

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

DEPARTMENT: Fire Department

AGENDA DATE: February 7, 2023

PUBLIC HEARING DATE: n/a

CONTACT PERSON NAME AND PHONE NUMBER: Mario D'Agostino, (915) 212-5605

DISTRICT(S) AFFECTED: All Districts

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

SUBGOAL:

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement (the "Agreement") by and between the City of El Paso ("City") and County of El Paso, Texas ("County") for funding of the Office of Emergency Management ("OEM") from November 1, 2022 through October 31, 2023, subject to automatic renewal for four (4) additional one (1) year periods. The total costs and expenses for the Office of Emergency Management is presently \$818,353.46; pursuant to the Agreement, the City will pay 79% (\$646,499.23), the County shall assume 21% (\$171,854.23). For each additional renewal year thereafter, the City's corresponding percentage shall decrease by 1%, and the County's percentage shall increase by 1%.

BACKGROUND / DISCUSSION:

The purpose of this agreement is to ensure coordination and mutual understanding and communication between the City and the County during emergency situations; and this Agreement for interlocal cooperation between the Parties to provide emergency management coordination for the City and the County is necessary for the mutual advancement of the safety and general welfare of the citizens of both jurisdictions concerned.

PRIOR COUNCIL ACTION:

On June 30, 1987, the City passed a Resolution establishing the El Paso City/County Emergency Management Organization and to mutually select with the County an Emergency Management Coordinator;

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Fire Department

SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD:

Mario M. D'Agostino

(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”) by and between the City of El Paso (“City”) and County of El Paso, Texas (“County”) for funding of the Office of Emergency Management (“OEM”) from November 1, 2022 through October 31, 2023, subject to automatic renewal for four (4) additional one (1) year periods. The total costs and expenses for the Office of Emergency Management is presently \$818,353.46; pursuant to the Agreement, the City will pay 79% (\$646,499.23), the County shall assume 21% (\$171,854.23). For each additional renewal year thereafter, the City’s corresponding percentage shall decrease by 1%, and the County’s percentage shall increase by 1%.

PASSED and APPROVED this _____ day of _____, 2023.


CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Carlos L. Armendariz
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino, Deputy City Manager
Public Health & Safety

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into on the last listed approved date below between the CITY OF EL PASO, TEXAS (“City”) and the COUNTY OF EL PASO, TEXAS (“County”) by and through their duly authorized officials, individually referred to as “Party” and collectively as “Parties”, pursuant to the Interlocal Cooperation Act.

RECITALS

WHEREAS, the City and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, on March 16, 1987, the County passed Commissioners Court Order No. 6 and on May 26, 1987, the City passed Ordinance No. 009039, establishing programs of comprehensive emergency management including mitigation, preparedness, response and recovery phases, authorizing the appointment of an Emergency Management Coordinator, among other things; and

WHEREAS, on June 30, 1987, the City passed a Resolution establishing the El Paso City/County Emergency Management Organization and to mutually select with the County an Emergency Management Coordinator; and

WHEREAS, the City and County find that vulnerability to many potential hazards is shared by residents of both the City and the County; and

WHEREAS, Texas Government Code Sec. 418.108, titled Declaration of Local Disaster, provides in part that a declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration; and

WHEREAS, Texas Government Code Sec. 418.108 provides for certain authority and functions of a county judge or mayor during local disasters and specifies that to the extent of a conflict between decisions of the county judge and the mayor, the decision of the county judge prevails regarding evacuation and movement of persons as provided by subsections (f) and (g); and

WHEREAS, given the unique circumstances that encompass the County’s jurisdiction that reaches rural communities, it is necessary to outline a scope of services that will ensure strategic communication to meet County specific needs; and

WHEREAS, the purpose of this agreement is to ensure coordination and mutual understanding and communication between the City and the County during emergency situations; and

WHEREAS, this Agreement for interlocal cooperation between the Parties to provide emergency management coordination for the City and the County is necessary for the mutual advancement of the safety and general welfare of the citizens of both jurisdictions concerned; and

FOR THESE REASONS, and in consideration of the mutual promises contained in this

Agreement, the County and the City mutually agree as follows:

