

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

AGENDA DATE: February 26th, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER: Nicole Ferrini (915) 212-1659

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 8 – Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: Develop and implement a comprehensive climate action plan

SUBJECT:

The City Mayor will be authorized to sign the Inter-local agreement between the City of El Paso and all members of the Leadership Steering Committee relating to EPA's Climate Pollution Reduction Grant (CPRG) program.

BACKGROUND / DISCUSSION:

The City's EPA-approved CPRG workplan includes the creation of a Leadership Steering Committee.

The committee will function as a senior level advisory group charged with guiding the scope of work led by the City of El Paso. The LSC will be comprised of multiple public entities committed through an Inter-local Agreement. Each entity will assign a point of accountability as an official representative. This Committee will participate in (i) data collection and sharing (ii) stewardship of engagement and outreach activities within their region, and (iii) review and comment regarding CPRG deliverables.

PRIOR COUNCIL ACTION:

This item is an administrative correction to the previous City Council's approval on January 3rd 2024 of a Memorandum of Understanding (MOU) instead of an Inter-local Agreement.

AMOUNT AND SOURCE OF FUNDING:

NA

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Office of Climate and Sustainability – Nicole Ferrini

SECONDARY DEPARTMENT:

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, through the Inflation Reduction Act of 2022 (IRA), Congress provided many tools to pursue greenhouse gas (GHG) pollution reductions, including the Climate Pollution Reduction Grants (CPRG) program;

WHEREAS, the El Paso Metropolitan Statistical Area (MSA), as one of the 67 most populous metropolitan areas, and with the City of El Paso as the lead entity, was awarded a planning grant under CPRG to develop a Comprehensive Climate Action Plan (CCAP);

WHEREAS, the City of El Paso and its regional partners of the Paso del Norte Community Climate Collaborative (PDNC3) have the purpose of building a partnership to accelerate the work of the El Paso MSA addressing environmental justice and climate empowering community-driven solutions in overburdened and underserved areas across the region;

WHEREAS, the Leadership Steering Committee (LSC) committee will function as a senior level advisory group charged with guiding the CCAP scope of work led by the City of El Paso;

WHEREAS, the LSC will be comprised of multiple public entities committed through an interlocal agreement. Each entity will assign a point of accountability as an official representative; and

WHEREAS, the LSC will participate in data collection efforts, engagement and outreach activities within their region, and review and comment regarding CPRG deliverables.

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 for the City of El Paso, in a form substantially similar to that which is attached to this Resolution as Attachment A, with all members of the Leadership Steering Committee relating to the CPRG Program;

(Signature Page to Follow)

APPROVED this ____ day of _____, 2024


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Sr. Assistant City Attorney

APPROVED AS TO CONTENT:



Abraham Gutierrez
for Nicole Ferrini
Nicole Alderete-Ferrini
Climate and Sustainability Officer

ATTACHMENT A

**INTERLOCAL AGREEMENT BETWEEN
[_____] LEADERSHIP STEERING COMMITTEE ENTITY [_____]]
AND THE CITY OF EL PASO OFFICE OF CLIMATE AND SUSTAINABILITY
FOR ASSISTANCE AND COOPERATION IN THE
LEADERSHIP STEERING COMMITTEE
FOR THE REGIONAL CLIMATE INITIATIVE**

STATE OF TEXAS	§	INTERLOCAL AGREEMENT BETWEEN LEADERSHIP
	§	STEERING COMMITTEE ENTITY AND THE CITY OF EL PASO
	§	OFFICE OF CLIMATE AND SUSTAINABILITY FOR
LEADERSHIP STEERING	§	ASSISTANCE AND COOPERATION IN THE LEADERSHIP
COMMITTEE MEMBER	§	STEERING COMMITTEE FOR THE REGIONAL CLIMATE
		INITIATIVE

This Interlocal Agreement (the “Agreement”) is made on _____, 2024 (“**Effective Date**”) and is made by and between **LEADERSHIP STEERING COMMITTEE ENTITY** (hereinafter referred to as the “**Committee Member**”), and the City of El Paso (hereinafter referred to as the “**Lead Organization**”), a Texas Municipal Corporation, duly herein and through its City Council a set of regional entities committed to the efforts of the Environmental Protection Agency (EPA) Regional Climate related program objectives. Committee Member and CITY may be referred to singularly as a "Party" or collectively as "Parties." The Parties agree to all the recitals, terms, conditions and representations contained in this Agreement. This Agreement is made pursuant to Chapter 791 of the Texas Government Code.

RECITALS

WHEREAS, The Lead Organization’s implementation of the Leadership Steering Committee was established as a collaboration of organizations, cities, and townships to develop and implement plans for reducing greenhouse gas emissions and other harmful air pollution the City of El Paso; and

WHEREAS, the Committee will collaborate with the Lead Organization on Regional Climate related program initiatives by establishing an institutional framework that can articulate the requirements of such programs. One of the key success factors is the leadership and political commitment of the relevant actors of the region; and

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

PURPOSE

1. The purpose of this Agreement is to establish an institutional framework that can articulate the requirements of Regional Climate related programs. One of key success factors is the leadership and political commitment of the relevant actors of the region, as more specifically described herein ("**Purpose**").

