

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

DEPARTMENT: Environmental Services

AGENDA DATE: January 27, 2015

CONTACT PERSON NAME AND PHONE NUMBER:
Ellen A. Smyth, Director, (915) 212-6060

DISTRICT(S) AFFECTED: County of El Paso and the City of San Elizario

SUBJECT:

That the Mayor of the City of El Paso be authorized to sign the first amendment to an Interlocal Agreement between the City of El Paso and the County of El Paso and City of San Elizario, Texas for the period September 1, 2014 through August 31, 2015, for the provision of public health and environmental services by the City of El Paso for the County of El Paso and City of San Elizario.

BACKGROUND / DISCUSSION:

The scope of services will include inspection services for food establishments and public facilities, complaint investigation and enforcement, vector control, animal shelter services, dog and cat registration services, communicable disease investigation, medical health services, immunization services, tuberculosis and sexually transmitted disease control services, and air quality monitoring and inspections.

The County of El Paso will compensate the City of El Paso an amount not to exceed \$1,083,552.00 for the services performed per this interlocal agreement.

PRIOR COUNCIL ACTION:

Previous interlocal agreement between the City of El Paso and the County of El Paso was approved on July 8, 2014.

AMOUNT AND SOURCE OF FUNDING:

Service	Accounting String	Total Amount
Air Quality	334-3100-34060-460250	\$41,698.00
Animal Shelter	334-3120-34050-460250	\$270,322.00
Animal Services Field Ops	334-3100-34060-460250	\$0.00
Vector Control	334-3100-34060-460250	\$141,144.00
Health Services	341-1000-41160-460240-P4101	\$630,388.00

BOARD / COMMISSION ACTION:

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 a First Amendment to the Interlocal Agreement between the City of El Paso and the County of El Paso, Texas, for the provision of public health and environmental services (“Services”), dated July 8, 2014, to add the City of San Elizario as a party, authorizing the City of El Paso to provide the Services to the City of San Elizario for the period of September 1, 2014 through August 31, 2015, and acknowledging that the County of El Paso’s annual amount of \$813,230 noted in the July 8, 2014 Interlocal Agreement, already incorporates the annual cost of SIXTY-SIX THOUSAND NINE HUNDRED FIFTY DOLLARS AND NO/100 (\$66,950.00) for the Services which shall be provided by the City of El Paso to San Elizario, and citing various authorizations by the City of San Elizario for the term of the First Amendment.

(Signatures on following page)

Dated this _____ day of _____ 2015.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

APPROVED AS TO CONTENT

Josette Flores
Assistant City Attorney

Robert Resendes, MBA, MT(ASCP), CLS(RI),
Director, Department of Public Health

APPROVED AS TO CONTENT:

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

STATE OF TEXAS) **FIRST AMENDMENT TO INTERLOCAL AGREEMENT**
) **BETWEEN THE COUNTY OF EL PASO, THE CITY OF EL**
) **PASO, AND NOW THE CITY OF SAN ELIZARIO, TEXAS**
COUNTY OF EL PASO) **FOR PUBLIC HEALTH AND ENVIRONMENTAL SERVICES**

On July 8, 2014, the City of El Paso and El Paso County (“County”) entered into an interlocal agreement (“Agreement”)(County Contract No.2014-0003) for health and environmental services. The Parties now agree to this First Amendment (County Contract No. 2014-0592) to include health and environmental services from September 1, 2014 to August 31, 2015, to also include the City of San Elizario.

RECITALS

WHEREAS, the County, the City of El Paso, and the City of San Elizario are authorized to enter into this First Amendment pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code;
WHEREAS, the City of El Paso has both a Department of Public Health and a Department of Environmental Services;
WHEREAS, the City of San Elizario was previously an unincorporated area within the County’s jurisdiction before it incorporated in 2013 and elected its first officers in 2014;
WHEREAS, the County and the City of El Paso currently have in effect the Agreement for health and environmental services that covers the area of the City of San Elizario;
WHEREAS, the County has agreed to pay the City of El Paso, on behalf of the City of San Elizario, to provide certain public health and environmental services to the City of San Elizario for FY15 of the City of El Paso;
WHEREAS, the City of San Elizario desires to have the City of El Paso’s appointed health and environmental authorities serve as the City of San Elizario’s health and environmental authorities;
WHEREAS, this First Amendment is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned; and
FOR THESE REASONS, and in consideration of the mutual promises contained in this First Amendment, the County, the City of El Paso, and the City of San Elizario mutually agree as follows:

1. SERVICE. The City of El Paso agrees to provide health and environmental services, as described in the Agreement, to the County and the City of San Elizario for the period September 1, 2014 to August 31, 2015.

