

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

DEPARTMENT: Environmental Services

AGENDA DATE: March 26, 2013

CONTACT PERSON NAME AND PHONE NUMBER:
Kurt Fenstermacher, Interim Director, (915) 621-6892

DISTRICT(S) AFFECTED: County of El Paso

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the County of El Paso, for the period of September 1, 2012 through August 31, 2013, for the provisions of public health and environmental services by the City of El Paso for the County of El Paso, including services for those animals delivered by the County of El Paso to the City's Animal Shelter, and to designate the currently established Animal Shelter Advisory Committee to serve as the statutorily required committee described in Texas Health and Safety Code Section 823.005.

BACKGROUND / DISCUSSION:

The scope of services will include inspection services of public facilities, complaint investigation and enforcement, mosquito and animal control services, communicable disease investigation, medical health services, immunization services, tuberculosis and STD control services, air quality monitoring and inspections, and WIC nutrition services.

The County will pay an amount not to exceed \$552,439.00, excluding the fees for animals. The County will also pay an impound fee of \$55.00 and a daily kenneling fee of \$15.00 for each animal delivered to the Animal Shelter., and a daily quarantine fee of \$10.00 as necessary. The revenue from Animal Fees is estimated to be approximately \$250,000 for the fiscal year.

PRIOR COUNCIL ACTION:

September 2011

AMOUNT AND SOURCE OF FUNDING:

\$552,439.00 Plus Animal Fees of Approximately \$250,000.00
3100-34060-460250

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(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 between the City of El Paso and the County of El Paso, for the period of September 1, 2012 through August 31, 2013, for the provision of public health and environmental services by the City of El Paso for the County of El Paso, including services for those animals delivered by the County of El Paso to the City's Animal Shelter, and to designate the currently established Animal Shelter Advisory Committee to serve as the statutorily required committee described in Texas Health and Safety Code Section 823.005.

Dated this _____ day of _____ 2013.

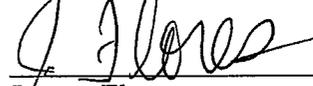
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

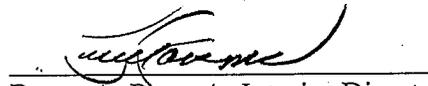
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT



Bruce A. Parsons, Interim Director
Department of Public Health

APPROVED AS TO FORM:



Kurt Fenstermacher, Interim Director
Department of Environmental Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into on last listed approved date below between the CITY OF EL PASO, TEXAS ("City") and the COUNTY OF EL PASO, TEXAS ("County") by and through their duly authorized officials, pursuant to the Interlocal Cooperation Act.

RECITALS

WHEREAS, the City and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, the City has both a Department of Public Health and a Department of Environmental Services; and

WHEREAS, this Agreement for interlocal cooperation for the City to provide certain public health and environmental services to the County is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned; and

WHEREAS, the County desires to have the City's appointed health authority serve as the County's health authority; and

WHEREAS, the County desires to have the City's designated local rabies control authority serve as the County's designated authority, as necessary pursuant to state law; and

WHEREAS, the County requests assistance from the City's Animal Services Division as the County has no location to house animals that it retrieves; and

WHEREAS, the County desires to have the City's Animal Shelter Advisory Committee serve as the County's Animal Shelter Advisory Committee; and

WHEREAS, the County will make available and/or transfer to the City certain information, in conjunction with goods or services that are being provided by the City to the County, which is confidential and must be afforded special treatment and protection; and

WHEREAS, the City will also have access to and/or receive from the County certain information that can be used or disclosed only in accordance with this Agreement and the HHS Privacy Regulations.

FOR THESE REASONS, and in consideration of the mutual promises contained in this Agreement, the County and the City mutually agree as follows:

1. **SCOPE OF SERVICES.**

1.1 The City shall perform the following services under the terms and conditions hereinafter stated, and the County hereby accepts and agrees to the following terms and conditions:

