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

DEPARTMENT: **Police**

AGENDA DATE: **August 27, 2013**

CONTACT PERSON NAME AND PHONE NUMBER: **Bob Feidner, Assistant Chief, 564-7301**

DISTRICT(S) AFFECTED: **All**

SUBJECT:
That the Mayor be authorized to sign an Interlocal Governmental Agreement between the City of El Paso and the County of El Paso/District Attorney's Office, 34th Judicial District of the State of Texas, for services to the City and its Police Department relating to arrests and prosecution of cases in connection with the District Attorney's Information Management System (DIMS) and program from September 1, 2013 through August 31, 2014 in an amount not to exceed $238,665.28.

BACKGROUND / DISCUSSION:
The purpose of this Agreement is to establish the fiscal terms and relationship of the DIMS program between the City and the County. DIMS substantially affects the procedures and resources utilized by the El Paso Police Department in connection with making arrests for criminal offenses classified as Class B misdemeanors and higher. The District Attorney shall provide duly qualified attorneys and clerical staff to operate a 24-hour screening unit accessible to the Police Department in conjunction with DIMS. The DIMS program increases the effectiveness and efficiency of the Police Department resources to reduce time spent processing those taken into custody.

PRIOR COUNCIL ACTION:
This is a recurring Interlocal Governmental Agreement. The current Agreement for the period of September 1, 2012 through August 31, 2013 was approved by City Council on September 11, 2012.

AMOUNT AND SOURCE OF FUNDING:
The estimated amount is not to exceed $238,665.28.
The account number is 522170 – 21100 – 1000 – 321 – P2103.

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: Gregory K. Allen

(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 Governmental Agreement between the City of El Paso and the County of El Paso/District Attorney, 34th Judicial District of the State of Texas, for services to the City and its Police Department relating to arrests and prosecution of cases in connection with the District Attorney's Information Management System and program from September 1, 2013 through August 31, 2014 in an amount not to exceed $238, 665.28.

ADOPTED this 27 day of August, 2013.

CITY OF EL PASO

OSCAR LEESER
Mayor

ATTEST:

RICHARDA DUFFY MOMSEN
City Clerk

APPROVED AS TO FORM:

JOHN R. BATOON
Assistant City Attorney

STATE OF TEXAS §
§ **INTERLOCAL GOVERNMENTAL AGREEMENT**
COUNTY OF EL PASO §

This Interlocal Governmental Agreement ("Agreement") is entered into by and between the City of El Paso, a home rule municipal corporation ("CITY"), and the County of El Paso, Texas ("COUNTY").

WHEREAS, the District Attorney of the 34th Judicial District ("District Attorney") established in or about 1994 a program known as the District Attorney's Information Management System (DIMS), which allows a prosecutor to screen criminal cases presented by law enforcement officers and determine if prosecution is desired within hours of the commission of an offense, and within hours of a person's arrest, instead of weeks or months after said arrest; and

WHEREAS, the operation of DIMS permits the filing of criminal charges in the State Court system within hours of a person's arrest, which increases the efficiency and effectiveness of the criminal justice system; and

WHEREAS, the operation of DIMS serves to increase the efficiency and effectiveness of local governments in their respective functions in the criminal justice system; and

WHEREAS, the operation of DIMS increases the effectiveness of law enforcement in the City of El Paso, saves the CITY from unnecessary use of resources and expenses, as well as improves community relations; and

WHEREAS, the CITY's monetary contribution to the DIMS program is a payment to the COUNTY for real-time 24-hour screening by the District Attorney's Office; and

WHEREAS, the COUNTY is mandated to fund the operation of the District Attorney's Office, to include the salaries of the assistant district attorneys, pursuant to Texas Gov't Code § 43.120.

WHEREAS, the CITY and COUNTY are authorized to enter into this Agreement under the provisions of Texas Gov't Code §791 *et. seq.*

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

1.0 ATTACHMENTS

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes as if set forth verbatim:

Exhibit "A"	DIMS Staffing Schedule;
Exhibit "B"	DIMS Staffing Rates;
Exhibit "C"	DIMS Schedule; and
Exhibit "D"	DIMS Staffing Component Projected Budget

2.0 CONTRACTUAL RELATIONSHIP

2.1 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.

2.1-1 The COUNTY 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 the COUNTY's officers, employees, agents or representatives who perform any service in connection with this Agreement.

2.1-2 The CITY understands and agrees that it will be responsible for its respective acts or omissions, and the COUNTY 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.

2.2 The COUNTY 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 the COUNTY to any obligation other than the obligations set forth in this Agreement.

2.3 The parties acknowledge and expressly agree that nothing contained in this Agreement shall be construed as creating an attorney-client relationship between the District Attorney or his agents, representatives, or employees, and the El Paso Police Department or the CITY or its agents, representatives, departments or employees.

