

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

DEPARTMENT: Museums and Cultural Affairs (MCAD)

AGENDA DATE: November 11, 2014

CONTACT PERSON NAME AND PHONE NUMBER: Dionne Mack, Interim Director, MCAD (212-0110)

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a Resolution that the City Manager be authorized to sign the Service Agreement Contracts for ONE HUNDRED SEVENTEEN THOUSAND SIXTY SEVEN AND 00/100 DOLLARS (\$117,067.00) by and between the City of El Paso and AVANCE-El Paso, Inc., to create a bilingual, pre-school visual literacy curriculum and program at the El Paso Museum of Art funded through a three year federal grant awarded to the El Paso Museum of Art from the Institute of Museums and Library Services stipulating the requirement to use AVANCE-El Paso for the literary services.

BACKGROUND / DISCUSSION:

The El Paso Museum of Art (EPMA) received a matching grant from the Institute of Museums and Library Services for \$149,762 to carry out a three year visual literacy project. Restricted Funds and Cost Share in-kind match from the EPMA and as a condition of the grant required partner in the project, AVANCE-El Paso, Inc. as ESL and Literacy Specialists. The AVANCE program has extensive evaluation data that demonstrate its effectiveness, an evidence-based parenting curriculum that prepares adults to be their children's first and most important teacher - providing them with skills and tools to ensure their children's healthy development and school success. AVANCE utilizes a multi-pronged approach in providing opportunities to improve families' long-term quality of life, thus making it an ideal partner for this innovative arts awareness and literacy project.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? No

AMOUNT AND SOURCE OF FUNDING:

The El Paso Museum of Art (EPMA) received a matching grant from the Institute of Museums and Library Services for \$149,762 to carry out a three year visual literacy project, and these funds will be used to pay for AVANCE-El Paso contract services. Source of Funding:

Grant Match: 454 2660 54090 G5415A19 \$149,762

Total Match: 454 2660 54090 G541519CM \$24,375; 454 1000 54000/54010 \$38,256 (in-kind match City staff percentage of time); 454 1000 54000 \$10,590 (El Paso Museum of Art Overhead); AVANCE \$66,188 (in-kind match AVANCE staff percentage of time); Andrade and Associates \$20,000 (in-kind match Andrade staff percentage of time)

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

COUNCIL PROJECT FORM
(RESOLUTION)

*****POSTING LANGUAGE BELOW*****

Please place the following item on the CONSENT agenda for the Council Meeting of NOVEMBER 11, 2014.

THAT the City Manager be authorized to sign the Service Agreement by and between the City of El Paso and AVANCE-El Paso, Inc., to create a bilingual, pre-school visual literacy curriculum and program at the El Paso Museum of Art, for an amount not to exceed ONE HUNDRED SEVENTEEN THOUSAND SIXTY SEVEN AND 00/100 DOLLARS (\$117,067.00), funded through a three year federal grant awarded to the El Paso Museum of Art from the Institute of Museums and Library Services.

*****ADDITIONAL INFO BELOW*****

CITY CLERK DEPT.
2014 NOV -6 AM 10:17

RESOLUTION

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

THAT the City Manager be authorized to sign the Service Agreement by and between the City of El Paso and AVANCE-El Paso, Inc., to create a bilingual, pre-school visual literacy curriculum and program at the El Paso Museum of Art, for an amount not to exceed ONE HUNDRED SEVENTEEN THOUSAND SIXTY SEVEN AND 00/100 DOLLARS (\$117,067.00), funded through a three year federal grant awarded to the El Paso Museum of Art from the Institute of Museums and Library Services.

ADOPTED this ___ day of _____, 2014.

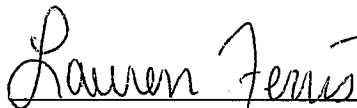
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

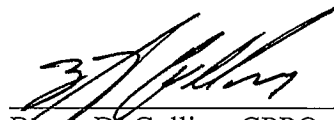


Lauren Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

Dionne Mack, Interim Director
Museum and Cultural Affairs Dept.

APPROVED AS TO CONTENT:



Bruce D. Collins, CPPO, Purchasing Director
Purchasing & Strategic Sourcing Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SERVICES AGREEMENT

This Services Agreement (this "*Agreement*") is entered into this ____ day of _____ 2014, by and between the City of El Paso, a home rule municipal corporation (the "*City*"), and AVANCE-El Paso, Inc., an organization authorized to do business in the State of Texas (the "*Consultant*").

RECITALS

WHEREAS, the City was awarded a three-year federal grant from the Institute of Museum and Library Services (Award No. MA-10-0333014) to create a bilingual, pre-school visual literacy curriculum and program (the "*Program*"); and

WHEREAS, the City desires to engage the *Consultant* to provide educational services, project management, and support as outlined herein to the El Paso Museum of Art of the City's Museums and Cultural Affairs Department for the Program; and

WHEREAS, the *Consultant* possesses the skills to perform said services for the City; and

WHEREAS, the City wishes to accept and the *Consultant* wishes to donate a portion of the services in-kind and through cost share as defined in the Scope of Services and Fee Schedule attached hereto as *Exhibit "A"*.

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.** The *Consultant* hereby agrees to perform the services in accordance with the Scope of Work in *Exhibit "A"*, which is attached hereto and incorporated herein by reference (the "*Consulting Services*"). *Consultant* acknowledges that this Agreement is funded, in whole or in part, under City's award of the grant. *Consultant*, therefore, agrees to abide by all relevant terms and conditions of the Grant which are attached hereto as *Exhibit "B"*.