- 1.1.1 The City will issue permits and provide inspection services of food establishments at a frequency and in accordance with recommended protocols as established by the Texas Department of State Health Services (DSHS). The City will provide enforcement of applicable State laws and regulations as appropriate to help reduce the risk of food borne illnesses in said establishments. Appropriate and customary fees will be charged to the establishments, as permitted by law.
- 1.1.2 The City will conduct inspections of public facilities, to include but not be limited to public schools, public and semi-public swimming pools, laundromats, and tattoo parlors, at a frequency and in accordance with standard protocols, environmental health regulations, and applicable State law. The City will provide enforcement of applicable State laws and regulations as appropriate, to help reduce the risk of disease transmission and drowning hazards. Appropriate and customary fees will be charged to the inspected facilities, as permitted by law.
- 1.1.3 The City will provide complaint investigation/enforcement services as determined to be appropriate by City staff for those conditions that violate the Texas Health and Safety Code.
- 1.1.4 The City will provide mosquito control services, including but not limited to, collecting and identifying mosquito species, larviciding, adulticiding, providing enforcement of violations that create mosquito harborage as appropriate, tracking of vector-borne disease, and educating the public regarding disease prevention strategies. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.
- 1.1.5 The City agrees to provide the following animal control services:
 - 1.1.5.1 The City shall provide spay and neuter services to County residents and access to City rabies vaccination clinics by County residents.

1.1.5.2 The City will receive at the City's Animal Shelter located at 5001 Fred Wilson Road, El Paso, Texas 79906 (the "Shelter") each animal that the County delivers to said Shelter. The City will board each animal that the County delivers to said Shelter, whether it be for purposes of reuniting said animal with its owner, quarantine, providing all necessary medical care, evidence for a legal proceeding, or euthanization and disposal.

1.1.5.2.1 The City shall recoup from all animal owners who reclaim their animals at the Shelter all applicable fees in order to mitigate all charges to the County to include the one time impound fee (\$55.00); kenneling fee (\$15.00); and the quarantine fee of (\$10.00), prior to releasing an animal to the owner.

1.1.6 The City of El Paso will provide communicable disease investigation services for the purpose of tracking communicable diseases and helping to reduce transmission in accordance with appropriate epidemiological intervention. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.

1.1.7 The City of El Paso will provide immunization services to County residents to include but not be limited to childhood immunizations as recommended by the Texas DSHS and immunizations to protect against influenza. Appropriate and customary fees will be charged to those receiving these services.

1.1.8 The City of El Paso will provide tuberculosis and sexually transmitted disease control services to County residents. Services may include testing, treatment and investigation of contacts, as appropriate. Appropriate and customary fees will be charged to those receiving these services.

1.1.9 The City of El Paso will include the County within its programs and services for the purpose of the enhancement of the air quality, to include but not be limited to, routine ambient air monitoring, analysis of gasoline samples to ensure compliance with oxygen content, and investigation and enforcement of air related nuisances and other requirements as set forth by

the Texas Commission on Environmental Quality and/or the United States Environmental Protection Agency as appropriate.

1.1.10 The City will provide Women, Infants and Children (WIC) Nutrition services to residents in the unincorporated areas in the County in accordance with Texas DSHS requirements. Services may include medical health assessment, nutrition, breast-feeding promotion, social service referral, and food benefit issuances, as appropriate.

1.2 The City will provide necessary training for employees utilized in providing services under this Agreement, as may be required by law or determined to be appropriate by the City, and shall require all such personnel to maintain all required licenses and certifications in accordance with State and Federal laws.

1.3 The City agrees that in accordance with the provisions of any and all grants agreements or grant awards from federal and state agencies that are awarded on a county-wide basis, the City will provide services in the unincorporated areas of the County as required under the applicable grant provisions. Provided however, nothing in this Agreement shall obligate the City to perform services if the grant funds relating to a particular grant are not currently being paid to the City, and in any such instances, the City's Director of its Department of Public Health or the City's Director of its Department of Environmental Services shall give written notice to the County that the City is not providing the particular services for the reason that it has not received funding under the applicable grant. The City will provide written notice to the County of grant funding which becomes discontinued or terminated, and any election by the City not to seek the renewal of grants existing at the effective date of this agreement.

1.4 Nothing within the terms of this Agreement shall require the City to purchase additional equipment or hire additional personnel in order to comply with the terms of this Agreement.

1.5 The City agrees that it will keep accurate records of all services provided to the County pursuant to this Agreement as part of its routine data collection processes and shall report such activities on the City's web site on a monthly basis.

