

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

**AGENDA DATE:** May 25, 2021  
**PUBLIC HEARING DATE:** May 25, 2021

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Mario M. D'Agostino, Fire Chief, (915) 212-5605

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

**STRATEGIC GOAL:** Goal 6. Set the standard for sound governance and fiscal management.

**SUBGOAL:** 6.8 Support transparent and inclusive government.

**SUBJECT:**

That the Mayor is authorized to execute an Interlocal Agreement ("Interlocal") between the City of El Paso ("City) and the University of Texas at El Paso ("University") for the bailment of City equipment to the University. The University will use the equipment for its continued assessment of the health of the University and the El Paso community; for activities designed to detect and mitigate COVID-19; and for the development of related research. Pursuant to the Interlocal, the parties agree that the division of costs and obligations fairly compensates each party and that neither party shall be responsible for monetary payment to the other.

**BACKGROUND / DISCUSSION:**

The Parties wish to establish interagency cooperation for the bailment of the equipment to University, for University's continued assessment of the health of the El Paso community, the University community, activities for the detection and mitigation efforts for the current worldwide health crisis and pandemic identified as COVID-19, and development of related research endeavors.

**PRIOR COUNCIL ACTION:**

The City, through its Department of Public Health laboratory had established a City Department Covid-19 testing facility within the University campus in accordance with the corresponding Interlocal Agreement for Laboratory Testing Facility for local State of Emergency Assistance effective March 30, 2020 and expiring on March 29, 2021.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  YES  NO

**PRIMARY DEPARTMENT:** Fire Department  
**SECONDARY DEPARTMENT:** Department of Public Health

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
\_\_\_\_\_

**RESOLUTION**

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

That the Mayor is authorized to execute an Interlocal Agreement (“Interlocal”) between the City of El Paso (“City) and the University of Texas at El Paso (“University”) for the bailment of City equipment to the University. The University will use the equipment for its continued assessment of the health of the University and the El Paso community; for activities designed to detect and mitigate COVID-19; and for the development of related research. Pursuant to the Interlocal, the parties agree that the division of costs and obligations fairly compensates each party and that neither party shall be responsible for monetary payment to the other.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.


THE CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeser  
Mayor

ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mario M. D'Agostino  
Fire Chief

STATE OF TEXAS §  
COUNTY OF EL PASO §

**INTERLOCAL AGREEMENT FOR  
TESTING EQUIPMENT BAILMENT**

This Interlocal Agreement (“Agreement”) is entered into by and between the **City of El Paso, Texas**, a Texas municipal corporation (“City”), and **The University of Texas at El Paso** (“University”) Texas State Agency, Texas Public Institution of Higher Education and member institution of The University of Texas System, by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act, Article 79.001 *et seq.*, Texas Government Code. City and University shall be jointly identified as the “Parties” and individually identified as a “Party”.

**RECITALS**

**WHEREAS**, the University and the City are local governments as defined in Chapter 791 of the Texas Government Code, and have the authority to enter into this agreement, and have each entered into this agreement in the appropriate manner prescribed by law;

**WHEREAS**, the University and the City specify that each Party paying for the performance of said functions of government shall make those payments from current revenues available to the paying Party;

**WHEREAS**, as a result of confirmed cases of 2019 Novel Coronavirus (COVID-19), the US Secretary of Health and Human Services declared a public health emergency exists and has existed since January 27, 2020, nationwide; and the Governor of the State of Texas on March 13, 2020 declared a State of Disaster in Texas due to COVID-19; and effective March 13, 2020, a local state of emergency was declared for the City of El Paso;

**WHEREAS**, on March 17, 2020 the U.S Secretary of Health and Human Services (HHS) published the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (COVID-19 Declaration) issued pursuant to the Public Readiness and Emergency Preparedness Act (PREP Act). This Agreement is being entered in response to the COVID-19 Declaration;

**WHEREAS**, the President of the United States of America continues to urge Americans to do their part to slow the spread of COVID-19;

**WHEREAS**, the City is the authority having jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following the declaration of an emergency under the COVID-19 Declaration;

**WHEREAS**, testing is considered a “covered countermeasure” to which immunity applies;

**WHEREAS**, the City through its Department of Public Health (“Department”) laboratory had established a City Department Covid-19 testing facility within the University campus (“Facility”) in accordance with the corresponding Interlocal Agreement for Laboratory Testing Facility for local State of Emergency Assistance effective March 30, 2020 and expiring on March 29, 2021;

**WHEREAS**, in order to assess the health of the El Paso community, and the University community, the University has established a proactive COVID-19 testing program as well as other COVID-19 related research endeavors;

**WHEREAS**, the City has closed the use of the Facility and ended the use of certain City equipment currently located on University property which use by University would be beneficial to the continued efforts to continue to assess the health of the El Paso community and the University community as well as continue to develop related research endeavors;

**WHEREAS**, the Parties wish to establish interagency cooperation for the bailment of the equipment to University, for University’s continued assessment of the health of the El Paso community, the University community, activities for the detection and mitigation efforts for the current worldwide health crisis and pandemic identified as COVID-19, and development of related research endeavors;

**WHEREAS**, City as bailor is willing to provide such equipment to University as bailee for the purposes set forth herein and subject to the terms and conditions of this Agreement, and University is willing to accept and use such equipment on such terms; and

**WHEREAS**, the Parties believe that this cooperative agreement will assist the City, the University, the public and the taxpayers in the detection and mitigation efforts through testing and assessment of health of the City of El Paso, El Paso County and University community, for the current worldwide COVID-19 health crisis and pandemic and is adequate consideration to support this Interlocal Agreement.