2.4 The parties further acknowledge and expressly warrant that the Office of the District Attorney is performing services and functions under the DIMS program that are legally authorized and/or mandated by law or statute. Nothing herein contained in this Agreement shall be interpreted as altering the statutorily assigned duties of either the El Paso Police Department and its members and the Office of the District Attorney.

2.5 The parties acknowledge and agree that in all things relating to this Agreement, the CITY and the COUNTY are performing governmental functions. The parties hereby agree that the CITY and the COUNTY enter into this Agreement as governmental entities for the purpose of performing a governmental function.

3.0 PURPOSE AND TERM OF AGREEMENT

3.1 Purpose. The purpose of this Agreement is to establish the fiscal terms and relationship of DIMS program. DIMS substantially affects the procedures and resources utilized by the El Paso Police Department in connection with making arrests for criminal offenses classified as Class B Misdemeanors and higher. The District Attorney shall provide such duly qualified attorneys and clerical staff to operate a 24-hour screening unit accessible to the El Paso Police Department in conjunction with DIMS.

3.2 Term. This Agreement shall be in effect from September 1, 2013 through August 31, 2014, unless terminated or amended pursuant to the terms stated herein.

4.0 SCOPE OF SERVICES

4.1 The District Attorney shall make attorneys and support staff from its office actively available to staff DIMS and provide real-time screening services on a 24-hour daily basis, with the enumeration of shifts set forth in Attachment "A". Attorney and clerical services will be provided at the rates set out in Attachment "B". The District Attorney's real-time 24-hour screening will be provided during the schedule in Attachment "C", or until funding under this Agreement is depleted, or the Agreement is terminated or amended pursuant to such terms set forth herein.

4.1-1 Under the DIMS program, the District Attorney and his Assistant District Attorneys shall be performing services and functions that are legally authorized and/or mandated by law or statute.

4.2 The District Attorney or his designated representative shall be the COUNTY contact for all operational matters of DIMS. The Chief of Police or his designated representative shall be the CITY's contact for all matters relating to DIMS.

5.0 CONSIDERATION

5.1 As consideration for this Agreement, and except as provided below, the CITY shall make payment to the COUNTY in a total amount not to exceed TWO HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED AND SIXTY-FIVE AND 28/100 DOLLARS ($238,665.28) pursuant to the scope of services stated in Section 4.0 of this Agreement. As further consideration for this Agreement, the COUNTY shall fund DIMS at no less than a cumulative rate of one twelfth of $531,222.72 per month (or $44,268.56 per month), for the months, or portions thereof, that DIMS is in operation under this Agreement, and only as long as the CITY is paying its

proportionate share of expenses for the DIMS program as set out in this Agreement; nothing in this Agreement shall restrict the District Attorney from providing real-time 24-hour screening under the DIMS program at a greater amount or greater corresponding rate.

5.2 Nothing in this Agreement prohibits the District Attorney from providing real-time 24-hour screening under the DIMS program to other law enforcement agencies within the 34th Judicial District, provided however, that in such case the total annual value of such shall not exceed the amount of $531,222.72.

5.3 The parties specifically agree that absent an amendment to this Agreement indicating otherwise, neither party is obligated to provide or fund the DIMS program under this Agreement, once either party has depleted its funding obligation under this Agreement.

6.0 PAYMENTS

6.1 The CITY shall make monthly payments of NINETEEN THOUSAND EIGHT HUNDRED EIGHTY-EIGHT AND 77/100 DOLLARS ($19,888.77) to the COUNTY for the months that real-time 24-hour screening under the DIMS program is being provided to the CITY under this Agreement.

6.1-1 Said monthly payments will be made by the CITY to the COUNTY for the actual screening performed under DIMS program as rendered under this Agreement: (a) as long as the COUNTY is paying its proportionate share of expenses for the DIMS program as set out in this Agreement; (b) only for such time until the CITY has expended the sum of $238,665.28; or (c) the Agreement is terminated or amended pursuant to the terms set forth herein.

6.1-2 The CITY shall pay the COUNTY by the fifteenth of each month for the actual screening performed under DIMS as utilized by the CITY, unless the CITY has already expended the total amount of its consideration under this Agreement or the Agreement is terminated or amended pursuant to the terms set forth herein.

6.2 The COUNTY shall bill the CITY by the first of each month for the CITY's portion of the DIMS program as set forth in Section 6.1 above.

6.2-1 The CITY may contest the information contained in these COUNTY bills within five (5) working days of the receipt of the bill by sending written notice to the County Auditor. In the event that a bill is contested, the County Auditor, with the District Attorney, and the Chief of Police, or their designated representatives, shall meet within five (5) working days of the notice of contest. If necessary, the bill shall be adjusted to reflect the proper billing to the CITY under the DIMS program and the CITY shall adjust its monthly payment to reflect said change. The CITY shall have an additional ten (10) working days after the meeting to pay such revised billing.

