

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

DEPARTMENT: El Paso Fire Department

AGENDA DATE: August 30, 2022

CONTACT PERSON NAME AND PHONE NUMBER: Interim Chief Jonathan Killings, (915) 212-5665

DISTRICT(S) AFFECTED: All

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

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable. THAT the Mayor be authorized to sign an Interlocal Cooperation Agreement (the "Agreement") between the City of El Paso, Texas ("City") and the El Paso County Emergency Services District No. 2 ("District") to provide fire and emergency response during emergency conditions occurring within the City or the District, to expire on September 30, 2022, or as extended through automatic renewal through 2027.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This Interlocal Agreement allow for the continuance of providing emergency response mutual aid and combined training between the City of El Paso and El Paso County Emergency Services District No. 2. This is necessary for the safety and general welfare of the citizens in both jurisdictions.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On October 6, 2015, the City Council approved the agreement.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

None

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

THAT the Mayor be authorized to sign an Interlocal Agreement (the “Agreement”) between the City of El Paso, Texas (“City”) and the El Paso County Emergency Services District No. 2 (“District”) to provide fire and emergency response during emergency conditions occurring within the City or the District, to expire on September 30, 2022, or as extended through automatic renewal through 2027.

APPROVED this ___ day of _____, 2022.


CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Jonathan P. Killings, Interim Fire Chief
Fire Department

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.

II. TERM

Unless otherwise terminated hereunder, the initial term of this Agreement shall commence on the effective date of this Agreement and shall expire on September 30, 2022. If this Agreement is not terminated as provided herein on or before the expiration date above, it shall automatically renew for consecutive one-year terms, beginning on October 1st of each year thereafter and ending on September 30th of each year thereafter until 2027 at which time this Agreement shall expire and the automatic renewal period shall cease.

III. OBLIGATIONS OF THE CITY

Upon the request by the Incident Commander or designated representative of the District, the City shall dispatch and provide firefighting equipment and personnel pursuant to the same policies and practices and in the same manner as the City would provide services within the City's own jurisdiction to any point within the firefighting jurisdiction of the District.

IV. OBLIGATIONS OF THE DISTRICT

Upon the request by the City by and through the El Paso Fire Department, the District shall dispatch and provide firefighting equipment and personnel pursuant to the same policies and practices and in the same manner as the District would provide services within the District's own jurisdiction to any point within the area for which the El Paso Fire Department provides fire protection.

V. MUTUAL OBLIGATIONS OF THE PARTIES

The rendering of assistance under the terms of this Agreement shall not be mandatory. The party receiving the request for assistance should immediately inform the requesting party if the assistance cannot be rendered when requested.

Any request for aid under this Agreement will specify the location to which the equipment and personnel are to be dispatched. The amount and type of equipment and the number of personnel to be furnished will be determined solely by the responding party.

The responding party will report to the officer in charge of the requesting party at the location to which the equipment is dispatched, and a unified command structure will be established if one is not already in place.

Nothing in this Agreement shall be construed to require either party to purchase additional equipment, acquire additional personnel, or otherwise increase or enhance its response capabilities.

VI. REIMBURSEMENT

The responding party shall not be entitled to reimbursement from the requesting party for all or any part of the costs or expenses incurred by such party in furnishing mutual aid pursuant to this Agreement outside of the responding party's jurisdiction. However, a mutual aid response hereunder is considered the first operational period of twelve (12) hours, and after twelve (12) hours, any response hereunder will be considered a mutual aid response and subject to reimbursement, as provided by law or written agreement. Nothing in this Agreement shall preclude any party from seeking reimbursement of expenses from third parties, or other appropriate entities, including, but not limited to, local, state or federal government agencies, as appropriate. Nothing in the Agreement obliges a party responding to an emergency situation hereunder to remain on scene for more than the first operational period.

VII. 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 party's actions. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement.

Specifically citing Texas Government Code Section 791.006(a-1), the parties agree that, for purpose of determining civil liability for non-party claims, the act of any person or persons while fighting fires, providing rescue services, providing first response EMS services, traveling to or from any type of emergency call or emergency scene, or in any manner furnishing services in accordance with this Agreement, shall be the act of the party performing such act. The payment of any and all civil or other liability, including liability on the basis of negligence, resulting from the furnishing of services under this Agreement is the responsibility of the individual party performing such acts. This shall specifically include, but not be limited to, the payment of court costs, expenses, and attorney's fees resulting from any such claim or lawsuit. The parties agree that the assignment of liability described by this Section is intended to be different than liability otherwise assigned under Section 791.006(a) of the Texas Government Code.

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.

VIII. TERMINATION

This Agreement may be terminated for convenience by either party providing thirty (30) days written notice to the other party. Either party may terminate this Agreement for cause by sending a sixty (60) days written notice to the other party. Termination shall be without prejudice to any obligation by one party to the other which shall have accrued and be owing prior thereto. The terminating party shall provide written notice setting forth the reason(s) for termination to the non-terminating party, and the latter shall have a thirty (30) day cure period which shall begin as of the date of receipt of the notice. If the non-terminating party fails to cure within the thirty (30) day period, the Agreement shall terminate.

IX. MODIFICATION OF 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 agreement 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.

X. 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.

XI. 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 changing):

CITY OF EL PASO

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

COPY TO:

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

EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2

El Paso County
Attention: President
El Paso County Emergency Services District No. 2
16001 Socorro Road
Fabens, Texas 79838

XII. MISCELLANEOUS PROVISION

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.

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.

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.

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.

Approval. This Agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

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.

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.

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.

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.

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.

Counterparts. This Agreement may be executed in multiple counterparts which, when taken together, shall be considered as one original.

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. 2

APPROVED by the City Council, El Paso, Texas in its meeting held on the ____ day of _____, 2022 and executed by its authorized representative.

CITY OF EL PASO

Oscar Leoser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Jonathan P. Killings, Interim Fire Chief
Fire Department

THE STATE OF TEXAS

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COUNTY OF EL PASO

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Signature page for the El Paso County Emergency Services District No. 2, Interlocal Cooperation Agreement between the City of El Paso, Texas and the El Paso County Emergency Services District No. 2

21 **APPROVED** by the El Paso County Emergency Services District No. 2 in its meeting held on the June day of June, 2022 and executed by its authorized representative.

EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2

By: _____

Adrian Santana, President

Date Signed: _____

6-21-2022

ATTEST:

FOR ESD NO. 2, APPROVED AS TO FORM:

Jacqueline Butler, Secretary

Ken Campbell, District's Attorney