1. SCOPE OF SERVICES.

- 1.1 The City shall perform the following services under the terms and conditions hereinafter stated:
 - 1.1.1 Hire an Emergency Management Coordinator;
 - 1.1.2 Hire an Assistant Emergency Management Coordinator;
 - 1.1.3 Ensure that the Emergency Management Basic Plan for the City and County of El Paso (“Plan”), including all associated annexes, are current in accordance with the guidelines provided by the State of Texas Department of Emergency Management. In addition, the City, prior to finalizing or amending the Plan and associated annexes, shall meet in person or via videoconference with designated County liaisons or their designees to review and seek County input;
 - 1.1.4 After consultation with the County as outlined under 1.1.3, the City shall provide a work session on the finalized or amended Plan and associated annexes;
 - 1.1.5 Maintain the Emergency Operations Center (EOC), both primary and alternate, in a state of readiness for immediate use during emergencies and/or disasters;
 - 1.1.6 Maintain contact lists of individuals required to staff the Emergency Operations Center during emergencies and/or disasters;
 - 1.1.7 Provide training and conduct exercises to assist both the City and County EOC staff and first responders in preparing for man-made or natural disasters and/or emergencies; training will incorporate an evaluation and corrective action program;
 - 1.1.8 Assume the operating costs of the Office of Emergency Management, which includes the EOC, as described in Section 4 for this Agreement;
 - 1.1.9 Provide continued maintenance and operation of the regional Joint Mobile Command Vehicle (JMCV), Mobile Operations Center (MOC) and mobile EOC trailer;
 - 1.1.9.1 In the event the City receives a request for aid from the County, the City, to the degree it is able, will make available the necessary personnel and supplies. The City should immediately inform the County if the assistance cannot be rendered when requested;

- 1.1.9.2 Given the unique circumstances of the County's jurisdiction, which includes rural communities, the City shall consult and coordinate with the County to align strategies to assist in furnishing aid in the amount and type of supplies, materials, equipment and number of personnel to be furnished to the County.
- 1.1.10 Identify and evaluate natural, technological, and human-caused threats within the County, establish capability targets, and identify capability gaps;
- 1.1.11 Upon the request of the County, provide guidance for the County to develop and maintain their continuity of government and continuity of operations plans. Such guidance may include training and review of continuity of government and continuity of operations plans;
- 1.1.12 Maintain a FEMA approved, multi-jurisdictional hazard mitigation action plan for the County;
- 1.1.13 Review and update as needed mutual aid agreements, contractual service agreements, memoranda of understanding, or regional or other arrangements that provide additional resources;
- 1.1.14 Provide an emergency preparedness public education program; and
- 1.1.15 Provide communications, alerts, notification and warning capabilities for emergencies/disasters;
- 1.1.16 Provide comprehensive reports and updates via a thorough and comprehensive presentation in the format of a PowerPoint or similar program to the County Commissioners Court during a public meeting at least once a quarter, and more often if requested by the County.
- 1.1.17 Provide situational reports and operational updates during times of emergencies and disasters with the County;
- 1.1.18 Pursuant to Texas Government Code Section 418.108, maintain high level and regular communications and briefings with the County Judge on emergency matters and emergency preparedness.
- 1.2 The County shall perform the following services under the terms and conditions hereinafter stated:
 - 1.2.1 Pay the operating costs of the Office of Emergency Management, as described in Section 4 of this Agreement;
 - 1.2.2 Ensure that the County and any County departments having responsibility for any portion of the Plan, as mandated by the Plan, makes best efforts to timely participate in the development and completion of said work;