7.0 TERMINATION

This Agreement may be terminated as provided herein:

7.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing. Except as otherwise provided herein, all duties and obligations of the CITY and the COUNTY shall cease upon termination or expiration of this Agreement.

7.2 Termination by Either Party. It is further understood and agreed by the CITY and the COUNTY that either party may terminate this Agreement by giving fourteen (14) days written notice to the other party. Except as otherwise provided herein, all duties and obligations of the CITY and the COUNTY shall cease upon termination or expiration of this Agreement.

7.3 Limitation on Damages in the Event of Termination. 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 non-terminating party prior to the date of termination. The parties acknowledge and expressly warrant that no claim of damages will exist after the date of termination.

8.0 GENERAL PROVISIONS

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

8.1-1 Sovereign Immunity. The CITY and COUNTY reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act or any applicable statute. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

8.2 Equipment. The CITY shall provide an office area and telephones which may be used by the District Attorney's Office in conjunction with DIMS. The CITY, through the Chief of Police, may permit the District Attorney and his Assistant District Attorneys to have access to the Police Department I-LEADS computer system for use only in connection with providing screening assistance to El Paso Police officers in conjunction with DIMS.

8.2-1 The Chief of Police, at his sole discretion, may at any time and without advance notice, limit, suspend or terminate the authorization of the District Attorney or any Assistant District Attorney or employee or agent of the District Attorney to access the I-LEADS computer system.

8.2-2 Nothing in this Agreement will enhance or decrease the District Attorney's access to the Police Department's I-LEADS computer system for purposes other than providing screening assistance to El Paso Police officers in conjunction with DIMS.

8.3 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY (by authority of the City Council) and the COUNTY (by authority of the Commissioners Court). No claim or right arising out of a breach of contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing by the aggrieved party.

8.4 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.

8.5 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service certified mail, return receipt requested addressed to the respective other party at the address provided below:

City:	City Manager 300 N. Campbell El Paso, Texas 79901
Copy to:	Chief of Police 911 N. Raynor Street El Paso, Texas 79903
District Attorney:	Jaime Esparza 2nd Floor, Courthouse, Ste 201 500 E. San Antonio St. El Paso, Texas 79901
County:	County Judge 3rd Floor, Courthouse, Ste. 301 500 E. San Antonio St. El Paso, Texas 79901

8.6 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.

8.7 Entire Agreement. This Agreement, together with the Attachments attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of this Agreement. Further, this Agreement, together with the Attachments, supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement, which is not contained herein, shall be valid or binding.

Dated this _____ day of _____, 2013.

THE CITY OF EL PASO

_____
Oscar Leeser, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
John R. Batton
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Gregory Allen
Chief of Police

(Signatures Continue on Following Page)

Dated this _____ day of _____, 2013.

COUNTY OF EL PASO

_____
Veronica Escobar
County Judge

ATTEST:

_____
Delia Briones
County Clerk

APPROVED AS TO FORM:

_____
Kevin McCary, Assistant County Attorney
County Attorney's Office

APPROVED AS TO CONTENT

_____
Jaime Esparza, District Attorney
34th Judicial District

EXHIBIT A

DISTRICT ATTORNEY INFORMATION MANAGEMENT SYSTEM (D.I.M.S.)

(FY2014: September 1, 2013 to August 31, 2014)

STAFFING SCHEDULE

Attorney staffing consists of 21 to 23 shifts for the average work week, and supplemental shift scheduling for select periods (holidays and/or special operations). The District Attorney provides staffing by at least one attorney/prosecutor at all times.

The enumeration of shifts for the typical non-holiday operational DIMS week is as follows:

	MON	*TUE*	*WED*	*THU*	*FRI*	*SAT*	*SUN*
A-shift (Midnight - 8 a.m.)	#1	#4	#7	#10	#13	#16	#19
B-shift (8 a.m. - 4 p.m.)	#2	#5	#8	#11	#14	#17	#20
C-shift (4 p.m. - midnight)	#3	#6	#9	#12	#15	#18	#21
D-shift ("Baker") (E.g., 8 p.m. - 4 a.m. or 10 p.m. – 6 a.m.)					#22	#23	

Attorney staffing may be enhanced, in conjunction with law enforcement needs, to cover anticipated heavy DIMS volume because of holidays, peak crime periods, or because of special law enforcement operations (e.g., roundups, blood-warrants). Staffing schedules may be amended for efficiency, economy, and to insure round-the-clock staffing. Shifts #22 and #23 may overlap primary shifts for busier nights.

