

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

DEPARTMENT: FIRE

AGENDA DATE: 3/23/2010

CONTACT PERSON NAME AND PHONE NUMBER: OTTO DROZD III, 771-1000

DISTRICT(S) AFFECTED: ALL

SUBJECT:

THAT the Mayor be authorized to sign an Interlocal Agreement (the "Agreement") between the City of El Paso, Texas and the Ysleta del Sur Pueblo to facilitate fire and emergency response during emergency conditions occurring within the City or the Pueblo, to expire on August 31, 2010, or as extended by the Parties.

BACKGROUND / DISCUSSION:

The attached agreement will provide each governmental entity with the ability to request and provide aid when emergency response demands outstrip local resources. This ability is critical in times of disaster, as well as large scale incidents, and will serve to strengthen each entity's capability and responsiveness to the needs of our community.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

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?

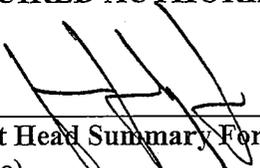
N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD:



Otto Drozd III, Fire Chief
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

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") between the City of El Paso, Texas ("City") and the Ysleta del Sur Pueblo ("Pueblo") to facilitate fire and emergency response during emergency conditions occurring within the City or the Pueblo, to expire on August 31, 2010, or as extended by the Parties.

ADOPTED this ___ day of _____, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Otto Drozd, Fire Chief
El Paso Fire Department

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF EL PASO, TEXAS, AND
THE YSLETA DEL SUR PUEBLO**

This Agreement by and between the City of El Paso, Texas, hereinafter referred to as "City" and the Ysleta del Sur Pueblo, hereinafter referred to as "Pueblo" is made in duplicate as of the date last executed by a party hereto.

WHEREAS the City is a home rule municipality located in El Paso County, Texas; 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 a federally recognized Indian tribe having its reservation within the limits of the State of Texas; and

WHEREAS the Pueblo is a federally recognized Indian tribe whose reservation is located wholly within the County of El Paso which is within the limits of the State of Texas; and,

WHEREAS the City and the Pueblo believe their residents would mutually benefit from a cooperative agreement between the parties to facilitate fire and emergency response during emergency conditions occurring within the City or the Pueblo to include mutual aid in fire prevention, firefighting and protecting property from fire, training activities, responses to incidents involving weapons of mass destruction, hazardous materials, medical emergencies, and special rescues;

NOW THEREFORE, the City and the Pueblo, in consideration of the mutual covenants and reliance on the representations herein expressed, agree as follow:

1. If an emergency situation arises on the Pueblo's reservation, a call for mutual aid assistance shall be made by the Incident Commander for the Pueblo or its designee to the City of El Paso Fire Department. Pending approval by the on duty Deputy Chief or acting Deputy Chief of the El Paso Fire Department, 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 to any point within the jurisdiction of the Pueblo.
2. On request to the Pueblo's Emergency Management Coordinator or its designee by the on duty Deputy Chief or acting Deputy Chief of the El Paso Fire Department, the Pueblo shall dispatch and provide firefighting equipment and personnel pursuant to the same policies and practices and in the same manner as the Pueblo would provide services within its own jurisdiction to any point within the response jurisdiction of the El Paso Fire Department.
3. The rendering of assistance under the terms of this Agreement shall not be mandatory, but the party receiving the request for assistance should immediately inform the requesting department if, for any reason, if assistance cannot be rendered.

