



**PUBLIC SERVICE BOARD MEETING
AGENDA ITEM
REGULAR MEETING**

Wednesday, February 09, 2022

SUBJECT

Interlocal Agreement with University of Texas El Paso (UTEP) for Research and Collaboration Pipeline Program

BACKGROUND

EPWater is one of the most progressive water utilities in the country and in the world, and it leads by example through exceptional water resources management.

UTEP and EPWater are looking to enter into an agreement for a new program called Research and Collaboration Pipeline (RCP). This proposed RCP program creates a pathway by which ideas and research will flow into a pool of tested solutions which will continue to ensure a water secure future for the El Paso community.

Under the RCP program, Center for Inland Desalination Systems (CIDS) will provide labor and expertise for the following:

- Digitize and create a database for EPWater's previous research efforts, by which EPWater and CIDS can conveniently reference previous research projects and mine their conclusions for continued research and development.
- Create a pipeline by which CIDS screens and presents emerging research for EPWater's leadership to consider for investigation and future implementation.
- Provide experienced staff and proven laboratory and pilot-scale implementation to evaluate solutions for large-scale implementation for EPWater's continued improvement.
- Develop a research collaborative for EPWater's continued maintenance, improvement, and growth.

STRATEGIC OBJECTIVES SUPPORTED

Improve Infrastructure

EVALUATION PROCESS

UTEP is classified as a Carnegie R1 University and has a dynamic and growing water research portfolio, leveraging expertise from Colleges of Engineering, Science, Health Sciences, and Business Administration, as well as the Center for Inland Desalination Systems and Center for Environmental Resources Management (CERM) research centers.

FINANCIAL IMPLICATIONS

Sufficient funds are available in various accounts and the funding source is the Water and Sewer Fund.

PROPOSED ACTION REQUESTED

Consider and approve an Interlocal Agreement with the University of Texas El Paso to provide services for a Research and Collaboration Pipeline program for a period of five years in the estimated amount of \$81,661 for Task Order One, and authorize future Task Orders in the estimated amount of \$820,000, provided that funding is available in the approved budget for the Task Orders or amendments.

SUPPORTING DOCUMENTATION PROVIDED

- Interlocal Agreement

STATE OF TEXAS

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**INTERLOCAL AGREEMENT FOR
RESEARCH AND COLLABORATION
PIPELINE PROGRAM**

COUNTY OF EL PASO

This Interlocal Agreement (“Agreement”) is made and entered into by and between University of Texas at El Paso (“UTEP”), a component of the University of Texas System, and EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD, a component unit of the CITY OF EL PASO, a Texas home rule municipality (“EPWater”) on February ____, 2022 (“Effective Date”)

RECITALS

WHEREAS, pursuant to the authority granted by City of El Paso Ordinance No. 00752 approved by the City Council on May 22, 1952, EPWater has been vested with complete authority and control of the management and operation of the City of El Paso’s water and wastewater systems; and

WHEREAS, pursuant to the authority granted by City of El Paso Ordinance No. 16668 approved by the City Council on June 19, 2007, EPWater has been vested with complete authority and control of the management and operation of the City of El Paso’s drainage system; and

WHEREAS, the water, wastewater and drainage systems are collectively referred as the “System”; and

WHEREAS, EPWater engages in research and development projects related to water conservation, wastewater reuse, robust river water treatment and brackish groundwater desalination; and

WHEREAS, UTEP, through its Center for Inland Desalination Systems, engages in water research projects; and

WHEREAS, in accordance with Chapter 791 of the Texas Government Code, EPWater, as a component unit of the City of El Paso, may contract with UTEP, a state institution of higher education and agency of the state, to provide a governmental functions and services; and

WHEREAS, EPWater and UTEP desire to enter into an Interlocal Agreement for the governmental function of collaborating on the management of EPWater’s research and development projects with the goal of producing continuous improvements to the sustainability and water resiliency strategy of the El Paso region through a program called Research and Collaboration Pipeline; and

WHEREAS, the Parties agree that the scope work be coordinated and accomplished in accordance with the terms of this Interlocal Agreement.

AGREEMENT

NOW, THEREFORE, as authorized representatives of each respective entities, EPWater and UTEP express their mutual understanding and cooperative relationship as follows:

SECTION 1. SCOPE OF SERVICES

UTEP agrees to manage EPWater's Research and Collaboration Pipeline program and provide the deliverables described in Task Orders issued by EPWater. EPWater will issue Task Orders which shall more definitively describe the services and which shall become part of this Agreement as attachments to this Agreement. The Task Orders will set forth the UTEP's services, time of performance, payment, deliverables, key personnel and such other terms and conditions which may apply.

EPWater will ensure that all information that EPWater has access to and that is necessary for UTEP to perform the scope of work of each Task Order will be provided to UTEP. EPWater will also grant access to all sites necessary to perform the Scope of Work, subject to UTEP's representatives agreeing to adhere to all EPWater safety procedures.

SECTION 2. TERM

The Term of this Agreement shall begin on the Effective Date and will remain for a term of five (5) years. The parties may extend the term of this Agreement through an amendment.

SECTION 3. PAYMENT TO UTEP

EPWater shall pay to UTEP an estimated amount of \$81,661 for the services provided pursuant to Task Order One. EPWater may issue future Task Orders during the term of this Agreement for additional work in the estimated amount \$820,000 provided that funding is available in the approved budget. EPWater shall only be responsible to compensate UTEP for the amounts stipulated in Task Orders. UTEP, however, agrees that at no time shall it make a claim against EPWater for more than the amount provided under the terms of this Agreement. The payment to UTEP shall be paid from current revenues available to EPWater.