Clerical staffing consists of 21 shifts for the average work week, which correspond with the attorney shifts #1-21, as enumerated above. On rare occasions, clerical staffing is enhanced, to cover anticipated heavy DIMS volume. Premium wage for winter holiday scheduling is incorporated into the budget, for a total amount not to exceed five hundred dollars. Staffing schedules may be amended for efficiency or economy. Clerical shifts may be optional due to unanticipated absence of assigned personnel.

EXHIBIT B

DISTRICT ATTORNEY INFORMATION MANAGEMENT SYSTEM (D.I.M.S.), STAFFING RATES
Fiscal Year 2014
(FY2014: September 1, 2013 to August 31, 2014)

The total program staffing cost for FY2013 is as set out in the Consideration clause. The program funding is for its Attorney Component, and its Secretarial/ Clerical component.

Attorney Rates and Funding. Attorney participation in DIMS is voluntary. Funding is calculated as salary and corresponding benefits for shifts outside of regular office hours. The District Attorney pays regular salary rates for Attorney DIMS shifts that are within regular business hours. The District Attorney pays two flat rates for Attorney DIMS shifts that are outside of regular business hours: $365 (salary) per shift, for the busier shifts; and $340 (salary) per shift, for the lighter shifts. Shifts are slightly shorter for premium holidays (e.g., Christmas and New Year's Eve).

Clerical Rates and Funding. Clerical funding is calculated as salary and corresponding benefits. Rates vary according to El Paso County salary schedules for clerks and secretaries. Overtime rates are paid for work performed outside of regular business hours, as necessary to insure staffing by qualified personnel. For Christmas and New Years, no more than eighteen clerical hours are paid to reduce regular shift times, for eleven scheduled shifts.

EXHIBIT C

FY-2014
(2013-2014)
DIMS
SCHEDULE

WEEK	MONTH	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	*Holiday*
1	SEP '13							1	
2		2	3	4	5	6	7	8	*Labor Day*
3		9	10	11	12	13	14	15	
4		16	17	18	19	20	21	22	
5		23	24	25	26	27	28	29	
6	OCT '13	30	1	2	3	4	5	6	
7		7	8	9	10	11	12	13	
8		14	15	16	17	18	19	20	*Columbus Day*
9		21	22	23	24	25	26	27	
10	NOV '13	28	29	30	31	1	2	3	
11		4	5	6	7	8	9	10	
12		11	12	13	14	15	16	17	*Veteran's*
13		18	19	20	21	22	23	24	
14	DEC '13	25	26	27	28	29	30	1	*Thanksgiving +*
15		2	3	4	5	6	7	8	
16		9	10	11	12	13	14	15	
17		16	17	18	19	20	21	22	
18		23	24	25	26	27	28	29	*Christmas +*
19	JAN '14	30	31	1	2	3	4	5	*New Year +*
20		6	7	8	9	10	11	12	
21		13	14	15	16	17	18	19	
22		20	21	22	23	24	25	26	*M.L. King Day*
23	FEB '14	27	28	29	31	31	1	2	
24		3	4	5	6	7	8	9	
25		10	11	12	13	14	15	16	
26		17	18	19	20	21	22	23	*President's Day*
27	MAR '14	24	25	26	27	28	1	2	
28		3	4	5	6	7	8	9	
29		10	11	12	13	14	15	16	
30		17	18	19	20	21	22	23	
31		24	25	26	27	28	29	30	
32	APR '14	31	1	2	3	4	5	6	*Cesar Chavez*
33		7	8	9	10	11	12	13	
34		14	15	16	17	18	19	20	Good Friday
35		21	22	23	24	25	26	27	
36	MAY '14	28	29	30	1	2	3	4	
37		5	6	7	8	9	10	11	
38		12	13	14	15	16	17	18	
39		19	20	21	22	23	24	25	
40	JUN '14	26	27	28	29	30	31	1	Memorial Day
41		2	3	4	5	6	7	8	
42		9	10	11	12	13	14	15	
43		16	17	18	19	20	21	22	Juneteenth
44		23	24	25	26	27	28	29	
45	JUL '14	30	1	2	3	4	5	6	4th of July
46		7	8	9	10	11	12	13	
47		14	15	16	17	18	19	20	
48		21	22	23	24	25	26	27	
49	AUG '14	28	29	30	31	1	2	3	
50		4	5	6	7	8	9	10	
51		11	12	13	14	15	16	17	
52		18	19	20	21	22	23	24	
53		25	26	27	28	29	30	31	

Exhibit D

FY 2014 DIMS Staffing Component Projected Budget

			County of El Paso (69%)	City of El Paso (31%)
Cost	Attorney Staffing:	$528,712	$364,811.28	$163,900.72
	Clerical Staffing:	$241,176	$166,411.44	$ 74,764.56
Total Cost:		$769,888		
Funding:			$531,222.72	$238,665.28

Total Funding: $531,222.72 + $238,665.28 = $769,888