

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

DEPARTMENT: City Manager - Office of Management & Budget
AGENDA DATE: March 4, 2014
CONTACT PERSON/PHONE: Lynly Leeper, Chief Budget Officer, (915) 212-1085
DISTRICT(S) AFFECTED: All
SUBJECT:

That the Mayor 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 Thirty-Five Thousand Seven Hundred Twenty and no/100 Dollars (\$35,720.00) 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 and the Community's Priorities regarding City Services.

BACKGROUND / DISCUSSION:

The Texas Interlocal Cooperation Act of the 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.

This project is a continuation of the 2006, 2008, and 2011 citizen survey conducted by the Institute for Policy and Economic Development (IPED) at UTEP. This survey measures changing citizen attitudes on City issues over time. It was developed by professional researchers at IPED and updated with contemporary issues. Survey results are expected in July.

Previous survey results are accessible via these hyperlinks:

Citizen Survey 2006 - http://home.elpasotexas.gov/omb/_documents/tr%202006-02%20vision%202006%20-%20city%20survey%203-2-06.pdf

Citizen Survey 2008 - http://home.elpasotexas.gov/omb/_documents/2008%20El%20Paso%20Citizen%20Survey%20-%20Report_IPED01-2008.pdf

Citizen Survey 2011 - http://home.elpasotexas.gov/omb/_documents/2011%20City%20of%20El%20Paso%20Citizen%20Survey%20Report.pdf

This year the survey is designed so that households with landlines and cell phones will be included. The survey is conducted in both English and Spanish.

PRIOR COUNCIL ACTION:

Yes, the Council has approved three prior citizen surveys in 2006, 2008 and 2011.

AMOUNT AND SOURCE OF FUNDING:

Fund 1000 - General
Operating Unit 999 - Non-Departmental
Division 99999 - Non-Departmental

Account 554130 – General City Expenditure
Contract Total = \$ 35,720.00

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: *Sydney G. Lopez* **DATE:** *2/26/14*

RESOLUTION

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

THAT the Mayor 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 Thirty-Five Thousand Seven Hundred Twenty and no/100 Dollars (\$35,720.00) 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 and the Community's Priorities regarding City Services.

APPROVED this _____ day of _____, 2014.

CITY OF EL PASO

Oscar Leeson
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Matthew K. Behrens
Assistant City Attorney

Lynly Leeper, Chief Budget Officer
Office of Management & Budget

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 _____, 2014, 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 desires to 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 and the Community's Priorities regarding City Services;

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

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:

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 to design, implement, and report on the results of the 2014 City of El Paso Citizen Survey as more fully detailed in Attachment A.

2. **TERM**

The term of this Agreement shall begin March 17, 2014, and shall end August 31, 2015. 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 a firm fixed price of Thirty-Five Thousand Seven Hundred Twenty Dollars and No/100 (\$35,720.00) (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. The City will acknowledge receipt and acceptance of the final report in writing, and UTEP will issue an invoice to the City that will be payable within thirty (30) days following submittal of invoices to the City.

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 are 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:

CITY: Director, Office of Management and Budget
City of El Paso
P.O. Box 1850
El Paso, Texas 79950-1850

UTEP: Diana Natalicio, President
University of Texas at El Paso
500 W. University Avenue
Administration Building, Room 301
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

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.

(Signature Page)

CITY OF EL PASO

ATTEST:

UNIVERSITY OF TEXAS AT EL PASO

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lynly Leeper, Chief Budget Officer
Office of Management and Budget

Attachment "A"

2014 City of El Paso Citizen's Survey Preliminary Scope of Work

Introduction:

The institute for Policy and Economic Development (IPED) at the University of Texas at El Paso is please to respond to the request from the City of El Paso Office and Management and Budget (OMB) to develop a scope of work regarding the design, implementation, and analysis of the 2014 City of El Paso Citizen Survey. As in previous years, the survey will target City of El Paso households with the intention to assess citizen perceptions and opinions about the services provided by the City of El Paso. In addition, survey responses will serve to compare and evaluate progress on areas identified in previous surveys. Proposed tasks, timeline, deliverables, and estimated costs are detailed below.

Proposed Tasks:

Household Telephone (Landlines) Survey

IPED Task 1: *Survey Design and UTEP IRB Approval* – IPED will work with staff from the City OMB to design/update the survey instrument. Once the final version is agreed upon, an electronic version of the instrument will be created to allow survey callers to collect responses electronically. The appropriate research protocol will be written and submitted for UTEP Institutional Review Board approval.

IPED Task 2: *Survey Implementation and Database Development* – IPED will purchase a list of randomly selected phone numbers (landlines) of the City of El Paso households, implement the telephone survey, and develop an electronic database with all responses received (no less than 1,000 responses).

IPED Task 3: *Database Analysis and Report* – All households' responses received will be analyzed and results will be presented in the form of frequencies and a report will be written.

Household Telephone Survey plus Cell Phone Survey Exercise

In addition to the above and considering that a growing number of households (particularly young) relying entirely on cell phones or switching from landlines to cell phones, a separate cell phone survey exercise is suggested to investigate if differences exists between landlines responses and cell phone responses. The following tasks are proposed for the cell phone survey exercise:

IPED Task 4: *Survey Design and UTEP IRB Approval* – IPED will work with staff from the City OMB to design the survey instrument. Considering its nature, the cell phone survey should be between 10 and 15 questions long. Once the final version is agreed upon, an electronic version of the instrument will be created to allow survey callers to collect responses

electronically. The appropriate research protocol will be written and submitted for UTEP Institutional Review Board approval.

IPED Task 5: *Survey Implementation and Database Development* – IPED will purchase a list of randomly selected cell phone numbers of City of El Paso residents, implement the cell phone survey, and develop an electronic database with all responses received (no less than 500 responses).

IPED Task 6: *Database Analysis and Report* – All cell phone responses received will be analyzed and compared with household responses. Results will be presented in the form of frequencies and a report will be written.

Timeline

IPED can complete the analysis and deliver a final report in five months.

Deliverables

Deliverables will be in the form of a report detailing the survey results.

Estimated Costs

Survey Design, Implementation, Analysis, and Report	\$32,473
Indirect Costs	\$ 3, 247
TOTAL COSTS	\$35,720