

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

DEPARTMENT: Fire Department

AGENDA DATE: August 21, 2018

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

DISTRICT(S) AFFECTED: All Districts

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

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the El Paso County Community College District for utilization of the City of El Paso Fire Training Academy to train EPCC students enrolled in fire science and related courses for the sum of \$200.00 per EPCC usage, plus any personal equipment rental fee and any applicable reimbursement expenses for El Paso Fire Department staff and damaged City Property.

BACKGROUND / DISCUSSION:

Agreement shall be for a period of 3 years and may be renewed for two (2) successive periods of one (1) year each.

PRIOR COUNCIL ACTION:

On May 26, 2015, City Council approved the previous agreement.

AMOUNT AND SOURCE OF FUNDING:

Department: 322 Fund: 1000 Division: 22090 Account: 405067 (Reimbursed Expenditures)

Amount: \$39,000 (est)

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

DEPARTMENT HEAD:

A handwritten signature in blue ink, appearing to be 'Mario M. D'Agostino', is written over a horizontal line.

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the El Paso County Community College District for utilization of the City of El Paso Fire Training Academy to train EPCC students enrolled in fire science and related courses for the sum of \$200.00 per EPCC usage, plus any personal equipment rental fee and any applicable reimbursement expenses for El Paso Fire Department staff and damaged City property.

APPROVED this _____ day of _____ 2018.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Mario D'Agostino
Fire Chief

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into on this the ____ day of _____, 2018 by and between the City of El Paso, Texas, a home rule municipal corporation ("CITY") and the El Paso County Community College District, a political subdivision of the State of Texas, ("EPCC").

WHEREAS, EPCC desires to have the CITY'S Fire Department ("Department") Training Academy facility made available for fire science training for its students enrolled in the El Paso County Community College Fire Technology Academy (the "Program"); and

WHEREAS, the CITY shall provide the facilities and equipment for the program; and

WHEREAS, the Mayor and City Council recognize that this Agreement will serve a public purpose and governmental purpose of enhancing the health and safety of the local population, specifically in the area of fire protection preparedness; and

WHEREAS, the CITY and EPCC are authorized to enter into this Agreement under the provisions of Chapter 791, Texas Government Code; and

NOW THEREFORE, THE CITY AND EPCC HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1. CONTRACTUAL RELATIONSHIP.

- 1.1. The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.
 - 1.1.1. As an independent contractor, EPCC understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to EPCC's officers, employees, agents or representatives who perform any service in connection with this Agreement.
 - 1.1.2. As an independent contractor, the CITY understands and agrees that it will be responsible for its respective acts or omissions, and EPCC shall in no way be responsible as an employer to the CITY's officers, employees, agents or representatives who perform any service in connection with this Agreement.
- 1.2. EPCC acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and

agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind EPCC to any obligation other than the obligations set forth in this Agreement.

2. **SCOPE OF SERVICES.**

- 2.1. The City shall allow access to the following items if available at the CITY'S Fire Department Training Academy located at 6800 Delta, El Paso, Texas 79905 ("Training Academy"): Training tower, burn building, and propane burn props, restrooms and two classrooms (referenced collectively as "Facility" regardless of number). Equipment shall include the following: Training Academy pumper, fire hose(s), fire nozzles and appliances, forcible entry tools, self-contained breathing apparatus, and ladders (referenced collectively as "Equipment").
- 2.2. The Program activities shall not interfere or conflict with the CITY'S normal services at the Training Academy.
- 2.3. The schedule for program use of the Facility and Equipment is to be approved by the Fire Chief, or his designee, at least 30 days prior to the beginning of the training semester. The use of the Facility for live fire training shall be restricted to evening hours and Saturdays. Requested changes to the schedule may be approved by the Fire Chief upon being given ten (10) days prior notice.
- 2.4. EPCC will provide instructors, and related materials. The parties agree that all equipment necessary for the Program and not specifically mentioned in section 2.1, such as high angle rescue equipment, shall be provided by EPCC.

3. **TERM.** This Agreement shall be for a period of three (3) years and may be renewed for two (2) successive periods of one (1) year each thereafter upon written notice issued from EPCC to the CITY at least ninety (90) days prior to the end of the initial term or any renewal period, unless or until otherwise cancelled or terminated as provided for herein.

4. **CONSIDERATION.** In exchange for the use of the CITY facilities through the Program, the amount to be paid by EPCC shall be a one-time \$200.00 fee per student per approved certification course. This fee will include, in addition to the Facility use, the rental and maintenance costs for one National Fire Protection Association ("NFPA") compliant self-contained breathing apparatus. Students without their own personal protective equipment may rent NFPA compliant pants and coat from the Department, to be used during live fire burns, for a fee of \$125.00 per student per approved certification course. This rental fee includes the use of NFPA compliant gear, as well as the costs associated with maintaining that gear in compliance with currently adopted NFPA standards.

