

A-17-38

G-7170-17-0001

MEMORANDUM OF UNDERSTANDING
BETWEEN NATIONAL PARK SERVICE
AND
EDDY COUNTY, NEW MEXICO

Article I - Background and Objectives

This agreement is entered into by and between the National Park Service (hereinafter "NPS"), United States Department of the Interior, acting through the Superintendent of Carlsbad Caverns National Park, and the Eddy County Sheriff's Office (hereinafter "ECSO"). The purpose of this agreement is to establish the terms and conditions under which the parties will provide mutual law enforcement assistance in and near Carlsbad Caverns National Park.

Whereas the Secretary of the Interior, acting through the NPS administers Carlsbad Caverns National Park as a unit of the national park system in accordance with 54 U.S.C. 320301 and the laws applicable generally to units of the national park system; and,

WHEREAS 54 U.S.C. 102701 authorizes the Secretary of the Interior "to designate... certain officers or employees of the Department of the Interior who shall maintain law and order and protect persons and property within areas of the National Park System"; and,

WHEREAS 54 U.S.C. 102711 authorizes the Secretary of the Interior to render "emergency rescue, firefighting and cooperative law enforcement assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the national park system"; and

WHEREAS, NMSA 4-41-2 (1978) authorizes the Eddy County Sheriff to enforce the laws of the State of New Mexico and ordinances duly enacted by the Eddy County Commission;

WHEREAS, NMSA 4-41-10 (1978) authorizes the ECSO to appoint qualified persons as special deputies for purposes of enforcing state law and county ordinances within Eddy County;

WHEREAS, the ECSO and the NPS have determined that the provision of law enforcement across jurisdictional boundaries in certain circumstances will be necessary and will increase the ability of the ECSO and the NPS to protect the safety and promote the general welfare of the public; and

Now, therefore the parties agree as follows:

Article II - Statement of Work

A. In-park Law Enforcement Assistance Pursuant to 54 U.S.C. 102701

1. In accordance with 54 U.S.C. 102701 the NPS shall enforce all applicable federal laws within Carlsbad Caverns National Park.
2. ECSO has primary responsibility for enforcing state laws and county ordinances within the park, including privately owned lands and state and county highways within the park. Emergency assistance will be provided by the NPS whenever possible upon official ECSO request. When the ECSO requests the assistance of the NPS for an incident in their jurisdiction, the NPS is authorized to render emergency law enforcement assistance and shall attempt to do so subject to the availability of manpower and resources, with due consideration to circumstances in both the requesting and assisting jurisdictions. The ECSO shall direct such requests to the NPS Chief Ranger or his/her designee, who must approve all such requests before any NPS law enforcement rangers may render emergency assistance. ECSO will control the scene and emergency assistance will continue only until such time that the ECSO has enough resources on the scene to adequately control the emergency or the exigency of the situation no longer exists.

B. Out of park Emergency Law Enforcement Assistance Pursuant to 54 U.S.C. 102711

1. The situations for which the NPS is authorized to render emergency law enforcement assistance under this agreement are the following:
 - a. Life or death incidents;
 - b. Accident or incident involving serious injury or fatality;
 - c. Crime scenes involving the protection of human life;
 - d. Officer in trouble;
 - e. Threats to public health or safety;
 - f. Incidents directly affecting park visitor safety or park resource protection;
 - g. Felonies committed in the presence of the NPS law enforcement ranger; and
 - h. Misdemeanors committed in the presence of any NPS law enforcement ranger that poses an immediate threat to the public's health or safety.
2. Upon receiving an official request from the ECSO, the NPS shall render emergency law enforcement assistance (in those situations described in provisions II.B.1 above) to the ECSO whenever possible. The ECSO shall direct such requests to the NPS Chief Ranger or his/her designee, who must approve all such requests before any NPS law enforcement rangers may render emergency assistance.
3. The NPS may render emergency law enforcement assistance in those situations where a properly appointed NPS law enforcement ranger, while

in the course of his/her official duties, observes an emergency situation (as defined in provision II.B.1 above), at which time the NPS law enforcement ranger shall secure and manage the scene. The NPS shall immediately notify the ECSO of the emergency. Upon arrival of the first ECSO officer on scene, the NPS law enforcement ranger shall relinquish control; however, upon request the NPS law enforcement ranger may assist the ECSO officer for the duration of the emergency.

