

ORDINANCE 2021-12-16-0992

**APPROVING AN INTERLOCAL COOPERATION
CONTRACT BETWEEN TEXAS STATE UNIVERSITY
AND THE SAN ANTONIO POLICE DEPARTMENT FOR
PARTICIPATION IN THE TOBACCO ENFORCEMENT
PROGRAM.**

* * * * *

WHEREAS, Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, provides that local governmental entities may contract with entities of the State to provide governmental functions and services, including police protection and associated services, to protect public health; and

WHEREAS, the Texas School Safety Center at Texas State University contracts with counties and municipalities to enable local law enforcement agencies to enforce Chapter 161, Subchapter H of the Texas Health and Safety Code, to reduce the sale and distribution of tobacco products to persons under the age of 21 years; and

WHEREAS, the contract will provide that Texas State University will reimburse the San Antonio Police Department for conducting on-site controlled buy/stings at a rate of \$125 per sting, up to a maximum of 835 separate buy/stings, for a maximum of \$104,375.00; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and designee, and the Chief of Police and designee, are hereby authorized to execute the interlocal cooperation contract, as set forth in Exhibit A, with Texas State University, that is materially and substantively the same as the agreement set forth in Exhibit A. The terms and conditions of the interlocal cooperation contract, which terminates on August 31, 2022, are hereby approved. If additional funds become available from Texas State University for the Tobacco Enforcement Program, the City Manager and designee, and the Chief of Police and designee, are hereby authorized to accept such funds without further action by City Council.

SECTION 2. Funding for this ordinance is not required in that there is no commitment or expenditure of funds, cash match, or in-kind match in connection with this agreement; any necessary expenses can be paid through the current San Antonio Police Department budget.


SECTION 3. Funds received by this ordinance will be deposited in Fund 29817000, Internal Order 817000000024, and General Ledger Account 6301120.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject

to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

PASSED AND APPROVED this 16th day of December, 2021.



M A Y O R
Ron Nirenberg

ATTEST:



Debbie Racca-Sittre, Interim City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 16, 2021

39.

2021-12-16-0992

Ordinance approving an Interlocal Cooperation Contract with Texas State University for the participation in the Tobacco Enforcement Program. [Maria Villagomez, Deputy City Manager; William P. McManus, Chief of Police]

Councilmember Courage moved to Approve on the Consent Agenda. Councilmember Cabello Havrda seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

Exhibit A

INTERLOCAL COOPERATION CONTRACT

THE STATE OF TEXAS
COUNTY OF HAYS

This Interlocal Cooperation Contract (this "Contract") is entered into by and between the Contracting Parties shown below pursuant to authority granted in and in compliance with the *Interlocal Cooperation Act, Chapter 791, Texas Government Code*.

I. Contracting Parties

The Receiving Party: **Texas State University ("Texas State")** an institution of higher education and agency of the State of Texas.

*Texas School Safety Center
601 University Dr.
San Marcos, Texas 78666*

The Performing Party: **City of San Antonio** a local government of the State of Texas

*San Antonio Police Department
PO Box 839966
San Antonio, TX 78283-3966*

II. Statement of Services to be Performed

Performing Party will perform the following service(s):

Conduct **835** controlled buy/stings and follow-ups of tobacco permitted retail outlets and sales and use tax permitted e-cigarette retail outlets using minors as decoys, to determine compliance with applicable laws in accordance with *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*. Work shall be performed following the details outlined in attached **Exhibit A – Scope of Work**, and **Exhibit B – Performance Measures**.

III. Basis for Calculating Reimbursable Costs

Performing Party shall be paid \$125.00 for each correct and completed controlled buy/sting and follow-up reported on the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) **(for a maximum of 835 Controlled Buy/Stings and Follow-ups x \$125.00 each for a total of \$104,375.00)**. Payment will be based on the receipt and approval of an invoice for services following the details outlined in attached **Exhibit C – Payment for Services**.

IV. Contract Amount

The total amount of this Contract shall not exceed ONE HUNDRED AND FOUR THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS AND NO/100 CENTS (\$104,375.00). This is the maximum amount collectable under the Contract as written.

V. Payment of Services

Receiving Party will remit payments to Performing Party for services satisfactorily performed under this Contract in accordance with the *Texas Prompt Payment Act, Chapter 2251, Texas Government Code*.

