

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

DEPARTMENT: El Paso Fire Department

AGENDA DATE: February 6, 2017

CONTACT PERSON NAME AND PHONE NUMBER: Chief Mario D'Agostino, 915-212-5600

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 Doña Ana County, New Mexico, ("Doña Ana County") to provide for the City and Doña Ana County to provide mutual aid in emergency situations and conditions resulting from fire events and other catastrophic events to include but not be limited to flood, earthquake, tornado and windstorm requiring immediate fire and medical response, incidents involving weapons of mass destruction (including biological and chemical weapons), hazardous materials, medical emergencies, and special rescue, that overwhelm the resources of the City or Doña Ana County, and to provide joint training activities to prepare for such response, within the jurisdictional limits of either the City of El Paso, Texas or Doña Ana County, New Mexico, subject to the discretion of the Fire Chief and in consultation with the City Manager.

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 Doña Ana County. 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 September 23, 2014, the City Council approved the agreement.

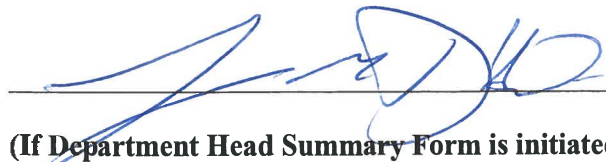
AMOUNT AND SOURCE OF FUNDING:

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 Cooperation Agreement (the "Agreement") between the City of El Paso, Texas ("City") and Doña Ana County, New Mexico, ("Doña Ana County") to provide for the City and Doña Ana County to provide mutual aid in emergency situations and conditions resulting from fire events and other catastrophic events to include but not be limited to flood, earthquake, tornado and windstorm requiring immediate fire and medical response, incidents involving weapons of mass destruction (including biological and chemical weapons), hazardous materials, medical emergencies, and special rescue, that overwhelm the resources of the City or Doña Ana County, and to provide joint training activities to prepare for such response, within the jurisdictional limits of either the City of El Paso, Texas or Doña Ana County, New Mexico, subject to the discretion of the Fire Chief and in consultation with the City Manager.

ADOPTED this ___ day of _____, 201_.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario D'Agostino, Fire Chief
El Paso Fire Department

THE STATE OF TEXAS

§

COUNTY OF EL PASO

§

§

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF EL PASO, TEXAS
AND DOÑA ANA COUNTY, NEW MEXICO**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the City of El Paso, Texas (hereinafter referred to as “City”) and Doña Ana County, New Mexico (hereinafter referred to as “Doña Ana County”), a political subdivision of the State of New Mexico, pursuant to the provisions of the Texas Interlocal Cooperation Act and the inherent authority of a County in the State of New Mexico.

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

WHEREAS, the Doña Ana County is a county in the State of New Mexico; 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 a county of a state other than Texas, 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 Doña Ana County, each pursuant to its statutory and constitutional authority, are responsible for fire and emergency response, and are desirous that the necessary agreement be entered into by and between the parties to facilitate assistance between the parties during emergency conditions occurring within the City and Doña Ana County; and

WHEREAS, the City and Doña Ana County believe that a cooperative agreement between the parties would provide a mutual benefit to residents of both the City and Doña Ana County; 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 each other to perform governmental functions and services under the terms of the Act, and;

WHEREAS, Doña Ana County is authorized to enter into this Agreement pursuant to its inherent authority as a County in the State of New Mexico with the responsibility to provide fire and emergency response to the residents; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

I. PURPOSE

The purpose of this Interlocal Agreement is to provide for the City and Doña Ana County to provide mutual aid in emergency situations and conditions resulting from fire events and other catastrophic events to include but not be limited to flood, earthquake, tornado and windstorm requiring immediate fire and medical response, incidents involving weapons of mass destruction (including biological and chemical weapons), hazardous materials, medical emergencies, and special rescue, that overwhelm the resources of the City of El Paso or Doña Ana County, and to provide joint training activities to prepare for such response, within the jurisdictional limits of either the City of El Paso, Texas or Doña Ana County, New Mexico. Mutual aid will be provided until the proper resources are marshaled from within the state of the requesting party or until incident stabilization is achieved, whichever comes first. Resources from Doña Ana and the City shall function within the framework of the National Incident Management System (NIMS) during all mutual aid situations. This Agreement is not intended to modify or amend any currently existing Interlocal Agreements between Doña Ana County 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 November 30, 2023. If this Agreement is not terminated as provided herein on or before the expiration date above, it shall automatically renew for three (3) consecutive five (5) year terms until November 30, 2038, 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 Doña Ana County, 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 inside the jurisdictional limits of Doña Ana County, New Mexico, subject to the discretion of the Fire Chief, in consultation with the City Manager.