- 1.2.3 Participate in EOC and emergency management training and exercises;
 - 1.2.4 Provide personnel that have responsibility for any portion of the Plan to staff and operate the EOC during emergencies and/or disasters;
 - 1.2.4.1 The County Judge's Office in coordination with the El Paso County Chief Administrator shall designate and assign certain County staff as liaisons for purposes of fulfilling and effectuating provisions contained in this Agreement.
 - 1.2.5 During emergencies and/or disasters, provide trained Public Information Officers to staff the Joint Information Center;
 - 1.2.6 The County will maintain a Continuity of Government Plan and Continuity of Operations Plans for County departments;
 - 1.2.7 Maintain personnel rosters, training records, equipment inventories, and other resources needed during emergencies and/or disasters;
 - 1.2.8 Maintain mutual aid agreements, contractual service agreements, memoranda of understanding, or regional or other arrangements that provide additional resources;
 - 1.2.9 The County, in any request for aid under this Agreement, will specify the location and number of equipment and personnel to be dispatched;
 - 1.2.10 In the event the County receives a request for aid from the City, the County, to the degree it is able, will make available the necessary personnel and supplies. The County should immediately inform the City if the assistance cannot be rendered when requested; and
 - 1.2.11 To the extent allowed by law, the County agrees to issue all orders necessary to give the City of El Paso and City of El Paso personnel jurisdiction to provide emergency response training and response operations in the County pursuant to the terms of this Agreement.
- 1.3 Nothing within the terms of this Agreement shall require the City to purchase additional equipment, purchase or lease real property, or hire additional personnel.
 - 1.4 The City agrees that it will keep accurate records of all services provided to the County pursuant to this Agreement as part of its routine data collection processes and shall report such activities to the County on a quarterly basis in addition to the information required under 1.1.16 of this Agreement.
 - 1.5 It is understood and agreed to between the Parties that any portion of this Agreement providing for the delivery of emergency management coordination and other services for which appropriate legal authority has not been granted to the City or County, shall be null and void and of no force and effect, and the City or County shall not be obligated

to provide those services.

2. **LOCATION OF PERFORMANCE.** The place where such services are to be performed is the City of El Paso and County of El Paso, Texas unless either Party establishes their own emergency management programs during the terms of this Agreement, and seeks to terminate this Agreement pursuant to Section 8.

3. **TIMES OF PERFORMANCE.** The terms of this Agreement shall commence on November 1, 2022 and shall end on October 31, 2023, regardless of the execution date of this Agreement. The Agreement shall be subject to automatic renewal for four (4) additional one (1) year periods unless this Agreement is terminated as provided for herein.

Services provided prior to November 1, 2022 shall be under terms and conditions as outlined in the previous interlocal agreement and subsequent amendments in place, County contract numbers 2013-0391 and 2018-0013.

4. **COMPENSATION.**

4.1 The total costs and expenses for the Office of Emergency Management is presently \$818,353.46. The City agrees to assume 79% of the operating costs of the Office of Emergency Management for the initial term of the Contract and then assume responsibility as described in section 4.1.1 below.

4.1.1 Notwithstanding Section 4.2 below, and subject to the automatic renewal provision of Section 3 of this Agreement, the City's percentage obligation of operating costs shall be according to the following schedule:

- November 1, 2023-October 31, 2024: 78% of the operating costs of the Office of Emergency Management
- November 1, 2024-October 31, 2025: 77% of the operating costs of the Office of Emergency Management
- November 1, 2025-October 31, 2026: 76% of the operating costs of the Office of Emergency Management
- November 1, 2026-October 31, 2027: 75% of the operating costs of the Office of Emergency Management

4.2 The County agrees to pay to the City a fee in the amount of \$171,854.23, for the initial term (November 1, 2022 through October 31, 2023) of the Agreement; said amount constitutes 21% of the total actual costs and expenses for the Office of Emergency Management.

4.2.1 Notwithstanding Section 4.1 above, and subject to the automatic renewal provision of Section 3 of this Agreement, the County agrees to pay the City according to the following pay schedule:

- November 1, 2023-October 31, 2024: Fee of 22% of the total actual costs and expenses with an estimated impact of \$180,037.76
- November 1, 2024-October 31, 2025: Fee of 23% of the total actual costs and expenses with an estimated impact of \$188,221.30
- November 1, 2025-October 31, 2026: Fee of 24% of the total actual costs and expenses with an estimated impact of \$196,404.83
- November 1, 2026-October 31, 2027: Fee of 25% of the total actual costs and expenses with an estimated impact of \$204,588.37

4.3 All fees described in this Section 4 are subject to review on an annual basis and any change shall require the written approval of the governing bodies of each Party to this Agreement.

4.3.1 The total costs and expenses for the Office of Emergency Management listed in Section 4.1 may not be changed without the written approval of the County.

4.4 The Parties acknowledge that the funds paid by the County pursuant to Section 4.2 or 4.3 above may not be sufficient in the event of an unexpected occurrence such as the declaration of a local, state or national emergency or a natural or man-made disaster in the jurisdictional area of the County. The City shall contact the County’s Chief Administrator to discuss and negotiate any additional costs that the County will need to pay to defray the resulting expenses; when applicable, the cost per service shall be governed by Schedule C of the City’s approved Budget.

