

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

DEPARTMENT: Department of Public Health – Administration

AGENDA DATE: CCA Consent 10/18/16

CONTACT PERSON/PHONE: Robert Resendes, Director (212-6500)

DISTRICT(S) AFFECTED: All

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

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso and the City of Anthony, Texas, ("City of Anthony") for the period of September 1, 2016 through August 31, 2017, for the provision of public health and 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 of SIXTY TWO THOUSAND ONE HUNDRED THIRTEEN DOLLARS AND NO/100 (\$62,113.00).

BACKGROUND / DISCUSSION:

The agreement authorizes the Department of Public Health (DPH) to provide laboratory, health education and community health preparedness services. DPH will continue to provide public health services, and have the City of El Paso's appointed health authority serve as the municipalities' health authority.

PRIOR COUNCIL ACTION:

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

Yes, annually

AMOUNT AND SOURCE OF FUNDING:

n/a

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____



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, ("City of Anthony") for the period of September 1, 2016 through August 31, 2017, for the provision of public health and 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 of SIXTY TWO THOUSAND ONE HUNDRED THIRTEEN DOLLARS AND NO/100 (\$62,113.00).

Dated this _____ day of _____, 20__.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM



Jyette Flores
Assistant City Attorney

APPROVED AS TO CONTENT



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

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 both a Department of Public Health and a Department of Environmental Services; and

WHEREAS, this Agreement for interlocal cooperation for the City of El Paso to provide certain public health and 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 appointed health authority serve as the City of Anthony's health authority; 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; and

WHEREAS, the City of El Paso will also have access to and/or receive from the City of Anthony certain information that can be used or disclosed only in accordance with this Agreement, the Texas Medical Records Privacy Act and the HHS Privacy Regulations;

WHEREAS, the City of El Paso will include the City of Anthony in public health research projects, to examine health conditions in the City of Anthony, when funded by the State of Texas or the federal government and when research protocols are indicated for areas beyond the urban borders of the City of El Paso.

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

1.1.1.1 The City will provide food handler and food manager training in accordance with the Texas Food Establishment Rules found at 25 TAC 228.

1.1.2 The City of El Paso will provide public health related complaint investigation/enforcement services as determined to be appropriate by City of El Paso staff for those conditions that violate the Texas Health and Safety Code and applicable City of Anthony ordinances.

1.1.3 The City of El Paso will provide communicable disease investigation services for the purpose of tracking communicable diseases and helping to reduce transmission in accordance with appropriate epidemiological intervention. Services will be provided in a manner and at a frequency that is consistent with standard public health practices.

1.1.4 The City of El Paso will provide immunization services to residents of the City of Anthony to include but not be limited to adult, adolescent and childhood immunizations as recommended by the Texas DSHS. Appropriate and customary fees will be charged to those receiving these services.

1.1.5 The City of El Paso will provide tuberculosis and sexually transmitted disease control services to residents of the City of Anthony. Services may

include testing, treatment and investigation of contacts, as appropriate. Appropriate and customary fees will be charged to those receiving these services.

1.1.6 The City of El Paso will provide Women, Infants and Children (WIC) Nutrition services to residents of the City of Anthony in accordance with Texas DSHS requirements. Services may include medical health assessment, nutrition, breast-feeding promotion, social service referral, and food benefit issuances, as appropriate.

1.1.7 The City will provide pediatric dental services to residents living in the City of Anthony in accordance with Texas Title V requirements and in accordance with Texas Medicaid waiver guidelines. Services may be provided in the Department of Public Health's licensed dental facility in the City of El Paso or by use of the City of El Paso's Mobile Dental clinic beyond the City limits.

1.1.8 The City of El Paso will provide informational programs including but not limited to injury prevention, asthma, diabetes, abstinence, maturation/puberty, and tobacco use prevention. These services are generally provided to the City of Anthony's residents at local school facilities through the City of El Paso's Health Education Program.

1.2 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:

1.2.1 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.

- 1.2.2 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.
- 1.3 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 Public Health or 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.
- 1.4 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 public health and 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 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 Agreement.

- 1.5 The City of El Paso agrees that it will file citations, complaints and 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 the City of El Paso 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.
- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 On or before July 1, 2017, 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, 2017. 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 FY2018 budget.
- 1.10 It is understood and agreed to between the parties that any portion of this Agreement providing for the delivery of public health and 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 public health and environmental services as delegated and authorized under this Interlocal Agreement (jurisdictional areas of the City of Anthony). Certain health services involving medical testing, treatment and laboratory analysis shall be performed at City Department of Public Health locations within the City of El Paso.

3. **APPOINTMENT OF HEALTH AUTHORITY.** The Parties agree that the individual appointed to serve as health authority for the City of El Paso will serve as the health authority for the City of Anthony, in accordance with Section 121.028(c), Texas Health and Safety Code.

4. **TIMES OF PERFORMANCE.** The City of El Paso shall commence the provision of its services on the 1st day of September 2016, and shall terminate on the 31st day of August 2017, regardless of the date of execution of this Agreement.

4.1 In the event of a public health or environmental emergency, such as, but not limited to, a disaster declaration of the City of Anthony, requiring, as a result of the emergency, specific health and environmental services from the City of El Paso after August 31, 2015, and prior to the signing of a subsequent Interlocal for health and 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.

