

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

DEPARTMENT: FINANCIAL SERVICES – PURCHASING

AGENDA DATE: March 6, 2007

CONTACT PERSON/PHONE: TERRENCE FREIBURG, X4313

DISTRICT(S) AFFECTED: ALL

SUBJECT:

Approve a Resolution and Interlocal Agreement by and between the City of El Paso, Texas and the County of El Paso, Texas to combine procurement efforts, from time to time, for the purchase of goods and services.

BACKGROUND / DISCUSSION:

The City and County of El Paso, Texas desire to increase their efficiency and effectiveness by coordinating and combining procurement efforts to reduce administrative costs and achieve high-volume discount pricing. In addition, any local governmental entity in Texas may, by written agreement, join as a party to this Agreement with the unanimous consent the City and County. Chapter 791 (Interlocal Cooperation Contracts) of the Texas Government Code authorizes local governments to contract with one another in order to increase their efficiency and effectiveness. Section 791.025(a) of the Code satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to execute an interlocal agreement by and between the City of El Paso, Texas and the El Paso County, Texas whereby both entities agree to combine their efforts, from time to time, for the purchase of goods and services.

ADOPTED this _____ day of _____ 2007.

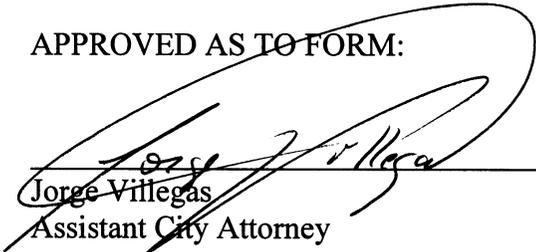
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

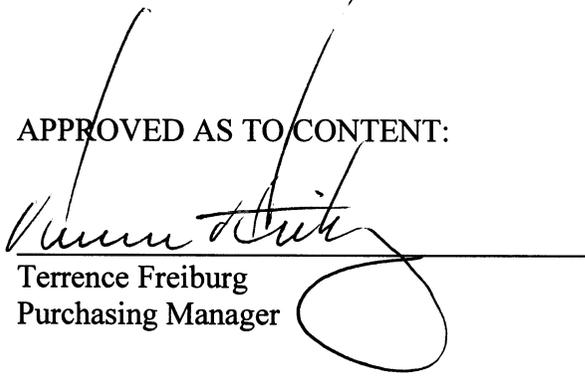
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**INTERLOCAL PURCHASING AGREEMENT
BETWEEN THE CITY OF EL PASO AND
THE EL PASO COUNTY**

This interlocal purchasing agreement (this "*Agreement*") is made and entered into this ___ day of _____, 2007, by and between the City of El Paso, a Texas municipal corporation (the "*City*") and the El Paso County, a Texas County (the "*County*").

RECITALS:

WHEREAS, the City and the County each separately undertake procurement efforts to acquire the same or similar goods and services;

WHEREAS, the City and the County desire to increase their efficiency and effectiveness with respect to their respective purchases of goods and services;

WHEREAS, the City and the County believe that by coordinating and combining the procurement efforts between themselves they will reduce costs by eliminating redundant purchasing expenses and achieve pricing advantages due to volume discounts from vendors;

WHEREAS, the City and the County anticipate that other government agencies which currently are not parties to this Agreement might also benefit from participation in joint purchasing efforts and, therefore, the City and the County desire to allow other agencies to become parties hereto;

WHEREAS, Chapter 791 (Interlocal Cooperation Contracts) of the Texas Government Code (the "*Code*") authorizes local governments to contract with one another in order to increase their efficiency and effectiveness. Section 791.025(a) of the Code authorizes local governments to contract with one another to purchase goods and services. A local government that purchases goods and services under Section 791.025(a) satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services; and

WHEREAS, the parties hereto shall pay their respective costs associated with this Agreement from current revenues available to the paying party at the date of execution.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to set forth the terms and conditions under which the parties hereto will make joint procurement efforts, from time to time, for various goods and services.

SECTION 2. TERM. The primary term of this Agreement shall begin on _____, 2007 and continue through _____, 2012, at which time it shall expire; provided, however, that this Agreement shall be automatically renewed for successive one-year terms except with respect to parties providing written notice to the other parties of its intent not to renew this Agreement at least sixty (60) days prior to the end of the then-current primary or renewal term.