1.6 It is understood and agreed to between the parties that any portion of this Agreement providing for the delivery of public health and other services for which appropriate legal authority

has not been granted to the City, shall be null and void and of no force and effect, and the City shall not be obligated to provide those services.

2. **LOCATION OF PERFORMANCE.** The place where such services are to be performed is in the unincorporated areas in the County of El Paso where the City may lawfully provide public health and other services. The place where the specific services described in Subsections 1.1.5.1 and 1.1.5.2 are to be performed is at the Shelter.

3. **APPOINTMENT OF HEALTH AUTHORITY.** The Parties agree that the individual appointed to serve as health authority for the City of El Paso will serve as the health authority for the County, in accordance with Section 121.028(c), Texas Health and Safety Code.

4. **DESIGNATION OF ANIMAL SHELTER ADVISORY COMMITTEE.** The Parties agree that the currently established Animal Shelter Advisory Committee ("ASAC") will serve as the statutorily required advisory committee described in Section 823.005, Texas Health and Safety Code. This section 4 of the present Agreement shall replace in its entirety the Interlocal Agreement previously entered into by the Parties on February 3, 1987, as amended thereafter on September 24, 1996 and again on February 9, 1999, regarding an Animal Shelter Advisory Committee.

5. **DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY.** The Parties agree that the individual designated by the City to serve as the local rabies control authority will serve as the local rabies control authority for the County, as necessary pursuant to Section 826.017, Texas Health and Safety Code, unless the El Paso County Commissioners' Court, by court order, designates another party to service the County.

6. **RABIES ORDER.** The Parties expressly agree that the February 15, 1974 Rabies Order of the El Paso County Commissioners' Court, and any lawfully adopted successor orders, shall apply within the County and shall be enforceable by the City and its designated employees within the unincorporated areas of the County.

7. **COUNTY FOOD SAFETY.** The City agrees to collect food safety fees in accordance with applicable Orders, now in effect or hereinafter adopted by the Commissioners Court. All fees that the City collects for County Food Safety activities shall be retained by the City.

8. **TIMES OF PERFORMANCE.** The City shall commence the provision of its services on the 1st day of September 2012, and shall terminate on the 31st day of August 2013, regardless of the date of execution of this Agreement.

9. **COMPENSATION.**

9.1 The County agrees to pay the amount not to exceed FIVE HUNDRED FIFTY TWO THOUSAND FOUR HUNDRED THIRTY NINE DOLLARS AND NO/100 (\$552,439.00) for services rendered pursuant to Section 1 of this Agreement, excluding those services described in subsection 1.1.5.2 of this Agreement which shall be addressed below in Sections 9.3 and 9.4. This amount is based on a cost model developed by the City and relies on routine data collection processes and activities performed during the normal course of providing the services contemplated in this Agreement. Payments shall be made in equal monthly installments, each in the amount of FORTY SIX THOUSAND THIRTY SIX DOLLARS AND 58/100 (\$46,036.58), with the first payment becoming due and payable on the 1st day of September 2012 or within 10 days after the date that the County signs this Agreement, whichever is later.

9.2 The Parties acknowledge that the funds paid by the County pursuant to Section 9.1 above may not be sufficient in the event of an unexpected occurrence such as an outbreak, epidemic (i.e. rabies, cholera), or intervention of emerging or new diseases or public health threats (chemical or biological) in the unincorporated areas of the County. The County shall name a person to serve as a point of contact to discuss these types of public health threats, its intervention, and any additional costs that the County will need to pay to defray the resulting expenses. Such contact person shall be designated and disclosed to the director of the Department of Public Health as of the signing of this Agreement.

9.3 The County agrees to pay a one-time fee in the amount of FIFTY FIVE AND NO/100 DOLLARS (\$55.00) for each animal delivered to the Shelter by the County pursuant to Subsection 1.1.5.2 to this Agreement. The County agrees to pay a daily fee of FIFTEEN AND NO/100 DOLLARS (\$15.00) for any animal other than a dog or cat, such as but not limited to livestock, horse, pig, or chicken delivered to the Shelter by the County pursuant to Subsection 1.1.5.2 to this Agreement. If any animal's owner reclaims the animal at the Shelter and pays any kenneling fees to the City, then the City shall credit the County for those kenneling fees paid by the owner on the subsequent monthly invoice to the County. This fee will be billed separately from the monthly allocated amount addressed in Section 9.1 and will be based on actual animals delivered to the Shelter.