IV. OBLIGATIONS OF DOÑA ANA COUNTY

Upon the request by the City by and through the El Paso Fire Department, Doña Ana County shall dispatch and provide firefighting equipment and personnel pursuant to the same policies and practices and in the same manner as Doña Ana County would provide services within Doña Ana County's own jurisdiction inside the jurisdictional limits of the City of El Paso, Texas, subject to the discretion of the Fire Chief, in consultation with the County Judge.

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. The highest ranking City of El Paso Fire Department official will retain command of El Paso Fire Department resources. The highest ranking Doña Ana County fire official will retain command of their resources.

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. Each party shall ensure that it is adequately covered by appropriate motor vehicle or other insurance, as necessary.

VI. REIMBURSEMENT

The responding party shall be acting in a voluntary capacity to aid the requesting party during an emergency response or natural disaster. 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, either party may seek to recover its own costs from those individuals or entities who are responsible for the emergency.

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. This Agreement assigns liability different from what is otherwise assigned under Subsection (a) of Texas Government Code, Section 791.006, and the parties are expressly operating under Subsection (a-1) of said Section.

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, New Mexico 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. Termination shall be without prejudice to any obligation by one party to the other which shall have accrued and be owing prior thereto.

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 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 Doña Ana County.

X. 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
P.O. Box 1890
El Paso, Texas 79950-1890

DOÑA ANA COUNTY, NEW MEXICO

Attention: Chuck McMahon
Dona Ana Interim County Manager
845 N. Motel Blvd.
Las Cruces, NM 88007

COPY TO:

Attention: Nicholas Hempel
Dona Ana County Fire Chief
1430 Portland Dr.
Las Cruces, NM 88005

XI. MISCELLANEOUS PROVISIONS

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, the City shall perform services or furnish aid pursuant to this Agreement with funds available from current revenues of the party. The City shall not have any liability for the failure to expend funds to provide aid hereunder. Pursuant to Section 6-6-11 New Mexico Statutes Annotated, Doña Ana County shall perform services or furnish aid pursuant to this Agreement with funds available from current revenues of Doña Ana County.

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, and pursuant to the authority granted under Doña Ana County Ordinance No. 229-07.

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 PAGES)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL COOPERATION AGREEMENT

Signature page for the City of El Paso, Interlocal Cooperation Agreement
between the City of El Paso, Texas and Doña Ana County, New Mexico.

APPROVED this ____ day of _____, 201_.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

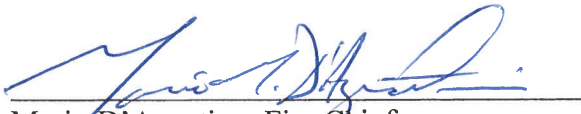
Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario D'Agostino, Fire Chief
Fire Department

**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**



Isabella Solis

Isabella Solis, Chair, District 4

For / Against

John L. Vasquez

John L. Vasquez, Vice-Chair, District 5

For / Against

Billy G. Garrett

Billy G. Garrett, District 1

For / Against

Benjamin L. Rawson

Benjamin L. Rawson, District 3

For / Against ✓

Ramon S. Gonzalez

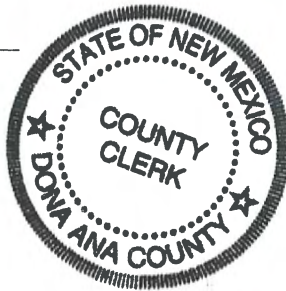
Ramon S. Gonzalez, District 2

For / Against

ATTEST:

Scott Krahl

Scott Krahl
County Clerk



STATE OF TEXAS)
)
COUNTY OF EL PASO)


INTERLOCAL COOPERATION AGREEMENT

Signature page for the Doña Ana County, Interlocal Cooperation Agreement
Between the City of El Paso, Texas and the Doña Ana County, New Mexico.

APPROVED this 9th day of January, 2018.



DOÑA ANA COUNTY



Isabella Solis, Chair
County Commissioner

ATTEST:



Scott A. Kraehling
County Clerk




APPROVED AS TO FORM:



Nelson J. Goodin
County Attorney

APPROVED AS TO CONTENT:

 (FOR CHIEF HEMPEL)

ERIC L. CRESPIANO, Deputy CHIEF
Nicholas Hempel, Fire Chief
Fire Department