

**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 ("City") and the El Paso County Emergency Services District No. 2 ("District") to provide fire and emergency response during emergency conditions occurring within the City or the District, to expire on September 30, 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

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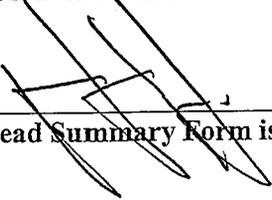
**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

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\*\*\*\*\*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 El Paso County Emergency Services District No. 2 ("District") to provide fire and emergency response during emergency conditions occurring within the City or the District, to expire on September 30, 2010, or as extended by the Parties.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2010.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

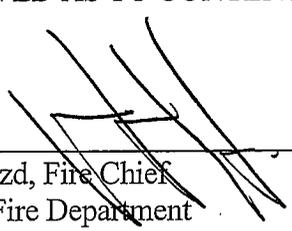
ATTEST:

\_\_\_\_\_  
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

THE STATE OF TEXAS                   §  
  §  
COUNTY OF EL PASO                   §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF EL PASO, TEXAS  
AND THE EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the City of El Paso, Texas (hereinafter referred to as “City”) and the EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2 (hereinafter referred to as “District”), a political subdivision of the State of Texas, 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 District is an Emergency Services District in the State of Texas; 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 special districts, 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 the District, each pursuant to its statutory and constitutional authority, are responsible for fire and emergency response, and are desirous that the necessary agreements be entered into by and between the parties to facilitate assistance between the parties during emergency conditions occurring within the City and District; and

**WHEREAS**, the City and District believe that a cooperative agreement between the parties would provide a mutual benefit to residents of both the City and District; and

**WHEREAS**, the City and District are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 791.001 et seq., (the “Act”) and Chapter 775 Texas Health and Safety Code, 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 City and the District to provide mutual aid in fire prevention, training activities, response to incidents involving weapons of mass

destruction, hazardous materials, medical emergencies, special rescue emergencies and property from fire and firefighting. This Agreement is not intended to modify or amend any currently existing Interlocal Agreements between the District 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 September 30, 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 October 1<sup>st</sup> of each year thereafter and ending on September 30<sup>th</sup> or each year thereafter until 2015 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 the District, 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 firefighting jurisdiction of the District.

**IV.  
OBLIGATIONS OF THE DISTRICT**

Upon the request by the City by and through the El Paso Fire Department, the District shall dispatch and provide firefighting equipment and personnel pursuant to the same policies and practices and in the same manner as the District would provide services within the District's own jurisdiction to any point within the area for which the El Paso Fire Department provides fire protection.

**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.

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.

## **VI. REIMBURSEMENT**

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 parties 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.

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.

## **VIII. TERMINATION**

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.

**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 District.

**X.**  
**APPLICABLE LAW**

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.

**XI.**  
**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 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

**EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2**

Attention: President  
El Paso County Emergency Services District No. 2  
P.O. Box 683  
Clint, Texas 79836

**XII.  
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, 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.

**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 PAGE)*

**APPROVED** by the City Council, El Paso, Texas in its meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2010 and executed by its authorized representative.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

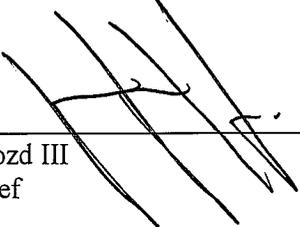
ATTEST:

\_\_\_\_\_  
Richarda Momsen  
City Clerk

APPROVED AS TO FORM:

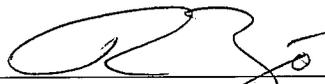
  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Otto Drozd III  
Fire Chief

APPROVED by the El Paso County Emergency Services District No. 2 in its meeting held on the 9<sup>th</sup> day of February, 2010 and executed by its authorized representative.

**EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 2**

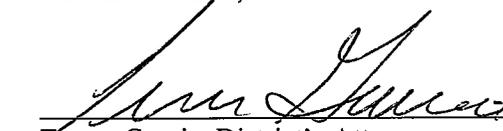
By:   
Raymond Trevizo, President

Date Signed: 02/09/10

ATTEST:

FOR ESD NO. 2, APPROVED AS TO FORM:

  
Rebecca Terrazas, Secretary

  
Teresa Garcia, District's Attorney

