

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

DEPARTMENT: Financial Services
AGENDA DATE: July 14, 2009
CONTACT PERSON/PHONE: Carmen Arrieta-Candelaria, 915-541-4011
DISTRICT(S) AFFECTED: #4, Representative Robinson

SUBJECT:

A resolution that the Mayor be authorized to sign a Mutual Termination and Release Agreement by and between the City of El Paso, Texas and the County of El Paso, Texas terminating the December 18, 2001 Interlocal Agreement as amended for the Construction of an Animal Control Facility for the El Paso City County and Environmental District and permitting the City of El Paso to acquire all interests of the County of El Paso, Texas in the Animal Control Facility at 5001 Fred Wilson Road.

BACKGROUND / DISCUSSION:

The City of El Paso and the County of El Paso had established a public health district known as the El Paso City-County Health and Environmental District and entered into a cooperative Agreement for its operation. On December 18, 2001 the City and County entered into an Interlocal Agreement for the construction of an Animal Control Facility for the El Paso City-County Health and Environmental District. The Interlocal Agreement identified a procedure for the valuation and transfer of the real property and the Animal Control Facility should the City and the County terminate the El Paso City-County Health and Environmental District. On October 8, 2002 the City and County amended the Interlocal Agreement to clarify the percentage ownership interest of the City and the County of the jointly owned Animal Control Facility to be built on City owned property. On December 31, 2007 the El Paso City-County Health and Environmental District ceased to exist. The City and the County are in agreement that the City will acquire all the County's interest in the Animal Control Facility at 5001 Fred Wilson, in accordance with the terms and condition's of the Interlocal Agreement and amendments, and that the mutual termination will cancel any further obligation on the part of the City and County.

PRIOR COUNCIL ACTION:

December 18, 2001, October 8, 2002, December 30, 2002, and December 31, 2007

AMOUNT AND SOURCE OF FUNDING:

Fund 27503

BOARD / COMMISSION ACTION:

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, the City of El Paso (the "City") and the County of El Paso, Texas (the "County") had established a public health district known as the El Paso City-County Health and Environmental District and had entered into a Cooperative Agreement for its operation pursuant to the Texas Health and Safety Code; and

WHEREAS, on Dec. 18, 2001, the City and the County entered into an Interlocal Agreement for the construction of an Animal Control Facility for the El Paso City-County Health and Environmental District; and

WHEREAS, the Interlocal Agreement identified a procedure for the valuation and transfer of the real property and the Animal Control Facility should the City and the County terminate the Cooperative Agreement which created the El Paso City-County Health and Environmental District; and

WHEREAS, on Oct. 8, 2002, the City and the County amended the Interlocal Agreement to clarify that the Animal Control Facility would be constructed on Fred Wilson Road on real property owned by the City and that the constructed improvements would be jointly owned by the City and the County as tenants in common; and

WHEREAS, the Oct. 8, 2002 Amendment to the Interlocal Agreement, also clarified the percentage ownership interest of the City and the County in the constructed improvements; and

WHEREAS, effective Dec. 30, 2002, the City and the County amended the Interlocal Agreement to address the failure to begin construction on the identified Animal Control Facility at 5001 Fred Wilson Road; and

WHEREAS, on Dec. 31, 2007, the El Paso City-County Health and Environmental District ceased to exist, and City and the County are in agreement that the City will acquire all of the County's interest in the Animal Control Facility at 5001 Fred Wilson Road, pursuant to the terms and conditions of the Interlocal Agreement, and its amendments; and

WHEREAS, the City and the County are also in agreement that the mutual termination of the Interlocal Agreement and its amendments shall cancel any further obligation on the part of the City and the County under the Interlocal Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Mutual Termination and Release Agreement by and between the City of El Paso, Texas and the County of El Paso, Texas terminating the Dec. 18, 2001 Interlocal Agreement, as amended for the Construction of an Animal Control Facility for the El Paso

City-County Health and Environmental District and permitting the City of El Paso to acquire all interests of the County of El Paso, Texas in the Animal Control Facility at 5001 Fred Wilson Road.

