

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

**AGENDA DATE:** September 26, 2023

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Interim Assistant Chief Julie Inciriaga,  
(915) 212-4308

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** 2 – Set the Standard for a Safe and Secure City

**SUBGOAL:**

**SUBJECT:**

That the City Council approve a modified Interlocal Agreement entered into by and between the City of El Paso and the District Attorney of the 34<sup>th</sup> Judicial District, for the disposition of forfeited property in accordance with Chapter 59 of The Texas Code of Criminal Procedure.

**BACKGROUND / DISCUSSION:**

This interlocal agreement is to establish a formal relationship between the City and the DA for the disposition of forfeited property in accordance with Chapter 59, Texas Code of Criminal Procedure and all relevant laws.

**PRIOR COUNCIL ACTION:**

NA

**AMOUNT AND SOURCE OF FUNDING:**

NA

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

**PRIMARY DEPARTMENT:**

**SECONDARY DEPARTMENT:** Police Department

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

**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
For Peter Pacillas, Interim Chief, Police Department

**RESOLUTION**

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

That the Mayor be authorized to sign an Interlocal Agreement by and between the City of El Paso, Texas and the District Attorney of the 34<sup>th</sup> Judicial District for purposes of disposition of forfeited property in accordance with Chapter 59, Texas Code of Criminal Procedure.

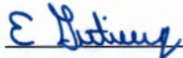
**CITY OF EL PASO**

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

**ATTEST:**

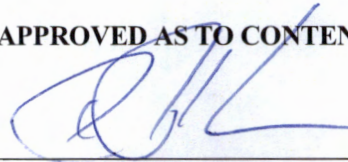
\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM**



\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT**



\_\_\_\_\_  
Peter Pacillas, Interim Chief  
El Paso Police Department

STATE OF TEXAS

§

**INTERLOCAL AGREEMENT**

COUNTY OF EL PASO

§

§

This Interlocal Agreement (“Agreement”) is entered into by and between the City of El Paso (“City”) and the District Attorney of the 34<sup>th</sup> Judicial District, the attorney representing the State of Texas with felony jurisdiction in El Paso, Hudspeth and Culberson counties (“DA”).

**WHEREAS**, Chapter 59, Texas Code of Criminal Procedure, provides for the seizure and forfeiture of contraband that was used or was intended to be used in the commission of certain crimes; and:

**WHEREAS**, the City is responsible for law enforcement protection within the city limits of El Paso, Texas, and is responsible for seizure of contraband pursuant to Chapter 59, Texas Code of Criminal Procedure, as part of its law enforcement functions; and

**WHEREAS**, the DA is the attorney representing the State of Texas and is responsible for filing forfeiture proceedings that involve the contraband seized by the City in accordance with Chapter 59, Texas Code of Criminal Procedure, and all other relevant laws; and

**WHEREAS**, the City and the DA have previously entered into local agreements that set forth the guidelines for disposition of forfeited property in accordance with Chapter 59, Texas Code of Criminal Procedure; and

**WHEREAS**, the City and the DA believe it to be in the best interests of the parties to enter into a new agreement that modifies the procedures and guidelines for the disposition of the value of the contraband or the contraband itself that was seized and forfeited pursuant to Texas law.

**NOW, THEREFORE, THE PARTIES HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:**

**1.0 PURPOSE, TERMS AND DEFINITIONS**

1.1 The purpose of this Agreement is to establish a formal relationship between the City and the DA for the disposition of the value of the contraband or the contraband itself that was seized and forfeited pursuant to Chapter 59, Texas Code of Criminal Procedure.

1.2 The following terms and definitions shall apply throughout this Agreement:

1.2-1 **“Court costs”** shall be defined as a taxable cost that is a litigation-related expense that the successful party is entitled to recover as part of the court’s award. Such costs

shall include clerk filing fees; service fees for process and subpoenas; court-reporter fees; interpreter fees; mediation fees; witness fees for those witnesses that are subpoenaed to attend a trial or deposition (does not include expert witnesses); deposition costs; post-judgment interest on court costs; and any other fees permitted by law. Court costs will be synonymous with costs throughout this Agreement.

1.2-2 “**Fiscal year**” shall be defined as September 1 through August 31 of a given year.

## **2.0 CONTRACTUAL RELATIONSHIP**

2.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in the Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents, or representatives.

