

THE STATE OF TEXAS

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COUNTY OF EL PASO

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**FIRST AMENDMENT TO THE INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF EL PASO, TEXAS AND THE EL PASO COUNTY EMERGENCY SERVICES
DISTRICT NO. 1 FOR THE USE OF THE CITY'S GRANT FUNDED REHAB UNIT FIRE
APPARATUS**

This Interlocal Agreement ("Agreement") is made and entered into by and between the City of El Paso, Texas (hereinafter referred to as "City" with an EIN of 74-6000749), by and through the El Paso Fire Department, and the EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 1, by and through its contracted emergency service organization, Horizon Fire Department, (hereinafter collectively referred to as "District" with an EIN of 74-2258180), a political subdivision of the State of Texas, and an authority having jurisdiction, pursuant to the provisions of the Texas Interlocal Cooperation Act.

WHEREAS, the City is a home rule municipality located in El Paso County, Texas; and

WHEREAS, the District is an Emergency Services District in the State of Texas, and exclusively includes Horizon Fire Department, in its territorial limits; and

WHEREAS, Texas Government Code, Chapter 791, Texas Interlocal Cooperation Act, Sections 791.003(3)(B), (D), (K) and (N), and 791.003(4)(A) allow local governments, including special districts, to contract with one another to perform governmental functions and services, including fire protection and other governmental functions in which the contracting parties are mutually interested; and

WHEREAS, the City and the District, each pursuant to its statutory and constitutional authority, are responsible for fire and emergency response, and are desirous that the necessary agreements be entered into by and between the parties to facilitate assistance between the parties during emergency conditions occurring within the City and District; and

WHEREAS, the Department of Homeland Security approved the City of El Paso's Fiscal Year (FY) 2018 Assistance to Firefighters Grant (the "Grant") application; and

WHEREAS, the Grant approved FOUR HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED SEVENTY-TWO AND 00/100 DOLLARS (\$457,272) in Federal funding for the City's acquisition of a 2020 Frontline Communications, 6.7 Liter Cummins ISB I-6, Rehab Unit fire apparatus ("Rehab Unit" or the "Apparatus"), which will aid in the protection of the health and safety of the public and firefighting personnel throughout El Paso County against fire and fire-related hazards; and

WHEREAS, the City and District believe that a cooperative agreement outlining the terms of use of the Rehab Unit would provide a mutual benefit to residents of both the City and District; and

WHEREAS, the City and District find that this Interlocal is necessary to protect the health, safety, and welfare of the municipality and District’s residents; and

WHEREAS, on September 24, 2020, ESD No.1 executed an Interlocal Cooperation Agreement between the City of El Paso, and the El Paso County Emergency Services District No. 1 for the Use of the City’s Grant Funded Rehab Unit Fire Apparatus; and

WHEREAS, on September 29, 2020, the City of El Paso similarly executed the Interlocal Cooperation Agreement between the City of El Paso, and the El Paso County Emergency Services District No. 1 for the Use of the City’s Grant Funded Rehab Unit Fire Apparatus; and

WHEREAS, subsequent to the District and City’s execution of the Interlocal Cooperation Agreement, the Federal Emergency Management Agency (FEMA) requested that the Interlocal Cooperation Agreement be amended to specifically name the Horizon Fire Department, as a participating organization; and

WHEREAS, pursuant to Section 12, paragraph M of the Interlocal Cooperation Agreement executed in September of 2020, the City and District desire to modify and replace the Interlocal Cooperation Agreement in its entirety with the agreement contained herein; and

WHEREAS, the City and District, by and through its contracted emergency service organization, Horizon Fire Department, are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 791.001 et seq., (the “Act”) and Chapter 775 Texas Health and Safety Code, which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act, and;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree to modify and replace the previously executed Interlocal Cooperation Agreement for the Use of the City’s Grant Funded Rehab Unit Fire Apparatus in its entirety with the following:

SECTION 1. PURPOSE.

The Parties believe regional activities should achieve cost effectiveness, support regional efficiency and resilience, and benefit more than one local jurisdiction (county, parish, township, city or village). To that end, the Parties desire to establish terms of use for the Rehab Unit purchased with Grant Funds by the City of El Paso, the District, and its contracted emergency service organization, Horizon Fire Department. This Agreement is not intended to modify or amend any currently existing Interlocal Agreements between the District and the City and the terms and conditions set forth in any such agreement shall remain in full force and effect.

