



**COMMISSIONERS COURT
COMMUNICATION**

AGENDA DATE : 4-22-2013

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO
(IF APPLICABLE): 2013-0101

SUBJECT: Approve and authorize the County Judge to sign the Interlocal Agreement between the County of El Paso and the El Paso County Tornillo Water Improvement District for On-Site Sewage and Environmental Services at a cost of \$1.00 for month.

BACKGROUND/DISCUSSION OF TOPIC: To include statutory requirement, operational impact, or performance goal.

FISCAL IMPACT: None

PRIOR COMMISSIONERS COURT ACTION (IF ANY): None

RECOMMENDATION: Approval

COUNTY ATTORNEY APPROVAL

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Kevin McCary

LEGAL REVIEW: 3/18/2013

LEGAL REVIEW NOTES (If Applicable): Approved as to Form as Submitted.

DATE: 3/18/2013

SUBMITTED BY:

Ernesto Carrizal III. P.E. Public Works Director. Public Works Dept. 915-546-2015

STATE OF TEXAS }
COUNTY OF EL PASO }

**INTERLOCAL AGREEMENT
BETWEEN THE COUNTY OF EL PASO AND THE EL PASO COUNTY TORNILLO WATER
IMPROVEMENT DISTRICT
FOR ENVIRONMENTAL SERVICES**

THIS AGREEMENT entered into between the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT, (“DISTRICT”), and the COUNTY OF EL PASO, TEXAS (“COUNTY”) by and through its duly authorized officials, pursuant to the Interlocal Cooperation Act, and for the purpose of providing certain services relating to the operation of the On-Site Sewage Facility Program, (“OSSF”) and public health services.

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

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

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

WHEREAS, on March 11, 2013, the County Commissioners Court approved a reduced fee (Item #33, Motion #9) for COUNTY OSSF services for non-municipal, non-taxing entities, like the DISTRICT; and

WHEREAS, the COUNTY may enforce Chapter 341, of the Texas Health and Safety Code, Minimum Standards of Sanitation and Health Protection Measures, to provide the citizens of the County with adequate public health protection and a minimum of environmental pollution; and

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

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

WHEREAS, the public health, safety and welfare of the citizens of El Paso County and the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT would be best served by both parties entering into this Intergovernmental Cooperation Agreement pursuant to the authority granted by Chapter 791 of the Texas Government Code; and

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

NOW THEREFORE, be it resolved that the County of El Paso and the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT enter into this Interlocal Cooperation Agreement for the administration and operation of the El Paso County OSSF Program.

1. **DISTRICT DUTIES**

- A. Pursuant to Section 3, the DISTRICT shall pay to the COUNTY a monthly fee, to be determined annually, for the services to be performed each year during the term of this Agreement, without demand and by the first day of each month during the term of this agreement.
- B. The DISTRICT shall notify the COUNTY of non-complying systems. The DISTRICT shall notify the COUNTY of inspections requested. The DISTRICT shall also report any non-complying activities to the County.

2. **COUNTY SCOPE OF SERVICES**

- A. The COUNTY shall perform the following services under the terms and conditions hereinafter stated, and the DISTRICT hereby accepts and agrees to the following terms and conditions:
 - (1) **PERMITTING SERVICES.** The COUNTY shall review permit applications, issue permits to construct, and provide inspection services of on-site sewage disposal systems in accordance with applicable Texas Commission on Environmental Quality rules, and in accordance with the El Paso County Sewage Facility Order. The County shall provide enforcement of said rules as appropriate for the purposes of protecting public health and the mitigation of nuisance conditions. Appropriate and customary fees will be charged to the owner of the facilities as permitted by law.
 - (2) **INSPECTION SERVICES.** The COUNTY shall provide inspection services including, but not limited to, inspection of new and existing OSSFs for

compliance with current rules and regulations. The COUNTY shall inspect the septic system and surrounding area.