ADOPTED this _____ day of _____, 2009.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

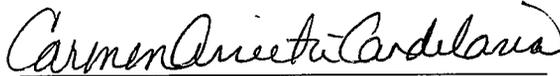
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria
Chief Financial Officer

STATE OF TEXAS

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§
§

MUTUAL TERMINATION AND

COUNTY OF EL PASO

RELEASE AGREEMENT

This Mutual Termination and Release Agreement is made this _____ day of _____, 2009 by and between the City of El Paso, a home-rule municipal corporation of El Paso County, Texas, hereinafter referred to as the "CITY," and the County of El Paso, Texas, hereinafter referred to as the "COUNTY."

WITNESSETH

WHEREAS, the CITY and the COUNTY had established a public health district known as the El Paso City-County Health and Environmental District and had entered into a Cooperative Agreement for its operation pursuant to the Texas Health and Safety Code; and

WHEREAS, on Dec. 18, 2001, the CITY and the COUNTY entered into an Interlocal Agreement for the construction of an Animal Control Facility for the El Paso City-County Health and Environmental District, hereinafter referred to as the "Interlocal Agreement," a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes; and

WHEREAS, the Interlocal Agreement identified a procedure for the valuation and transfer of the real property and the Animal Control Facility should the CITY and the COUNTY terminate the Cooperative Agreement which created the El Paso City-County Health and Environmental District; and

WHEREAS, on Oct. 8, 2002, the CITY and the COUNTY amended the Interlocal Agreement to clarify that the Animal Control Facility would be constructed on Fred Wilson Road on real property owned by the CITY and that the constructed improvements would be jointly owned by the CITY and the COUNTY as tenants in common; and

WHEREAS, the Oct. 8, 2002 Amendment to the Interlocal Agreement, also clarified the percentage ownership interest of the CITY and the COUNTY in the constructed improvements, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes; and

WHEREAS, effective Dec. 30, 2002, the CITY and the COUNTY amended the Interlocal Agreement to address the failure to begin construction on the identified Animal Control Facility, at the Fred Wilson Road location, a copy of which is attached hereto as Exhibit "C" and made a part hereof for all purposes; and

WHEREAS, on Dec. 31, 2007, the El Paso City-County Health and Environmental District ceased to exist, and CITY and the COUNTY are in agreement that the CITY will acquire all of the COUNTY's interest in the Animal Control Facility pursuant to the terms and conditions of the Interlocal Agreement, and its amendments; and

KK-09-196

WHEREAS, the CITY and the COUNTY are also in agreement that the mutual termination of the Interlocal Agreement and its amendments shall cancel any further obligation on the part of the CITY and the COUNTY under the Interlocal Agreement,

NOW THEREFORE BE IT RESOLVED by the parties as follows:

The parties signatory to this agreement, in consideration of the mutual promises, covenants and obligations to be done as hereinafter set forth agree as follows:

1. That the Interlocal Agreement as subsequently amended between the CITY and the COUNTY is hereby mutually terminated effective July 1, 2009, and upon the CITY's tender of ONE MILLION, ONE HUNDRED THIRTY-TWO THOUSAND AND 00/100 DOLLARS (\$1,132,000.00) to the COUNTY. This action is to the mutual benefit of the CITY and the COUNTY, and the parties agree and hereby do waive any notice for termination requirement in the Interlocal Agreement, as amended. All improvements located at 5001 Fred Wilson Road and used in connection with the Animal Control Facility are hereby declared to be the sole property of the CITY, and the COUNTY hereby forever releases any and all claims, the same, of whatsoever nature or kind under the Interlocal Agreement, as amended.
2. The transfer and possession of the improvements located at 5001 Fred Wilson Road and used in connection with the Animal Control Facility is of sufficient benefit and consideration to the CITY, and the CITY and the COUNTY agree that the ONE MILLION, ONE HUNDRED THIRTY-TWO THOUSAND AND 00/100 DOLLARS (\$1,132,000.00) is adequate consideration to the COUNTY so that any termination value or any obligation or obligations as set forth in the Interlocal Agreement, as amended, is not required. It is the intention of the parties that the termination of the Interlocal Agreement, as amended, is to be without any additional costs, obligation or liability on the part of the CITY or the COUNTY. Notwithstanding anything in the Interlocal Agreement, as amended, to the contrary, the COUNTY hereby releases and forever discharges the CITY from any obligation to make any termination payment to the COUNTY and any other obligation under the Interlocal Agreement, as amended.
3. The CITY and the COUNTY do hereby forever release and discharge each other from any and all obligations, claims, causes of actions, damages, losses, liabilities, costs and expenses, including without limitation, reasonable attorneys' fees whether known or unknown, directly or indirectly related to the Interlocal Agreement, as amended. The CITY hereby accepts the premises "AS IS" with no expectation as to condition or fitness for a particular use.

4. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas. Venue for any action shall be in the City of El Paso, El Paso County, Texas.
5. This document shall be construed as equally binding on the parties and the fact that one party or the other shall be construed as equally binding on the parties and the fact that one party or the other drafted the document shall not be interpreted as requiring a strict construction of the provisions of the instrument against either party.

IN WITNESS WHEREOF, this Mutual Termination and Release Agreement has been executed by the parties named hereinabove as of the date, month and year first written above.

CITY: THE CITY OF EL PASO, TEXAS

By: _____
John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2009, by John F. Cook as Mayor of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires

(Signatures continued on next page)

COUNTY: THE COUNTY OF EL PASO, TEXAS

By: Anthony Cobos
Anthony Cobos, County Judge

ATTEST:

County Clerk

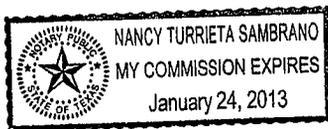
APPROVED AS TO FORM:

Erich Morales
Erich Morales, Assistant County Attorney

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 15th day of April, 2009, by Anthony Cobos, as County Judge for the County of El Paso, Texas.



Nancy Turrieta Sambrano
Notary Public, State of Texas

1-24-2013.
My Commission Expires

THE STATE OF TEXAS)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION OF AN ANIMAL CONTROL FACILITY FOR THE
EL PASO CITY-COUNTY HEALTH AND ENVIRONMENTAL DISTRICT

THIS INTERLOCAL AGREEMENT is entered into on this 18th day of December, 2001 by and between the CITY OF EL PASO, a home- rule municipal corporation of El Paso County, Texas, by and through its duly authorized officials and hereinafter referred to as the "City", and the COUNTY OF EL PASO, State of Texas, by and through its duly authorized officials, hereinafter referred to as the "County".

RECITALS

Whereas, the City and the County have established a public health district known as the El Paso City-County Health and Environmental District (hereinafter referred to as the "District") in accordance with Texas Health & Safety Code Section 121.041 and have entered into a Cooperative Agreement for its operation pursuant to Texas Health and Safety Code Section 121.044; and

Whereas, the Parties have determined that the District is in need of a new Animal Control Facility to enhance the efficient performance of its duties; and

Whereas, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

Whereas, the City and the County each find that a consolidated effort in the construction of a new Animal Control Facility is in each party's best interest and that of the public and that this agreement will increase the effective and efficient functioning of each party; and

Whereas, the COUNTY and the CITY are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this

agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

Whereas, the COUNTY and the CITY specify that any party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party;

Now therefore, in consideration of the premises, and of the terms, provisions, and mutual promises herein contained which fairly compensate the performing party, it is mutually agreed as follows:

1. ANIMAL CONTROL FACILITY PROJECT BUDGET AND CONSTRUCTION

1.1 Project Budget. The City and the County shall construct a new Animal Control Facility for the El Paso City-County Health and Environmental District pursuant to Texas Health and Safety Code Section 121.047 (hereinafter "the Project"). The City shall appropriate and reserve \$2.5 million and the County shall appropriate and reserve \$1.3 million for the Project, for a total Project Budget of \$3.8 million. In the event that funding from sources other than the City or the County are obtained for this Project, the Project Budget may be increased, however, under no circumstances shall either the City's or the County's financial contribution to the Project exceed these appropriated amounts. Indirect costs shall not be considered as a part of an entity's financial contribution.

1.2 Project Procurement and Construction Services. The City shall perform general administrative support and all the procurement, contracting, and construction project management services necessary for completion of the Project pursuant to the applicable laws, rules, and procedures of the City. The City shall enter into contracts for any required architectural and engineering professionals and construction services for the development and construction of the Project. Any insurance for the Project required or obtained naming the City

as an insured, shall be required to also name the County as an additional insured under the same terms and conditions as the City.