Payments made under this Contract will (1) fairly compensate Performing Party for the services performed under this Contract, and (2) be made from current revenues available to Receiving Party in the form of a contract from the Department of State Health Services and/or the Texas Health and Human Services Commission to fund local law enforcement agencies to enforce *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*.

VI. Warranties

Receiving Party warrants that (1) the services are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in *Texas Government Code 403.105 – Permanent Fund for Health and Tobacco Education and Enforcement*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

Performing Party warrants that (1) it has authority to perform the services under authority granted in *Chapter 161.088, Texas Health and Safety Code and Chapter 791, Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (3) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

VII. Term of the Contract

This Agreement is effective **upon execution of this contract** and shall terminate on **August 31, 2022**.

VIII. Termination

In the event of a material failure by a Performing Party to perform its duties and obligations in accordance with the terms of this Contract, the other party may terminate this Contract upon **30 days'** advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the **30-day** period.

IX. Other Provisions

Entire Contract; Modifications. This Contract supersedes all prior agreements, written or oral, between Receiving Party and Performing Party and shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Contract. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Receiving Party and Performing Party.

Assignment. This Contract is not transferable or assignable except upon written approval by Receiving Agency and Performing Agency.

Severability. If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

Public Records. It shall be the independent responsibility of Receiving Party and Performing Party to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. Receiving Party is not authorized to receive public information requests or take any action under the *Public Information Act* on behalf of Performing Party. Likewise, Performing Party is not authorized to receive public information requests or take any other action under the *Public Information Act* on behalf of Receiving Party.

Certification. The Receiving Party and the Performing Party certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies, (2) the proposed arrangements serve the interest of efficient and economical administration of the State of Texas, and (3) the services, supplies or materials contracted for are not required by Section 21, Article 16 of the *Texas Constitution* to be supplied under contract given to the lowest responsible bidder.

Duly authorized representatives of the Performing Party and the Receiving Party have executed and delivered this Contract to be effective as of the Effective Date.

PERFORMING PARTY
City of San Antonio

By _____

Name _____

Title _____

Date _____

By _____

Name _____

Title _____

Date _____

RECEIVING PARTY
Texas State University

By _____

Name _____

Title _____

Date _____

EXHIBIT A SCOPE OF WORK

The Performing Party shall diligently render the following performance:

Contract funds shall be used to support the enforcement activities and additional program requirements outlined below. The Performing Party shall meet the assigned Performance Measures assigned in Exhibit B.

1. Enforcement Activities

The Performing Party shall:

- a. Conduct Controlled Buy/Stings and Follow-ups of tobacco permitted retail outlets and sales and use tax permitted e-cigarette retail outlets using minors as decoys, to determine compliance with applicable laws in accordance with *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*. Refer to **Exhibit B Schedule – Performance Measures**, for the number of controlled buy/stings to be conducted.
- b. Conduct controlled buy/stings and follow-ups in target areas to include high retail density, low socio economic, high risk areas, and local perspective of previous sales to minors and/or complaints received.
- c. Record the results of the controlled buy/stings conducted using the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) provided by the Texas School Safety Center at Texas State University.
- d. Use non-smoking male and female minors ages 16 –20 (born on or after September 1, 2001) in accordance with *Texas Health and Safety Code, Chapter 161.088 – Enforcement; Announced Inspections*.
- e. Use the State Comptroller of Public Accounts most recent Tobacco Permitted Retail Outlet List and Sale and Use Tax Outlet List of e-cigarette retail outlets for the controlled buy/stings to obtain retail outlet name, address, and tobacco permit numbers.
- f. Conduct follow-up controlled buy/stings of retail outlets found to be in violation of the sale of cigarettes, e-cigarettes, or tobacco products to minors. Reasons for follow-up may include: 1) repeated violations, 2) knowledge of historical perspective of previous sales to minors, and /or 3) complaints received where a follow-up is needed. Follow-up controlled buy/stings shall be conducted within two to ten (2-10) days of original controlled buy/sting.

2. Training Activities

The Performing Party shall:

- a. Participate in a web-based training session conducted by Texas School Safety Center at Texas State University prior to implementation of contract activities. Representative(s) shall include the person(s) assigned to the implementation of the contract activities, and/or the supervisor overseeing the day-to-day activities of this contract, and the person(s) conducting the enforcement activities outlined in Exhibit A – Scope of Work.
- b. Participate in any and all ongoing technical assistance and training activities offered by the Texas School Safety Center at Texas State University.

