

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

DEPARTMENT: Financial Services Department

AGENDA DATE: 11/27/07

CONTACT PERSON/PHONE: Carmen Arrieta-Candelaria (541-4293)

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

Discussion and action on a Resolution to enter into an Interlocal Agreement with the County of El Paso to provide public health and other services under the new City Public Health Department for the time period of January 1, 2008 through August 31, 2008.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The attached resolution will allow the City and the County to enter into an interlocal agreement so that the newly formed City Department of Public Health can provide laboratory, health education and community health preparedness services at a level and in a manner so as to adequately support all services and programs of the El Paso Department of Public Health. This agreement outlines the terms and conditions by which the City department will provide such services. The City and County are entering into this Agreement to provide for public health and other services following the dissolution of the El Paso City-County Health and Environmental District (hereafter "District") on December 31, 2007. The term of the agreement shall cover the time period of January 1, 2008 through August 31, 2008 and will require the County to pay \$1.538 million for these services. In addition, the Interlocal Agreement requires the County to pay for 30% of the vacation leave balances for all affected employees at December 31, 2007, values. The County will also pay 30% of the actuarial sick leave liability pursuant to a calculation performed by the City's actuaries in October 2007. This will allow all affected employees to transfer 100% of the vacation and sick leave balances over to the City. Attached is a copy of the proposed agreement, subject to both the County and City approval.

PRIOR COUNCIL ACTION

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

The County will pay the City \$1,537,092.00 for services under the scope of this agreement as well as contribute 30% share of vacation leave balances and 30% of the actuarial liability of the sick leave balances

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

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

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

APPROVED FOR AGENDA:

CITY CLERK DEPT
07 NOV 16 AM 11:53

CITY MANAGER: _____

DATE: _____

CITY CLERK DEPT.
07 NOV 16 AM 11:53

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Governmental Agreement between the CITY OF EL PASO and the COUNTY OF EL PASO, for the provision of public health services by the City to the County, and related matters, for the period of January 1, 2008 through August 31, 2008.

ADOPTED this 27th day of November 2007.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM


Elaine S. Hengen
Senior Assistant City Attorney

CITY CLERK DEPT.
07 NOV 16 AM 11:51

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

07 NOV 20 AM 9:06

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 its 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.

Whereas, the City has created a Department of Public Health to provide laboratory, health education and community health preparedness services at a level and in a manner so as to adequately support all services and programs of the El Paso Department of Public Health.

Whereas, the City has notified the appropriate federal agencies and the State of Texas that it will continue to provide public health services to all residents of El Paso County, including the residents of the incorporated cities as well as the unincorporated areas, as required by relevant Federal and State grants.

Whereas, this Agreement for Interlocal cooperation between the Parties to provide public health and other services by the City for the County is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned.

Whereas, the City and County are entering into this Agreement to provide for public health and other services following the dissolution of the El Paso City-County Health and Environmental District (hereafter "District") on December 31, 2007.

Whereas, the County desires to have the City's appointed health authority serve as the County's health authority.

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.

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.**

A. 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) 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.
- (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.
- (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.
- (4) The City will issue permits and provide inspection services of on-site sewage disposal systems in accordance with applicable Texas ~~DSHS~~ Commission on Environmental Quality rules, and in accordance with the County Sewage Facility Order. The City will provide enforcement of said rules as appropriate for the purpose of protecting public health and the mitigation of nuisance conditions. Appropriate and customary fees will be charged to the facilities, as permitted by law.
- (5) The City will provide mosquito control services, including but not limited to, collecting and identifying mosquito species, larviciding, adulticiding, providing

CITY CLERK DEPT.
07 NOV 20 AM 9:06

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.

- (6) The City agrees to provide animal control services as determined to be appropriate by City staff and as required by law, including but not limited to, investigating citizen complaints, conducting periodic patrols to proactively enforce appropriate State animal-related rules and laws, impoundment of stray animals, investigation of animal bite reports, quarantine of animals involved in bites, investigation of allegations of animal cruelty, and the euthanization of animals as necessary. This Agreement does not include animal sheltering costs and consequently, those costs will be the responsibility of the citizen.
- (7) The City will provide communicable disease investigation services to the County 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.
- (8) The City will provide immunization services to residents in the unincorporated areas of the County 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.
- (9) The City will provide tuberculosis and sexually transmitted disease control services to residents in the unincorporated areas of the County. Services may include testing, treatment and investigation of contacts, as appropriate. Appropriate and customary fees will be charged to those receiving these services.
- (10) The City will include the unincorporated areas of 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, inspection of demolition projects to ensure compliance with federal and state asbestos requirements, analysis of gasoline samples to ensure compliance with oxygen content, and investigation and enforcement of air related nuisances and other

CITY CLERK DEPT.
07 NOV 20 AM 9:06

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

(11) 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.

