

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

**DEPARTMENT:**      Parks and Recreation

**AGENDA DATE:**     June 9, 2015

**CONTACT PERSON/PHONE:**   Tracy Novak (212-1708)

**DISTRICT(S) AFFECTED:**   All Districts

**STRATEGIC GOAL:**

Goal 4 - Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments;

**SUBJECT:**

That the City Manager be authorized to sign an Interlocal Cooperation Contract by and between the City of El Paso and The University of Texas at El Paso, wherein UTEP will provide exercise programs for Senior Citizens of El Paso at the Gary del Palacio Recreation Center located at 3001 Parkwood Street, El Paso, Texas.

**BACKGROUND / DISCUSSION:**

The UTEP program would provide registration, administer the program, and pay the direct program costs the City incurs in order to support the program. Participants will pay a semester fee to join the program. UTEP is also seeking grant opportunities to further decrease costs.

**PRIOR COUNCIL ACTION:**

May 14, 2013, City Council heard a presentation from Dr. Dorgo with UTEP, requesting assistance from the City to provide a senior adult exercise program at Gary Del Palacio Recreation Center. City Council directed City Manager to have City Staff work with Dr. Dorgo to develop the program.

September 8, 2014, City Council adopted an interlocal agreement with University of Texas El Paso (UTEP) to provide a senior adult exercise program at Gary Del Palacio Recreation Center.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*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:** \_\_\_\_\_

CITY CLERK DEPT.  
2015 JUN -9 AM 8:20

**RESOLUTION**

**WHEREAS**, the El Paso City Council has determined that there is a need to provide an exercise program for senior citizens of the City; and

**WHEREAS**, the City has determined that the University of Texas at El Paso ("UTEP") is capable and qualified to provide such services; and,

**WHEREAS**, UTEP is willing to provide such services to the City of El Paso; and,

**WHEREAS**, the City and UTEP desire to have UTEP provide exercise programs at City's Parks and Recreation facilities, in alignment with UTEP's annual academic calendar; and,

**WHEREAS**, the Texas Interlocal Cooperation Act of the Texas Government Code §§791.001, *et seq.*, allows a local government and a state institution of higher education to contract among each other for governmental functions and services; and

**WHEREAS**, the services and functions to be performed pursuant to this Agreement constitute solely governmental functions and services.

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

That the City Manager be authorized to sign an Interlocal Cooperation Contract by and between the City of El Paso ("City") and The University of Texas at El Paso ("UTEP"), wherein UTEP will provide exercise programs for Senior Citizens of El Paso at the Gary del Palacio Recreation Center located at 3001 Parkwood Street, El Paso, Texas.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leoser  
Mayor

*(Signatures continue on following page)*

ATTEST:

Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

Lauren Ferris  
Lauren Ferris  
Assistant City Attorney

APPROVED AS TO CONTENT:

Tracy Novak  
Tracy Novak, Director  
Parks and Recreation Department

CITY CLERK DEPT.  
2015 JUN -9 AM 8:20

CITY CLERK DEPT.

STATE OF TEXAS 2015 JUN -4 PM 12:01

) INTERLOCAL COOPERATION CONTRACT  
)  
COUNTY OF EL PASO )

This Interlocal Cooperation Contract ("Contract") is entered into this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the CITY OF EL PASO, through its Department of Parks and Recreation, a municipal corporation situated in El Paso County, Texas (the "CITY") and THE UNIVERSITY OF TEXAS AT EL PASO, a Texas institution of higher education ("UTEP").

**I. PURPOSE:**

The purpose of this Contract is for CITY to obtain the services of UTEP to provide the Golden Age Exercise Program for Senior Citizens of El Paso (the "Program") under the direction of UTEP Kinesiology Department, to be conducted at: the City Parks and Recreation designated facility, Gary del Palacio Recreation Center located at 3001 Parkwood St, El Paso, Texas 79925 (the "Premises").

**II. STATEMENT OF SERVICES TO BE PERFORMED:**

UTEP and CITY will perform the services ("services") as described in Exhibit "A", attached hereto and incorporated herein.