3. Reporting Requirements

The Performing Party shall:

- a. Submit a completed Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) provided by the Texas School Safety Center at Texas State University that tallies the number of controlled buy/stings and follow-ups conducted and number of citations issued within the performance reporting period.
- b. Submit billing information for services provided in the invoice section of the Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)). Payment amount for services is outlined in **Exhibit C – Payment for Services**. The Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) shall be signed by the designated authorized official
- c. Attach completed Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)) for each controlled buy/sting conducted for the performance reporting period. The total activity reported shall correspond to the pre-established monthly goal listed in the Work Plan (TEP-100 (Rev 9/2020)).
- d. The Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) shall be submitted to the Texas School Safety Center on the first day of the month. The report may be mailed to the Texas School Safety Center, Attn. Bea Pyle, 601 University Dr., San Marcos, Texas 78666 or emailed to beapyle@txstate.edu.
- e. Texas School Safety Center forwards violation information to the Comptroller of Public Accounts as required by law, (*Texas Health & Safety Code, Section 161.090 Reports of Violation*) by the 10th working day of the month for activity of the previous month.

4. Additional Program Requirements

The Performing Party shall:

- a. Assign a minimum of one (1) agency representative to the implementation of the activities of this contract, and provide the name(s) of any key personnel changes that impact the requirements of this contract to via email: beapyle@txstate.edu or phone: 512-245-0821.

- b. Coordinate enforcement activities with other law enforcement agencies within the Performing Party's area. Coordination of services shall include but not limited to resources such as officers and minor decoys to maintain integrity of the undercover operation in testing compliance with tobacco sales to minors.
- c. Performing Party shall maintain specific, detailed supporting documentation of all programmatic records used in the course of conducting the Controlled Buy/Stings for a minimum of 4 years.

EXHIBIT B PERFORMANCE MEASURES

The following performance measures will be used to measure compliance with the services rendered as described in Exhibit A, Scope of Work.

The Performing Party shall:

1. Conduct the number of activities for this contract period as follows:
 - a. Total number of controlled buy/stings and follow-ups using minors as decoys: **835**
 - i. In at least 50% of all controlled buy/stings conducted, the minor must attempt to purchase an e-cigarette, component, part, or accessory.
 - ii. Minimum number of e-cigarette attempts: **418**
 - b. A performance measure will not be assigned for follow-up of controlled buy/stings as a result of local perspective of previous sales to minors and/or complaints received. However, contractor is required to conduct follow-up of retail outlets not in compliance and report the activity monthly.
2. The Performing Party shall follow the Work Plan's (TEP-100 (Rev 9/2020)) monthly goals as pre-established upon the execution of the contract. The Work Plan (TEP-100 (Rev 9/2020)) outlines monthly goals to follow from **September 2021 to August 2022**.
 - a. Deviation from the pre-established Contractor's Program Work Plan requires prior approval from the Texas School Safety Center at Texas State University via email: beapyle@txstate.edu or phone: 512-245-0821.
 - b. Failure to complete and/or update the Work Plan (TEP-100 (Rev 9/2020)) may result in payment being withheld until completion or submission.

EXHIBIT C
PAYMENT FOR SERVICES

Payment will be based on the receipt and approval of Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) and attached Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)).

The Performing Party shall:

1. Be paid monthly upon submission of completed Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) and attached Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)) as confirmation of services rendered.
2. Be paid \$125.00 for each correct and completed controlled buy/sting reported on the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)). All costs incurred for the purpose of conducting a complete control buy/sting are the responsibility of the contractor. In order to receive full payment for the controlled buy/stings including follow-ups billed for each performance reporting period, a completed Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) must be attached for each.
3. Submit invoices and attachments to the Texas School Safety Center, Attn. Bea Pyle, 601 University Dr., San Marcos, Texas 78666 or emailed to beapyle@txstate.edu.

The Monthly Summary and Invoice form (TEP-101 (Rev 9/2021)) will be reviewed by the receiving agency and submitted for payment if information included in the report and attachments are correct. Payment shall be subject to laws of the State of Texas including Prompt Payment.

Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by University to Contractor shall not exceed **\$104,375.00** without prior written approval from the Texas School Safety Center at Texas State University.