2. COMPENSATION. The County agrees to pay \$66,950.00 on behalf of the City of San Elizario to the City of El Paso to provide the health and environmental services: this payment amount is included within the \$813, 230.00 total amount that the County has budgeted and approved to pay the City of El Paso for health and environmental services under the City of El Paso-County interlocal Agreement for the same period, September 1, 2014 to August 31, 2015, which equals \$67,769.17 total per month as reflected in Appendices “A” & “B”. The amount of \$270,322 for Animal Services listed in Appendix B, shall not be included in the total amount stated in this Section 2 as the amount for Animal Services is addressed in Sections 9.3 and 9.4 of the Agreement.

3. AUTHORIZATIONS. The City of San Elizario authorizes the City of El Paso Department of Public Health and Department of Environmental Services to perform the health and environmental services under the Agreement within the corporate limits of the City of San Elizario. The City of El Paso will provide the services pursuant to state law and regulations, and County rules. The City of San Elizario agrees:

- 3.1 to adopt the current County food ordinance within 30 days of the execution of this First Amendment so that the City of El Paso may enforce it within the corporate limits of San Elizario;
- 3.2 to appoint the City of El Paso’s appointed Health Authority as the Health Authority within the corporate limits of San Elizario during the term of this First Amendment pursuant to section 121.028(c) of the Health and Safety Code;
- 3.3 that the currently established Animal Shelter Advisory Committee (“ASAC”) will serve as its committee pursuant to section 823.005 of the Health and Safety Code;
- 3.4 that the individual designated by the City of El Paso to serve as the local rabies control authority will serve as its local rabies control authority pursuant to section 826.017 of the Health and Safety Code;
- 3.5 to authorize the El Paso County Sheriff’s Office to conduct rabies enforcement under state law;
- 3.6 to the extent allowed by law, San Elizario agrees to pass all ordinances and resolutions necessary to give the City of El Paso and City of El Paso personnel jurisdiction to provide public health and other service functions in San Elizario pursuant to the terms of this First Amendment, including its extraterritorial jurisdiction, if any, where the providing of public health and other services is authorized by law, and including the power to issue citations for violations of any ordinances pertaining to the protection of the public health and which pertain

to services the City of El Paso agrees to render in accordance with the terms of this First Amendment;

3.7 If the City of San Elizario creates it municipal court system during the term of this First Amendment, the City of El Paso agrees that it will file citations, complaints and violations occurring within the territorial limits of the City of San Elizario through the City of San Elizario Municipal Court. It is agreed that the appropriate personnel from the City of El Paso will be administratively directed to be present at such times as court sessions are set and cases involving the City of El Paso are on the court's docket, without the necessity for the issuance of a subpoena. The City of San Elizario Municipal Court will provide reasonable notice of any case settings to the City of El Paso.

3.8 **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 of San Elizario offers assurances to the City of El Paso that San Elizario will safeguard any protected health information received or created by the City of El Paso regarding residents of San Elizario. Pursuant to this requirement, the parties further agree to the terms and conditions of the standard Business Associate Agreement set forth in Appendix C and incorporated herein as if fully set forth.

4. **TERM AND TERMINATION.** This First Amendment is effective for the City of El Paso fiscal year FY2015 (September 1, 2014 to August 31, 2015). Any Party may terminate this First Amendment for any reason upon 30 days written notice to the other Parties. This First Amendment does not automatically renew even though the Agreement between the City of El Paso and County does automatically renew. Unless otherwise negotiated by all parties by August 1, 2015, this First Amendment expires August 31, 2015.

5. **NOTICE.** Notice under this First Amendment may be delivered to the following addresses:

TO COUNTY:
Ruben Vogt, Chief of Staff
El Paso County Judge's Office
500 E. San Antonio Ave., Rm 301
El Paso, Texas 79901
Tel: 915-546-2098

TO CITY OF EL PASO
City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Fax: 915-543-3888
rvogt@epcounty.com

TO CITY OF SAN ELIZARIO:
The City of San Elizario, Texas
Hon. Maya Sanchez, Mayor
P.O. Box 1723
San Elizario, Texas 79849
Tel: (915) 252-6599

6. INDEPENDENT CONTRACTOR. The Parties are independent legal entities. Except to the extent required by section 437.009 of the Health and Safety Code, nothing contained in this First Amendment shall be construed to create the relationship of an employer-employee or principal-agent, a partnership or joint venture, or to otherwise create any liability whatsoever with respect to the indebtedness, liabilities, and obligations of the Parties.

7. LIABILITY. Each Party is solely responsible for the actions or omissions of its employees and agents to the extent required by Texas law. Where injury or property damage results from the joint or concurring acts or omissions of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, and subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties and not for the benefit of any person. No provision of this First Amendment may be deemed a waiver of any defenses available by law. Parties agree that, in all things relating to this First Amendment, the City of El Paso is performing a governmental function, as defined by the Texas Tort Claims Act.