**WHEREAS**, the Parties find that the subject of this Agreement is necessary for the benefit of the public; and, that each Party has the legal authority to perform and to provide the governmental function or proprietary service which is the subject matter of this Agreement.

**NOW THEREFORE**, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the Parties, the receipt and sufficiency is hereby acknowledged, the City and the University agree as follows:

**I. OBLIGATIONS OF BOTH THE CITY AND UNIVERSITY**

- 1. Designated Liaisons.** Each Party will assign a responsible liaison and point of contact (“POC”) to coordinate, oversee and facilitate the implementation of the Program.

The parties hereby designate the following POC under this Agreement:

For University:

**Robert Kirken, Ph.D.**  
500 W. University Ave  
El Paso, TX 79968  
Phone: (915) 747-5536  
Email: [rkirken@utep.edu](mailto:rkirken@utep.edu)

For Department:

**Chief Mario D’Agostino**  
P.O. Box 1890  
El Paso, TX 79901  
[DagostinoMM@elpasotexas.gov](mailto:DagostinoMM@elpasotexas.gov)

2. **Delivery.** City as bailor hereby delivers the Equipment (as defined below) to University as bailee in bailment, granting University its gratuitous use, pursuant to the terms and conditions set forth herein. University as bailee hereby accepts the Equipment (as defined below) in bailment, subject to the terms and conditions set forth in this Agreement.
3. **Property Bailment.** The City's property subject to this bailment consists of equipment and related accessories, appliances and tooling proprietary to and owned by City (hereinafter, the "Equipment") as follows:
  - i. One (1) 7500 FAST DX INSTRUMENT TOWER, serial number 275031564
  - ii. One (1) KINGFISHER FLEX, serial number 711-80983
  - iii. Any associated technologies detailed within the SOP, necessary operate the Equipment.
4. **Title.** The Parties agree that the Equipment is owned by and is the exclusive property of City. University may not sell, lease, mortgage, pledge, encumber or dispose of the Equipment in any manner.
5. **Equipment Location.** University agrees to install and keep the Equipment in University property located in El Paso, Texas. University may not transfer the Equipment to a different location, unless it obtains the prior written authorization from City.
6. **CLIA.** City and University will coordinate the removal of the Equipment listed from the City's CLIA facility inventory and adding Equipment to the University's CLIA facility inventory.
7. **Use and Maintenance.** University agrees to provide, at its own cost, any maintenance that the Equipment requires during the term of this Agreement. University may not remove the Equipment from the University's property or modify the Equipment without City's prior written consent. University shall use, operate, repair and maintain the Equipment in compliance with all applicable laws and regulations, including all safety laws and regulations, industry codes and standards, and the specifications of operating and maintenance manuals.
8. **Equipment Return.** Upon termination of this Agreement, University shall return the Equipment to City in the same condition as it was delivered, reasonable wear and tear excepted. All such returns shall be to City's facility at 9566 Railroad Drive, El Paso, Texas 79924, with transportation paid by University.
9. **Risk of Loss; Property Insurance.** University shall assume all risk of loss or damage to the Equipment while it is in the custody, possession or control of University. University shall maintain at its expense property insurance for the Equipment in an amount not less than its full replacement value, as notified to University by City from time to time. University may, at its sole discretion, include the Equipment in the University's standard existing insurance coverage policies. University shall report any incidents of damage or loss to the Equipment promptly after the same become known to University.
10. **No Liens.** University shall not permit any mechanics lien or other lien to be imposed on or against the Equipment.

11. **Warranty; Limitation of Liability.** The Equipment is provided to University on an “AS IS” basis, without any express or implied warranties whatsoever. CITY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In no event will City be liable for any special, indirect, incidental or consequential damages arising out of or relating to use of the Equipment.
12. **Facility Access.** University shall permit City, its officers, employees, consultants and agents reasonable access to the facility to inspect the Equipment, upon not less than ten (10) calendar days’ advance written notice from City specifying the names and titles of personnel it intends to conduct the inspection and any University personnel or resources it desires to be available during the inspection. University shall use reasonable efforts to cause such personnel and resources to be available at the time of the inspection. All such personnel of City shall be subject to and abide by the safety and security rules of University applicable to the facility where Equipment is located. University may require such personnel to execute a visitor's confidentiality agreement and release prior to entry to the corresponding facility.
13. **Compensation.** The Parties agree that neither Party shall be responsible for any monetary payment to the other Party and further agree that the division of costs and obligations detailed in this Agreement fairly compensates both Parties under this Agreement.