SECTION 2. TERM.

- A. This Agreement will commence on the Effective Date and will end on December 31, 2025 (the “Term”).

- B. This Agreement may be administratively renewed for one-year terms a total of five times if both parties agree. If the District intends to renew this Agreement, then it must send a notice of intent to renew to the City at least 30 calendar days before the Term of this Agreement expires.

SECTION 3. NO INDEMNIFICATION.

- A. The Parties agree that neither Party will have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages arising from this Agreement.
- B. Each party must handle any claims resulting from their actions in this Agreement.
- C. Each Party agrees that each will be responsible for the acts or omissions of its respective representatives.

SECTION 4. TERMINATION.

- A. This Agreement may be terminated as provided in this section.
 - 1. **TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement for any reason by sending a written notice to the non-terminating party at least fifteen (15) calendar days before termination. All parties providing work under this Agreement will halt all work when the termination notice sent by the terminating party is received by the non-terminating party.
 - 2. **TERMINATION BY EITHER PARTY FOR CAUSE.** Either party may terminate this Agreement if one party fails to fulfill the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision the terminating party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating party to cure such failure.

SECTION 5. OBLIGATIONS OF THE CITY.

A. Possession.

The City of El Paso, by and through the El Paso Fire Department, will store the Apparatus at one of the City's fire stations, or at 8600 Montana Ave. within the Fire Logistics Support Program facility.

B. Maintenance & Routine Upkeep.

1. Service and maintenance shall be performed by the City, by and through the El Paso Fire Department Fleet personnel. Such maintenance shall include tire replacement, routine oil changes, and monthly inspections.
2. All service and maintenance records shall be kept by the City of El Paso, by and through the El Paso Fire Department. Upon Horizon Fire Department's request by and through the District to review the service and maintenance records for the Apparatus, the City shall make the records available for the District's review.

SECTION 6. OBLIGATIONS OF THE DISTRICT.

The District, by and through Horizon Fire Department, shall timely return the Apparatus to the City at the location specified by the City upon the District's discontinued use of the Apparatus or the City's request for return of the Apparatus, whichever comes sooner.

SECTION 7. MUTUAL OBLIGATIONS OF THE PARTIES

A. Fueling the Apparatus.

The City, by and through the El Paso Fire Department, will maintain the Apparatus with a full tank of fuel. The District shall be responsible for refueling the Apparatus while the Apparatus is in its control. Unless otherwise specified by the City, the District shall return the Apparatus to the City with a full tank of fuel.

B. Deployment.

The Apparatus shall be requested through the parties' active mutual aid agreement and delivered by the City, by and through the El Paso Fire Department, subject to the limits therein.

- C. All parties hereto must each report to NFIRS and meet the regional minimum for NIMS compliance.

SECTION 8. CONSIDERATION & REIMBURSEMENT.

A. Consideration.

The Parties agree that the parties' mutual fire readiness and preparedness, which is further accomplished through this Agreement, is good and adequate consideration.

B. Apparatus Damage.

In the event the Apparatus is damaged or destroyed, the party in possession of the Apparatus when the damage occurs, is responsible for all associated costs of repair or replacement. In the event the Apparatus is damaged while under the control of the District, by and through the Horizon Fire Department, the District shall notify the City of the damage upon the Apparatus's return to the City. The City will invoice the District based on the estimated cost of repair through the appropriate vendors.

SECTION 9. LIABILITY.

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 parties actions.

The parties expressly agree that, in the execution of this Agreement, 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.

SECTION 10. NOTICE

All notices, demands and requests, including invoices which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when: (i) personally delivered to the intended recipient; (ii) three (3) days after being sent by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; (iv) deposited into the custody of a recognized overnight delivery service such as Federal Express Corporation, addressed to such party at the address specified below; or (v) sent by facsimile, telegram or telex, provided that receipt for such facsimile, telegram or telex is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. For purposes of this section, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is changed):

CITY OF EL PASO

Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

COPY TO:

Attention: City of El Paso Fire Department, Fire Chief
416 N. Stanton, Ste. 200
El Paso, Texas 79901

EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 1

Attention: President
El Paso County Emergency Services District No. 1
Bill Mayberry
Board of Commissioners
14151 Nunda Ave.
Horizon City, Texas 79928

COPY TO:

Attention: Horizon Fire Department, Fire Chief
Kris Menendez
El Paso County Emergency Services District No. 1
14151 Nunda Ave.
Horizon City, Texas 79928

SECTION 12. MISCELLANEOUS PROVISIONS.

