

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

DEPARTMENT: Public Health

AGENDA DATE: CCA December 22, 2009

CONTACT PERSON NAME AND PHONE NUMBER: Ed De Castro, 842-1010

DISTRICT(S) AFFECTED: All

SUBJECT:

Authorize the Mayor to sign an Inter-local agreement with the County of El Paso, for animals delivered to the City's Animal Shelter.

BACKGROUND / DISCUSSION:

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 animal services by the City of El Paso for the County of El Paso, for those animals delivered by the County of El Paso to the City's Animal Shelter.

PRIOR COUNCIL ACTION:

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

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 animal services by the City of El Paso for the County of El Paso, for those animals delivered by the County of El Paso to the City's Animal Shelter located at 5001 Fred Wilson Road, for the period of September 1, 2009 through August 31, 2010.

Dated this _____ day of _____ 2009.

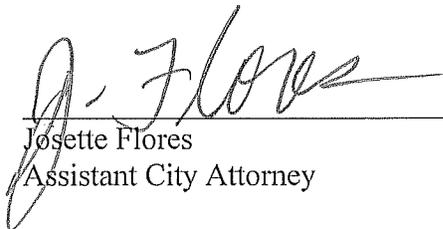
CITY OF EL PASO

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's Department of Public Health includes the City's Animal Services Division; and

Whereas, the County requests assistance from the City's Animal Services Division as it has no location to house animals that it retrieves; 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 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:

1.1.1 The City will receive at the City's Animal Shelter located at 5001 Fred Wilson Road, El Paso, Texas 79906 (the "Shelter") each animal that the County delivers to said Shelter.

1.1.2 The City will board each animal that the County delivers to said Shelter, whether it be for purposes for reuniting said animal with its owner,

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quarantine, providing all necessary medical care, evidence for a legal proceeding, or euthanization and disposal.

1.2 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.

1.3 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.

1.4 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.

1.5 The City shall recoup from all animal owners who reclaim their animals at the Shelter all applicable fees in order to mitigate all charges to the County to include the one time impound fee (\$55.00); kenneling fee (\$15.00); and the quarantine fee of (\$10.00), prior to releasing an animal to the owner.

2. **LOCATION OF PERFORMANCE.** The place where such services are to be performed is at the Shelter.

3. **TIMES OF PERFORMANCE.** The City shall commence the provision of its services on the 1st day of September 2009, and shall terminate on the 31st day of August 2010, regardless of the date of execution of this Agreement.

4. **COMPENSATION.**

4.1 The County agrees to pay a one time fee in the amount of FIFTY FIVE AND NO/100 DOLLARS (\$55.00) for each animal delivered to the Shelter by the County. The County agrees to pay a daily fee of FIFTEEN AND NO/100 DOLLARS (\$15.00) for any animal other than a dog or cat, such as but not limited to livestock, horse, pig, or chicken delivered to the Shelter by the County. If any animal's owner reclaims the animal at the Shelter and pays any kenneling fees to the City, then the City shall credit the County for those kenneling fees paid by the owner on the subsequent monthly invoice to the County.

4.2 In addition to the applicable kenneling fees listed above, the County also agrees to pay a daily quarantine fee of TEN AND NO/100 DOLLARS (\$10.00) for any animal delivered to the Shelter by the County that is injured, has or is suspected of having rabies, is pending a bite investigation, or is pending an animal cruelty investigation. If a quarantined animal's owner reclaims the animal at the Shelter and pays any quarantine fee to the City, then the City shall credit the County for those quarantine fees paid by the owner on the subsequent monthly invoice to the County. The City shall maintain detailed records supporting all billings and fee reimbursements and shall remit such information with its billings to the County.

5. **PAYMENTS PURSUANT TO THIS AGREEMENT.** The City shall invoice the County by the fifteenth of each month for services provided during the previous month. Payment is due to the City within thirty (30) days of delivery of the invoice net of any fees received by the City from pet owners previously billed to the County. Payment within 30 days shall begin upon receipt of supporting documentation from the City. 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. If a payment is not received by the City within thirty (30) days of delivery of the invoice, the City may charge the applicable interest rate under the Texas Prompt Pay Act, pursuant to Texas Government Code Chapter 2251.

6. **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.

6.1 *Orders.* The COUNTY shall provide certified copies of all the County of El Paso, Texas Orders affecting animal regulations upon execution of this Agreement and as requested by the City, including public health orders pertaining to animal regulations subsequently adopted by the commissioners court during the term of this Agreement.

6.2 *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 and the County 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.

6.3 *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.

6.4 *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, NEITHER THE CITY NOR THE COUNTY ARE 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 OR THE COUNTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

6.5 *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 NOR THE COUNTY'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.

6.6 *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.

7. **TERMINATION & NOTICE.** This Agreement may be terminated in whole or in part by either party upon thirty 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

8. **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.

9. **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 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, 2009.

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

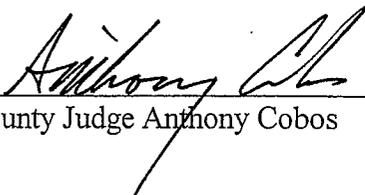


Michael Hill, Director
Department of Public Health

(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 23rd day of November, 2009.

ATTEST:



County Clerk

APPROVED AS TO FORM:



Assistant County Attorney

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 October, 2009.

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

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 ____ day of October, 2009.

ATTEST:

APPROVED AS TO FORM:

County Clerk

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 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)).

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 Contract and cure is not possible.
- (3) Notify the Secretary of HHS if termination is not possible.