## II. OTHER COVENANTS AND AGREEMENTS

1. **Transfer of Ownership Interest.** This Interlocal Agreement represents an agreement for the City and University to share resources. Neither Party shall acquire an interest in the real or personal property of the other.
2. **Retention of Ownership.** Upon termination of this Agreement, in accordance with section, each Party will retain ownership of its respective properties, equipment and related supplies, whether or not the property was previously shared.
3. **No Conveyance of Real or Personal Property Interests.** Both Parties agree this Interlocal Agreement is not intended to form an interest in real property and neither the City nor the University will acquire rights of tenancy in the other’s facilities for the initial term of this Agreement or during any renewal, extensions or modifications of the term of the Agreement.
4. **Stand Alone Agreement.** The terms of this Agreement will be considered separate from any other University/City transaction or agreement, including yet not limited to, those Interlocal Agreements related to either assignment of University personnel to City laboratory or establishment of a City testing facility at University. The mutual consideration of the Parties described herein shall be calculated without reference to any other contract. Setoffs against other contractual obligations is neither contemplated by the Parties nor permitted.

## III. TERM AND TERMINATION

1. **Term.** The effective date of this Agreement is the date this Interlocal Agreement is approved by the El Paso City Council (“Effective Date”). Thereafter, this Agreement shall be in effect

until **December 31, 2022**, unless terminated earlier by either Party in accordance with the provisions set in this Agreement.

2. **Renewal.** Subject to approval of both Parties and applicable law and regulation, this Agreement may be renewed or its Term extended, in accordance with a written amendment hereof signed by duly authorized representatives of each of the Parties.
3. **Termination.** Either Party may terminate this Agreement upon thirty (30) calendar days' written notice of its intention to terminate the Agreement signed by duly authorized representative of the terminating Party to the other Party.

#### IV. NOTICES

Any notice to any Party under this Agreement must be in writing signed by the Party giving it, and shall be deemed given when received by the Party's designated representative. Notices shall be mailed postage prepaid by U.S. Postal Service first class, certified, or express mail, or other overnight mail service, hand delivered or emailed to the following designated representatives:

To the City of El Paso:	City of El Paso Office of the City Manager P.O. Box 1890 El Paso, TX 79950-1890
With copy to:	City of El Paso Attn. Chief Mario D'Agostino P.O. Box 1890 El Paso, Texas 79901
Agency Name:	The University of Texas at El Paso 500 W. University Ave El Paso, TX 79968 Attn. Vice President for Business Affairs

Changes may be made to the above addresses and addressees through timely written notice provided to the other Party.

#### V. GOVERNMENTAL FUNCTION AND IMMUNITY

1. **Governmental Function.** The City and University expressly agree that, in all things relating to this Interlocal Agreement, the parties enter into this Interlocal Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of each Party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.
2. **Immunity.** The City and University reserve, and do not waive, their respective rights of governmental and/or sovereign immunity and similar rights and do not waive their rights under

the Texas Tort Claims Act. The Parties expressly agree that neither Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

3. **PREP ACT.** The City and University agree that immunity applies to University and its employees and the City and its employees for the covered countermeasures, including but not limited to testing for COVID-19.

## **VI. RISK ALLOCATION – LIMITATION OF LIABILITY**

1. **Liability.** This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either Party by law.
2. **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, and further including, mental anguish, emotional distress and attorney's fees- 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, except as expressly provided herein. Neither Party hereto shall be liable to the other Party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other Party regardless of whether the Party receiving said information from the other Party was advised, had other reason to know, or in fact knew thereof.
3. **Intentional Risk Allocation.** The City and University 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.
4. **No Indemnification.** The City and University expressly agree that, except as provided herein, 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.
5. **Fines and Penalties.** Each Party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that Party's actions, except as may be specifically provided by law.

## **VII. GENERAL PROVISIONS**

1. **Compliance with Laws.** In the performance of their obligations under this Agreement, the Parties shall comply with all applicable federal, state or local laws, ordinances and regulations



and declarations.

2. **Governing Law.** For purposes of determining the law governing the same, this Agreement is entered into in the city and state of main operations of the Parties hereto, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso, Texas.
3. **Privileges and Immunities.** All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City and the University when performing a function shall apply to such officers, agents, Personnel or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.
4. **Current Revenues.** Pursuant to Section 791.001(d) (3), Texas Government Code, each Party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying Party.
5. **No Waiver.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.
6. **Amendment; Assignability.** This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other Party.
7. **Severability.** All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which 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.
8. **Section Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.
9. **Representation of Counsel; Mutual Negotiation.** Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties named hereinabove as of the date, month and year first written above.

*(Signatures follow on next page)*

**CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leeser, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Mario D'Agostino, Fire Chief  
El Paso Fire Department

**THE UNIVERSITY OF TEXAS AT EL PASO**



\_\_\_\_\_  
Mark McGurk  
Vice President for Business Affairs