UTEP shall submit invoices to EPWater not more frequently than bi-monthly. Invoices should (1) be properly prepared on UTEP letterhead; (2) certify that all payments requested are for appropriate purposes and are in accordance with scope of work; (3) state the period for which reimbursement is being requested and the Agreement Number; (4) itemize the costs by budget category per the budget summary; (5) include a written summary of the work performed during the billing period; (6) detail costs in both the payment period requested and cumulative cost to date by budget category; and (7) be signed by an authorized representative. The final invoice shall be submitted within sixty days of the end of the period of performance and shall be marked "FINAL."

EPWater agrees to pay invoices for all services performed in accordance with Chapter 2251 of the Texas Government Code. Upon dispute and proper notice to UTEP, EPWater may withhold payment to UTEP for the amount in dispute only.

SECTION 4. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement shall be construed as establishing a partnership or joint obligations among the parties. EPWater and UTEP each retain the right to conduct its business as it sees fit.

Both Parties acknowledge that neither is an agent, servant, employee of the other, nor are the Parties engaged in a joint enterprise, and each Party is responsible for its own acts and deeds and for those of its agents or employees during the performance of the Scope of Work.

SECTION 5. INSURANCE

EPWater will not provide UTEP with any insurance coverage - professional liability, medical, or otherwise. UTEP shall be responsible for carrying its own insurance coverage as it deems appropriate based on the services to be provided.

Each entity may insure its own property, and neither party shall be liable for loss or damage to the real or personal property or any other special, indirect and/or consequential damages of any kind of the other arising from this Agreement.

SECTION 6. LIABILITY

This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

SECTION 7. APPLICABLE LAWS

UTEP shall comply with all Federal, State, and local laws and ordinances applicable to the Scope of Work and all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies.

SECTION 8. GOVERNMENTAL FUNCTION

The parties agree that in all things relating to this Agreement, EPWater and UTEP are performing a governmental function, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission by either, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

SECTION 9. SOVEREIGN IMMUNITY

EPWater and UTEP reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

SECTION 10. TERMINATION

Any party may terminate this Agreement for convenience by giving the other party thirty (30) days written notice. Should EPWater or UTEP have cause to terminate this Agreement, the Agreement may be terminated immediately upon notification to respective parties of the cause for termination. Should early termination occur for any reason, UTEP shall accurately reflect such early termination and partial service in a final invoice, which shall be sent no later than thirty (30) days after termination becomes effective. EPWater shall compensate UTEP in accordance with this

Agreement for work performed. Nothing contained herein or elsewhere in this Agreement shall require EPWater to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

SECTION 11. MISCELLANEOUS

A. *Patents and Copyrights.* Title to all inventions and discoveries made solely by UTEP staff resulting from the performance of the Scope of Work shall reside with UTEP; title to all inventions and discoveries made solely by EPWater staff resulting from performance of the Scope of Work shall reside with EPWater; title to all inventions and discoveries made jointly by UTEP and EPWater staff resulting from performance of the Scope of Work shall reside jointly with UTEP and EPWater. If the project results in a patent, the patent will be negotiated in a separate agreement.

B. *Financial Records.* UTEP agrees to retain all books, records, and other documents relative to the cost of the Agreement for three (3) years after final payment (the “Inspection Period”). EPWater, its authorized agents, and/or state auditors shall have full access to and the right to examine any such documents during the Inspection Period.

C. *Notices.* All notices, communications, invoices, and reports under this Agreement shall be either hand-delivered or mailed, postage pre-paid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

EPWATER: El Paso Water Utilities – Public Service Board
Attn: President / CEO
P.O. Box 511
El Paso, TX 79961-001

With copy to: El Paso Water Utilities – Public Service Board
Attn: Purchasing & Contract Administration
P.O. Box 511
El Paso, TX 79961-0511

UTEP: University of Texas at El Paso
Attn: Center for Inland Desalination Systems
500 W. University Ave.
El Paso, TX 79968-0587

With copy to: University of Texas System
Office of General Counsel
201 W. 7th St.
Austin, TX 78701

D. *Captions.* The captions of this Agreement are for information purposes only and shall in no way affect the substantive terms or conditions of this Agreement.

- E. *Conflicting Provisions.* Any provision contained in any attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.
- F. *Governing Law and Venue.* This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Venue shall lie with a court of competent jurisdiction located in El Paso County, Texas.
- G. *Severability.* Should any section, paragraph, or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.
- H. *Successors and Assigns.* UTEP and EPWater each binds itself, its successors, executors, assigns, and administrators to the other Party to this Interlocal Agreement and to the successors, executors, assigns, and administrators of such other Party in respect to all covenants of this Interlocal Agreement.
- I. *Amendments.* By mutual written consent of the Parties, the scope of work and payment provisions of this Interlocal Agreement may be amended prior to its expiration.
- J. *Signatory Warranty.* Each signatory warrants that the signatory has necessary authority to execute this Interlocal Agreement on behalf of the entity represented.
- K. *Entire Agreement.* This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

IN WITNESS WHEREOF, duly authorized representatives of the parties have signed in confirmation of this Agreement.

EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD,

John E. Balliew, P.E.
President/CEO

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sol M. Cortez
Deputy General Counsel

Irazema S. Rojas, P.E.
Interim Chief Technical Officer

UNIVERSITY OF TEXAS AT EL PASO

Roberto Osegueda
VP for Research