B. In providing the services under this Agreement, it is the City's intent to provide the same base level of services as has been historically provided in the unincorporated areas of the County by the District over the past five years.

C. 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.

D. 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 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. On or before March 1, 2008, the City will provide a list of the grant awards and funding that had been awarded to the District during calendar year 2007, and a list of the grant awards that the City has received and is using for county-wide programs. Thereafter, 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 existing grants.

E. 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.

CITY CLERK DEPT.
NOV 20 AM 9:06

F. 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 in its standardized records format to the County officials, on a regular basis, not less than once per quarter.

G. 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.

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. **SEWAGE FACILITY ORDER.** The Parties agree that the 1988 Rules for El Paso County, Texas, Private Sewage Facilities, and any lawfully adopted successor orders, to include but not be limited to the February 17, 1997 Sewage Facility Order, shall apply within the County, and shall be enforceable by the City and its designated employees within the unincorporated areas of the County.

5. **ON-SITE SEWAGE FEES-** The County agrees to continue to collect fees for On-Site Sewage services in accordance with the February 17, 1997 Order of the Commissioner's Court or any Order subsequently adopted by Commissioners Court. All fees that the County Collects for this purpose shall be paid to the City on a quarterly basis, within 30 days of the conclusion of the quarter. For purposes of this Agreement, there shall be three quarters, ending February 29, 2008, May 31, 2008 and August 31, 2008. The County shall also provide the city with a report indicating the amount of fees collected and the time period associated with such collection.

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 January 2008, and shall terminate on the 31st day of August 2008, regardless of the date of execution of this Agreement.

9. **COMPENSATION.**

A. The County agrees to pay the amount not to exceed ONE MILLION FIVE HUNDRED AND THIRTY-SEVEN THOUSAND AND NINETY-TWO DOLLARS (\$1,537,092.00) for services rendered pursuant to Section 1 of this Agreement. 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 on the first day of each month without the necessity for the submission of an invoice or billing to the County, each in the amount of ONE HUNDRED NINETY-TWO THOUSAND ONE HUNDRED AND THIRTY-SIX AND 50/100 DOLLARS (\$192,136.50), with the first payment becoming due and payable on the 1st day of January 2008 or within 10 days after the date that the County signs this Agreement, whichever is later.

B. The Parties acknowledge that the funds paid by the County pursuant to Section 9 A 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.

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. 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. 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 60 days, pursuant to the El Paso City Code, Ordinance 14700.

11. **TRANSFER OF DISTRICT PERSONAL AND INTELLECTUAL PROPERTY.**

Prior to the termination of the District, the District acquired personal property to include furniture, fixtures and equipment (FF&E) for use in the normal course of operations of the District. The County consents to the transfer by the District of all District FF&E, intellectual property created for or held by the District, if any, and all other personalty of the District, to the City, whether by transfer of vehicle titles, bill of sale, surrender of assets, or by such other legally appropriate means. The City agrees to continue to use this FF&E specifically to provide public health and other related services throughout the ordinary life and usefulness of such FF&E.

12. **DISSOLUTION OF THE DISTRICT.** In order to facilitate the orderly dissolution of the District, the City and County further agree to the following provisions, while still recognizing that certain obligations survive the termination of the Cooperative Agreement, that had created the District, as set forth therein.

A. *District Employee Vacation and Sick Leave Balances.* The City and the El Paso City-County Health and Environmental District (District), have signed an Agreement for the admittance of certain employees of the District into the City Civil Service System as City employees (hereafter, "admitted employees"), pursuant to Section 6.13E of the El Paso City Charter, under certain terms and conditions. The City has agreed to allow the admitted employees to retain and transfer 70% of their accrued vacation, sick and special sick leave balances (collectively referred to as the "Leave Balances"), during their term of employment, subject to a maximum number of hours, as permitted by the City's Civil Service Rules. Such agreement provides that the City will credit the admitted employees with such amounts reimbursed by the County to the City for this purpose.

