

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

DEPARTMENT: Environmental Services

AGENDA DATE: September 15, 2015

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

DISTRICT(S) AFFECTED: Anthony, Texas

STRATEGIC GOAL: Goal 8: Nurture and Promote a Healthy, Sustainable Community

SUBJECT:

That the Mayor of the City of El Paso be authorized to sign an Interlocal Agreement between the City of El Paso and Anthony, Texas for the period September 1, 2015 through August 31, 2016, for the provision of environmental services by the City of El Paso for Anthony.

BACKGROUND / DISCUSSION:

The scope of services will include environmental services performed in Anthony by the Environmental Services Department for investigation and enforcement of Texas Health and Safety Code statutes regarding air quality, animal services field operations (animal control), animal shelter services and vector control services.

The City of Anthony will compensate the City of El Paso \$42,478.00 for the services performed per this interlocal agreement.

PRIOR COUNCIL ACTION:

Previous interlocal agreement between the City of El Paso and Anthony was authorized on December 9, 2014.

AMOUNT AND SOURCE OF FUNDING:

N/A

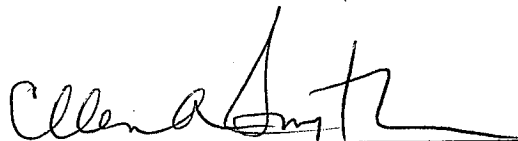
BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Ellen A. Smyth, P.E.



August 31, 2015

Name

Signature

Date

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 City of Anthony, Texas, for the period of September 1, 2015 through August 31, 2016, for the provision of environmental services by the City of El Paso to the City of Anthony, for which the City of Anthony shall pay to the City of El Paso an annual amount FORTY TWO THOUSAND FOUR HUNDRED SEVENTY EIGHT AND 00/100 DOLLARS (\$42,478.00).

Dated this _____ day of _____ 2015.


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



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

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into on the last listed approved date below between the CITY OF EL PASO, TEXAS (“City of El Paso”) and the CITY OF ANTHONY, TEXAS (“City of Anthony”) by and through its duly authorized officials, pursuant to the Interlocal Cooperation Act.

RECITALS

WHEREAS, the City of El Paso and City of Anthony are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, the City of El Paso has a Department of Environmental Services; and

WHEREAS, this Agreement for interlocal cooperation for the City of El Paso to provide certain environmental services to the City of Anthony is necessary for the mutual advancement of the health and general welfare of the citizens of all jurisdictions concerned; and

WHEREAS, the City of Anthony desires to have the City of El Paso’s designated Local Rabies Control Authority serve as the City of Anthony’s designated authority, as necessary pursuant to state law.

WHEREAS, the City of Anthony requests assistance from the City’s Animal Services Division as the City of Anthony has no location to house animals that it retrieves or other individuals or entities retrieve within the jurisdictional boundaries of the City of Anthony; and

WHEREAS, the City of Anthony will make available and/or transfer to the City of El Paso certain information, in conjunction with goods or services that are being provided by the City of El Paso to the City of Anthony, which is confidential and must be afforded special treatment and protection.

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

1. **SCOPE OF SERVICES.**

1.1 The City of El Paso shall perform the following environmental services by and through its Department of Environmental Services under the terms and conditions hereinafter stated, and the City of Anthony hereby accepts and agrees to the following terms and conditions:

1.1.1 The City of El Paso 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.

1.1.2 The City of El Paso agrees to provide the following animal control services:

1.1.2.1 The City of El Paso will receive at the City's Animal Shelter located at 5001 Fred Wilson Road, El Paso, Texas 79906 (the "Shelter") each animal that the City of Anthony either delivers or requests to be delivered to said Shelter, or that each resident of the City of Anthony delivers to said Shelter. The City of El Paso will board each animal that the City of Anthony delivers or requests to be delivered to said Shelter, or that each resident of the City of Anthony delivers to said Shelter, whether it be in order to reunite said animal with its owner, quarantine, maintain evidence for a legal proceeding, or euthanize and dispose of said animal.