9.4 In addition to the applicable kenneling fees listed above in Section 9.3 for those services rendered pursuant to Subsection 1.1.5.2 to this Agreement, the County also agrees to pay a daily quarantine fee of TEN AND NO/100 DOLLARS (\$10.00) for any animal delivered to the

Shelter by the County that is injured, has or is suspected of having rabies, is pending a bite investigation, or is pending an animal cruelty investigation. If a quarantined animal's owner reclaims the animal at the Shelter and pays any quarantine fee to the City, then the City shall credit the County for those quarantine fees paid by the owner on the subsequent monthly invoice to the County. The City shall maintain detailed records supporting all billings and fee reimbursements and shall remit such information with its billings to the County. This fee will be billed separately from the monthly allocated amount addressed in Section 9.1 and will be based on actual animals quarantined at the Shelter.

10. **PAYMENTS PURSUANT TO THIS AGREEMENT.** All payments submitted under this Agreement shall be made payable to the City of El Paso, Attn: Financial Services, #2 Civic Center Plaza, El Paso, TX 79901-1196, or to the address provided by the City to the County in writing in the event the City relocates without the need to formally amend this Agreement in the event of an address change. In addition to the compensation provided for herein, the City shall retain all proceeds received from inspection, permit, and animal registration fees collected in the County. If a payment is not received by the City within thirty (30) days of delivery of the invoice, the City may charge the applicable interest rate under the Texas Prompt Payment Act, pursuant to Texas Government Code Chapter 2251. In the event that the County accrues an arrearage on payment, the City Comptroller or any collection agency retained by the City to collect delinquent accounts may add a collection fee of 21% to the account receivable if owing to the City for more than sixty (60) days, pursuant to the El Paso City Code, Ordinance 14700.

11. **LAW GOVERNING CONTRACT.** For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

11.1 *Authority of the City.* The County expressly agrees that the City shall have authority to enforce all laws and County Orders applicable to public health, to include animal regulation, within the jurisdiction of the County of El Paso, Texas. The County further agrees that, in the absence of any conflicting law, the City shall have authority to enforce the laws of the State of Texas and the County of El Paso, Texas within the jurisdiction of the County of El Paso, Texas. The County shall provide certified copies of all the County of El Paso, Texas Orders affecting public health upon execution of this Agreement and as requested by the City, including public

health and animal regulation orders subsequently adopted by the commissioners court during the term of this Agreement.

11.2 *Privileges and Immunities.* All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City when performing a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

11.3 *Governmental Function.* The Parties expressly agree that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

11.4 *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, THE CITY WILL NOT BE LIABLE TO ANY OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

11.5 *Maximum Aggregate Liability.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, IN NO EVENT SHALL THE CITY'S AGGREGATE LIABILITY TO ANY OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY THE PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID TO THE CITY UNDER THE TERMS OF THIS AGREEMENT.

11.6 *Intentional Risk Allocation.* Each of the Parties acknowledges 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.

12. **HHS PRIVACY REGULATIONS.** The Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule), see 45 CFR Part 160 and Subparts A and E of Part 164, requires that the City offer assurances to the County that the City will safeguard any protected health information received or created on behalf of the County. Pursuant to this requirement, the parties further agree to the terms and conditions of the Standard Business Associate Contract set forth in Appendix A and incorporated herein as if fully set forth.

The County continues its authorization for the City of El Paso to possess and maintain any protected health information received or created on behalf of the County and previously possessed or maintained by the District, in accordance with the terms of the Standard Business Associate Contract set forth in Appendix A.

13. **INDEPENDENT CONTRACTORS.** The City and the County are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the City nor the County nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.

14. **TERMINATION.** This Agreement may be terminated in whole or in part by either party upon thirty days written notice to the other party at the following addresses, or at a new address as provided in writing to the nonmoving party by a party which has moved its physical location within thirty (30) days of said relocation without the necessity of amending this contract:

CITY: City of El Paso
Attn: City Manager
PO Box 1890
El Paso, Texas 79950-1890

COUNTY: County of El Paso
Attn: County Judge
500 E. San Antonio
El Paso, Texas 79901

15. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

16. **HEADINGS.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

17. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

(signature pages follow)

Signature page for the City of El Paso, Interlocal Agreement between the City
of El Paso and the County of El Paso, Texas.