8. SEVERABILITY. If any provision of this First Amendment is held invalid, unenforceable, or illegal by a court of competent jurisdiction, the remainder of this First Amendment will remain valid and in full force and effect.

9. GOVERNING LAW AND JURISDICTION. The laws of the State of Texas will apply to this First Amendment and venue will be in El Paso County, Texas.

10. ENTIRE AGREEMENT. The Agreement and this First Amendment is the entire agreement between the Parties. This agreement may be amended in a writing executed by all Parties.

(Signature pages follow)

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

APPROVED this ____ day of _____, 201__.

COUNTY OF EL PASO

Veronica Escobar
County Judge

ATTEST:

Delia Briones
County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

(signatures continue on the following page)

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

APPROVED this _____ day of _____, 201____.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Robert Resendes, MBA, MT(ASCP), CLS(RI)
Department of Public Health, Director

APPROVED AS TO CONTENT:

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

(signatures continue on the following page)

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

APPROVED this _____ day of _____, 201____.

CITY OF SAN ELIZARIO

Maya Sanchez
Mayor

ATTEST:

Nancy Montes
City Clerk

APPROVED AS TO FORM:

Elizabeth Elleson
City Attorney

**APPENDIX A
DEPARTMENT OF PUBLIC HEALTH
COST MODEL – PER CAPITA**

**City of El Paso, Texas
Summary Results- For Direct Departments
Based on 2015 Budgeted Expenditures**

	El Paso	Anthony	Clint	Horizon	Socorro	Vinton	County	San Elizario	Total Operational Cost
Environment - Food	(82,509)	(623)	(116)	(2,099)	(4,017)	(247)	(9,655)	(1,147)	(100,414)
STD/HIV/Aids Clinics	125,463	947	177	3,192	6,108	376	14,682	1,745	152,690
Dental Clinic	476,061	3,593	671	12,113	23,176	1,427	55,709	6,620	579,370
Neighborhood Health Centers	125,320	946	177	3,189	6,101	376	14,665	1,743	152,516
Laboratory	788,612	5,952	1,111	20,066	38,393	2,363	92,284	10,966	959,746
Epidemiology	262,142	1,978	369	6,670	12,762	786	30,676	3,645	319,029
Health Education Programs	201,250	1,519	283	5,121	9,798	603	23,550	2,798	244,922
TDH Immunization	716,523	5,408	1,009	18,232	34,883	2,147	83,848	9,963	872,014
TB Outreach (less 5%)	63,490	479	89	1,616	3,091	190	7,430	883	77,267
HIV Prevention	117,507	887	166	2,990	5,721	352	13,751	1,634	143,006
PDNHF Two Should Know	44,456	336	63	1,131	2,164	133	5,202	618	54,103
DSHS TB Prevention/Control	153,130	1,156	216	3,896	7,455	459	17,919	2,129	186,360
DSHS Regional Planning (ORAS)	62,589	472	88	1,593	3,047	188	7,324	870	76,172
TDH Bur of Women & Children Fees (Title V -Dental)	94,146	711	133	2,396	4,583	282	11,017	1,309	114,576
STD/HIV Federal	93,297	704	131	2,374	4,542	280	10,918	1,297	113,544
Bio Terrorism-Lab	66,291	500	93	1,687	3,227	199	7,757	922	80,677
HIV/Surv Federal DSHS	17,541	132	25	446	854	53	2,053	244	21,347
OPHP/Bio Terrorism	107,072	808	151	2,724	5,213	321	12,530	1,489	130,308
211 Area Information Center	77,257	583	109	1,966	3,761	232	9,041	1,074	94,022
HEAL	36,365	274	51	925	1,770	109	4,255	506	44,256
Abstinence	51,355	388	72	1,307	2,500	154	6,010	714	62,500
WIC Administration	823,444	6,215	1,160	20,953	40,088	2,468	96,360	11,450	1,002,137
WIC Breastfeeding	83,003	626	117	2,112	4,041	249	9,713	1,154	101,015
WIC Nutrition Education	237,356	1,791	334	6,040	11,555	711	27,776	3,300	288,864
Laboratory Response Network	-	-	-	-	-	-	-	-	-
PDN Tobacco	41,424	313	58	1,054	2,017	124	4,848	576	50,414
Infectious Disease Control	1,569	12	2	40	76	5	184	22	1,910
NEW PROGRAMS	-	-	-	-	-	-	-	-	-
IDCU Foodborne Assoc Infection	21,917	165	31	558	1,067	66	2,565	305	26,673
Caring for Children Foundation	8,766	66	12	223	427	26	1,026	122	10,668
Total Department of Public Health	4,814,837	36,338	6,782	122,514	234,405	14,428	563,438	66,950	5,859,692
Percent of Total Cost	82.17%	0.62%	0.12%	2.09%	4.00%	0.25%	9.62%	1.14%	100.00%
Population	674,433	5,090	950	17,161	32,834	2,021	78,923	9,378	820,790
Cost Per Capita	7.14	7.14	7.14	7.14	7.14	7.14	7.14	7.14	7.14

