

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

DEPARTMENT: Office of Management & Budget/Insurance & Benefits

AGENDA DATE: October 28, 2008

CONTACT PERSON/PHONE: David Almonte, 541-4350
Terrence Freiburg, Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve a resolution that the City Manager be authorized to execute an Interlocal Agreement by and between the City of El Paso and the Ysleta Independent School District to purchase pharmacy benefit management services under contract #2007-297R previously awarded by the City to Medco Health Solutions, Inc.

BACKGROUND / DISCUSSION:

The Ysleta Independent School District (YISD) has a contract with Medco Health Solutions, Inc. that expires on December 31, 2008 to provide pharmacy benefit management services. The existing YISD Third Party Administrative (TPA) Services contract expires on December 31, 2009. YISD is requesting to enter into an interlocal with the City in order to facilitate a common expiration date for their pharmacy benefit management services and the TPA services of December 31, 2009. Even though the interlocal agreement is for a period of three years, YISD will release a bid for the pharmacy benefit management services and the TPA services during 2009. Medco Health Solutions, Inc. has agreed to continue to provide the pharmacy services for YISD under this interlocal.

PRIOR COUNCIL ACTION:

The City awarded Medco Health Solutions, Inc. the pharmacy benefit management contract in July 2007.

AMOUNT AND SOURCE OF FUNDING:

No cost to City of El Paso to enter into this interlocal.

BOARD / COMMISSION ACTION:

NA

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

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

DEPARTMENT HEAD: David Almonte
David Almonte

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

THAT the City Manager be authorized to execute an Interlocal Agreement by and between the City of El Paso, Texas and the Ysleta Independent School District whereby the District may purchase pharmacy benefit management services under Contract No. 2007-297R previously awarded by the City of El Paso to Medco Health Solutions, Inc.

ADOPTED this _____ day of _____ 2008.

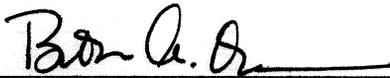
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

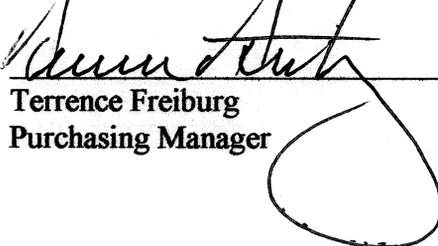
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager

THE STATE OF TEXAS §
 §
CITY OF EL PASO §

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF EL PASO
AND YSLETA INDEPENDENT SCHOOL DISTRICT
FOR PARTICIPATION IN MEDCO HEALTH SOLUTIONS
PHARMACY BENEFIT MANAGEMENT SERVICES

This Agreement is made this _____ day of August, 2008, by and between the CITY OF EL PASO (hereinafter called "City"), a Texas municipality political subdivision, pursuant to the action of its Mayor and City Council of _____, 2008, and YSLETA INDEPENDENT SCHOOL DISTRICT, a Texas political subdivision (hereinafter called the "District"), acting by and through its Board of Trustees pursuant to its actions of Aug 13, 2008.

I.

Preamble

WHEREAS, Chapter 791 of the *Texas Government Code* ("Act") authorizes political subdivisions to enter into intergovernmental agreements; and

WHEREAS, District is a political subdivision located in El Paso, Texas; and

WHEREAS, The City is a political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, The City has completed a procurement process for Pharmacy Benefit Management Services; and has a contract for Pharmacy Benefit Management Services directly with Medco Health Solutions; and

WHEREAS, The City's Council and the District's Board of Trustees have approved a resolution authorizing this interlocal agreement for procurement of pharmacy benefit management services; and

WHEREAS, pursuant to the Act, the City is authorized to contract with eligible entities to perform governmental functions and services, including cooperative purchasing agreements; and

WHEREAS, District has represented that it is an eligible entity under the Act, that it has authorized this Agreement and that it desires to participate in a cooperative purchasing effort based on the terms set forth below.

NOW, THEREFORE, in consideration of the covenants, conditions, and provisions set forth herein, the parties hereto agree as follows:

II.
Definitions

- 2.1. When used in this Agreement, the following terms shall have the following meanings:
- (a) **City** shall mean the City of El Paso, a Texas municipality organized under the laws of the State of Texas, acting by and through its City Manager as authorized by the Mayor and City Council.
 - (b) **District** shall mean Ysleta Independent School District, governed by its Board of Trustees.
 - (c) **Medco** shall mean Medco Health Solutions.

III.
Statement of General Purpose and Intent

3.1 LEGAL AUTHORITY

The District represents to The City that (1) it is eligible to contract with The City under the Act because it's a local government, as defined in the Act, and (2) it possesses adequate legal authority to enter into this Agreement.

3.2 PURPOSE

The purpose of this Agreement is for District and City to attain the benefits and efficiencies that can accrue by cooperating in a concerted effort to comply with state bidding requirements for acquisition of Pharmacy Benefit Management Services.

3.3 APPLICABLE LAWS

The City and the District agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement.

3.4 COOPERATIVE PURCHASING

District and City agree that District may utilize the solicitation and procurement that City has acquired with Medco to acquire Pharmacy Benefit Management Services by cooperative purchasing and by contract directly with Medco as described herein.