For the purpose of enabling the City to credit the admitted employees with 100% of their leave balances, in accordance with the Agreement between the City and the District, and subject to applicable law and Civil Service Rules, the County hereby agrees to make the following payments pay to the City, which the parties agree is a the sum equal to 30% of the leave

balances. The County shall pay to the City an amount equaling 30% of \$225,000.00, which is the amount calculated by the City which represents the estimated cost of the service credit for the sick leave balances of the admitted employees on the City pension plan. The County shall additionally pay to the City an amount equaling 30% of the vacation leave balances as of December 31, 2007 of the admitted employees which are transferred and credited to such employees in accordance with the Agreement between the City and the District, and subject to applicable law and Civil Service Rules. Such amounts shall be paid by the County to the City in a lump sum payment no later than 45 days after the date the City provides the County with an invoice and a report showing the amounts of the vacation leave balances. The City shall provide for the leave balances to be used in compliance with the City's Civil Service Rules and Chapter 2.64 of the El Paso City Code relating to the City Employees' Pension Fund. The City assumes the obligation to pay the vacation balances to these employees, including the funding provided by the County, in accordance with City policies regarding the taking of vacation and the payment of outstanding vacation leave balances upon the termination of the employee's services.

B. *Final Reconciliation of Accounts.* The City and County further agree to the following provisions for the reconciliations of the payments, expenditures and revenues of the District, in recognition that the obligation to make such a reconciliation and to make appropriate payments between the Parties pursuant thereto survives the termination of the Cooperative Agreement between the Parties that established the District, dated on or about November 8, 2005, as amended (hereafter "Cooperative Agreement").

The County consents to the City performing such reconciliations as become necessary and appropriate, to include collecting District receivables and all other financial assets, and paying Board of Health approved and obligated expenditures (collectively referred to as "obligated expenditures") as of December 31, 2007, by utilizing the funding provided by the City and the County pursuant to the Cooperative Agreement, as well as other sources of revenue and income that the District had created, obtained or was legally entitled to receive. Nothing in this Agreement shall require the City to use any other funds of the City to pay any expenditures or obligations of the District.

The County shall make any payments due to the City as required pursuant to the Cooperative Agreement and for the purposes stated herein within 30 days of receipt of notice from the City of the amounts owed. The City shall use its best efforts to create and provide

the first reconciliation report to the County by March 31, 2008. The Parties further agree that such reconciliation may not include all obligated expenditures and that it may be necessary for the City to make other reconciliations pursuant to the Cooperative Agreement.

Nothing in this Agreement shall constitute an agreement between the Parties for the waiver of immunity or the assumption of liability or responsibility for any outstanding obligated expenditures of the District which remain unresolved at the time of the final reconciliation, nor the waiver or immunity or the assumption of any of the liabilities of the District incurring or arising during the time of or out of the District's existence, and the Parties retain their sovereign immunity from all liability and lawsuit, as provided by law and in accordance with Section 101.063, Texas Civil Practices and Remedies Code.

13. **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.

A. *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 orders subsequently adopted by the commissioners court during the term of this agreement.

B. *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.

C. *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 to this Agreement falls within the definition of governmental function.

D. *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.

E. *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.

F. *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.

14. **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 further authorizes 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.

15. **TERMINATION.** This Agreement may be terminated in whole or in part by either party upon sixty days written notice to the other party at the following addresses:

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

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

16. **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.

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.

CITY OF EL PASO

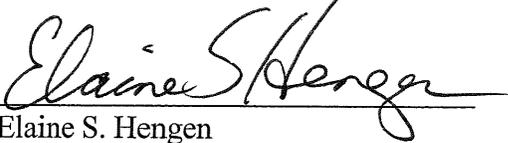
John F. Cook, Mayor

APPROVED this _____ day of December, 2007.

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elaine S. Hengen
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Joyce A. Wilson
City Manager

(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

County Judge Anthony Cobos

APPROVED this ____ day of _____, 2007.

ATTEST:

APPROVED AS TO FORM:

County Clerk

County Attorney

07 NOV 20 AM 9:07
CITY CLERK DEPT.

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)).

07 NOV 20 AM 9:07

CITY CLERK DEPT.

CITY CLERK DEPT.
07 NOV 20 AM 9:07

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)).

CITY CLERK DEPT.
07 NOV 20 AM 9:07

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 of 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)).

(i) **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.

(j) **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.

(k) **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.

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

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

CITY CLERK DEPT.
07 NOV 20 AM 9:07