ARTICLE 2

TERM AND TERMINATION

2. Term. The term of this Agreement shall begin on the Effective Date and terminate **four (4)** calendar years from the Effective Date with the option to extend upon agreement by the Parties. ("**Term**").

- a. Termination.

- i. This Agreement may be terminated in whole or in part by either party upon sixty days written notice to the other party at the following addresses, or at a new address as provided in writing to the nonmoving party by a party which has moved its physical location within thirty (30) days of said relocation without the necessity of amending this contract:

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

- i. The Parties may mutually agree to terminate this Agreement. Parties in their sole discretion will determine if, as part of the general termination.
 - ii. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement, including those remedies listed at 2 C.F.R. 200.207 and 2 C.F.R. 200.338 - 200.342. Following termination by the Committee Member or Lead Organization shall continue to be obligated to the Committee Member for the return of grant funds in accordance with applicable provisions of this Agreement.

ARTICLE 3

PROGRAM SCOPE

3. Outcome Statement. The Parties will develop and maintain a framework that will consist of the following outcomes:
 - a. Support data gathering efforts by the selected consultants, including, but not limited to: utility, economic, demographic, and environmental data.
 - b. Support the identification of measures to reduce air pollution and GHG emissions that could be implemented in the upcoming years, including measures required under CPRG Phase II and other related projects
 - c. All projects pertaining to CPRG Phase II will need to comply with EPA requirements and guidelines.
 - d. Commitment to enter into a Memorandum of Agreement (MOA, as defined by the Environmental Protection Agency (EPA) in its guidelines, to be part of a regional coalition to participating in CPRG Phase II.
 - e. Support outreach and community engagement efforts to be held in their communities as part of the Regional Climate related program or future Climate programs.
 - f. Actively participate in managing, planning, and decision-making meetings as a member of the Leadership Steering Committee.
 - g. Designate a person of contact for all Regional Climate related programs and Climate related activities.
 - h. Review and comment all Regional Climate Regional Programs and Climate related deliverables.

ARTICLE 4

LEGAL AUTHORITY

4. Lead Organization certifies that it possesses all legal authority necessary to apply for and receive funds pursuant to this Agreement. A resolution, motion or similar action has been or will be duly adopted or passed as an official act of Lead Organization's governing body, authorizing the approval of this Agreement, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative, or their designee of the organization to act in connection with the application and to provide such additional information as may be required.

ARTICLE 5

PUBLIC INFORMATION

5. Notwithstanding any provisions of this Agreement to the contrary, Parties acknowledge that the Parties and this Agreement are subject to the Texas Public Information Act, Texas Government Code Chapter 552 (the "PIA"). Lead Organization acknowledges that the Parties will comply with the PIA, as interpreted by its legal counsel based on judicial opinions and opinions of the Attorney General of the State of Texas.

- 5.1 Committee Member acknowledges that information created or exchanged in connection with this Agreement, is subject to the PIA, whether created or produced by Committee Member or any third party, and Lead Organization agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to the Parties. Committee Member will cooperate with the Lead Organization in the production of documents or information responsive to a request for information.

ARTICLE 6

COOPERATION WITH MONITORING, AUDITS, AND RECORDS REQUIREMENTS

6. All records and expenditures are subject to, and Parties agree to comply with, monitoring and/or audits conducted by the United States Environmental Protection Agency Inspector General, other federal agencies or offices, or the Parties' Auditors or their designee. Parties shall maintain under GAAP or GASB, adequate records that ensure proper accounting for all costs and performances related to the Agreement.
- 6.1 If Lead Organization expends \$750,000 or more in federal funds in a fiscal year, it may be subject to Single/Audit Requirements in 2 CFR, Part 200, Subpart F - Audit Requirements, at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title 02/0cfr200 main 02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title%2002/0cfr200%20main%20.pdf), and subject to the requirements in the Texas Single Audit Circular, at <https://comptroller.texas.gov/purchasing/docs/ugm.pdf>. The audit must be completed and the data collection and reporting package described in 2 CFR 200.512 must be submitted to the Federal Audit Clearinghouse (FAC) within 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, whichever is earlier.
- 6.2 If any audit, monitoring, investigations, review of awards, or other compliance review reveals any discrepancies, inadequacies, or deficiencies which are necessary to correct in order to maintain compliance with this Agreement, regional climate programs, United States Environmental Protection Agency applicable to climate programs funding, other applicable laws, regulations, or Lead Organization obligations hereunder, Lead Organization agrees to correct such discrepancies or inadequacies within ninety (90) days after Lead Organization receipt of the findings.
- 6.3 Lead Organization shall maintain appropriate records for the periods required by law to provide accountability for all expenditures of grant funds, reporting measures, and funds received from Committee Member under this Agreement. Records maintained by Lead Organization to permit an audit of its accounting systems and payment verification with respect to the expenditure of any funds awarded under this Agreement.

