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

**DEPARTMENT:** **Public Health**

**AGENDA DATE:** **CCA 10/22/13**

**CONTACT PERSON NAME AND PHONE NUMBER: Robert Resendes, 771-5794**

**DISTRICT(S) AFFECTED:** **All**

**SUBJECT:**

**That** the City Council approves of the appointment of Hector I. Ocaranza, M.D., as the local health authority for a two-year term and sets the total compensation of the health authority at $48,000.00 for services rendered for that two-year term, pursuant to Section 121.033 of the Texas Health and Safety Code.

**BACKGROUND / DISCUSSION:**
Dr. Ocaranza has previously served as the Health Authority for the Department of Public Health.

**PRIOR COUNCIL ACTION:**
Council approved similar item on 04/16/07, 12/22/09, 01/10/12

**AMOUNT AND SOURCE OF FUNDING:**

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

**DEPARTMENT HEAD:** _____

# RESOLUTION

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

**That** the City Council approves of the appointment of Hector I. Ocaranza, M.D., as the local health authority for a two-year term and sets the total compensation of the health authority at $48,000.00 for services rendered for that two-year term, pursuant to Section 121.033 of the Texas Health and Safety Code.

ADOPTED this __ day of _____, 2013.

CITY OF EL PASO

_____
Oscar Leeser
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Robert Resendes, MBA, MT, CLS, Director
Department of Public Health

PL Matter #11-1052-091.001; PL Doc #: 215961; RESO-Health Authority Appt & Salary/JF

# APPOINTMENT OF HEALTH AUTHORITY
# CITY OF EL PASO

**WHEREAS,** the director of the City of El Paso's Department of Public Health is authorized, by ordinance and in conformity with Chapter 121 of the Texas Health and Safety Code, to appoint the Health Authority of the City of El Paso, with the approval of the City Manager.

**NOW, THEREFORE,** upon taking the OATH OF OFFICE, Hector I. Ocaranza, M.D., be and is hereby appointed health authority for the City of El Paso, Texas, effective for a two year term of office beginning January 1, 2014.

_____
Robert Resendes, MBA, MT(ASCP), CLS(RI)
Director, Department of Public Health

APPROVED:

_____
Joyce A. Wilson
City Manager

Filed in the Office of the City Clerk this _____ day of _____, 2013.

STATE OF TEXAS )
) **INDEPENDENT SERVICES CONTRACT**
COUNTY OF EL PASO )

This contract is made this _____ day of _____, 2013 between the **CITY OF EL PASO**, hereinafter referred to as "City," and **DR. HECTOR I. OCARANZA**, hereinafter called "Contractor."

**WITNESSETH:**

**WHEREAS**, Section 121.023, Health and Safety Code, provides that a Health Authority has a two year term of office;

**WHEREAS**, Contractor is a physician capable of performing the duties of the Health Authority; and

**WHEREAS,** Contactor has been appointed as the Health Authority by the Director of the Department of Public Health, which appointment has been approved as required by state statute; and

**WHEREAS,** it is necessary and appropriate for the City to enter into this contract with Contractor to set the compensation and establish such other necessary and appropriate provisions for the Contractor's services while the Contractor serves during this term of office.

**NOW, THEREFORE,** the City and Contractor do hereby mutually agree as follows:

1. **Services.** During the period of the Contract, the Contractor shall be the Health Authority for the City of El Paso, Department of Public Health and all jurisdictions which have by contract with the City agreed that the City's Health Authority shall serve as the Health Authority for that jurisdiction, and shall perform such services as required of a Health Authority by Section 121.024 of the Texas Health and Safety Code and any other applicable state statute.

2. **Period of Contract**. The services of Contractor are to commence on January 1, 2014 and shall continue for the ensuing two-year term of office.

3. **Compensation and Method of Payment**. The Contractor shall be compensated in the amount of TWO THOUSAND DOLLARS AND NO/100 ($2,000.00) per month, during the period of Contract. The City will not pay any fringe benefits. Contractor understands that as an independent contractor, taxes will not be withheld from the Contractor's payment, and consequently Contractor assumes all liability for payment of taxes on his earnings.

Contractor shall receive no compensation from patients serviced by the Department of Public Health for services rendered by Contractor in his capacity as Health Authority and only the Department of Public Health shall be eligible to make application for Medicare, Medicaid and other third party health insurance coverage reimbursement.

4. **Location of Performance**. The place where such services are to be performed is the City and County of El Paso, State of Texas, or as otherwise necessary in conjunction with the performance of Contractor's statutorily required duties.

5. **Independent Contractor Relationship**. Nothing herein shall be construed as creating a relationship of employer and Contractor between the Parties. The City nor the Department of Public Health shall be subject to any obligations or liabilities of the Contractor incurred in the performance of this contract, unless otherwise herein authorized.