- 4.1. EPCC will also pay separately for actual propane used during live burns.
- 4.2. As further consideration, EPCC agrees to share its facilities, including, but not limited to, classrooms, assembly facilities, and physical fitness facilities with the CITY.

5. **PAYMENT.**

- 5.1. EPCC shall reimburse the City for the compensation paid to El Paso Fire Department employees required to facilitate live fire and other after-hours training sessions at the rate of \$40/hour per applicable City employee. This reimbursement shall include applicable travel time charges and shall apply to no more than two (2) Department employees,

- except in unusual circumstances. Unusual circumstances shall be detailed in writing to EPCC when reimbursement is billed. The two (2) Department employees shall include one Training Academy staff member, to be in overall control of the Facility and the training props, and one Logistics staff member to facilitate the issuance, retrieval, and documentation of personal protective equipment.
- 5.2. Payment shall be due to the CITY from EPCC within thirty (30) days of receipt of a proper and timely request for payment.
- 5.3. Requests for payment shall be made via invoice by the CITY to EPCC's Accounts Payable Department.
- 5.3.1. The CITY shall submit an invoice to EPCC upon confirmation of the Program student roster, and shall account for both the fee per student per semester and the rental fee per student per semester.
- 5.3.2. The CITY shall submit an invoice on a monthly basis to EPCC to account for all other use, except as otherwise provided herein. Charges on the monthly bill may include use of the Facility, Equipment, Department staff as described in this Agreement, late registrants to the Program and any other costs to the City pursuant to this Agreement.
- 5.4. All invoices sent by the CITY pursuant to this Agreement shall reference this Agreement and the date of approval by the CITY.
6. **RIGHT OF ENTRY.** The CITY herein grants a right of entry to EPCC, to include its Program students, designated agents, employees, and contractors, into the Training Academy.
- 6.1. Entry into the Training Academy will be limited to Program students and instructors of EPCC. Guests, spectators and/or bystanders shall not be allowed entry. EPCC shall provide a roster of Program students at the beginning of each semester to the Department for current Program student verification purposes. The roster shall be checked by Department staff along with identification shown by each person seeking entry on Program usage days.
7. **UTILITY USAGE.** The CITY shall pay for all utilities provided at the Program facilities.
8. **TERMINATION.**
- 8.1. Termination - Cause. The parties agree that either party may terminate this Agreement in whole or in part. Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.
- 8.2. Termination – Convenience. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.
- 8.3. Termination Shall Not Be Construed as Release. Termination by either party shall

not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

- 8.4. This contract may be terminated by EPCC at the end of any fiscal year of EPCC with thirty (30) days prior written notice to the Contractor, for any of the following reasons: 1) EPCC has exhausted all funds legally available for payments to become due under said contract; or 2) EPCC does not appropriate funds for the payment of monies due under said contract for any succeeding fiscal year other than the current fiscal year; or 3) An appropriation of funds is made by EPCC for the next fiscal years, but prior to actual release such appropriation is withdrawn. If funds are appropriated for an immediately following fiscal year, and such funds are for the acquisition of functions which in whole or in part are essentially the same functions for the performance of which the equipment/service was agreed to hereunder, then such appropriated funds will be used to satisfy the payment obligations under this contract.
- 8.5. Except as otherwise provided herein, all duties and obligations of the CITY and EPCC shall cease upon termination or expiration of this Agreement.
9. **MAINTENANCE AND REPAIRS.** The CITY shall accept general maintenance and repair responsibilities except as herein identified.
 - 9.1. Maintenance. The Parties agree that the CITY shall be responsible for janitorial services in the Facility. However, EPCC shall retain responsibility for additional clearing of trash and debris following their Program activities. Should the Fire Chief, or designee, notify EPCC that the Program activities have resulted in excess trash and debris, EPCC shall retain the responsibility for additional cleanup in the Facility.
 - 9.1.1. Upon completion of each training session, EPCC instructors shall be responsible for returning the Facility back to normal operating conditions. This will include the cleaning of the classrooms, training grounds, and any Equipment that was used during the training program.
 - 9.2. Repairs. The CITY shall keep the Facility in good condition and repair at all times during the effective period of this Agreement except that EPCC shall repair damage to Program area Facility and Equipment when notified by and at the discretion of the Fire Chief of substantial damage at any time provided that such damage is caused by an EPCC Program student or instructor. The CITY shall notify EPCC of any such damage within seventy-two (72) hours of the incurrence of same.
10. **REIMBURSEMENT.** In the alternative to repairing damaged CITY property, EPCC shall be responsible for reimbursement and for any damaged CITY property caused by the Program students and/or instructors during the training periods. EPCC shall notify the Department in writing within 72 hours of any such damage to CITY property. In the alternative, the CITY shall notify the Program Director of damage to CITY property at the Training Academy within 72 hours of discovery and will notify EPCC of the

reimbursement cost at that time. EPCC shall pay said cost within fifteen (15) days of receipt of said notice from the CITY.