2. PROJECT MANAGEMENT COMMITTEE

2.1 Project Management Committee. A Project Management Committee (hereinafter "the Committee") of three members shall be appointed to supervise, manage, and control the Project. The Committee shall monitor and direct the City's employees and contractors in the services they perform in furtherance of the Project.

2.2 Appointment. The three members of the Committee shall be designated as follows: one member shall be the Deputy Director of the District; one member shall be a county commissioner designated by the El Paso County Commissioners Court; and the remaining member shall be a city employee appointed by the Mayor. The members of the Committee shall serve at the pleasure of the appointing authority.

2.3 Quorum. A Quorum of the Committee shall be three (3) and no meeting of the Committee shall take place unless all members are present.

3. POWERS AND DUTIES OF THE COMMITTEE

3.1 Oversight Duties. The Committee shall supervise, manage, and control the Project and shall monitor and direct the City's employees and contractors in the services they perform in furtherance of the Project.

3.2 Project Milestones. The Committee shall review and, by a unanimous vote signified by the signature of each, make written recommendations to the Mayor and City Council and Commissioner's Court with regard to each of the five following Project Milestones:

- 1) final selection of the Project Site;
- 2) final approval of the Project Design for Construction;
- 3) any changes to the Project Design for Construction due to an increase in the Project Budget or any other reason;
- 4) the award of the construction bid for the Project; and
- 5) any change orders to the construction contract for the Project.

The Committee may, in its discretion, amend or modify its written recommendation on any Project Milestones by a unanimous vote signified by the signature of each member to the amendment or modification.

3.3 Action by Mayor and City Council on Committee Recommendations. In the event that the Mayor and City Council decline to follow the written recommendation, or any amendment or modification thereto, of the Committee regarding any Project Milestone, the final decision on the Project Milestone must be made by both the City and the County, with each governmental entity approving any action regarding said Project Milestone in the manner provided by law for action by the governmental entity.

4. PAYMENT

Within fifteen (15) days of the approval by the City of item number 1 of the Project Milestones as defined in paragraph 3.2, the County shall pay to the City one-fourth of its contribution to the Project Budget, without demand. Within fifteen (15) days of the approval by the City of item number 2 of the Project Milestones as defined in paragraph 3.2, the County shall pay to the City an additional one-fourth of its contribution to the Project Budget, without demand. The remaining balance of the County's contribution to the Project Budget shall be paid to the City within fifteen (15) days of the approval by the City of item number 4 of the Project Milestones as defined in paragraph 3.2. Upon completion of the Project or in the event the Project is abandoned, the City shall

reconcile the expenditures already made, or due and owing under contract for the Project and shall remit the County's proportionate share of the unspent Project Budget to the County within sixty (60) days of completion or abandonment. Abandonment shall be defined as failure to begin construction on the Project by December 31, 2002 or termination or suspension of construction of the Project lasting longer than sixty (60) days.

5. OWNERSHIP OF PROPERTY

5.1 Joint Proportional Ownership. The parties anticipate that the Project will be constructed on real property owned by the City. After final selection of the Project Site is made, the site shall be appraised with the cost of said appraisal to be paid from the Project Budget. The appraised value of the Project Site shall be added to the City's financial contribution to the Project. The real property and the animal control facility shall be jointly owned by the City and the County in the proportion to which the financial contribution of each relates to the total combined financial contribution of both. Any funding in the Project Budget from any sources other than the City and the County shall not affect the joint proportional ownership of the property and improvements by the City and the County.

5.2 Transfer of Real Property. Within thirty (30) days of the start of construction on the Project, the City shall execute a General Warranty Deed for the Project Site to the City and the County, as tenants in common, reflecting the percentage ownership interest of each as determined in Section 5.1 above. The District shall assure that adequate casualty insurance for the Facility shall be maintained at all times.

5.3 Transfer of Animal Control Operations. In the event the City and County terminate the Cooperative Agreement which created the District, or in the event the District ceases to provide animal control operations in El Paso County, the real

property and Animal Control Facility shall be transferred to the entity that assumes animal control operations in the city and the county. The property and fixtures shall be re-appraised and the transferring entity shall be entitled to payment of the value of its ownership interest or as the parties otherwise agree at that time.