5. **COMPENSATION.**

5.1 The City of Anthony agrees to pay the amount not to exceed SIXTY TWO THOUSAND ONE HUNDRED THIRTEEN DOLLARS AND NO/100 (\$62,113.00) for services rendered in accordance with this Agreement, excluding the services described in Section 4.1. Payments shall be made in equal quarterly installments, each in the amount of FIFTEEN THOUSAND FIVE HUNDRED TWENTY-EIGHT DOLLARS AND 25/100 (\$15,528.25), with the first payment becoming due and payable on the 1st day of September 2016 or within 10

days after the date that the City of Anthony signs this Agreement, whichever is later. The quarterly installment described in this Section 5.1 does not include the services described in Section 4.1. The Cost Model attached hereto as Appendix A and Appendix B identifies the total cost of services offered by the City of El Paso to the City of Anthony pursuant to this Agreement.

- 5.2 The Parties acknowledge that the funds paid by the City of Anthony pursuant to Section 5.1 above may not be sufficient in the event of an unexpected occurrence such as an outbreak, epidemic (i.e. Zika, cholera), or intervention of emerging or new diseases or public health threats (chemical or biological) 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 Public Health and the Director of the Department of Environmental Services as of the signing of this Agreement, as applicable.

6. **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 addition to the compensation provided for herein, the City of El Paso shall receive all proceeds received from inspection and permit fees collected in the City of Anthony. Such fees, when set or revised by the City of Anthony and to the extent allowed by law, shall be set in the same amounts as the fees for the identical services or charges as made by the City of El Paso. All fees that the City of Anthony collects for this purpose shall be paid to the City of El Paso on a quarterly basis, within 30 days of the conclusion of the quarter. The City of Anthony shall also provide the City of El Paso with a report indicating the amount of fees collected and the time period associated with such collection. 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.

7. **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.

- 7.1 *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 those public health and environmental services covered in this agreement, within the incorporated 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 those public health and environmental services covered in this agreement, within the incorporated city 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 public health and environmental 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 Public Health and to the Director of the City of El Paso Department of Environmental Services, as applicable.
- 7.2 *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.
- 7.3 *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.
- 7.4 *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 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.

7.5 *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.

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 El Paso offer assurances to the City of Anthony that the City of El Paso will safeguard any protected health information received or created on behalf of the City of Anthony. Pursuant to this requirement, the parties further agree to the terms and conditions of the standard HIPAA Business Associate Agreement set forth in Appendix C and incorporated herein as if fully set forth.

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

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 5 and 6 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 City of Anthony are independent legal entities. Except to the extent required by section 437.009 of the Health and Safety Code, 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 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.

13. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

14. **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.

15. **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 _____, 2016.

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)
Director, Department of Public Health



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

(Signatures continue on the following page)

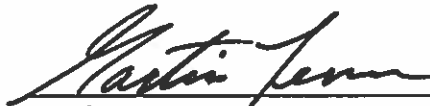
STATE OF TEXAS)
)
COUNTY OF EL PASO)

INTERLOCAL AGREEMENT

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

APPROVED this 22 day of August, 2016.

CITY OF ANTHONY



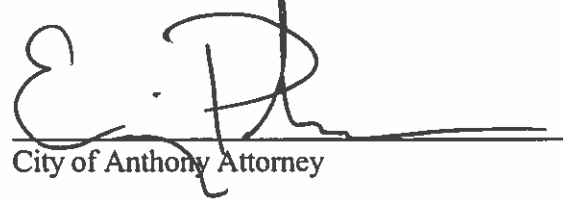
Martin Lerman
Mayor

ATTEST:



City of Anthony Clerk

APPROVED AS TO FORM:



City of Anthony Attorney

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

**City of El Paso, Texas
Summary Results- For Direct Departments
Based on 2017 Budgeted Expenditures**

| FY17 | El Paso | Anthony | Clint | Horizon | Socorro | El Paso County | San Elizario | Vinton | Total Operational Cost |
|------------------------------|------------------|---------------|--------------|---------------|---------------|----------------|--------------|---------------|------------------------|
| Vector Control | 824,356 | 25,232 | 4,984 | 13,810 | 42,781 | 105,705 | 4,361 | 17,133 | 1,038,362 |
| Air Quality (per capita) | 223,431 | 1,725 | 319 | 5,760 | 11,019 | 32,655 | 3,228 | 696 | 278,832 |
| Grand Total | 1,047,786 | 26,957 | 5,303 | 19,570 | 53,800 | 138,360 | 7,589 | 17,829 | 1,317,194 |
| Percent of Total Cost | 79.55% | 2.05% | 0.40% | 1.49% | 4.08% | 10.50% | 0.58% | 1.35% | 100.00% |

APPENDIX C

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on August 22, 2016, by and between the CITY OF EL PASO, TEXAS ("CITY"), as the Covered Entity, and CITY OF ANTHONY ("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 ANTHONY.

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, 2016, and shall terminate on August 31, 2017, 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: City of Anthony
Attn: Mayor
401 Wildcat Drive
Anthony, Texas 79821

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 _____, 2016.

CITY OF EL PASO

Tomás González
City Manager

CITY OF ANTHONY

Signature: 
Name Printed: Martin Leona
Title: 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)
Director, Department of Public Health