4. Any request for aid under this Agreement will specify the location to which the equipment and personnel are to be dispatched; however, the amount and type of equipment and number or personnel to be furnished will be determined by a representative of the responding organization.
5. The City and the Pueblo, when responding to a mutual aid request, shall adhere to the Incident Command System. An Incident Command System (ICS), appropriate to the nature of the emergency will be implemented by the Pueblo.
6. The responding aid unit will report to the officer in charge of the requesting organization at the location to which the equipment is dispatched, and a unified command structure will be established if one is not in place.
7. Nothing in this Agreement shall be construed to require either entity to purchase additional equipment, acquire additional personnel, or otherwise increase or enhance its response capabilities.
8. Any reimbursement to which the City shall be entitled for any part of the cost, or expenses incurred by it in furnishing aid on the Pueblo's reservation, may be recoverable from the federal government by the City under 15 U.S.C. § 2210. While such reimbursement shall not be recoverable from the Pueblo itself, the Pueblo shall cooperate with the City in the City's reimbursement claim submitted to the federal government. Such cooperation shall include, but not be limited to the Pueblo providing the City with any and all paperwork and documents detailing the emergency situation to the extent possible, including the City's firefighting assistance, for which the City is seeking reimbursement.
9. Unless otherwise terminated hereunder, the initial term of this Agreement shall commence on the effective date of this Agreement and shall expire on August 31, 2010. If this Agreement is not terminated as provided herein on or before the expiration date above, it shall automatically renew for consecutive one-year terms, beginning on September 1st of each year thereafter and ending on August 31st or each year thereafter until 2015 at which time this Agreement shall expire and the automatic renewal period shall cease.
10. This Agreement may be terminated for convenience by either party providing thirty (30) days written notice to the other party. Either Party may terminate this Agreement for cause by sending a sixty (60) 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. The terminating Party shall provide written notice setting forth the reason(s) for termination to the non-terminating Party, and the latter shall have a thirty (30) day cure period which shall begin as of the date of receipt of the notice. If the non-terminating Party fails to cure within the thirty (30) day period, the Agreement shall terminate.
11. Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violations or requirements applicable to performance under

this Agreement.

12. The parties expressly waive all claims against each other for compensation or any property loss, damage, personal injury or death occurring as a result of the performance under this Agreement.
13. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement.
14. Any liability incurred in connection with the Agreement is subject to the immunities and limitation of the Texas Tort Claims Act or other applicable laws.
15. The execution and performance of this Agreement by each of the parties has been duly authorized by all necessary law, resolutions, ordinances or government body action, and this Agreement constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.
16. 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 Pueblo.
17. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas.
18. 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 changes):

CITY OF EL PASO

Attention: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

COPY TO:

Attention: City of El Paso Fire Department, Director
8600 Montana
El Paso, Texas 79925

YSLETA DEL SUR PUEBLO

Attention: Tribal Governor
Ysleta Del Sur Pueblo
119 South Old Pueblo Road
El Paso, Texas 79907

COPY TO:

Attention: Office of Emergency Management, Coordinator
Ysleta Del Sur Pueblo
119 South Old Pueblo Road
El Paso, Texas 79907

19. **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.
20. **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.
21. **Current Revenues.** Pursuant to Section 791.011(d)(3) of the Texas Government Code, each Party performing services or furnishing aid pursuant to this Agreement shall do so with funds available from current revenues of the Party. No Party shall have any liability for the failure to expend funds to provide aid hereunder.
22. **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.

23. **Approval.** This Agreement has been duly and properly approved by each Party's governing body and constitutes a binding obligation on each Party.
24. **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.
25. **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.
26. **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.
27. **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.
28. **Counterparts.** This Agreement may be executed in multiple counterparts which, when taken together, shall be considered as one original.
29. **Effective Date.** This Agreement is made to be effective on the latest date accompanying the signatures below.

[SIGNATURE PAGE FOLLOWS]

WITNESS THE HAND OF THE PARTIES HERETO:

THE CITY OF EL PASO

YSLETA DEL SUR PUEBLO

JOHN F. COOK
Mayor

FRANK PAIZ
Governor

Date: _____

Date: 1/28/2010

ATTEST:

Richarda Duffy Momsen
City Clerk

Tribal Secretary

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

Ron Jackson
Tribal Attorney

APPROVED AS TO CONTENT:

Fire Chief Otto Drozd
El Paso Fire Department

Josué García
Tribal Emergency Management Coordinator