice to the other party.
- (B) The CITY or UTEP may terminate this Agreement without cause upon thirty (30) days written notice to the other party.
- (C) Termination shall be without prejudice to any obligation by one Party to the other, which shall have accrued and owed prior thereto.

9. NOTICES

Any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the City or UTEP at the following addresses:

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CITY: Director, Office of Management and Budget
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901-1196

UTEP: Dennis L. Soden, Ph.D.
Institute for Policy and Economic Development
University of Texas at El Paso
El Paso, Texas 79968-0703

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

- (A) *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 UTEP pursuant to the terms of this Agreement, or any written amendment hereto.
- (B) *Specific Discriminatory Actions Prohibited:* UTEP 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. FINAL 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 authorized representative of both parties hereto.

13. VENUE

The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso 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

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

(A) No Indemnification. The parties hereto 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 hereto 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 UTEP 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

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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 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;

(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 OF EL PASO'S AGGREGATE LIABILITY TO UTEP (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY UTEP), 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; and**

(E) Intentional Risk Allocation. UTEP 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 next page)

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

(Signature Page)

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

CITY OF EL PASO

Joyce Wilson
City Manager

ATTEST:

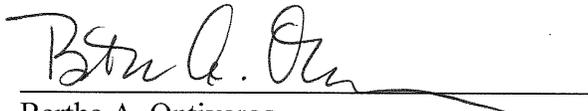
Richarda Duffy Momsen
City Clerk

UNIVERSITY OF TEXAS AT EL PASO



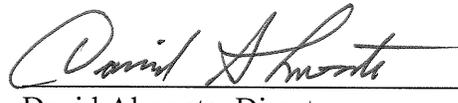
Diana Natalicio
President

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management and Budget

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