APPENDIX B
DEPARTMENT OF ENVIRONMENTAL SERVICES
COST MODEL – PER ACTIVITY (ANIMAL SERVICES & VECTOR CONTROL)
/PER CAPITA AIR QUALITY)

City of El Paso, Texas
Interlocal Allocation of Resources

FY15	El Paso	Anthony	Clint	Horizon	Socorro	Vinton	El Paso County	Total Operational Cost
Animal Shelter	\$3,503,182	\$11,803	\$13,551	\$34,971	\$106,660	-	\$270,322	\$3,940,488
Animal Control Officers	\$2,512,409	\$8,301	\$7,765	\$50,339	\$98,804	\$15,124	-	\$2,692,742
Vector Control	\$702,254	\$23,904	\$17,518	\$9,215	\$18,339	\$22,433	\$141,144	\$934,807
Air Quality (per capita)	\$285,305	\$2,202	\$407	\$7,355	\$14,071	\$1,118	\$41,698	\$352,156
Grand Total	\$7,003,149	\$46,210	\$39,241	\$101,880	\$237,874	\$38,675	\$453,164	\$7,920,193
Percent of Total Cost	88.42%	0.58%	0.50%	1.29%	3.00%	0.49%	5.72%	100.00%

APPENDIX C

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on _____, 201____, by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and CITY OF SAN ELIZARIO ("BUSINESS ASSOCIATE") by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, CITY has engaged BUSINESS ASSOCIATE to perform services or provide goods, or both;

WHEREAS, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

WHEREAS, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

NOW THEREFORE, CITY and BUSINESS ASSOCIATE agree as follows:

A. HIPAA Terms

1. **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, or as provided in (1)(h) to this Section.
 - a. **Agreement** shall refer to this document.
 - b. **Business Associate** means CITY OF SAN ELIZARIO.
 - c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.

- d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
 - e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
 - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
 - g. **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.
 - h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
 3. **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 CITY for the following stated purposes:
To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)
 4. **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. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
 5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

- a. The disclosure is required by law; or
 - b. 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. 45 C.F.R. 164.504(e)(4)(ii)).
6. **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 CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).
7. **BUSINESS ASSOCIATE OBLIGATIONS:**
- a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
 - b. **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 Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
 - c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
 - d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time 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 Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
 - (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health

information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.

- e. **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 Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **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)).
- h. **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. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **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 CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).

- k. **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 Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
 - l. **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. 45 C.F.R. 164.530(e)(1)).
 - m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).
 - n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
 - o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
 - p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
8. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
9. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, 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.
10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate

Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

B. Term and Termination

1. **Term.** The Term of this Agreement shall be effective as of September 1, 2014, and shall terminate on the same date as the Interlocal for public health and environmental services between the parties to which this Agreement is attached and identified as Attachment "C", or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
2. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY 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 CITY.
 - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
 - c. Notify the Secretary of HHS if termination is not possible.
3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:
 - a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
 - b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
 - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;

- d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
- e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
- f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

C. Remedies. If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:

- 1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
- 2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- 3. Terminate this Agreement immediately.
- 4. Injunction. CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.
- 5. Indemnification. BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BUSINESS ASSOCIATE in connection with the representations, duties and obligations of BUSINESS ASSOCIATE under this Agreement. The parties' respective rights and obligations under this Section 5 shall survive termination of the Agreement.

D. Miscellaneous

1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.
2. **Amendment.** CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.
4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

COPY TO: City of El Paso
Department of Public Health
Attention: Director
5115 El Paso Drive
El Paso, TX 79905

BUSINESS ASSOCIATE: The City of San Elizario, Texas
Hon. Maya Sanchez, Mayor
P.O. Box 1723
San Elizario, Texas 79849

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that

default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the _____
_____ day of _____, 201__.

CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Robert Resendes, MBA, MT(ASCP), CLS(RI)
Director, Department of Public Health

BUSINESS ASSOCIATE:

CITY OF SAN ELIZARIO

Maya Sanchez
Mayor

APPROVED AS TO FORM:

ATTEST:

Elizabeth Elleson
City Attorney

Nancy Montes
City Clerk