

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

AGENDA DATE: January 18, 2023

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Ellen A. Smyth, (915) 212-6000

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 8 – Nurture & Promote a Healthy, Sustainable Community

SUBGOAL:

SUBJECT:

That the Mayor of the City of El Paso be authorized to sign the Interlocal Agreement between the City of El Paso and the Ysleta del Sur Pueblo for the sale of two (2) LR-TS36S Longray Therman Foggers to Pueblo, which are no longer required or used by the City of El Paso, to be used exclusively by Pueblo, to allow Pueblo to combat the spread of mosquito populations in the area and which serves a municipal purpose as it would benefit the overall health and safety of City's residents.

That the City manager or designee be authorized to sign any additional related paperwork, including all understanding and assurances contained therein, and accept, reject, alter, or terminate the resulting Interlocal Agreement, and be authorized to submit necessary revisions to the operational plan and make any budget transfers necessary to accomplish the purpose of this resolution.

BACKGROUND / DISCUSSION:

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Environmental Services Department

SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD:



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

RESOLUTION

WHEREAS, the City of El Paso (“City”) and Ysleta del Sur Pueblo (“Pueblo”) would like to enter into an agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, which authorizes local governments to contract with one another to carry out their governmental functions; and

WHEREAS, City and Pueblo have a joint interest in protecting the health and safety of their residents; and

WHEREAS, the City and Pueblo believe their residents would mutually benefit from an agreement by which Pueblo could acquire Thermal Foggers from the City to control mosquito populations within their boundaries and prevent their spread into surrounding area; and

WHEREAS, the City has Thermal Foggers, which are now surplus, no longer used and no longer needed by City; and

WHEREAS, the City of El Paso finds that the sale of two used LR-TS36S Longray Thermal Foggers to Pueblo serves a municipal purpose as it would benefit the overall health and safety of the City’s residents by combatting the spread of mosquito populations in the area and potentially reducing the number of vector-borne diseases that are transmitted to humans, as Pueblo’s territory is immediately adjacent to the City’s jurisdiction.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor of the City of El Paso be authorized to sign the Interlocal Agreement between the City of El Paso and the Ysleta del Sur Pueblo for the sale of two (2) LR-TS36S Longray Thermal Foggers to Pueblo, which are no longer required or used by the City of El Paso, to be used exclusively by Pueblo, to allow Pueblo to combat the spread of mosquito populations in the area and which serves a municipal purpose as it would benefit the overall health and safety of City’s residents.

That the City manager or designee be authorized to sign any additional related paperwork, including all understanding and assurances contained therein, and accept, reject, alter, or terminate the resulting Interlocal Agreement, and be authorized to submit necessary revisions to the

operational plan and make any budget transfers necessary to accomplish the purpose of this resolution.

APPROVED this _____ day of _____, 2023.

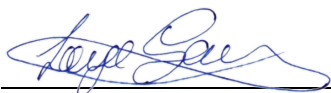
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

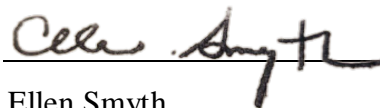
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen Smyth,
Chief Transit and Field Operations Officer

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Contract of Sale ("Contract") is entered into between the City of El Paso, Texas, a Texas home rule municipality ("SELLER"), and Ysleta del Sur Pueblo ("Pueblo"), a federally recognized Indian tribe as per 101 Stat. 666, Public Law No. 100-89 ("BUYER"), on this date of _____, 20_____.

RECITALS

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

WHEREAS, the City is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code §791.001 et seq., (the Act) which authorizes local governments to contract with a federally recognized Indian tribe having its reservation within the limits of the State of Texas; and

WHEREAS, the Pueblo is a federally recognized Indian tribe whose reservation is located wholly within the County of El Paso which is within the limits of the State of Texas; and

WHEREAS, the City and Pueblo believe that their residents would mutually benefit from an agreement by which Pueblo could acquire Thermal Foggers to control mosquito populations within their boundaries and prevent their spread into the surrounding area.

WHEREAS, the Seller's Environmental Services Department has used the Thermal Foggers (as described on Exhibit "A") which is surplus and no longer required by the Seller ("Equipment"); and

WHEREAS, the Buyer desires to purchase the Equipment from Seller; and

WHEREAS, Buyer agrees that the Equipment shall be used solely and exclusively by Pueblo; and

WHEREAS, the City of El Paso finds that the sale of the Equipment to Buyer would benefit Seller's citizens in terms of combatting mosquito populations within the Buyer's territory, preventing the spread into surrounding areas, and potentially reducing the number of vector-borne diseases that are transmitted to humans, as the Buyer's territory is immediately adjacent to the Seller's jurisdiction; and

WHEREAS, Seller's Environmental Services Department's capabilities would not be hindered by the sale of the Equipment.