1.1.2.1.1 The City shall recoup from all animal owners who reclaim their animal at the Shelter, prior to releasing an animal to the owner, all applicable fees in order to mitigate charges to the City of Anthony to include the one time impound fee of \$55.00/animal; kenneling fee of \$10.00/day for a dog or cat, and \$15.00/day for an animal other than a dog or cat; and the quarantine fee of \$10.00/day. On a monthly basis, the City will keep track of the amounts recouped directly from City of Anthony animal owners who reclaimed their animal(s) at the Shelter, and shall issue a refund in that amount to the City of Anthony by September 30, 2016.

1.1.2.2 The City of El Paso agrees to provide animal control services as determined to be appropriate by City of El Paso staff and as required by law, including but not limited to, investigating citizen complaints, conducting periodic patrols to proactively enforce appropriate State animal-related rules and laws and engaging in the impoundment of stray animals, investigation of animal bite reports, quarantine of animals involved in bites, investigation of allegations of animal cruelty, and the euthanasia of animals as necessary.

1.1.3 The City of El Paso will include the jurisdictional areas of the City of Anthony within its programs and services for the purpose of the enhancement of the air quality, to include but not be limited to, routine ambient air monitoring, analysis of gasoline samples to ensure compliance with oxygen content, and investigation and enforcement of air related nuisances and other requirements as set forth by the Texas Commission on Environmental Quality and/or the United States Environmental Protection Agency as appropriate.

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

1.3 To the extent allowed by law, the City of Anthony agrees to pass all ordinances and resolutions necessary to give the City of El Paso and City of El Paso personnel

jurisdiction to provide environmental service functions in the City of Anthony pursuant to the terms of this Agreement, including its extraterritorial jurisdiction, if any, where the providing of environmental 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 Agreement.

- 1.4 The City of El Paso agrees that it will file citations and complaints regarding applicable violations occurring within the territorial limits of the City of Anthony through the City of Anthony 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 said citations and complaints are on the court's docket, without the necessity for the issuance of a subpoena. The City of Anthony Municipal Court will provide reasonable notice of any case settings to the City of El Paso.
- 1.5 The City of El Paso 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 of El Paso, and shall require all such personnel to maintain all required licenses and certifications in accordance with State and Federal laws.
- 1.6 Nothing within the terms of this Agreement shall require the City of El Paso to purchase additional equipment or hire additional personnel in order to comply with the terms of this Agreement.
- 1.7 The City of El Paso agrees that it will keep accurate records of all services provided to the City of Anthony pursuant to this Agreement as part of its routine data collection processes and shall report such activities in its standardized records format to City of Anthony officials, as requested. However, the City of El Paso will not be required to furnish copies of any reports that are maintained on the City's website and available to the City of Anthony from the website.
- 1.8 On or before July 1, 2016, the City of El Paso shall provide to the City of Anthony an initial projection based on the City Manager's filed proposed budget of City of Anthony's potential costs for a new Interlocal Agreement that, if agreed upon, would

be effective September 1, 2016. The provision of this initial projection of potential costs will be used solely for the purposes of facilitating the budgeting process for the City of Anthony for its FY2017 budget.

1.9 It is understood and agreed to between the parties that any portion of this Agreement providing for the delivery of environmental services for which the City of Anthony does not grant legal authority shall be null and void and of no force and effect, and the City of El Paso shall not be obligated to provide those services.

2. **LOCATION OF PERFORMANCE.** The place where most services are to be performed is in the City of Anthony, Texas, and any extraterritorial jurisdiction thereof where the City of El Paso may lawfully provide environmental services as delegated and authorized under this Interlocal Agreement (jurisdictional areas of the City of Anthony). The place where the specific services described in Subsections 1.1.2.1 are to be performed is at the Shelter.

3. **DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY.** The Parties agree that the individual or entity designated by the City to serve as the Local Rabies Control Authority will serve as the Local Rabies Control Authority for the City of Anthony, as necessary pursuant to Section 826.017, Texas Health and Safety Code.

4. **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 jurisdictional areas of the City of Anthony.

5. **TIMES OF PERFORMANCE.** The City of El Paso shall commence the provision of its services on the 1st day of September 2015, and shall terminate on the 31st day of August 2016, regardless of the date of execution of this Agreement.

