

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 County of El Paso ("the County") and the City of El Paso (the "City") requiring the City to pay \$2,000.00 per month for the County's administration and operation of the On-Site Sewage Facility Program for locations within the City's jurisdiction.

PASSED AND APPROVED this _____ day of _____, 2008.

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:



Ellen A. Smyth, P.E., Director
Environmental Services Department

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STATE OF TEXAS }
 }
COUNTY OF EL PASO }

**INTERLOCAL AGREEMENT BETWEEN
THE COUNTY OF EL PASO AND
THE CITY OF EL PASO FOR THE
ON-SITE SEWAGE FACILITY PROGRAM**

THIS AGREEMENT entered into this ____ day of _____, 2008, between the City of El Paso, hereinafter called “MUNICIPALITY”, and the COUNTY OF EL PASO, TEXAS hereinafter called “COUNTY” by and through its duly authorized officials, pursuant to the Interlocal Cooperation Act, and for the purpose of providing certain services relating to the operation of the On-Site Sewage Facility Program, hereinafter called “OSSF”.

WHEREAS, the COUNTY and the MUNICIPALITY are authorized to enter this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, the COUNTY and the MUNICIPALITY are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the COUNTY has adopted an order regulating the construction and use of on-site sewage facilities to provide the citizens of the County with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, this Agreement for Interlocal cooperation between the parties to provide OSSF services by the COUNTY for the MUNICIPALITY is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned; and

WHEREAS, the MUNICIPALITY desires to have the COUNTY provide OSSF services pursuant to Chapter 366 of the Texas Health and Safety Code, and 30 Texas Administrative Code, hereinafter referred to as the “Requirements” and

WHEREAS, the public health, safety and welfare of the citizens of El Paso County and the City of El Paso would be best served by both parties entering into this Intergovernmental Cooperation Agreement pursuant to the authority granted by Chapter 791 of the Texas Government Code (the Texas Intergovernmental Cooperation Act); and

WHEREAS, by combining resources, the COUNTY and the MUNICIPALITY may provide a better, more cost efficient enforcement of OSSF more to this area than could be accomplished with each entity acting alone; and

WHEREAS, it is necessary and in the best interests of the COUNTY and the MUNICIPALITY to combine resources for the mutual benefit of their constituents,

WHEREAS, the COUNTY and the MUNICIPALITY specify that each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party,

NOW THEREFORE, be it resolved that the County of El Paso and the City of El Paso enter into this Intergovernmental Cooperation Agreement for the administration and operation of the El Paso County OSSF Program.

1. **MUNICIPALITY DUTIES**

The MUNICIPALITY shall notify the COUNTY of non-complying systems. The MUNICIPALITY shall notify the COUNTY of inspections requested. The MUNICIPALITY shall also report any non-complying activities to the County. The MUNICIPALITY shall pay the COUNTY a \$2,000.00 fee per month for the services listed below.

2. **COUNTY DUTIES**

The COUNTY will perform services as detailed below under scope of services.

3. **SCOPE OF SERVICES**

A. The COUNTY shall perform the following services under the terms and conditions hereinafter stated, and the MUNICIPALITY hereby accepts and agrees to the following terms and conditions:

(1) **PERMITTING SERVICES.** The COUNTY shall review permit applications, issue permits to construct, and provide inspection services of on-site sewage disposal systems in accordance with applicable Texas Commission on Environmental Quality rules, and in accordance with the El Paso County Sewage Facility Order. The County shall provide enforcement of said rules as appropriate for the purposes of protecting public health and the mitigation of nuisance conditions. Appropriate and customary fees will be charged to the owner of the facilities as permitted by law.

(2) **INSPECTION SERVICES.** The COUNTY shall provide inspection services including, but not limited to, inspection of new and existing OSSFs for compliance with current rules and regulations. The COUNTY shall inspect the area of investigation and septic system.

(3) **COMPLAINT INVESTIGATION AND ENFORCEMENT.** The COUNTY shall provide complaint investigation/enforcement services as determined to be appropriate by COUNTY staff for those conditions that violate the Texas Health and Safety Code Chapter 341 and 366, the Texas Water Code

Chapter 7, and the El Paso County Sewage Facility Order. If a complaint is found to be valid, county inspectors shall present the case to the County Attorney's office for prosecution and collect evidence and testify as necessary in court.

(4) **DE-COMMISSIONING.** The COUNTY shall ensure that any OSSF within the MUNICIPALITY to be abandoned is properly de-commissioned by COUNTY inspectors pursuant to the Texas Commission on Environmental Quality regulations and Sewage Facility Orders.

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 limited to the February 17, 1997 Sewage Facility Order, shall apply to the City of El Paso, and shall be enforceable by the County and its designated employees within the City of El Paso.
5. **ON-SITE SEWAGE FEES.** The County shall 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 retained by the County.
6. **TIMES OF PERFORMANCE.** The COUNTY shall commence the provision of its services on the date this Agreement is executed by all parties, and shall terminate on the 30th day of September, 2009, regardless of the date of execution of this Agreement.
7. **PAYMENTS PURSUANT TO THIS AGREEMENT.** All payments submitted under this Agreement shall be made payable to the County of El Paso, Attn: County Auditor's Office, Treasury Division, Rm. 406, 500 E. San Antonio, El Paso, Texas 79901.
8. **LAW GOVERNING CONTRACT.** For purposes of determining the law governing the same, this Agreement is entered into in the 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 County.* The MUNICIPALITY expressly agrees that the COUNTY shall have authority to enforce all laws and County Orders applicable to the OSSF, within the jurisdiction of the City of El Paso. The COUNTY further agrees that, in the absence of any conflicting law, the COUNTY shall have authority to enforce the laws of the State of Texas and the County of El Paso, Texas within the jurisdiction of the City of El Paso. The COUNTY shall provide copies of all the County of El Paso, Texas orders affecting OSSF upon execution of this Agreement and as requested by the MUNICIPALITY.
 - 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 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.

- C. *Governmental Function.* The Parties expressly agree that, in all things relating to this Agreement, the COUNTY 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 COUNTY, 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 COUNTY 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 COUNTY 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 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 COUNTY 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.
15. **CONSIDERATION.** As consideration for this Agreement, and except as provided below, the MUNICIPALITY shall make payment to the COUNTY in a total amount not to exceed \$2,000.00 per month. The MUNICIPALITY shall make payment by the 1st of each month during the term of this Agreement for the services performed during the previous month.

16. **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 OF EL PASO: City of El Paso
 Attn: Mayor John Cook
 #2 Civic Center Plaza
 El Paso, Texas 79901

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

17. **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.
18. **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 _____, 2008.

CITY OF EL PASO

John Cook
Mayor

ATTEST:

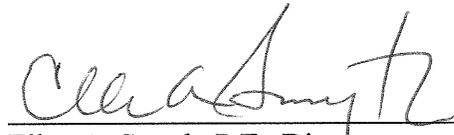
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services Department

(signatures continue on the following page)

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

APPROVED this _____ day of _____, 2008.

COUNTY OF EL PASO

County Judge Anthony Cobos

ATTEST:

APPROVED AS TO FORM:

County Clerk

Assistant County Attorney