APPROVED this _____ day of _____, 201_.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

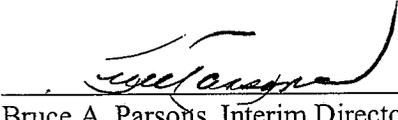
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



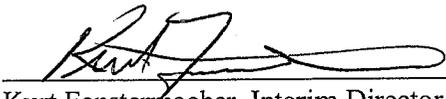
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Bruce A. Parsons, Interim Director
Department of Public Health

APPROVED AS TO FORM:

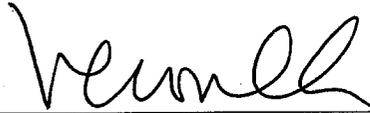


Kurt Fenstermacher, Interim Director
Department of Environmental Services

(signatures continue on the following page)

Signature page for the County of El Paso, Interlocal Agreement between the
City of El Paso and the County of El Paso, Texas.

COUNTY OF EL PASO



Veronica Escobar
County Judge

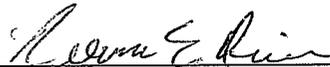
APPROVED this 28th day of february, 2013

ATTEST:

APPROVED AS TO FORM:



County Clerk



Assistant County Attorney

APPENDIX A

HIPPA BUSINESS ASSOCIATE CONTRACT

(a) **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

1. **Contract** shall refer to this document.
2. **Business Associate** means the City.
3. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164.
4. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" is defined 45 C.F.R. 164.501.
5. **Information** shall mean any "health information" provided and/or made available by the COUNTY to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.102.
6. **Parties** shall mean BUSINESS ASSOCIATE and the COUNTY.
7. **Secretary** shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated.

(b) **Limits on Use And Disclosure Established by Terms of Contract.** BUSINESS ASSOCIATE hereby agrees that is shall be prohibited from using or disclosing the Information provided or made available by the COUNTY for any other purpose other than as expressly permitted or required by this Contract (ref. 164.504(e)(2)(i).)

(c) **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from COUNTY for the following stated purposes:

To provide public health services to the community of the COUNTY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the COUNTY (ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

(d) **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper

management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 164.504(e)(4)(i)(A-B)).

(e) **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from COUNTY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

1. The disclosure is required by law; or
2. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 164.504(e)(4)(ii)).

(f) **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of COUNTY. (ref. 164.504(e)(2)(i)(B)).

(g) **BUSINESS ASSOCIATE OBLIGATIONS:**

1. **Limits on Use and Further Disclosure Established by Contract and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the COUNTY shall not be further used or disclosed other than as permitted or required by the Contract or as required by law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
2. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Contract. (ref. 164.504(e)(2)(ii)(B)).
3. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that is shall report to COUNTY **within two (2) days of discovery** any use or disclosure if Information not provided for or allowed by this Contract. (ref. 164.504(e)(2)(ii)(C)).

4. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that anytime Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract. (ref. 164.504(e)(2)(ii)(D)).
5. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E)).
6. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the COUNTY, amend or correct protected health information (PHI) in its possession or under its control.
7. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
8. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(G)).
9. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the COUNTY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H)).
10. **Return or Destruction of Information.** At the termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of

the COUNTY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use or disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to the COUNTY that the Information has been destroyed. (ref.164.504(e)(2)(ii)(I)).

11. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the HHS Privacy Regulations. (ref. 164.530(f)).
12. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 164.530(e)(1)).

(h) **Property Rights.** The Information shall be and remain the property of the COUNTY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.

(i) **Modifications.** The COUNTY and BUSINESS ASSOCIATE agree to modify this Business Associate Contract, in order to comply with Administrative Simplification requirements of HIPPA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the "Privacy Rule" and Subparts A and C the "Security Rule") of the Code of Federal Regulations.

(j) **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Contract shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

(k) **Termination for Cause.** Upon the COUNTY's knowledge of a material breach by BUSINESS ASSOCIATE, the COUNTY shall:

- (1) Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the COUNTY.

- (2) Immediately terminate the Business Associate Contract if BUSINESS ASSOCIATE has breached a material term of this Business Associate Contract and cure is not possible.
- (3) Notify the Secretary of HHS if termination is not possible.