5.1 In the event of an environmental emergency, such as, but not limited to, a disaster declaration of the City of Anthony, requiring, as a result of the emergency, specific environmental services from the City of El Paso after August 31, 2016, and prior to the signing of a subsequent Interlocal for environmental services between the parties to this Agreement, the required services shall be provided by the City of El Paso to the City of Anthony at the rate described in the present Agreement, and the City of Anthony shall pay for said services at said rate within thirty (30) days of receipt of an invoice from the City of El Paso for said services.

6. **COMPENSATION.**

6.1 The City of Anthony agrees to pay the amount not to exceed FORTY TWO THOUSAND FOUR HUNDRED SEVENTY EIGHT AND 00/100 DOLLARS (\$42,478.00) for services rendered in accordance with this Agreement, excluding the services described in Section 5.1. Payments shall be made in equal monthly installments, each in the amount of THREE THOUSAND FIVE HUNDRED THIRTY NINE AND 83/100 DOLLARS (\$3,539.83), with the first payment becoming due and payable on the 1st day of September 2015 or within 10 days after the date that the City of Anthony signs this Agreement, whichever is later. The monthly installment described in this Section 6.1 does not include the services described in Section 5.1.

6.2 The Parties acknowledge that the funds paid by the City of Anthony pursuant to Section 6.1 above may not be sufficient in the event of an unexpected occurrence such as an outbreak or epidemic (i.e. rabies, cholera) in the jurisdictional areas of the City of Anthony. The City of Anthony shall name a person to serve as a point of contact to discuss these types of threats, its intervention, and any additional costs that the City of Anthony will need to pay to defray the resulting expenses. Such contact person shall be designated and disclosed to the director of the Department of Environmental Services as of the signing of this Agreement. The comparative Cost Model attached hereto as Appendix A lists the cost per service offered by the City of El Paso to the City of Anthony pursuant to this Agreement.

7. **PAYMENTS PURSUANT TO THIS AGREEMENT.** Payments submitted under this Agreement shall be made payable to the City of El Paso, Attn: Comptroller, PO Box 1890, El Paso, TX 79950-1890. In event that the City of Anthony accrues an arrearage on payment, the City of El Paso 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.

8. **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.

8.1 *Authority of the City of El Paso.* The City of Anthony expressly agrees that the City of El Paso shall have authority to enforce all laws and ordinances applicable to

environmental law, including animal regulation, within the city limits and extraterritorial jurisdiction of the City of Anthony, Texas. The City of Anthony further agrees that, in the absence of any conflicting city ordinance, the City of El Paso shall have authority to enforce the laws of the State of Texas and the County of El Paso applicable to environmental law to include animal regulation, within the incorporated limits and extraterritorial jurisdiction of the City of Anthony, Texas. The City of Anthony shall provide certified copies of all the City of Anthony, Texas Ordinances affecting environmental law, including animal regulation upon execution of this Agreement and as requested by the City of El Paso, and to provide copies of all such newly adopted or amended ordinance within 10 days after adoption or amendment. Copies of such ordinances shall be sent to the Director of the City of El Paso Department of Environmental Services.

- 8.2 *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 of El Paso 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. Each party reserves, and does not waive, its rights of sovereign immunity and rights under the Texas Tort Claims Act.
- 8.3 *Governmental Function.* The Parties expressly agree that, in all things relating to this Agreement, the City of El Paso 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 of El Paso, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.
- 8.4 *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 PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE LATTER 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.

8.5 *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.

9. **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, or at a new address as provided in writing to the nonmoving party by a party which has moved its physical location within thirty (30) days of said relocation without the necessity of amending this contract:

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

CITY OF ANTHONY: City of Anthony
 Attn: Mayor
 401 Wildcat Drive
 Anthony, Texas 79821

All payments by the City of Anthony under this Agreement are payable only out of current City of Anthony revenues. In the event that funds relating to this Agreement do not become available, such as by City of Anthony City Council not appropriating the funds, the City of Anthony shall have no future obligation to pay or perform any future services related herein to the City of El Paso for the City of Anthony's fiscal year during which time such funding is not available or appropriated; however, all services that have been provided by the City of El Paso shall be paid in accordance with Sections 6 and 7 of this Agreement. Should the City of Anthony experience a funding unavailability related to the services described in this Agreement, the City of Anthony shall

immediately provide written notification to the City of El Paso of such case and either party may choose to terminate the Agreement subject to this Section 9. In the event that the City of Anthony notifies the City of El Paso that the City of Anthony is experiencing a funding unavailability related to this Agreement, the City of El Paso shall immediately cease providing the services described in this Agreement to the City of Anthony except as required by related grant funding requirements to which the City of El Paso must adhere.

