

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

DEPARTMENT: Office of Economic Development
AGENDA DATE: October 13, 2009 CONSENT AGENDA
CONTACT PERSON/PHONE: Kathy Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement with the University of Texas at El Paso ("UTEP") under which the Institute for Policy and Economic Development ("IPED") of UTEP shall provide economic-impact assessments, briefing and training to City staff, and other technology-based economic development assessments services, all as requested by the Economic Development Department of the City. This Agreement shall be for a term of one (1) year, subject to renewal on mutual agreement, with a maximum of cost to the City of \$30,000 per year.

BACKGROUND/DISCUSSION:

The Economic Development Department of the City of El Paso has frequent requirements for economic impact assessments, briefing and training to City staff, and other technology-based economic development assessments service for which the City has determined that the University of Texas at El Paso ("UTEP"), through its Institute for Policy and Economic Development ("IPED"), is qualified to provide.

PRIOR COUNCIL ACTION:

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

Yes - previous contract July 2007 and Amendment March 2008.

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?

\$30,000 from the Economic Development Department Budget Acct. #72010268

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

Approved City Council - Budget Process 2010

*****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

WHEREAS, the Economic Development Department of the City has frequent requirements for economic-impact assessments, briefing and training to City staff, and other technology-based economic development assessment services; and

WHEREAS, the City has determined that the University of Texas at El Paso ("UTEP"), through its Institute for Policy and Economic Development ("IPED"), is qualified to provide such assessments, training and services; and

WHEREAS, UTEP is willing to provide such assessments, training and services to the City;

WHEREAS, 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; and

WHEREAS, it is the intent of the City and UTEP that they enter into an Interlocal Agreement to provide for such assessments, training and services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign an Interlocal Agreement with the University of Texas at El Paso ("UTEP") under which the Institute for Policy and Economic Development ("IPED") of UTEP shall provide economic-impact assessments, briefing and training to City staff, and other technology-based economic development assessments services, all as requested by the Economic Development Department of the City. The Agreement shall be for a term of one (1) year, subject to renewal on mutual agreement, with a maximum of cost to the City of \$30,000 per year.

ADOPTED this ____ day of _____, 2009.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn B. Dodson, Director
Economic Development Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is entered into this ____ day of _____ 2009, by and between the CITY OF EL PASO, 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 (the "UTEP")

WITNESSETH

WHEREAS, the Economic Development Department of the City has frequent requirements for economic-impact assessments, briefing and training to City staff, and other technology-based economic development assessment services, as part of its governmental functions and duties; and

WHEREAS, the City has determined that UTEP, through its Institute for Policy and Economic Development ("IPED"), is qualified to provide such assessments, training and services; and

WHEREAS, UTEP is willing and able to provide such assessments, training and services to the City; and

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

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

NOW THEREFORE BE IT RESOLVED, that the City and UTEP, for consideration set forth herein, agree as follows:

1. SCOPE OF SERVICES

UTEP, through IPED, agrees to provide to the city's Economic Development Department, various economic-impact assessments, briefing and training for City staff, and related economic-development assessment services as set forth more fully in **ATTACHMENT "A"**, which is attached hereto and made a part hereof for all purposes.

2. TERM

The term of this Agreement shall begin on the day and year first noted above and shall end after one (1) year; provided, however, that the term of this Agreement may be extended upon the written approval of both parties.

3. COMPENSATION AND METHOD OF PAYMENT

The cost of the services requested pursuant to this Agreement shall not exceed THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00) during the initial term of this Agreement. The parties acknowledge that compensation for services provided hereunder shall be in accordance with applicable provisions of ATTACHMENT "A". The City agrees to compensate UTEP on a project cost basis for the costs of services provided pursuant to this Agreement. Each project cost will be negotiated between UTEP and the City in advance, relative to the time of completion and the cost incurred for each project. Payments will be made within thirty (30) days following receipt of an invoice for payment. The City shall pay only those costs allowable under the terms of this Agreement, which were previously agreed upon by the parties as appropriate project costs. UTEP further agrees that at no time shall it make a claim against the City for more than the rate provided under the terms of this Agreement.

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

The parties are independent contractors. Except as may be expressly 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. 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. The City or UTEP may terminate this Agreement without cause upon thirty (30) days' written notice to the other party.
- B. Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and be owing prior thereto.

9. NOTICES

All notices, communications and reports under this Agreement shall be hand delivered or mailed, certified return receipt requested, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing by the other party:

CITY: Director, Economic Development Department
City of El Paso
2 Civic Center Plaza, 2nd floor
El Paso, TX 79901-1196

UTEP: Dennis L. Soden, Ph.D.
Institute for Policy and Economic Development
University of Texas at El Paso
El Paso, TX 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 disability, 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. ENTIRE 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 representatives of both parties hereto.

13. VENUE

The parties agree that this Agreement 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.

14. CONTRACT INTERPRETATION

The parties agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or

conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

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 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 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 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 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 Agreement, 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 AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION

ACTUALLY PAID BY THE CITY UNDER THE TERMS OF THIS AGREEMENT.

- 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.

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

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, Director
Economic Development Department

UNIVERSITY OF TEXAS AT EL PASO

Diana Natalicio, President

ATTACHMENT "A"

SCOPE OF SERVICES

The Institute for Policy and Economic Development ("IPED") at the University of Texas at El Paso ("UTEP") shall provide data, data analysis and modeling services to the Economic Development Department of the City of El Paso on an as-needed basis. Said services shall include, but not be limited to, the following:

1. IPED shall provide access to data bases which it maintains and shall deliver such data in a pre-determined format;
2. IPED shall provide data, as reasonable, in a "rapid response" manner in support of those Economic Development Department needs, which may arise from time to time;
3. IPED shall provide support in data base development;
4. IPED shall provide support in database programming, subject to all security and access requirements of the City of El Paso's systems;
5. IPED shall provide analysis independently or in cooperation with the Economic Development Department as predetermined;
6. IPED shall provide support and delivery of impact analysis using best practices;
7. IPED shall provide modeling using best practices;
8. IPED shall provide forecasts using best practices.

Each request from the Economic Development Department will be addressed separately and as an individual project unless otherwise requested by the City.

Both parties will assign a point of contact from appropriately knowledgeable personnel.

Time is of the essence, with regard to each request from the City for a project and delivery dates will be agreed upon in advance.

Costs per requested project will be based on standard IPED and UTEP costs including applicable indirect/overhead. Such costs shall be established and agreed upon by the parties prior to the commencement of any work by IPED.