- (3) **COMPLAINT INVESTIGATION AND ENFORCEMENT.** The COUNTY shall provide complaint investigation/enforcement services as determined to be appropriate by COUNTY staff for those conditions that violate the Texas Health and Safety Code Chapter 341 (relating to public health nuisances) and 366, the Texas Water Code Chapter 7, and the El Paso County Sewage Facility Order. If a complaint is found to be valid, county inspectors shall present the case to the County Attorney's Office for prosecution and collect evidence and testify as necessary in court.
- (4) **DE-COMMISSIONING.** The COUNTY shall ensure that any OSSF within the DISTRICT to be abandoned is properly de-commissioned by its owner and inspected by COUNTY inspectors pursuant to the Texas Commission on Environmental Quality regulations and Sewage Facility Orders.
3. **COMPENSATION.** For the current term of this agreement, the fee payable to the COUNTY shall be \$1.00 per month. For any annual term thereafter, the COUNTY may notify DISTRICT in writing of a fee increase by August 1st of any year during the term of this agreement. If DISTRICT elects not to pay the increased fee, DISTRICT shall so notify the COUNTY in writing by October 1st of that year and this agreement shall terminate effective October 1st of that year.
4. **PAYMENTS PURSUANT TO THIS AGREEMENT.** All payments submitted under this Agreement shall be made without demand and shall be made payable to the County of El Paso, Attn: County Auditor's Office, Treasury Division, Rm. 406, 800 E. Overland, El Paso, Texas 79901.
5. **TERM AND TERMINATION.** This agreement shall be effective on March 1, 2013 (regardless of the date executed) and shall terminate on the 30th day of September, 2013, regardless of the date of execution of this Agreement. This agreement shall automatically renew for an additional one-year term on October 1, 2013 unless a Party to this Agreement notifies the other Party of its intent to cancel this agreement no later than August 1, 2013. In addition, either Party may terminate this Agreement at any time by providing the other Party 120 days' written notice.
6. **SEWAGE FACILITY ORDER.** The Parties agree that the 1988 Rules for El Paso County, Texas, Private Sewage Facilities, and any lawfully adopted successor orders, to include, but not limited to the February 17, 1997 Sewage Facility Order, shall apply to the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT, and shall be enforceable by the County and its designated employees within the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT.

7. **ON-SITE SEWAGE FEES.** The COUNTY shall continue to collect fees for On-Site Sewage services from individuals being provided services in accordance with the February 17, 1997 Order of the Commissioner's Court or any Order subsequently adopted by Commissioners Court. All fees that the County collects for this purpose shall be retained by the County.

8. **LAW GOVERNING CONTRACT.** For purposes of determining the law governing the same, this Agreement is entered into in the County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.
 - A. *Authority of the County.* The DISTRICT expressly agrees that the COUNTY shall have authority to enforce all laws and County Orders applicable to On-site Sewage Facilities, within the jurisdiction of the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT . The COUNTY further agrees that, in the absence of any conflicting law, the COUNTY shall have authority to enforce the laws of the State of Texas and the County of El Paso, Texas within the jurisdiction of the EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT. The COUNTY shall provide copies of all the County of El Paso, Texas Orders affecting On-Site Sewage Facilities upon execution of this Agreement and as requested by the DISTRICT.

 - B. *Privileges and Immunities.* All privileges and immunities from liability, exemptions from laws, ordinances and rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of the COUNTY when performing a function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

 - C. *Governmental Function.* The Parties expressly agree that, in all things relating to this Agreement, the COUNTY is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the COUNTY, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

9. **NOTICE.** Any written notice to be provided pursuant to this agreement shall be sent to the following addresses:

TO EL PASO COUNTY TORNILLO WATER IMPROVEMENT DISTRICT :
Tornillo Water Improvement District
Attn: Business Manager
PO Box 136
Tornillo, TX 79853

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

WITH A COPY TO: County Road & Bridge Dept.
Attn: Public Works Director
800 E. Overland
El Paso, Texas 79901

10. **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.
11. **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.

In witness whereof, the parties execute this agreement:

ATTEST:

**EL PASO COUNTY TORNILLO
WATER IMPROVEMENT DISTRICT**

Notary Public

By _____
(Authorized Signature)

Printed Name

Title

Date: _____

ATTEST:

THE COUNTY OF EL PASO

County Clerk Delia Briones

By _____
County Judge Veronica Escobar
Date:

APPROVED AS TO FORM:

Attorney for the District

APPROVED AS TO FORM:

Assistant County Attorney