6. MISCELLANEOUS

6.1 Notice. Any and all notices required to be given by one party to the other under the terms of this Agreement shall be in writing and shall be effective if sent by certified mail, return receipt requested, or facsimile transmission to the following addresses:

City of El Paso
Attn.: Mayor
2 Civic Center Plaza
El Paso, Texas 79901

El Paso City-County Health & Environmental District
Attn.: Director
1148 Airway
El Paso, Texas 79925

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

6.2 Venue. For the purpose of determining the place of contract and the law governing 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.

6.3 Entire Agreement. This writing constitutes and expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by both/all parties.

In witness whereof the parties execute this Agreement.

ATTEST:



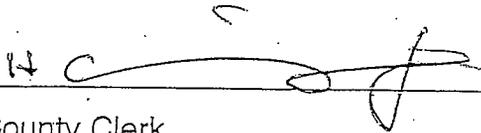
City Clerk

THE CITY OF EL PASO



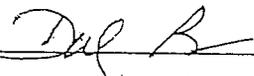
Mayor Raymond C. Caballero
Agenda Date: 12-18-01

ATTEST:



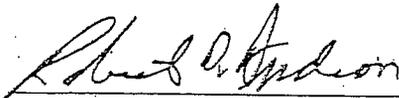
County Clerk

THE COUNTY OF EL PASO



County Judge
Agenda Date: 12/17/01

APPROVED AS TO FORM:



Assistant City Attorney
Robert D. Andron

APPROVED AS TO FORM:



Assistant County Attorney

**AMENDMENT TO INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION OF AN ANIMAL CONTROL FACILITY FOR THE
EL PASO CITY-COUNTY HEALTH AND ENVIRONMENTAL DISTRICT**

THIS AMENDMENT TO THE INTERLOCAL AGREEMENT FOR THE CONSTRUCTION OF AN ANIMAL CONTROL FACILITY FOR THE EL PASO CITY-COUNTY HEALTH AND ENVIRONMENTAL DISTRICT entered on the 18th day of December, 2001, (Agreement), is by and between the CITY OF EL PASO, a home rule municipal corporation of El Paso County, Texas, by and through its duly authorized officials and hereinafter referred to as the "City," and the COUNTY OF EL PASO, State of Texas, by and through its duly authorized officials, hereinafter referred to as the "County."

WITNESSETH

WHEREAS, on 18th day of December, 2001, the City and the County entered into the aforesaid Interlocal Agreement regarding the funding and construction of a new regional facility for Animal Control;

WHEREAS, such Interlocal Agreement provided that the Project will be constructed on real property owned by the City;

WHEREAS, such Interlocal Agreement provides that the real property and the animal control facility shall be jointly owned by the City and the County in the proportion to which the financial contribution of each relates to the total combined financial contribution of both;

WHEREAS, the City and the County through their respective governing body have approved the selection of Public Service Board property located on Fred Wilson Road, El Paso, Texas, as the site for the Animal Control facility;

WHEREAS, the real property at the selected site cannot be jointly owned by the City and the County without an increase in funds expended for the acquisition of such property, and it is in the interest of taxpayers that project funds be maximized towards the construction of the facility;

FOR THESE REASONS, AND IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

5. OWNERSHIP OF PROPERTY

5.1 Ownership. The Project will be constructed on Public Service Board land released to the City. The acquisition costs shall be added to the City's financial contribution to the Project. The real property shall be owned by the City. The constructed improvements shall be jointly owned by the City and the County, as tenants in common, in the proportion to which the financial

contribution of each relates to the total combined financial contribution of both. Any funding in the Project Budget from any sources other than the City and the County shall not affect the joint proportional ownership of the improvements by the City and the County.

5.2 Transfer of Improvements. Within thirty (30) days of the start of construction on the Project, the City shall execute a General Warranty Deed for the Project Site to the City and the County, as tenants in common, reflecting the percentage ownership interest of each as determined in Section 5.1 above. The District shall assure that adequate casualty insurance for the Facility shall be maintained at all times.