2.2 As an independent contractor, the DA understands and agrees that it will be responsible for its respective acts or omissions, and that the City shall in no way be responsible as an employer to the DA, employees, agents, or representatives who perform any service in connection with this Agreement.

2.3 As an independent contractor, the City understands and agrees that it will be responsible for its respective acts or omissions, and that the DA shall in no way be responsible as an employer to the City, its officers, employees, agents, or representatives who perform any service in connection with this Agreement.

2.4 The DA acknowledges and agrees that he does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the DA to any obligation other than the obligations set forth in the Agreement.

2.5 The parties hereby agree that the City and the DA enter into the Agreement as agencies of governmental entities for the purpose of performing a governmental function.

## **3.0 DISTRIBUTION OF FORFEITED PROPERTY**

3.1 In consideration of services provided by the City and the DA in the forfeiture process, the parties hereby agree to the following terms and conditions regarding the disposition of forfeited property:

3.1-1 The City shall retain seventy percent (70%) and the DA shall retain thirty percent (30%) of all forfeited money, securities, negotiable instruments, stocks or bonds, or things of value or proceeds from the sale of such items. The retention of the forfeited money, securities, negotiable instruments, stocks or bonds, or things of value or proceeds from the sale of such items by the parties shall be done in compliance with Chapter 59, Texas Code of Criminal Procedure, and any other relevant statute or ordinance.

(a) During the pending prosecution of forfeiture money, securities, negotiable instruments, stocks or bonds, or things of value, the parties agree that the City shall transfer such seized money, securities, negotiable instruments, stocks or bonds, or things of value to the management of the DA. Said money, securities, negotiable instruments, stocks or bonds, or things of value shall be deposited into an interest bearing account, as defined by Chapter 59, Texas Code of Criminal Procedure, during the pending prosecution of the civil forfeiture. Upon final judgment, after the payment of any allowable costs, the remainder of the proceeds, including interest, shall be apportioned as seventy percent (70%) to the City and thirty percent (30%) to the DA.

(b) The parties agree that the DA may retain money forfeited in amounts less than five thousand dollars (\$5,000) and such retention will not be subject to the distribution outlines above in Paragraph 3.1-1 above. In the event that the DA retains money forfeited in amounts less than \$5,000, the DA warrants that such money will only be used for the official purposes of the DA's office.

3.1-2 In terms of forfeited vehicles that are the subject of a final judgment, the City shall have the right of first refusal on any forfeited vehicle and will retain said vehicle in accordance with the provisions of Chapter 59, Texas Code of Criminal Procedure. Otherwise, the DA shall have the option of retaining the forfeited vehicle in accordance with the provisions of Chapter 59, Texas Code of Criminal Procedure. The parties agree that any forfeited vehicle retained by either party shall be used only for official purposes. Title to said forfeited vehicle shall be held by the party who retains possession. If neither party wishes to retain a forfeited vehicle, then the parties agree that the vehicle will be auctioned in accordance with the provisions of Chapter 59, Texas Code of Criminal Procedure, and distribution of the sale proceeds shall be divided as stated in Paragraph 3.1-1 above.

(a) In the event that a third party possesses a lien over a vehicle subject to

forfeiture, the parties agree to confer, on a case by case basis, to determine whether to continue with the forfeiture of the vehicle. In the event the parties agree to move forward with a forfeiture lawsuit, the DA shall cause the owner and any interest holder to be named as a party and to be served with citation as provided by the Texas Rules of Civil Procedure. Upon final judgment, the lien and payment of any allowable costs will be satisfied from the proceeds of the sale and the remainder of the sale proceeds shall be divided as stated in Paragraph 3.1-1 above.

3.1-3 In terms of forfeited real property, the parties agree that the DA will be responsible for taking all actions necessary for the maintenance, insurance, liquidation and disposition of the real property subject to civil forfeiture under Texas law. Said responsibility also includes the filing of a lis pendens notice as prescribed by Chapter 59, Texas Code of Criminal Procedure. The disposition of the real properties may be made in any manner permitted by law. All sales of forfeited real property will be for cash. Upon final judgment, after allowable costs have been deducted, said sale proceeds will be apportioned as fifty percent (50%) to the City and fifty percent (50%) to the DA.