5. **PAYMENTS PURSUANT TO THIS AGREEMENT.** The City shall invoice the County on an annual basis by November 1. Payment is due to the City within sixty (60) days of delivery of the invoice. All payments submitted under this Agreement shall be made payable to the City of El Paso, Attn: City of El Paso Financial Services, P.O. Box 1890, El Paso, TX 79901, or to such other address as provided by the City without the need to amend this Agreement.

6. **LAW GOVERNING CONTRACT.** For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

6.1 **Orders.** The County shall provide copies of all of the County of El Paso, Texas Orders issued with regard to emergency management operations upon execution of this Agreement and as requested by the City, and shall provide such Orders subsequently adopted by the El Paso County Commissioners Court during the term of this Agreement within five (5) days of the issuance of said Order.

6.2 **Privileges and Immunities.** All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City and the County when performing a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

6.3 **Governmental Function.** The Parties expressly agree that, in all things relating to this Agreement, the City and County are performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City and County which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

7. **EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, NEITHER THE CITY NOR THE COUNTY ARE LIABLE TO ANY OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY OR THE COUNTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

7.1 **Maximum Aggregate Liability.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, IN NO EVENT SHALL THE CITY'S OR THE COUNTY'S AGGREGATE LIABILITY TO ANY OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY THE PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID TO THE CITY UNDER THE TERMS OF THIS AGREEMENT.

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

8. **TERMINATION & NOTICE.**

- 8.1 This Agreement may be terminated in whole or in part by either party for convenience or cause upon one hundred twenty (120) days written notice to the other Party at the following addresses, or at such other address as either Party may provide in writing to the other as the current mailing address. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.
- 8.2 Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below, or to such other address as provided in writing by the parties without the need to formally amend this Agreement:

CITY: City of El Paso Attn:
City Manager PO
Box 1890
El Paso, Texas 79950-1890

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

Office of Emergency Management
Attn: Emergency Management Coordinator
6055 Threadgill
El Paso, Texas 79924

COUNTY: County of El Paso
Attn: County Judge 500
E. San Antonio
El Paso, Texas 79901

9. **GENERAL TERMS.**

- 9.1 **Independent Contractors.** The County and the City are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the County nor the City nor any of their respective agents or employees shall control or have any right to control the activities of the other Party in carrying out the terms of this Agreement.
- 9.2 **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, and such consent will not be unreasonably withheld.
- 9.3 **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality

or invalidity shall not affect the validity of the remainder of this Agreement.

- 9.4 **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- 9.5 **Compliance with Laws.** The Parties agree that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, the parties reserve the right to notify the other party in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
- 9.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.
- 9.7 **Entire Agreement; Amendments.** This Agreement constitutes the entire understanding of the Parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

(Signatures appear on following page)

Signature page for the City of El Paso, Interlocal Agreement between the City of El Paso and the County of El Paso, Texas.

APPROVED this _____ day of _____, 2023.


CITY OF EL PASO

Oscar Lesser, Mayor

ATTEST:

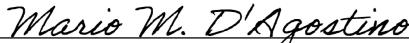
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Carlos L. Armendariz
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario M. D'Agostino, Deputy City Manager
Public Health & Safety

(Signatures continue on the following page)

Signature page for the County of El Paso, Interlocal Agreement between the
City of El Paso and the County of El Paso, Texas.

COUNTY OF EL PASO



County Judge Ricardo A. Samaniego

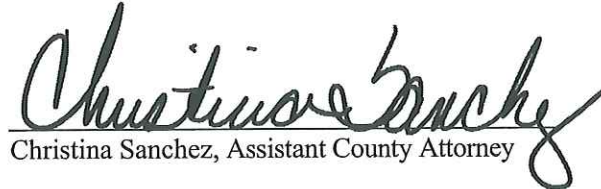
APPROVED this 5th day of December, 2022.

ATTEST:

APPROVED AS TO LEGAL FORM ONLY:



Delia Briones, County Clerk



Christina Sanchez, Assistant County Attorney

APPROVED AS TO CONTENT:



Betsy Keller, El Paso County Chief Administrator