6. **Proof of Lawful Work Status**. Contractor agrees to comply with the Immigration Reform and Control Act. Contractor agrees to complete all necessary forms or documents including Form I-9 and to provide proof of United States citizenship or lawful residency and work status within three (3) days of the execution of this Contract.

7. INDEMNIFICATION. As a condition of the granting of this Contract, the Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR CONTRACTOR'S SERVICES AS HEALTH AUTHORITY. Without modifying the Contractor's obligation to preserve and assert any defense available to the City, the City will promptly forward to the Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The Contractor will pay all judgments in actions defended by the Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by the Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

8. **Law Governing Contract**. For purposes of determining the place of the Contract and the law governing the same, it is agreed that this contract is entered into the City of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.

9. **Termination**. Contractor may terminate this Contract upon thirty (30) days written notice to the City. This agreement shall automatically terminate in the event that Contractor ceases to be the Health Authority, to include but not be limited to Contractor's resignation or removal, or the appointment of a physician as the Director of the Department of Public Health. This agreement shall automatically terminate in the event that Contractor cease to be a competent physician with a reputable professional standing who is legally qualified to practice medicine in Texas.

10. **Notices**. Notices required herein shall be either hand-delivered or mailed, postage pre-paid, to the following addresses:

| | |
|---|---|
| CITY: | City of El Paso<br>Attn: City Manager<br>300 N. Campbell<br>El Paso, Texas 79901 |
| CONTRACTOR: | Hector I. Ocaranza, M.D.<br>1329 Calle Lago<br>El Paso, Texas 79912 |

11. **Compliance with Laws.** Contractor shall at all times during the term of this Contract, provide all required services to accordance with applicable law. In addition, Contractor shall, at all times during the term of this Contract, satisfy all State and Federal certifications, regulations or licensure requirements and render services under this Agreement in compliance with all applicable statutes, regulations, standards, rules and directives of State, Federal and other governmental and regulatory bodies having jurisdiction over Contractor. Contractor agrees to give immediate written notice to the

Director of the City of El Paso Department of Public Health in the case of suspension or revocation, or initiation of any processing that could result in any change in the status, suspension or revocation, of such licensure, certification or registration. Evidence of such licensing, certification or registration, if applicable, shall be submitted to the Director of the City of El Paso Department of Public Health upon request by Contractor.

12. **HIPAA Business Associate Agreement.** The Parties to this Contract agree to comply with the terms of the HIPAA Business Associate Agreement, attached hereto as Exhibit "A."

13. **Amendment; Entire Agreement.** Any amendment to this Contract must be in writing and signed by both parties to be valid. This Contract constitutes and expresses the entire agreement between the parties in reference to the services of the Contractor for the City of El Paso, and to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to the hiring of such services, all promises, representations and understandings relative thereto herein being merged.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

CONTRACTOR:

Hector I. Ocaranza, M.D.

APPROVED AS TO FORM:

Elizabeth M. Ruhmann
Assistant City Attorney

EXHIBIT "A"

(HIPAA BUSINESS ASSOCIATE AGREEMENT)

FOLLOWS ON NEXT PAGE

STATE OF TEXAS )
) **HIPAA BUSINESS ASSOCIATE AGREEMENT**
COUNTY OF EL PASO )

**THIS AGREEMENT** is entered into on the last listed approved date below between the CITY OF EL PASO, TEXAS ("City") and DR. HECTOR I. OCARANZA, by and through their duly authorized officials.

(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, or as provided in (a)(a) to this section.

1. **Agreement** shall refer to this document.
2. **Business Associate** means the DR. HECTOR I. OCARANZA.
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 in 45 C.F.R. 164.501.
5. **Information** shall mean any "health information" provided and/or made available by the CITY 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 CITY.
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.

(a)(a) **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164: breach, data aggregation, designated record set,

disclosure, health care operations, protected health information, required by law, subcontractor, and use.

(b) **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 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 CITY for the following stated purposes:

To provide public health services to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 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. 45 C.F.R. 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 CITY 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. 45 C.F.R. 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 CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

(g) **BUSINESS ASSOCIATE OBLIGATIONS:**

1. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal 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 Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
3. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure if Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
4. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time 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 Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).

   **4.1 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such information.

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 Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
6. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, 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. 45 C.F.R. 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 CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).

10. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Agreement. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Agreement for as long as necessary to protect the Information and to limit any further use of disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to the CITY that the Information has been destroyed. (ref. 45 C.F.R. 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 Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 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. 45 C.F.R. 164.530(e)(1)).

13. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).

14. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.

15. **Notice and Authorization Required for Electronic Disclosure of** PHI. The BUSINESS ASSOCIATE shall comply with the requirements

of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the individual's PHI is subject to electronic disclosure.

16. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.

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

(i) **Modifications**. The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, 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 Agreement 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 CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY 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 CITY.

(2) Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.

(3) Notify the Secretary of HHS if termination is not possible.