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

DEPARTMENT: **Public Health**

AGENDA DATE: **CCA December 14, 2010**

CONTACT PERSON NAME AND PHONE NUMBER: **Michael Hill, Director 771-5702**

DISTRICT(S) AFFECTED: **All**

SUBJECT:
Authorize the Mayor to sing an Inter-local agreement with the County of El Paso for the provision of public health services.

BACKGROUND / DISCUSSION:
Request that the Mayor be authorized to sign and Inter-local agreement with the County of El Paso. The agreement authorizes the Department of Public Health (DPH) to provide rabies control authority, public health and other services, and have the City of El Paso's appointed health authority serve as the County's health authority.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

Yes, 12/08/09

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?

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the County of El Paso, for the provision of public health services by the City of El Paso for the County of El Paso, and related matters, for the period of September 1, 2010 through August 31, 2011.

Dated this _____ day of _____ 2010.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT

_____
Michael Hill, Director
Department of Public Health

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

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

RECITALS

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

Whereas, the City has created a Department of Public Health; and

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; and

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

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

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

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

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

1. SCOPE OF SERVICES.

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

K-10-501

1.1.1 The City will issue permits and provide inspection services of food establishments at a frequency and in accordance with recommended protocols as established by the Texas Department of State Health Services (DSHS). The City will provide enforcement of applicable State laws and regulations as appropriate to help reduce the risk of food borne illnesses in said establishments. Appropriate and customary fees will be charged to the establishments, as permitted by law.

1.1.2 The City will conduct inspections of public facilities, to include but not be limited to public schools, public and semi-public swimming pools, laundromats, and tattoo parlors, at a frequency and in accordance with standard protocols, environmental health regulations, and applicable State law. The City will provide enforcement of applicable State laws and regulations as appropriate, to help reduce the risk of disease transmission and drowning hazards. Appropriate and customary fees will be charged to the inspected facilities, as permitted by law.

1.1.3 The City will provide complaint investigation/enforcement services as determined to be appropriate by City staff for those conditions that violate the Texas Health and Safety Code.

1.1.4 The City will provide mosquito control services, including but not limited to, collecting and identifying mosquito species, larviciding, adulticiding, providing enforcement of violations that create mosquito harborage as appropriate, tracking of vector-borne disease, and educating the public regarding disease prevention strategies. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.

1.1.5 The City agrees to provide animal control services limited to solely the provision of spay and neuter services to County residents and access to City rabies vaccination clinics by County residents.

1.1.6 The City will provide Women, Infants and Children (WIC) Nutrition services to residents in the unincorporated areas in the County in accordance with Texas DSHS requirements. Services may include

medical health assessment, nutrition, breast-feeding promotion, social service referral, and food benefit issuances, as appropriate.

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

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

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

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

1.6 It is understood and agreed to between the parties that any portion of this Agreement providing for the delivery of public health and other services for which appropriate legal authority has not been granted to the City, shall be null and void and of no force and effect, and the City shall not be obligated to provide those services.

1.7 For FY2011, the following services shall be subject to the percentage and dollar amount reductions indicated with the service level from FY 2010 as the base:

1. Vector Control – 5%; $30,000.00, as referenced in Section 1.1.4 above.

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. **DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY**. The Parties agree that the individual designated by the City to serve as the local rabies control authority will serve as the local rabies control authority for the County, as necessary pursuant to Section 826.017, Texas Health and Safety Code.

5. **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.

6. **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.

7. **TIMES OF PERFORMANCE.** The City shall commence the provision of its services on the 1st day of September 2010, and shall terminate on the 31st day of August 2011, regardless of the date of execution of this Agreement.

8. **COMPENSATION.**

8.1 The County agrees to pay the amount not to exceed FIVE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS ($570,000.00) 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, each in the amount of FORTY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO/100 ($47,500), with the first payment becoming due and payable on the 1st day of September 2010 or within 10 days after the date that the County signs this Agreement, whichever is later.

8.2 The Parties acknowledge that the funds paid by the County pursuant to Section 8 above may not be sufficient in the event of an unexpected occurrence such as an outbreak, epidemic (i.e. rabies, cholera), or intervention of emerging or new diseases or public health threats (chemical or biological) in the unincorporated areas of the County. The County shall name a person to serve as a point of contact to discuss these types of public health threats, its intervention, and any additional costs that the County will need to pay to defray the resulting expenses. Such contact person shall be designated and disclosed to the director of the Department of Public Health as of the signing of this Agreement.

9. **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.

10. **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.

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

10.2 *Privileges and Immunities.* All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the City when performing

a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

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

10.4 *Exclusion of Incidental and Consequential Damages.* Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, THE CITY WILL NOT BE LIABLE TO ANY OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

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

10.6 *Intentional Risk Allocation.* Each of the Parties acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.

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

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

12. **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

13. **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.

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

(signature pages follow)

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

APPROVED this _____ day of December, 2010.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Michael Hill, Director
Department of Public Health

(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 8th day of November, 2010.

ATTEST:

County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

APPENDIX A

HIPPA BUSINESS ASSOCIATE CONTRACT

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

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

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

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

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

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

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

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

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

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

(g) **BUSINESS ASSOCIATE OBLIGATIONS:**

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

4. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that anytime Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract. (ref. 164.504(e)(2)(ii)(D)).

5. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E)).

6. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the COUNTY, amend or correct protected health information (PHI) in its possession or under its control.

7. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).

8. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(G)).

9. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the COUNTY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H)).

10. **Return or Destruction of Information.** At the termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of

the COUNTY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use 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)).

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

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

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

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

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

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

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