4. The NPS shall render assistance only until such time as the ECSO has enough resources on the scene to adequately control the emergency or until the emergency no longer exists, whichever comes first.
5. The on-scene commanding officer of the ECSO shall be in command of all officers, including NPS law enforcement rangers who are rendering emergency assistance; provided that the ECSO on-scene commander shall exercise command of NPS law enforcement rangers only through the highest ranking NPS law enforcement ranger at the scene, which individual shall be identified by the NPS.
6. For good cause the NPS Chief Ranger or his/her designee may decide at any time to withdraw emergency law enforcement assistance.
7. NPS law enforcement rangers rendering emergency assistance to the ECSO pursuant to this agreement shall wear official NPS uniform or, if approved by the NPS Chief Ranger or his/her designee, plain clothes, shall remain under the authority and control of the NPS supervisor; shall be subject to the laws, regulations, and policies of the NPS and the United States; and shall not receive any monetary compensation for any source other than the NPS.
8. NPS law enforcement rangers rendering emergency assistance to the ECSO pursuant to this agreement shall be deemed acting within the scope of their federal employment. Under no circumstances shall NPS law enforcement rangers be deemed "borrowed servants" of the ECSO.

C. The parties further agree as follows:

1. Each party shall bear its own cost for furnishing services under this agreement, and neither party shall claim reimbursement for the costs from the other.
2. Nothing in this agreement shall be construed to bind the NPS to expend in any one fiscal year any sum in excess of funds appropriated by Congress or allocated by the NPS for the purposes of this agreement.
3. Each party hereby waives any and all claims, demands, and causes of action against the other party and its employees, and releases the other party and its employees from any and all liability, arising out of or resulting from activities under this agreement. Each party shall be solely responsible for any and all claims, demands, and causes of action and the costs of paying any compromise settlements, judgments, assessed costs, or fees (including attorney fees).

4. The parties shall coordinate all public information releases about law enforcement incidents, investigations, actions, and other matters involving both parties. No public information release by one party shall refer to the other party or to any employee of the other party (by name or otherwise) without the other party's prior approval.
5. The parties authorize use of ECSO and NPS agency radio frequencies for official law enforcement purposes to include non-emergency and emergency radio communications.

Article III - Term of Agreement

This agreement shall be effective for a period of five years after the date of final signature, unless it is terminated earlier by one of the parties pursuant to article VIII below. At the conclusion of that five-year term, this agreement may be extended or renewed by written agreement of the parties.

Article IV - Key Officials

All communication and notices regarding this agreement shall be directed to the following key official(s) for each party:

For the NPS:

Superintendent
Carlsbad Caverns National Park
3225 National Parks Highway
Carlsbad, NM 88220

For Eddy County Sheriff's Office:

Sheriff, Eddy County
Eddy County Sheriff's Office
Post Office Box 1240
Carlsbad, NM 88221

Article V - Property Utilization

Unless otherwise agreed to in writing by the parties, any property furnished by one party to the other shall remain property of the furnishing party. Any property furnished by the NPS to the ECSO shall be used and disposed of as set forth in the NPS Property Management Regulations.

Article VI - Prior Approval

See Article II - Statement of Work above.
Article VII - Reports and/or Other Deliverables

Upon request and to the full extent permitted by applicable law, the parties shall share with each other final reports of incidents involving both parties.

Article VIII - Modification of Termination

This agreement may be modified only by written instrument executed by the parties.

Either party may terminate this agreement by providing the other party with sixty (60) days advance written notice. In the event that one party provides the other party with notice of its intention to terminate, the parties shall meet promptly to discuss the reasons for the notice and to try to resolve their differences amicably. The parties commit to using every reasonable means available, including the use of a neutral mediator if necessary, to try to avoid terminating this agreement.

Article IX - Standard Clauses

A. Civil Rights

During the performance of this agreement, the parties agree to abide by the terms of the USDI-Civil Rights Assurance Certification, non-discrimination, against any person because of race, color, religion, sex, or national origin. The parties will take affirmative action to ensure the applicants are employed without regard to their race, color, religion, sex, or national origin.

B. Officials Not to Benefit

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

Article X - Authorizing Signatures

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated below, thereby executing this agreement.

For the National Park Service:

Douglas S Neighbor
Signature

Douglas Neighbor
Superintendent, Carlsbad Caverns National Park

5/3/17
Date

For Eddy County Sheriff's Office:

M. Cage
Signature

Mark Cage
Sheriff, Eddy County

5-15-2017
Date

ATTEST: Eddy County Clerk _____

Date

For Eddy County Board of County Commissioners:

Stella Davis
Signature

Stella Davis
Chair, Board of County Commissioners

May 2, 2017
Date

ATTEST: Eddy County Clerk Rebecca J. Jatte

5-2-17
Date

