

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

DEPARTMENT: EL PASO FIRE DEPARTMENT

AGENDA DATE: September 23, 2014

CONTACT PERSON/PHONE: SAMUEL PEÑA, FIRE CHIEF, 485-5605
RAFAEL REYES, EMERGENCY MANAGEMENT COORDINATOR, 820-3263

DISTRICT (S) AFFECTED: ALL

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement by and between the City of El Paso and County of El Paso, Texas for funding of the Office of Emergency Management (OEM) from November 1, 2013 through October 31, 2014, subject to automatic renewal for four (4) additional one (1) year periods, whereby the County shall pay \$94,249.99, which is 29% of the total costs and expenses for the OEM and the City shall resume 33.5% of the OEM costs and expenses, and the Emergency Management Program Grant shall cover the remaining 37.5% OEM costs and expenses.

BACKGROUND / DISCUSSION:

This Interlocal Agreement will provide emergency management coordination for the City and the County and is necessary for the safety and general welfare of the citizens in both jurisdictions concerned.

PRIOR COUNCIL ACTION:

Yes. June 30, 1987, the City passed a Resolution establishing the El Paso City/County Emergency Management Organization.

AMOUNT AND SOURCE OF FUNDING:


22130-322-2720- G2215010 – Emergency Planning Grant
State Contribution: \$121,875.00
City Contribution: \$108,875.00
County Contribution: \$94,249.99

BOARD / COMMISSION ACTION:

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

DEPARTMENT HEAD:

SAMUEL PEÑA
Name


Signature

9/15/14
Date

RESOLUTION

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

THAT the Mayor be authorized to sign an Interlocal 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, 2013 through October 31, 2014, subject to automatic renewal for four (4) additional one (1) year periods, whereby the County shall pay \$94,249.99, which is 29% of the total costs and expenses for the OEM, and the City shall assume 33.5% of the OEM costs and expenses, and the Emergency Management Program Grant shall cover the remaining 37.5% OEM costs and expenses.

PASSED and APPROVED this _____ day of _____, 2014.


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

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, 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, 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 Operations 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;
- 1.1.4 Maintain the Emergency Operations Center in a state of readiness for immediate use during times of Plan activation;
- 1.1.5 Maintain contact lists of individuals required to attend the Emergency Operations Center during times of Plan activation; and
- 1.1.6 Conduct exercises to assist both the City and County in preparing for manmade or natural disasters and/or emergencies, so that both governmental entities will remain functional during Plan activation.
- 1.1.7 Assume 33.5 of the cost for the operating costs of the Office of Emergency Management, and apply on an annual basis to the State of Texas for the Emergency Management Program Grant ("EMPG") for the remaining 37.5% portion to cover the operating costs of the Emergency Operations Center.
- 1.1.8 Provide emergency response operations and specialty teams to include but not be limited to hazardous materials response, urban search and rescue, water rescue, wilderness rescue and rope rescue, in addition to the continued maintenance and operation of the Regional Mobile Command Unit.
 - 1.1.8.1 The rendering of emergency response operations or specialty teams under the terms of this agreement shall not be mandatory. The City should immediately inform the County if the assistance cannot be rendered when requested.
 - 1.1.8.2 The amount and type of equipment and the number of personnel to be furnished will be determined solely by the City.

1.2 The County shall perform the following services under the terms and conditions hereinafter stated:

- 1.2.1 Pay 29% of the operating costs of the Office of Emergency Management, as described in Section 4 of this Agreement.

1.2.2 Ensure that any County department or entity having responsibility for any portion of the Plan, as mandated by the Plan, will timely participate in the development and completion of said work.

1.2.3 The County, in any request for aid under this Agreement, will specify the location to which the equipment and personnel are to be dispatched.

1.3 Nothing within the terms of this Agreement shall require the City to purchase additional equipment or hire additional personnel in order to comply with the terms of this Agreement.

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.

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, shall be null and void and of no force and effect, and the City 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.

3. **TIMES OF PERFORMANCE.** The City shall commence the provision of its services on November 1, 2013, and the initial term shall end on October 31, 2014, regardless of the date of execution 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.

4. **COMPENSATION.**

4.1 The County agrees to pay to the City a fee in the amount of NINETY FOUR THOUSAND TWO HUNDRED FORTY-NINE AND 99/100 DOLLARS (\$94,249.99), for each year (being the period from October 1 through September 30th) that this Agreement is in effect. Said fee constitutes 29% of the total actual costs and expenses for the Office of Emergency Management, which presently is \$324,999.99.

4.1.1 Together, the City and the EMPG shall cover the remaining 71% of the actual costs and expenses for the Office of Emergency Management, as further described above in Section 1.1.7.

4.1.2 The amount described in Section 4.1 shall be increased every year in an amount equal to the average annual increase to the Consumer Price Index for All Urban Consumers ("CPI-U"). The average CPI-U shall be determined in January of each remaining year of the Agreement for the immediately prior twelve-month period. Regardless of whether the January determination shows an increase or decrease to the CPI-U for the prior twelve-month period, the County shall pay to the City the lesser of the CPI-U versus the fee that the County paid to the City for the immediately prior twelve-month period.

4.2 Should the EMPG be reduced by up to twenty percent (20%) during the term of this Agreement, each party shall pay one-half of the amount previously covered by the EMPG to cover the shortfall which shall be in addition to the other sum(s) described in this Section 4.

4.3 Should the EMPG be reduced by more than twenty percent (20%) during the term of this Agreement, or be cancelled or discontinued, the City shall notify the County in writing of such funding change and the County shall notify the City in writing within 60 days whether the County wishes to negotiate a written amendment to this Agreement to cover the shortfall or whether the County wishes to terminate the Agreement. If the County fails to send written notice within 60 days regarding its intentions, each party shall pay one-half of the entire budget for the Office of Emergency Management, which shall render inapplicable the amount stated in Section 4.1 to this Agreement.

4.4 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.

5. **PAYMENTS PURSUANT TO THIS AGREEMENT.** The City shall invoice the County by the fifteenth of each month for services provided during the previous month. Payment is due to the City within thirty (30) days of delivery of the invoice. All payments submitted under this Agreement shall be made payable to the City of El Paso, Attn: Financial Services, PO Box 1890, El Paso, TX 79950-1890, or to such other address as provided by the City without the need to amend this Agreement. If a payment is not received by the City within thirty (30) days of delivery of the

invoice, the City may charge the applicable interest rate under the Texas Prompt Pay Act, pursuant to Texas Government Code Chapter 2251.

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 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 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 thirty days by sending written notice of the termination date 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: Chief
416 N. Stanton, Ste. 200
El Paso, Texas 79901

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.

CITY OF EL PASO

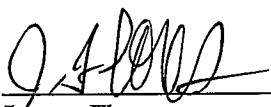
Oscar Leeser, Mayor

APPROVED this _____ day of _____, 2014.

ATTEST:


Richarda Duffy Mornsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Peña
Fire Chief

(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

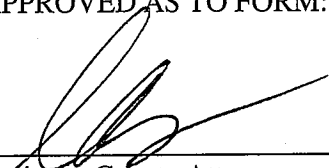

County Judge Veronica Escobar

APPROVED this 25 day of August, 2014.

ATTEST:


County Clerk

APPROVED AS TO FORM:


Assistant County Attorney