(a) In the event that real property subject to forfeiture would be sold by entering into a listing agreement with a licensed real estate broker, such sale will be for cash and any sale commission paid to such broker will be paid from the proceeds of the sale of the real property, but will not exceed seven percent (7%) of the sale proceeds unless otherwise agreed to in writing by the parties. The broker fee is to be paid from the proceeds of sale of the real property.

(b) In the event a third party possesses a lien over the real property subject to forfeiture, the parties agree to confer, on a case by case basis, to determine whether to continue with the forfeiture of said real property. In the event the parties agree to move forward with a forfeiture lawsuit, the DA shall cause the owner and any interest holder to be named as a party and to be served with citation as provided by the Texas Rules of Civil Procedure. Upon final judgment, the lien and payment of any allowable costs will be satisfied from the proceeds of the sale and the remainder of the sale proceeds shall be divided as stated in Paragraph 3.1-3 above.

#### **4.0 PAYMENT OF COSTS**

4.1 Court costs will not be imposed on any forfeiture less than two thousand five hundred dollars (\$2,500) pursuant to the provisions of Chapter 59, Texas Code of Criminal Procedure. Further, no costs will be imposed on a civil forfeiture involving a motor vehicle when an owner or lien holder's interest is forfeited by a default judgment pursuant to Chapter 59, Texas Code of Criminal Procedure.

4.2 Costs generated in the prosecution of the civil forfeiture shall be paid from the forfeiture proceeds or proceeds from the sale of property subject to forfeiture under Chapter 59,

Texas Code of Criminal Procedure. The parties agree that the payment of allowable costs will be done prior to any distribution of proceeds outlined in Paragraph 3.0 above.

## **5.0 TERM OF AGREEMENT**

5.1 This Agreement shall become effective as of the date entered into said Agreement, and shall remain in effect until the end of the fiscal year.

5.2 Said Agreement shall automatically be extended for one (1) year periods at the beginning of the fiscal year under the same price, terms and conditions, unless terminated or amended pursuant to the terms stated herein.

## **6.0 TERMINATION**

6.1 Either party may terminate this Agreement at any time upon thirty (30) days written notice via certified mail, return receipt requested.

6.1-1 Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminating party prior to the date of termination. The parties acknowledge and expressly warrant that no claim of damages will exist after the date of termination.

6.1-2 In the event that a forfeiture proceeding has been commenced prior to the termination of this Agreement, said forfeiture proceeding shall not be affected by the termination or the notification of intended termination.

## **7.0 GENERAL PROVISIONS**

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

7.2 The City shall have the right to perform, or cause to be performed inspections of all books or records kept by the DA in connection with any civil forfeiture proceeding involving property seized by the City during the term of this Agreement. The parties agree that the City's right of inspection does not extend to any books or records that show how the DA distributes its share of proceeds awarded in a final judgment.

7.3 The parties may amend this Agreement only by written instrument duly executed on behalf of the City and the DA. No claim or right arising out of a breach of this Agreement can

be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.4 This Agreement shall be construed and interpreted in accordance with the law of the State of Texas.

7.5 The parties understand and warrant that it is their specific intent that this Agreement shall apply to all things forfeited pursuant to Chapter 59, Texas Code of Criminal Procedure. Money, securities, negotiable instruments, stocks or bonds, things of value, proceeds from the sale of such items, vehicles or real property.

7.6 All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.7 Venue shall be in the County of El Paso, State of Texas.

7.8 All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the address provided below or at such other address as the receiving party may have therefore prescribed by written notice to the sending party. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY OF EL PASO:           City Manager  
  300 N. Campbell  
  El Paso, TX 79901

Copy to:                        Chief of Police  
  El Paso Police Department  
  911 North Raynor  
  El Paso, TX 79903

DISTRICT ATTORNEY:       District Attorney, 34<sup>th</sup> Judicial District  
  500 E. San Antonio, Room 201  
  El Paso, TX 79901

7.9 This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that all



prior agreements regarding civil forfeitures and distribution of such are no longer valid and that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

**THE CITY OF EL PASO:**

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Eric Gutierrez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**



\_\_\_\_\_  
Peter Pacillas  
Interim Chief of Police

**COUNTY OF EL PASO**

\_\_\_\_\_  
Ricardo A. Samaniego  
County Judge

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Delia Briones  
County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant County Attorney