10. **INDEPENDENT CONTRACTORS.** The City of El Paso and the City of Anthony are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the City of El Paso nor the City of Anthony nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.

11. **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.

12. **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.

13. **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. The parties reserve the right to amend this Agreement in the event either party should experience an unforeseen, significant impact to their respective budget allocated for the services addressed in this Agreement.

(Signature pages follow)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

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

APPROVED this _____ day of _____, 20__.

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

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

(Signatures continue on the following page)

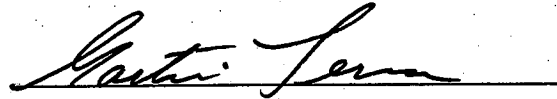
STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

Signature page for the City of Anthony Interlocal Agreement between the City of El Paso and the City of Anthony.

APPROVED this 8th day of September, 2015.


CITY OF ANTHONY



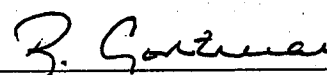
Martin Lerma
Mayor

ATTEST:

APPROVED AS TO FORM:



City of Anthony Clerk



City of Anthony Attorney

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

FY16	El Paso	Anthony	Clint	Horizon	Socorro	Vinton	El Paso County	San Elizario	Total Operational Cost
Animal Shelter	2,858,073	17,568	13,851	87,838	102,702	4,730	270,322	21,959	3,375,043
Animal Control Officers	2,295,098	12,420	5,796	42,129	75,248	4,383	-	146	2,435,221
Vector Control	602,112	11,191	6,432	10,277	32,041	2,078	114,136	92	778,359
Air Quality (per capita)	168,380	1,300	240	4,341	8,304	524	24,609	2,433	210,131
Grand Total	5,921,664	42,478	26,319	144,585	218,296	11,715	409,067	24,630	6,798,754
Percent of Total Cost	87.10%	0.62%	0.39%	2.13%	3.21%	0.17%	6.02%	0.36%	100.00%



Interlocal Environmental Services Agreements, FY 16

Karl Rimkus, M.Ed.
Environmental Services



1. Strategic Goal No. 8

- Nurture and promote a healthy, sustainable community



2. Purpose

- Interlocal agreements with area municipalities and the County of El Paso allow the City of El Paso to provide environmental services to these communities at a specified cost for each jurisdiction



3. Background

- The El Paso City-County Health and Environmental District
 - Existed from 1960s – 2007
 - Provided health and environmental services to County and area municipalities
- City of El Paso
 - Since 2008 have provided these services via interlocal agreements
 - Provided by Dept. of Public Health and ESD



4. Environmental Services

- Air Quality (enforcement)
- Animal Services Field Ops (animal control)
- Animal Shelter (impoundment, adoption, quarantine)
- Vector Control (application and enforcement)



5. Agreement Renewal

- For area municipalities, agreements are renewed annually, and are effective September 1st of each year
- The agreement with El Paso County is “perpetual,” unless terminated, and does not require annual renewal



6. Approval Dates

- 8/18/15 – Horizon City and Vinton
- 8/20/15 – Socorro
- 8/25/15 – Anthony and San Elizario
- 8/26/15 - Clint



7. Cost Allocation

- Cost for services is allocated based on a relative share of total activities conducted in each community for the previous 12 months



8. Cost Allocation

Municipality/County	Total
El Paso County	\$409,067
Socorro	\$218,296
Horizon City	\$144,585
Anthony	\$42,478
Clint	\$26,319
San Elizario	\$24,630
Vinton	\$11,715



Questions and Comments