NOW THEREFORE, for and in consideration of the terms, provisions, and mutual promises that are established in this document, the Parties agree as follows:

ARTICLE I. RESPONSIBILITY OF SELLER

- 1.1 The Seller hereby sells to Buyer the used Thermal Foggers more completely described on Attachment "A" (the "Equipment").

ARTICLE II. RESPONSIBILITY OF BUYER

- 2.1 Buyer agrees that it shall purchase the Equipment listed on Attachment "A".
- 2.2 Buyer shall be fully responsible for any and all taxes, fees and assessments for sales tax, use tax, excise tax or other amounts imposed by governmental bodies with respect to the Equipment described in this Contract.
- 2.3 Buyer shall obtain and pay for all necessary registration, licenses, permits, inspections and fees necessary for the lawful operation of said Equipment.
- 2.4 Buyer agrees that it shall be used solely and exclusively by the Pueblo in future and to control the mosquito and/or insect population within the bounds of the reservation.
- 2.5 Buyer agrees that it shall not sell the Equipment in lieu of complying with Section 2.4 of this Contract.

ARTICLE III. CONDITION OF EQUIPMENT

- 3.1 Condition of Equipment. **Buyer accepts Equipment "as is" and without warranty of any kind. Buyer shall be responsible for any and all inspections of the Equipment prior to Buyer transporting the Equipment. The Seller disclaims any warranties, express or implied, made to Buyer, or to any other person or organization, including without limitation, any warranties regarding quality, suitability, merchantability, and fitness for a particular purpose.**
- 3.2 **The Seller shall not be liable for any loss or damage to Buyer, nor to anyone else in whatsoever cause may arise, whether by use, repair, maintenance or any failure of the Equipment purchased.**

ARTICLE IV. CONSIDERATION, PAYMENT

- 4.1 The Seller sells the Equipment to Buyer for ONE DOLLAR AND NO/100 (\$1.00) in exchange for the non-monetary consideration of the health and safety benefit to the citizens of El Paso in terms of Buyer's prevention of the spread of mosquito populations which in turn may reduce the number of vector-borne illnesses transmitted to the citizens of El Paso. The referenced amount shall be paid by Buyer to the Seller prior to Buyer's receipt of the Equipment.

- 4.2 Payment shall be made to the Seller and shall be remitted to the following address:

City of El Paso
Office of the Comptroller
P.O. BOX 1890
El Paso, Texas 79950-1890

The receipt issued by the Seller to Buyer at the time of Buyer's payment for the Equipment shall be provided to the Buyer so that the Seller may release the Equipment to Buyer.

ARTICLE V. TRANSPORTATION TO DESTINATION

- 5.1 Buyer shall be responsible for all transportation costs of the Equipment from its location in El Paso, Texas. Buyer shall not seek contribution from Seller for any such costs.

ARTICLE VI. CONTRACTUAL RELATIONSHIP: NATURE OF CONTRACT

- 6.1 The Parties are Independent Contractors. Except that which is laid out in this Contract in expressed form, there is no intention to establish a partnership or a corporation by means of this Contract, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Contract, neither Party has, nor will either Party attempt to assert a claim to exercise the power to obligate the other.

ARTICLE VII. DISTRIBUTION OF RISK - LIMITATION OF LIABILITY

- 7.1 **Governing Functions.** The Parties expressly agree that in everything relating to this Contract, the Seller is performing governmental functions, as defined by the Texas Tort Claims Act.
- 7.2 **Exclusion of Incidental and Consequential Damages.** Independent of, severable from, and to be enforced independently of all other provisions of this Contract, neither Party will become responsible to the other Party (nor to any person who is claiming rights which are derived from the rights of the respective Party) for incidental, consequential, special, punitive, or exemplary damages or harm, or issues of any nature, loss of earnings, loss of customers or other economic damages and harm among others, contemplating for damages to goods, mental anguish and emotional crisis - in consequence of the non-fulfillment of a term of this Contract, regardless of whether the Party had been notified, may have had another reason to be informed, or in fact might have known about the corresponding possibility. The Seller will not be held responsible by Buyer, or by any third party, because of any inaccuracy, omission or obsolescence of any information provided or maintained

by Buyer, regardless of whether the Seller was advised, had other reason to know, or in fact had knowledge thereof.