5.3 Transfer of Animal Control Operations. In the event the City and County terminate the Cooperative Agreement which created the District, or in the event the District ceases to provide animal control operations in El Paso County, the Animal Control Facility shall be transferred to the entity that assumes animal control operations in the city and the county. The property and fixtures shall be re-appraised and the transferring entity shall be entitled to payment of the value of its ownership interest or as the parties otherwise agree at that time.

All other terms and conditions of the Agreement dated December 18, 2001, are continued and incorporated herein.

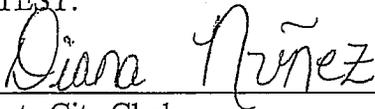
APPROVED the 8th day of October, 2002.

THE CITY OF EL PASO



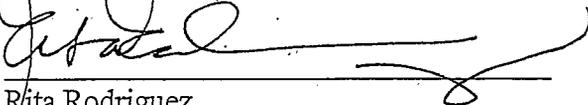
Raymond C. Caballero
Mayor

ATTEST:



Deputy City Clerk

APPROVED AS TO FORM:



Rita Rodriguez
City Attorney

Exhibit "B."

Page 2 of 4

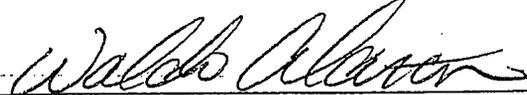
APPROVED the 14th day of October, 2002.

THE COUNTY OF EL PASO



Dolores Briones
County Judge

ATTEST:



Deputy County Clerk

APPROVED AS TO FORM:



Lee Shapleigh
Assistant County Attorney

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Authorizing the Mayor to sign an Amendment to Interlocal Agreement for the Construction of an Animal Control Facility for the El Paso City-County Health and Environmental District, amending ownership provisions of real property.

ADOPTED this 8th day of October, 2002.

CITY OF EL PASO:



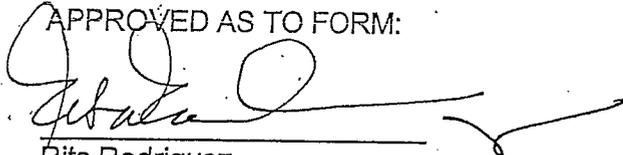
Mayor Raymond C. Caballero

ATTEST:



City Clerk

APPROVED AS TO FORM:



Rita Rodriguez
City Attorney

**SECOND AMENDMENT TO INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION OF AN ANIMAL CONTROL FACILITY FOR THE
EL PASO CITY-COUNTY HEALTH AND ENVIRONMENTAL DISTRICT**

Heretofore, on the 18th day of December, 2001, the County of El Paso, Texas (hereinafter called "County"), and the City of El Paso, a home rule municipal corporation of El Paso County, Texas, (hereinafter called "City") entered into an Interlocal Agreement For The Construction Of An Animal Control Facility For The El Paso City-County Health And Environmental District, which they amended on October 14, 2002, (both attached hereto and made a part hereof for all purposes). The Parties now desire to further amend the Agreement for the convenience of both parties. All sections of the Agreement and 1st Amendment to the Agreement not specifically amended herein shall remain in full force and effect.

1. The last sentence of Section 4 of the original Agreement dated December 18, 2001, shall be amended to read as follows:

Abandonment shall be defined as failure to begin construction on the Project by December 31, 2003 or termination of construction or suspension of construction lasting longer than sixty (60) days.

THIS SECOND AMENDMENT IS EFFECTIVE the 30th day of December, 2002, regardless of its date of execution.

ATTEST:

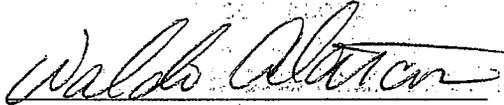
THE CITY OF EL PASO

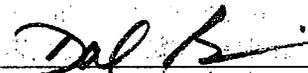

Richarda Duffy Momsen
City Clerk


Mayor Raymond C. Caballero
Date: 4/7/03

ATTEST:

THE COUNTY OF EL PASO

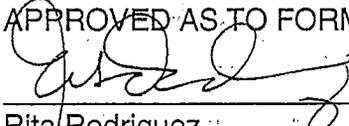

Waldo Alarcón
County Clerk


County Judge Dolores Briones
Date: 4/7/03

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Assistant County Attorney


Rita Rodriguez
City Attorney