

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

DEPARTMENT: Fire - Office of Emergency Management

AGENDA DATE: April 19, 2016

CONTACT PERSON/PHONE: Jerry Villanueva, Acting Emergency Management Coordinator, 838-3264
Samuel Peña, Fire Chief, 485-5605

DISTRICT(S) AFFECTED: ALL

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

SUBJECT:

That the Mayor be authorized to sign an Interlocal Cooperation Agreement between the City of El Paso ("The City") and Doña Ana County, New Mexico ("Doña Ana County") to provide Doña Ana County the Midland Kit which was purchased through funding provided by the Border Environment Cooperation Commission in support of the project entitled "Hazardous Railcar Leak Mitigation Training for communities in Doña Ana County, New Mexico/El Paso, Texas/Ciudad Juarez, Chih" to Doña Ana County.

BACKGROUND / DISCUSSION:

In 2015, the El Paso Fire Department was awarded the Grant titled BECC-TAA15-007. The project name is the Hazardous Railcar Leak Mitigation Training for Communities in Dona Ana County, NM/El Paso, TX/Ciudad Juarez, Chihuahua. The grant is funded by the Environmental Protection Agency and is administered by the Border Environmental Conservation Commission (BECC). The awarded amount was for \$30,000. The money was used to purchase 3 Midland Kits and to provide training on their proper use to Doña Ana County, NM and Ciudad Juarez, Chihuahua. These kits are used to respond to railcar hazardous material leaks. The Interlocal Agreement is to allow the City of El Paso to provide Doña Ana County the Midland Kit.

SELECTION SUMMARY

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: 

RESOLUTION

WHEREAS, railcars carrying hazardous material can pose a serious threat to first responders, civilians and the environment in the El Paso – Juarez – Dona Ana County, New Mexico region; and

WHEREAS, since 2010, the City of El Paso Fire Department has responded to over 250 rail incidents, including hazardous conditions; and

WHEREAS, from August 2014 to April 2015, Dona Ana Fire and Emergency Services responded to three hazmat rail incidents; and

WHEREAS, a Midland Kit is used in mitigating leaks in hazardous railcar valves and fittings and is a key tool for local jurisdictions responding to railcar emergencies; and

WHEREAS, on August 18, 2015, the City entered into a Technical Assistance Agreement with the Border Environment Cooperation Commission (“BECC”) in support of the project entitled “Hazardous Railcar Leak Mitigation Training for communities in Dona Ana County, NM/El Paso, TX/Juarez, Chih.” in order for the City of El Paso to purchase a Midland Kit for itself, one for Dona Ana County, NM and one for Ciudad Juarez, and in order to conduct trainings in how to use said equipment; and

WHEREAS, the City has conducted the training pursuant to the Technical Assistant Agreement funding provided by the BECC; and

WHEREAS, the City of El Paso has acquired such kits and wishes to provide one to Dona Ana County, NM, pursuant to an Interlocal Cooperation Agreement.

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

THAT the Mayor be authorized to sign an Interlocal Cooperation Agreement between the City of El Paso, Texas and Dona Ana County, New Mexico to provide a “Midland Kit”

which was purchased through funding provided by the Border Environment Cooperation Commission in support of the project entitled "Hazardous Railcar Leak Mitigation Training for communities in Dona Ana County, NM/El Paso, TX/Juarez, Chih." to Doña Ana County.

ADOPTED this ___ day of _____, 2016.


CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Peña, Fire Chief
El Paso Fire Department

THE STATE OF TEXAS

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COUNTY OF EL PASO

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**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.

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

WHEREAS, on August 18, 2015, the City of El Paso entered into a Technical Assistance Agreement with the Border Environment Cooperation Commission (“BECC”) in support of the project entitled “Hazardous Railcar Leak Mitigation Training for communities in Dona Ana County, NM/El Paso, TX/Juarez, Chih.” (“BECC Agreement”); and

WHEREAS, a Midland Kit can be used to cap leaks on hazardous railcar valves and fittings; and

WHEREAS, the purpose of the BECC Agreement was to provide funding for regional training on how to use a Midland Kit, and for the purchase of a separate Midland Kit for each of the parties named in the project supported by the BECC Agreement; and

WHEREAS, the City of El Paso and Doña Ana County and are desirous that the necessary agreement be entered into by and between the parties so that the City of El Paso can provide to Doña Ana County a Midland Kit purchased for Doña Ana County through the BECC Agreement; 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, as these two

parties have entered into an Interlocal Agreement with each other 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 are 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;

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 legal mechanism for the City to give to Doña Ana County the Midland Kit that the City of El Paso purchased on behalf of Doña Ana County with the funds available to the City through the Technical Assistance Agreement between the City of El Paso and the Border Environment Cooperation Commission (“BECC”) for the project entitled “Hazardous Railcar Leak Mitigation Training for communities in Dona Ana County, NM/El Paso, TX/Juarez, Chih.” (“BECC Agreement”). This Agreement is not intended to modify or amend any currently existing Interlocal Agreements between the City and Doña Ana County 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 April 30, 2016.

III. OBLIGATIONS OF THE CITY

No later than thirty days after the full execution of this Agreement, the City of El Paso shall notify Doña Ana County, that a Midland Kit that the City of El Paso purchased with the BECC Agreement funds is available for pick up by Doña Ana County at the City of El Paso Fire Department Headquarters, or a designated site. The City of El Paso shall bear no responsibility for the delivery of the Midland Kit designated for Doña Ana County.

IV. OBLIGATIONS OF DOÑA ANA COUNTY

Upon notification by the City of El Paso that a Midland Kit is available for pick up, Doña Ana County shall pick up the Midland Kit with a reasonable time. Doña Ana County shall be fully responsible for any title, licensing or permitting issues, repairs to, or warranty issues regarding the Midland Kit once Doña Ana County possesses the Midland Kit.

V. MUTUAL OBLIGATIONS OF THE PARTIES

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

VI. IMMUNITY NOT WAIVED

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.

VII. 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.

VIII. 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.

IX. 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: Sue Padilla
Doña Ana County Manager
845 N. Motel Blvd
Las Cruces, NM 88007

COPY TO:

Attention: Eric Crespín
Deputy Fire Chief
Dona Ana County Fire & Emergency Services
Fire Administration
845 N. Motel Blvd.
Las Cruces, NM 88007

X. 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 the BECC Agreement and/or current revenues of the City. The City shall not 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 PAGES)

APPROVED by the City Council, El Paso, Texas in its meeting held on the ____ day of _____, 2016 and executed by its authorized representative.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney


APPROVED AS TO CONTENT:



Samuel Peña, Fire Chief
Fire Department


APPROVED by Doña Ana County, New Mexico in its meeting held on the 25 day of March, 2016 and executed by its authorized representative.

DOÑA ANA COUNTY, NEW MEXICO

By: 
Julia T. Brown, Esq., County Manager

Date Signed: 3/25/16

ATTEST:


Name Printed: Deborah J. Rouse
Secretary

APPROVED AS TO FORM:


Name Printed: Nelson J. Gaudin
Doña Ana County's Attorney