**III. WARRANTIES:**

CITY warrants that (1) it has the authority to contract for the services under authority granted in Chapter 791, *Texas Government Code*; and (2) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

UTEP warrants that (1) it has authority to perform the services under authority granted in Chapter 791, *Texas Government Code*; and (2) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

**IV. COMPENSATION AND METHOD OF PAYMENT:**

UTEP shall reimburse the CITY, in consideration of this Contract, for all direct costs incurred by CITY for UTEP's use of the Premises in connection with the Program throughout the term of this Contract and any renewals thereof.

In exchange for the consideration described above, the CITY will allow for the use of the premises and provide the services as described in Exhibit "A".

CITY will invoice UTEP for services associated with each "program period", consistent with UTEP's academic Fall, Spring and Summer Semesters (see Program Period in V). Invoices shall be submitted no earlier than thirty (30) days before the commencement of the program period.

Payments will be made within thirty (30) days following receipt of an invoice for payment.

## **V. PROGRAM PERIOD:**

The program period refer to the period of time that is consistent with UTEP's yearly academic calendar. The dates when the exercise program is in effect and open to the participants within these periods shall be agreed upon in writing by both parties.

## **VI. TERM OF CONTRACT:**

This Contract will begin on the Effective Date and may be renewed on an annual basis, provided that UTEP gives CITY ninety (90) days advance notice of its desire to renew the contract and agrees to pay the direct costs associated with the renewal term.

## **VII. TERMINATION:**

In the event of a material failure by a party to perform its duties and obligations in accordance with the terms of this Contract, the other party may terminate this Contract upon thirty (30) days' advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the 30-day period.

CITY or UTEP may terminate this Agreement without cause upon thirty (3) days written notice to the other party.

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

## **VIII. NOTICES:**

All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows unless and until either party is otherwise notified in writing by the other party:

CITY:            City of El Paso  
                    Attn.: City Manager  
                    300 N. Campbell  
                    El Paso, Texas 79901

Copy to:        City of El Paso  
                    Attn.: Parks and Recreation Department Director  
                    801 Texas  
                    El Paso, Texas 79901

UTEP: University of Texas at El Paso  
Attn.: Office of Research and Sponsored Projects (ORSP)  
500 W. University, Benedict Hall 101  
El Paso, Texas 79968

Or such other person or address as may be given in writing by either agency to the other in accordance with this Section.

#### **IX. RISK ALLOCATION-LIMITATION OF LIABILITY:**

- A. *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 Contract.
- B. *Governmental Function.* The parties expressly agree that, in all things relating to this Contract, 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 Contract, falls within the definition of governmental function. The parties also agree that UTEP is entering into this Contract as part of its mission 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 Contract, 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 and emotional distress – as a result of breach of any term of this Contract, regardless of whether the party was advised had other reason to know, or in the 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 Contract, IN NO EVENT SHALL THE CITY AGREGATE 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 CONTRACT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID BY THE CITY UNDER THE TERMS OF THIS CONTRACT.

- E. *Intentional Risk Allocation.* UTEP and the CITY each acknowledge that the provisions of this Contract were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Contract. The disclaimers and limitations in this Contract 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.

#### **X. OTHER PROVISIONS, IF ANY:**

**Reservation of CITY Rights.** The CITY shall have the power at any time to require UTEP to cease operation of the Program for any public purpose in which the CITY may need the facility. Work done in connection with the use, repair and maintenance of such facilities is subject to the continuing police power of the CITY. CITY is not required to reimburse UTEP for loss of any of the Program dates.

**Entire Contract; Modifications.** This Contract supersedes all prior agreements, written or oral, between CITY and UTEP and shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Contract. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by CITY and UTEP. The CITY Manager is authorized to sign amendments to this Contract on behalf of the CITY.

**Independent contractor.** The parties are independent contractors. Except as may be expressly provided in this Contract, no partnership or joint venture is intended to be created by this Contract, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Contract, 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.

**Applicable Laws.** UTEP shall perform all services under this Contract in accordance with all applicable local, state, and federal laws and regulations.

**Assignment.** This Contract is not transferable or assignable except upon written approval by CITY and UTEP. Any attempt to assign this Contract without prior written approval is null and void, and may be grounds for termination of the Contract at the option of the CITY.

**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 of condition precedent or any other right hereunder.

**Venue.** The parties agree that this Contract is entered into in the State of Texas, shall be enforceable in El Paso, Texas, and exclusive venue shall lie in El Paso County, Texas.

**Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or

unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

**Public Records.** It shall be the independent responsibility of CITY and UTEP to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. CITY is not authorized to receive public information requests or take any action under the *Public Information Act* on behalf of UTEP. Likewise, UTEP is not authorized to receive public information requests or take any other action under the *Public Information Act* on behalf of CITY.

**Loss of Funding.** Performance by a Contracting Agency of its duties and obligations under this Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by that Contracting Agency's governing board. If the Legislature fails to appropriate or allot the necessary funds to a Contracting Agency, or a Contracting Agency's governing board fails to allocate the necessary funds, then the Contracting Agency that loses funding may terminate this Contract without further duty or obligation under this Contract.

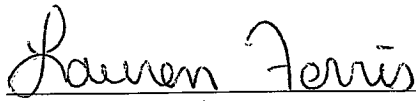
**Certification.** The Contracting Agencies certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected State agencies, (2) the proposed arrangements serve the interest of efficient and economical administration of the State of Texas, and (3) the services, supplies or materials contracted for are not required by Section 21, Article 16 of the *Texas Constitution* to be supplied under contract given to the lowest responsible bidder.

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

**CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lauren K. Ferris  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Tracy Novak, Director  
Parks and Recreation Department

CITY CLERK DEPT.  
2015 JUN -4 PM 12:01



**THE UNIVERSITY OF  
TEXAS AT EL PASO  
(UTEP):**

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Diane N. De Hoyos, Director  
Purchasing and General Services

CITY CLERK DEPT.  
2015 JUN -4 PM 12:02

## **EXHIBIT A**

**(pg. 1 of 2)**

### **UTEP Responsibilities for Golden Age Exercise Program for Seniors**

1. Should UTEP desire to renew the Contract, it shall submit a written request for an additional year no later than 90 days prior to the expiration of the Contract for PARD consideration and review.
2. Meet with PARD GDP Center site director at least one month prior to the beginning of each program period to detail specific dates and arrangements for program period (See VII Program Period). Both parties understand and agree that the beginning of the exercise program for the Summer of 2015 will depend on recruitment and outreach efforts for the initiation of the program and will take this into account to determine the opening day for the program.
3. The days and hours that the facility is open to the Program participants shall be agreed upon by both parties.
4. Provide all program staff and/or volunteers including program supervisor to monitor all daily activities on site. If the program staff is not available for unforeseen circumstances, PARD will be notified and the program will be cancelled for that day.
5. Hire and pay all salaried and hourly employees employed through UTEP for the purpose of the program.
6. Process all background checks through the UTEP Human Resources department and provide related training for employees and volunteers involved in the program.
7. Provide all participant supplies and any other related equipment needed for the program, such as non-stationary exercise equipment.
8. Conduct outreach and recruitment of program participants.
9. Provide a storage cart for non-stationary equipment items owned and used by UTEP for the program.
10. Respond to issues or complaints from participants within 2 business days if pertinent to exercise program, provide a timeline for resolution when appropriate, and refer facility-related issues to PARD.
11. Inform PARD Center site staff immediately of any accidents or incidents that takes place in or around the facility pertinent to the exercise program.
12. Handle and intake program membership registration and applicable fees for participation; eligibility will be extended to Seniors ages 60 and over.

## **EXHIBIT A**

(pg. 2 of 2)

### **PARD Responsibilities:**

1. Provide a clean and safe space for UTEP to conduct event. The space shall consist of the auxiliary gym, adjacent storage room, cardio and weight room and working restrooms.
2. Open the facility at 6am for the first class session on the previously agreed upon dates.
3. Provide basic janitorial amenities needed during program periods.
4. Provide access to cardio and weight equipment currently at GDP/PARD facilities. The equipment will be maintained as scheduled in the preventive maintenance calendar.
5. Repair any broken stationary equipment as soon as possible.
6. Provide storage area location for placement of a storage cart for program supplies, as mutually agreed upon between PARD and UTEP. CITY will not be responsible for any loss, damaged, or stolen items left by UTEP.
7. Provide restroom facilities as usual and as in any other program, along with the normal trash and debris removal. Excessive trash and debris removal will be the responsibility of UTEP.
8. Support utilities and other basic facility amenities, such as electricity and water.
9. Provide, through assigned staff, basic monitoring of the building and program.
10. Establish maximum number of participants to adhere to maximum capacity regulations.