- A. **No Third Party Beneficiaries.** No term or provision of this Agreement is intended to, or shall, create any rights in any person, firm, corporation, or other entity not a party hereto, and no such person or entity shall have any cause of action hereunder.
- B. **No Other Relationship.** No term or provision in this Agreement is intended to create a partnership, joint venture, or agency arrangement between any of the parties.
- C. **Current Revenues.** Pursuant to Section 791.011(d)(3) of the Texas Government Code, each party performing services or furnishing aid pursuant to this Agreement shall do so with funds available from current revenues of the party. No party shall have any liability for the failure to expend funds to provide aid hereunder.
- D. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or a breach of this Agreement if such failure to perform, delay or default arises out of causes beyond the control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.
- E. **Approval.** This Agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.
- F. **Assignment.** Except as otherwise provided in this Agreement, a party may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the other party.
- G. **Non-Waiver.** A party's failure or delay to exercise a right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

- H. **Paragraph Headings.** The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any section thereof.
- I. **Severability.** The parties agree that in the event any provision of this Agreement is declared invalid by a court of competent jurisdiction that part of the Agreement is severable and the decree shall not affect the remainder of the Agreement. The remainder of the Agreement shall be and continue in full force and effect.
- J. **Open Meetings Act.** The parties hereby represent and affirm that this Agreement was adopted in an open meeting held in compliance with the Texas Open Meetings Act (Tex.Gov. Code, Ch. 551), as amended.
- K. **Counterparts.** This Agreement may be executed in multiple counterparts which, when taken together, shall be considered as one original.
- L. **Applicable Law.** 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 performable in El Paso County, Texas.
- M. **Modification Agreement.** This Agreement contains the entire contract among the parties hereto, and each party acknowledges that no other party has made, either directly or through any agent or representative, any representation or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended by agreement in writing executed by the City and District.
- N. **Effective Date.** This Agreement is made to be effective on the latest date accompanying the signatures below.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

THE STATE OF TEXAS

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COUNTY OF EL PASO

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Signature page for the City of El Paso, Interlocal Cooperation Agreement between the City of El Paso, Texas and the El Paso County Emergency Services District No. 1, and its contracted emergency service organization provider, Horizon Fire Department, for use of the Grant Funded Rehab Unit Fire Apparatus.

APPROVED by the City Council, El Paso, Texas in its meeting held on the ____ day of _____, 2020 and executed by its authorized representative.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

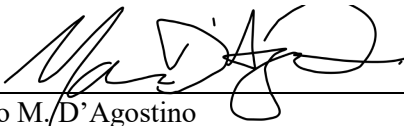
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Ana Schumacher
Assistant City Attorney



Mario M. D'Agostino
Fire Chief

THE STATE OF TEXAS

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Signature page for the El Paso County Emergency Services District No. 1, Interlocal Cooperation Agreement between the City of El Paso, Texas and the El Paso County Emergency Services District No. 1, and its contracted emergency service organization provider, Horizon Fire Department, for use of the Grant Funded Rehab Unit Fire Apparatus.

APPROVED by the El Paso County Emergency Services District No. 1 in its meeting held on the _____ day of _____, 2020 and executed by its authorized representative.

**EL PASO COUNTY EMERGENCY SERVICES
DISTRICT NO. 1**

By: _____
Bill Mayberry, President

Date Signed: _____

ATTEST:

FOR ESD NO. 1, APPROVED AS TO FORM:

Secretary

Attorney

THE STATE OF TEXAS

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COUNTY OF EL PASO

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Signature page for Horizon Fire Department, Interlocal Cooperation Agreement between the City of El Paso, Texas and the El Paso County Emergency Services District No. 1, and its contracted emergency service organization provider, Horizon Fire Department, for use of the Grant Funded Rehab Unit Fire Apparatus.

APPROVED by the Horizon Fire Department in its meeting held on the _____ day of _____, 2020 and executed by its authorized representative.

HORIZON FIRE DEPARTMENT

By: _____
Kris Menendez, Fire Chief

Date Signed: _____

ATTEST:

FOR HORIZON FIRE DEPARTMENT:

Secretary

Attorney