11. RISK ALLOCATION – LIMITATION OF LIABILITY.

11.1. Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

11.1.1. 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 party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further damage including, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

11.1.2. Intentional Risk Allocation. The CITY and EPCC each acknowledge 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.

11.1.3. No Indemnification. The Parties expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

11.2. The CITY will not be responsible for any injuries, deaths, or damages incurred during the training period(s) and to the extent legally possible, EPCC will indemnify and hold harmless the CITY for any claim for death, damage, or injury made by any Program student or instructor of EPCC.

11.3. Prior to entering the Fire Academy, a waiver of liability shall be completed by instructors and trainees holding harmless the CITY. A copy of the aforementioned indemnification shall be forwarded to EPCC's Office of Purchasing Services.

12. GOVERNMENTAL FUNCTION AND IMMUNITY.

12.1. Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the CITY enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act.

The parties further expressly agree that every act or omission of the CITY, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function. The parties also agree that EPCC is entering into this Agreement as part of its duty to provide educational services.

- 12.2. Governmental or Sovereign Immunity. The CITY and EPCC reserve, and do not waive, their respective rights of governmental or sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

13. **GENERAL PROVISIONS**

- 13.1. Security. The CITY shall generally retain responsibility for providing security personnel at its facilities in accordance with standard policy. EPCC shall provide security for the Program immediately preceding, during, and following any Program activities when the City determines and gives prior 24-hour notice of a need for additional security personnel.
- 13.2. Amendments and Waiver. EPCC shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.
- 13.3. Discrimination Prohibited. No person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, the Program.
- 13.3.1. Specific Discriminatory Actions Prohibited. Neither party shall utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, national origin, age or disability, or having the effect of defeating or substantially impairing accomplishment of the objectives of the Program or activities funded pursuant to this Agreement or any written amendment hereto with respect to individuals of a particular race, color, national origin, creed, sex, age or disability.
- 13.4. Assignment. The services to be provided under this Agreement by EPCC cannot be assigned or delegated without the prior written consent of the CITY.
- 13.5. Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.
- 13.6. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the CITY, and EPCC Board Policies.

- 13.7. Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 13.8. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via personal delivery with signed receipt or via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address provided 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:

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

COPY TO: City of El Paso
Attention: Fire Chief
416 N. Stanton Dr.
El Paso, Texas 79901

EPCC: El Paso County Community College
Director of the Fire Technology Academy
P.O. Box 20500
El Paso, Texas 79998-0500

- 13.9 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of EPCC warrants that he/she has the authority to do so and to bind EPCC to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

APPROVED and executed this _____ day of _____, 2018.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:




Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



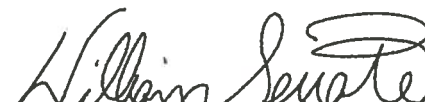
Mario M. D'Agostino
Fire Chief

APPROVED AS TO FORM:



Edward W. Dunbar
Attorney for EPCC

**EL PASO COUNTY COMMUNITY
COLLEGE DISTRICT**



Dr. William Serrata, President
El Paso Community College

EL PASO COMMUNITY COLLEGE



WAIVER OF LIABILITY

I, _____, the undersigned, hereby waive any claim against the El Paso Community College, members of the college staff, instructors, or any other agents, to include the City of El Paso, El Paso Fire Department, the El Paso Fire Department Training Academy, or members of the El Paso Fire Department for any injury which I may sustain, either directly or indirectly, as a result of my participation in the EPCC Basic Firefighter Certification Certificate of Completion and the examination process conducted by the Texas Commission on Fire Protection for Basic Firefighter. I understand that my participation in physical skills training is required in order to complete the courses required for the certificate and during the TCFP examination for Basic Fire Fighter and that there may be a risk of bodily injury.

I further authorize the pursuit of emergency care for myself in the event that I sustain an injury during training. The terms of this waiver also apply to any claims against the aforementioned entities arising from the manner or mode of either administering or securing emergency medical care. The aforementioned entities or individuals are not bound to secure such treatment in the event an injury should occur.

I fully understand and acknowledge that there are inherent dangers and risk involving injury, damage, or death, which exist in and arise from my participation in the EPCC Firefighter Training Program. These risks and dangers may be caused by the program providers, other program participants or by equipment and facilities to be used in the program. On behalf of myself, my heirs, representatives and assigns, I hereby assume all risk and responsibility, and hold harmless, release, remise and discharge the City, EPCC and my instructors from any and all injuries, losses and/or damages arising from the Firefighter Training Program described herein.

This waiver shall be binding upon the undersigned, his heirs and assignees.

I have read the full text of this release and I understand and agree to its terms and conditions.

This agreement shall be binding for the complete term of the training program beginning on or about _____ and ending on or about _____.

SIGNATURE

DATE

Subscribed and sworn to, before me, in El Paso County, Texas:

Notary Public in and for El Paso County, Texas

DATE

My commission expires: _____

FOR NOTIFICATION PURPOSES

Next of Kin: _____ Relationship: _____.

Address: _____
 Street City State Zip Code

Business Telephone: _____ Home Telephone: _____