3.5 CONTRACT WITH MEDCO

District may utilize the purchasing contract which City acquired with Medco for acquisition of all services covered by the solicitation procedure recently completed by City. District will acquire these services by separate contract with Medco, and District will be responsible for all costs, fees, and expenses in connection with services provided to District by Medco. Moreover, District will be responsible for reimbursing City for all additional costs that may be incurred by City as the result of permitting District to participate in this cooperative purchasing agreement.

3.6 **FUNDING**

All amounts paid pursuant to this agreement will be paid from the parties' current revenues available to each entity.

IV. Term

4.1. The term of this Agreement shall begin on November 1, 2008 and end upon termination of the City's Pharmacy Benefit Contract with Medco unless terminated sooner or provided herein. District or City may terminate this Agreement at anytime by giving the other sixty (60) days written notice of termination, which will be effective upon receipt.

V. Assignment

5.1. This Agreement shall not be assignable by either party.

VI. Severability

6.1. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, including any renewals, then and in that event, it is the intent of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intent of the parties to this Agreement that, in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

VII. Entire Agreement

7.1. This Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon to date, and no other agreements of prior date, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. It is the intent of the parties that neither party shall be bound by any term, condition, or representation not herein written.

VIII. Amendment

8.1. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

**IX.
Non-Discrimination**

9.1. Any discrimination by District or City or their agents or employees on account of race, color, sex, age, religion, handicap, or national origin, in employment practices or in the use of or admission to the Projects, is prohibited.

**X.
Notices**

10.1. Notices to the parties hereto required or appropriate under this Agreement shall be delivered to the following officials:

DISTRICT: Ysleta Independent School District
Attn: Superintendent of Schools
9600 Sims
El Paso, Texas 79925

Ysleta Independent School District
Attn: Pam Ward, Director
Risk Management Department
9600 Sims
El Paso, Texas 79925

CITY: City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

COPY TO: City of El Paso
Attn: _____
2 Civic Center Plaza
El Paso, Texas 79901

XI.
Texas Law to Apply

11.1. This Agreement and its obligations shall be performed pursuant, construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. **NOTWITHSTANDING ANY PROVISIONS HEREIN CONTAINED TO THE CONTRARY: (i) NEITHER DISTRICT NOR CITY WAIVES ANY RIGHTS TO SOVEREIGN IMMUNITY OR ANY OTHER IMMUNITIES OR DEFENSES BY ITS EXECUTION OR DELIVERY OF THIS AGREEMENT.**

XII.
Force Majeure

12.1. Neither party to this Agreement shall be required to perform any term, condition, or covenant in this Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by a governmental authority, civil riots, floods, and any other cause not reasonably within the control of either party to this Agreement and which, by the exercise of due diligence, such party is unable, wholly or in part, to prevent or overcome. If, by reason of force majeure, either party is prevented from full performance of its obligations under this Agreement, written notice shall be provided to the other party within five (5) business days.

XIII.
Gender

13.1. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XIV.
Captions

14.1. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

XV.
Authority

15.1. The signers of this Agreement hereby represent and warrant that they have authority to execute this Agreement on behalf of each of their governing bodies.

XVI.
No Waiver

**XVI.
No Waiver**

16.1. Notwithstanding any provision set forth herein, District's and City's obligations shall be performable and enforceable only to the extent such obligation is permitted by Texas law. By entering this Agreement and performing hereunder, District and City (including their officials, employees and agents) do not intend, do not, and this Agreement shall not be construed to waive immunities, defense or limits of liability to which Districts and City are entitled.

**XVII.
Attorney Fees**

17.1. In an action to enforce or construe this Agreement in a court of law, the prevailing party shall be entitled to its necessary and responsible attorney's fees and costs of court, in accordance with Texas Local Government Code §271.159.

WITNESS the signatures of the parties hereto in duplicate originals as of the date first written above.

CITY OF EL PASO, TEXAS

Joyce Wilson
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

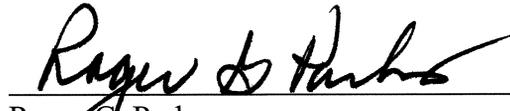
APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management and Budget

**YSLETA INDEPENDENT SCHOOL
DISTRICT**


Carmen G. Muñoz
President, YISD Board of Trustees


Roger G. Parks
Interim Superintendent, YISD

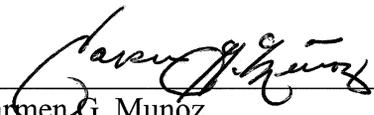
RESOLUTION

BE IT RESOLVED BY THE YSLETA INDEPENDENT SCHOOL DISTRICT:

THAT the Superintendent be authorized to execute an Interlocal Agreement by and between the City of El Paso, Texas (the "City") and the Ysleta Independent School District ("District"), whereby the District may attain the benefits and efficiencies that can accrue by cooperating in a concerted effort to comply with state bidding requirements for acquisition of Pharmacy Benefit Management Services from Medco Health Solutions.

ADOPTED this 13TH day of August, 2008.

YSLETA INDEPENDENT SCHOOL
DISTRICT

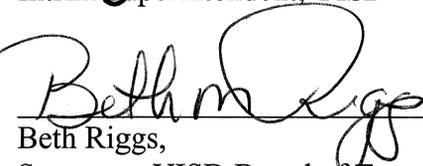


Carmen G. Muñoz,
President, YISD Board of Trustees

ATTEST:



Roger G. Parks,
Interim Superintendent, YISD



Beth Riggs,
Secretary, YISD Board of Trustees