ARTICLE 7
PROCUREMENT PRACTICES AND POLICIES

7. The Lead Organization must follow applicable federal and state law, federal procurement standards specified in regulations governing federal awards to non-federal entities, their established policy, and best practices for procuring goods or services with grant funds.

ARTICLE 8
POLITICAL ACTIVITIES

8. Unless specifically authorized to do so by federal law, Lead Organization is prohibited from using grant funds directly or indirectly for political purposes, including lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get out the vote campaigns.
- 8.1 Lead Organization officials or grant funded employees may not use official authority or influence or permit the use of a program administered by the grantee agency of which the person is an

officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.
- 8.2 Grant-funded employees may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose.
- 8.3 Funding received under this Agreement may not be used to employ, as a regular full- time or part-time or contract employee, a person who is required by Chapter 305 of the Government Code to register as a lobbyist. Furthermore, grant funds may not be used to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 of the Government Code to register as a lobbyist.
- 8.4 As applicable, the Lead Organization and each contracting tier will comply with 31 USC § 1352, which provides that none of the funds provided under an award may be expended by the grantee to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal action concerning the award or renewal. Each contracting tier shall also disclose any lobbying with non- federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE 9

REMEDIES

9. If the Lead Organization determines that Committee Member has failed to comply with any term of this Agreement, whether stated in a federal or state statute or regulation, an assurance, in this Agreement, in guidance issued by federal authorities or subsequently issued by federal authorities may pursue any combination of the following remedies:
 - i. wholly or partially suspend or terminate this Agreement;
 - ii. in accordance with Section 6.02, require return or recapture of any funding provided;
 - iii. terminate this Agreement;
 - iv. impose a corrective action plan;
 - v. withhold further awards; or
 - vi. take other remedies or appropriate actions.

ARTICLE 10

SEVERABILITY

10. If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provisions shall be modified or deleted in such manner so as to afford the part for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

ARTICLE 11

AMENDMENT

11. Any alternations, additions, or deletions to the terms of this Agreement must be documented in writing and signed by both Parties to be binding. Notwithstanding this requirement, it is understood and agreed by the Parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

ARTICLE 12

INTERPRETATION

12. To the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be construed consistent with the general objectives, expectations and purposes of this

Agreement and in call cases, according to its fair meaning. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Agreement.

ARTICLE 13

SURVIVABILITY

13. Notwithstanding any expiration or termination of this Agreement, the rights and obligations pertaining to the close-out, cooperation and provision of additional information, return of grant funds, audit rights, records retention, public information, and any other provision implying survivability shall remain in effect after the expiration or termination of this Agreement.

ARTICLE 14

SOVEREIGN IMMUNITY

14. It is expressly understood and agreed that in the execution of this Agreement, neither of the Parties waives or shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against any claims asserted against it.

ARTICLE 15

TEXAS LAW TO APPLY

15. This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the Parties created hereunder are performed in the El Paso Metropolitan Statistical Area.

ARTICLE 16

PRIOR AGREEMENTS SUPERSEDED

16. This Agreement constitutes the sole and only agreement of the Parties hereto and supersedes all prior understandings or written or oral agreements between the Parties with respects to the subject matter of the Agreement.

ARTICLE 17

DELEGATION AND ASSIGNMENT

17. Neither Party may delegate the performance of any contractual obligation to a third party,
- 23-1685 | Tran #512345 | CHD | Leadership Streeting Committee | Interlocal Agreement | jsg

unless mutually agreed in writing. A Party to this Agreement may not assign its rights, privileges and obligations under this Agreement in whole, or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE 18

NOTICES

18. All notices required or permitted herein shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage, prepaid, registered or certified mail, return receipt requested, to the Party's office or usual mailing address. For the purpose of notice, the addresses of the Parties shall be as follows:

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

COMMITTEE: _____
MEMBER _____

COPY TO: City of El Paso Climate and Sustainability Office
 Fernando L. Berjano
 Senior Climate Programs Manager
 P.O. Box 1890
 El Paso, Texas 79950-1890
 BerjanoFL@elpasotexas.gov

All notices of termination and/or recapture of funds shall be in writing within 120 days in advance.

ARTICLE 19

CURRENT REVENUES

19. Each Party paying for the performance of governmental functions or services will make those payments from current revenues then available to the paying Party.

[Signatures begin on the following page]

IN WITNESS HEREOF, THE PARTIES have made and executed this Agreement in duplicate originals on the date of the last signature below.

CITY OF EL PASO:

Oscar Leeson
Mayor

Date Signed: ____/____/____

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Nicole Ferrini, Director
Office of Climate and Sustainability

[COMMITTEE MEMBER SIGNATURE PAGE]