

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC Discussion/Action re: Approval of Agreement with the City of Laredo regarding fire/ambulatory services within Webb County

SUBMITTED BY: Juan Cruz **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: August 26, 2010

RECOMMENDATION:

It is recommended that the United ISD Board of Trustees discuss and take Action re: Approval of Agreement with the City of Laredo regarding fire/ambulatory services within Webb County

RATIONALE:

BUDGETARY INFORMATION

BOARD POLICY REFERENCE AND COMPLIANCE

- (a) City will make Fire Fighting and First Responder Medical Services available to the following UISD Schools: (1) Juarez-Lincoln Elementary, (2) Kennedy-Zapata Elementary, (3) Hachar Elementary, and (4) Salvador-Garcia Middle School, twenty-four (24) hours a day, seven (7) days a week. First Responder Medical Services will only be for UISD students, employees, patrons, and those individuals that have incidents occurring at said UISD Schools.
- (b) City will make First Responder Medical Services available to UISD School Buses and other UISD vehicles conducting UISD Business traveling outside the corporate limits of City but within UISD boundaries between the hours of 6:00 a.m. and 10:00 p.m. Monday through Saturday.
- (c) City will dispatch appropriate equipment and personnel for fire-fighting operations, rescue operations, emergency medical first response, hazardous materials response, and other emergency responses upon notification either by UISD or from the public of a need for services (911 calls). City will dispatch fire fighter medical first response personnel to begin emergency medical care upon notification either by UISD or from the public of a need for services (911 calls).
- (d) City will respond using its equipment and personnel.
- (e) All personnel acting for City under this Agreement will be employees of City.

“Fire Fighting and First Responder Medical Service” is defined to include: (1) Fire Protection and Suppression, (2) Fire Prevention, (3) Hazardous Material Control, (4) Emergency Rescue; (5) Emergency Medical First Responder Services; and (6) other Fire Fighting and First Responder Medical Services assistance to UISD as necessary.

SECTION II TERM

2.1 The initial term of this Agreement shall be Twelve (12) months from the date this Agreement is fully executed, subject to the termination provisions noted herein. This Agreement shall be renewed automatically unless terminated as provided herein.

SECTION III CONSIDERATION

3.1 In consideration for services being provided by City under this Agreement, UISD will provide “in-kind” services in the form of assistance during disaster and community-wide emergencies by authorizing City to use designated UISD buildings and other resources as part of the City’s Emergency Management Plan for disasters. UISD will also serve as a food service contractor during disaster and community-wide emergencies by providing meals, along with attendant supplies and labor, for disaster and community-wide victims and/or evacuees. UISD

will provide food products and supplies during disaster and community-wide emergencies to the extent permissible under the United States Department of Agriculture ("USDA").

SECTION IV TERMINATION

4.1 If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least **six (6) months** in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the one hundred eighty-first (181st) day after receipt of such notice. It is further agreed that both parties may terminate this Agreement at any time by mutual written agreement.

SECTION V CONTRACTURAL RELATIONSHIP

5.1 The parties to this Agreement are governmental entities that are entering into this Agreement pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

5.2 UISD 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 UISD to any obligation other than the obligations set forth in this Agreement.

SECTION VI RISK ALLOCATION-LIMITATION OF LIABILITY-INSURANCE

6.1 Liability.

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

6.2 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 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 and 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.

6.3 Intentional Risk Allocation.

The City and UISD 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.

6.4 No Indemnification.

The parties expressly agree that, except as provided therein, 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.

6.5 Fines and Penalties.

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, except as may be specifically provided by law.

6.6 Insurance.

Throughout the term of this Agreement, UISD shall provide and maintain:

- (a) Commercial General Liability Insurance with a minimum bodily injury and property damage of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, including contractual liability coverage.

The policy shall include an endorsement in favor of City: thirty (30) days notice of cancellation and City listed as an additional insured. UISD will provide City a certificate of coverage issued by the insurer(s). UISD shall not permit any insurance to lapse during the term of this Agreement.

All liability for claims filed by an employee of City covered by workers compensation will be the sole responsibility of City.

SECTION VII GOVERNMENTAL FUNCTION AND IMMUNITY

7.1 Governmental Function.

The parties expressly agree that, in all things relating to this Agreement, the City enters into this Agreement for the purposes of performing a governmental function and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

7.2 Sovereign Immunity.

The City and UISD 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. The parties expressly agree that 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.

SECTION VIII GENERAL PROVISIONS

8.1 Compliance with Laws.

The City and UISD shall comply with all applicable local, state, and federal laws in performance of their obligations under this Agreement.

8.2 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 thereto.

8.3 Amendment/Assignment.

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

8.4 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.

8.5 Venue.

The Parties hereto agree that this Agreement shall be enforceable in Webb County, Texas and if legal action is necessary to enforce it, exclusive venue shall lie in Webb County, Texas. Should the need for dispute resolution arise, venue is in Webb County, Texas.

8.6 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.

8.7 Section Headings.

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

8.8 Notices.

All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: Mr. Carlos Villarreal
City Manager
City of Laredo
1110 Houston Street, 3rd Floor
Laredo, Texas 78040

Copy to: Fire Chief Steve Landin
City of Laredo
One Guadalupe Street
Laredo, Texas 78041

UISD: Mr. Roberto J. Santos
Superintendent of Schools
United Independent School District
201 Lindenwood Drive
Laredo, Texas 78045

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

8.9 Representation of Counsel; Mutual Negotiation.

Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

8.10 Execution and Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement and no party shall be required to produce an original or all of such counterparts when making such proof.

8.11. Warranty of Capacity to Execute Contract.

The person signing this Agreement on behalf of the City warrants that he/she has the authority to do so and to bind the City to this Agreement and all the terms and conditions herein.

EXECUTED this the _____ day of _____, 2010.

CITY OF LAREDO

Carlos Villarreal
City Manager

ATTEST:

Gustavo Guevara Jr.
City Secretary

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Valeria M. Acevedo
Assistant City Attorney

Steve Landin
Fire Chief
City of Laredo

EXECUTED this the _____ day of _____, 2010.

UNITED INDEPENDENT SCHOOL
DISTRICT

Roberto J. Santos
Superintendent of Schools

APPROVED AS TO FORM:

Fortunato G. Paredes
Attorney for UNITED ISD