2. **TERM.** The term of this Agreement shall commence upon the execution ("*Execution Date*") of this Agreement and shall be in effect for 36 months from the execution date.

3. **CONSIDERATION AND METHOD OF PAYMENT.** The *Consultant* shall be paid a total amount not to exceed ONE HUNDRED SEVENTEEN THOUSAND SIXTY SEVEN AND 00/100 DOLLARS (\$117,067.00) for all services, as set forth in the fee schedule attached hereto as *Exhibit "A"*, or as otherwise agreed to by the parties in a written amendment to this Agreement. The City will not pay any other expenses, including travel expenses. The City Manager, at his sole discretion, may approve additional work or compensation through an amendment of this Agreement, provided that at no time during the term of this Agreement or separate agreement may the total compensation within one year, including expenses, exceed \$50,000.00. The *Consultant*

acknowledges that, pursuant to state law, the City cannot contract for services in an amount over \$50,000.00 per year without engaging in a competitive solicitation.

3.1 The Consultant shall submit detailed invoiced to include dates of service, type of services (such as recruitment, educational workshops), hours spent, and attach timesheets on the first day of each month during the term of this agreement.

3.2 The Consultant shall maintain fiscal and performance records to assure compliance with this Agreement and with all requirements under the Project, and make them available to The City of El Paso upon reasonable request and shall retain all books, records, reports, and documents that are related in any way to this Agreement for five (5) years after the termination of the Agreement.

3.3 The Consultant hereby agrees that at no time will Consultant make a claim against the City for more than the rate provided under the terms of this Agreement. The Consultant further agrees to bill the respective City departments having direct oversight to the specific programs and services being reviewed under the terms of this Agreement.

4. LOCATION OF PERFORMANCE. The Consultant shall perform the Services in the City and County of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.

5. INDEPENDENT CONSULTANT RELATIONSHIP. 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 the Consultant incurred in the performance of this Agreement unless otherwise herein authorized. The City will provide no fringe benefits to the Consultant.

6. INDEMNIFICATION OF THE CITY. BY ACCEPTANCE OF THIS AGREEMENT, THE CONSULTANT AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, THEIR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH) ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF THE CONSULTANT OR ITS AGENTS, SUBCONSULTANTS, CONSULTANTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT.

7. INSURANCE. The Consultant shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement. City shall be provided with certificates of insurance evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

A. Liability Insurance. For the duration of this Agreement and any extension thereof, the Consultant shall carry, in a solvent company authorized to do business in the State of Texas, public liability insurance to: a) cover the Consultant and its employees in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00); and, b) protect the general public and the City in the minimum amounts of Two Hundred Fifty Thousand

Dollars (\$250,000.00) per occurrence for bodily injury or wrongful death and Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence for property damage.

B. Workers Compensation. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

C. Auto Liability. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Consultant, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage.

D. Form of Policies. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. City prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.

E. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.

F. Insured Parties. Each policy, except those for Workers' Compensation, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

G. Deductibles. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Consultant shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City of El Paso, their officers, agents or employees.

H. Material Change in Policy(ies). Prior to any material change in any policy required herein, City will be given thirty (30) days advance written notice by registered mail. Further, City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.

I. Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company.

J. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.

K. Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

8. NOTICE. Any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the respective parties at the respective addresses shown below, unless and until either party is notified of a new address in writing, without the need to amend this Agreement:

CITY: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

CONSULTANT: AVANCE-El Paso, Inc.
616 N. Virginia St., Suite B
El Paso, Texas 79902

9. DISPUTE RESOLUTION. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. Upon delivery and receipt of notice, the parties agree to submit the matter to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse.

10. TERMINATION. Either party may terminate this Agreement without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. Should the City have cause to terminate this Agreement or if the Consultant is in breach of this Agreement, the Agreement may be terminated immediately upon written notification to the Consultant of the cause for termination.

11. LAW GOVERNING AGREEMENT/VENUE. For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

12. COMPLIANCE WITH LAWS. Consultant shall comply with all applicable federal and state statutes, ordinances, administrative orders, rules or regulations, in addition to any local laws or ordinances relating to its activities and performance under this contract and shall procure all licenses and pay all fees or other charges as required, if applicable.

13. ASSIGNMENT. This contract does not grant Consultant the right to transfer its respective rights and duties under this Agreement without prior written consent of the City as applicable.

14. WAIVER. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

15. SEVERABILITY. All agreements, covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.

16. CAPTIONS. The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.

17. AUTHORITY TO CONTRACT. The person signing this document on behalf of Consultant warrants that he or she has been duly authorized to sign this Agreement on behalf of Consultant and to bind the organization, its officers, agents and employees.

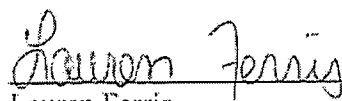
18. COMPLETE AGREEMENT. This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the personal services of the Consultant for the City, and in reference to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to such services, all promises, representations and understanding relative thereto herein being merged.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, 2014.

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:



Lauren Ferris
Assistant City Attorney

APPROVED AS TO FORM:

Dionne Mack, Interim Director
Museums & Cultural Affairs Department

CONSULTANT: AVANCE-El Paso, Inc.

Leticia Diaz Rios, Executive Director

ATTACHMENT A- SCOPE OF WORK and COST

Project Scope