7.3 **Intentional Risk Allocation.** The Parties each acknowledge that the provisions of this Contract were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Contract. The disclaimers and limitations of this Contract are intended to limit circumstances of liability. The remedy limitations, and the limitations of liability are separately intended to limit the forms of relief available to the Parties.

7.4 **Responsibility for Claims:** To the extent permitted by applicable law, Buyer shall indemnify and hold harmless the Seller and all of the Seller's representatives from all suits, actions, or damages sustained by any person or property in consequence of any neglect by Buyer in using, operating or storing the Equipment or on account of any act or omission by Buyer involving the Equipment. Should such liability arise, Buyer agrees to comply with all requirements for the satisfaction of debts.

ARTICLE VIII. TERMINATION

8.1 **Termination.** This Contract may be terminated without cause, for the convenience of either Party, upon thirty (30) days written notice to the other Party, prior to sale of the Equipment to Buyer.

ARTICLE IX. REMEDIES

9.1 **Rights and Remedies.** The duties and obligations imposed by this Contract and the rights and remedies available herein, shall be in addition to and without limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE XI. GENERAL PROVISIONS

10.1 If any paragraph, statement, clause or provision of this Contract is construed or interpreted by a court of competent jurisdiction to be void, illegal or unenforceable, such decision shall affect only those paragraphs, statements, clauses or provisions.

10.2 This Contract is executed in Texas, and all rights and liabilities hereunder shall be determined in accordance with the law of Texas. Venue shall be in El Paso County, Texas.

10.3 The Parties will strictly comply with all laws according to the applicable rules in the performance of their obligations in accordance with this Contract.

- 10.4 No amendment, waiver or modification of this Contract or any provision of this Contract shall be effective unless in writing and signed by both Parties.
- 10.5 The failure on behalf of either Party at any time to require performance by the other Party of any provision of this Contract, under no circumstances will affect the right of the respective Party to require performance of that provision. Any waiver on behalf of either Party of the non-performance of any provision of this Contract will not be considered as a waiver of continuing or future non-performance of any provision or as a waiver of any other right in accordance with this Contract.
- 10.6 The article headings contained in this Contract are for reference purposes only, and shall not in any way control the meaning or interpretation of this Contract.
- 10.7 Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Contract. This Contract shall therefore be deemed as to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and consultation of legal counsel, and will be interpreted in accordance with its terms without favor to any Party.
- 10.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other Party at the address listed below or at such other address as the receiving Party may have theretofore 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:

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

COPY TO: City of El Paso
Environmental Services Department
Attn: Environmental Services Director
P.O. Box 1890
El Paso, Texas 79950-1890

BUYER: Attention: Tribal Governor
Ysleta Del Sur Pueblo
119 South Old Pueblo Road
El Paso, Texas 79907

COPY TO: Attention: Tribal Assistant Director of
Community Development

Ysleta Del Sur Pueblo
332 Alton Griffin Rd.
El Paso, Texas 79907

10.9 This Contract contains the entire Contract of the parties and all prior understandings and conversations, whether oral or written, are merged herein.

10.10 Each person signing below represents that he or she has read this Contract in its entirety (including any and all Attachments); understands its terms; is duly authorized to execute this Contract on behalf of the Party indicated below; and agrees on behalf of such Party that such Party will be bound by those terms.

11.9 **Effective Date.** The effective date of this Contract shall be the date executed by both Parties.

Executed on this _____ day of _____, 20____.


CITY OF EL PASO:

Oscar Leaser
Mayor


ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Joyce Garcia
Assistant City Attorney


APPROVED AS TO CONTENT:


Ellen A. Smyth,
Chief Transit and Field Operations Officer

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

Executed on this _____ day of _____, 20__.

YSLETA DEL SUR PUEBLO

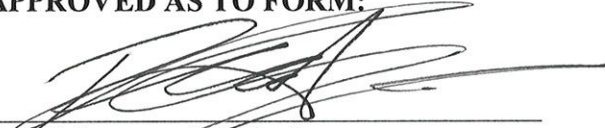


E. Michael Silvas
Governor

ATTEST:

Tribal Clerk

APPROVED AS TO FORM:



Tribal Attorney Ron Jackson

ATTACHMENT "A"

Year	Model	Make	Serial	Sale Value
2018	LR-TS36S	LONGRAY	CA1045	\$966
2018	LR-TS36S	LONGRAY	CA1090	\$966