SECTION 3. PROCUREMENT ARRANGEMENT.

A. The City and the County are the original parties to this Agreement, with each to be known as a "**Charter Party**". With the unanimous consent of the Charter Parties, any governmental entity in Texas located in and around El Paso, Texas, constituting a "local government" within the meaning of the Code, may by written agreement join as a party to this Agreement, such joining "entities" shall be known as an "**Associate Party**". The term "**Party**" herein shall be deemed to refer, as the context may require, to each Charter Party and to each Associate Party. The supervision and authority over the conduct and operation of this Agreement shall be vested solely on the Charter Parties.

B. Subject to applicable laws or legal privileges, each Party who intends to acquire any goods or services by any means including, but not limited to, competitive solicitations (the "**Acquiring Party**"), may, at the Acquiring Party's option and in its discretion, provide notice to the other Parties of: (i) the goods and/or services sought; (ii) the form of the anticipated transaction [e.g. sale, lease, etc.]; (iii) the anticipated timetable for the acquisition process; and (iv) the deadline for receipt by the Acquiring Party of any other Parties' requests for inclusion of items or services in the proposed procurement. If another Party wishes to participate in such procurement (the "**Participating Party**"), the Acquiring Party and the Participating Party shall seek to reach agreement on mutually-agreeable terms and conditions of the procurement and of the solicitation documents.

C. The Acquiring Party, if there is a Participating Party for such procurement, shall include in the solicitation, the advertisement for the solicitation, and the subsequent contract, the following statement, or words to such effect:

"This contract may be utilized for purchases by [Name Of Participating Party], pursuant to that certain Interlocal Purchasing Agreement dated February __, 2007." Any procurement award by [NAME OF ACQUIRING PARTY] on behalf of [NAME OF PARTICIPATING PARTIES] shall be contingent upon the issuance of a purchase order or execution of a procurement agreement by [NAME OF PARTICIPATING PARTIES] and shall not be binding upon [NAME OF ACQUIRING PARTY], which shall only be legally responsible for

payment for the goods and services in the quantities detailed in its own purchase order or procurement agreement.”

If a vendor refuses to comply with the above statement, the Acquiring Party may, nonetheless, procure the goods and/or services from the vendor for the price and on the terms submitted to the Acquiring Party. In such case, the Participating Party is hereby precluded from asserting a claim against the Acquiring Party for completing its acquisition of the subject goods and services.

SECTION 4. SCOPE OF AGREEMENT; MUTUAL COOPERATION. The Parties do not intend to limit the scope of this Agreement solely to the joint acquisition of goods and services as described above. In order to avoid duplication of efforts, unnecessary expenditures, and increase their efficiency and effectiveness, the Parties hereby agree to cooperate with each other as each deems appropriate with respect to procurement of goods and services. Such cooperation may include, but not be limited to: (i) jointly contracting to purchase goods and services as provided in Chapter 791 of the Texas Government Code; (ii) developing a common registry of vendors; (iii) jointly advertising to save expense when requesting the same type of goods and services; and (iv) participating in or performing such other actions involving the procurement of goods and services as the Parties believe will be in their best collective interests.

SECTION 5. INDEPENDENT ACTIONS AND APPROVALS. Notwithstanding any other provision of this Agreement, each Party (whether a Charter Party or an Associate Party) may independently request proposals and purchase goods and services at such times, in such quantities, and under such terms as such Party may elect without the involvement, consent, or approval of any other Party. The proposed joint cooperation under this Agreement shall in no way limit, impair, or otherwise affect the authority of the governing body of each Party to approve or disapprove under each Party's own guidelines and standards, any proposed contract or transaction. Participation in procurement efforts contemplated herein are voluntarily and, therefore, all Parties are prevented from requiring any other Party or Parties to participate in any transaction against such Party's wishes. In the event that more than one Party elects to participate in any proposed action, any Party may withdraw from such participation at any time without liability or continuing obligation to any other Party. In no event shall participation in this Agreement prevent any Party from entering into any other procurement agreement or cooperative arrangement.

SECTION 6. RESERVATION OF RIGHTS. Nothing herein shall be construed to be a waiver of sovereign immunity by any of the Parties, except to the limited extent required by law to enforce the Parties' respective obligations to each other hereunder. The Parties expressly agree that, in all things relating to this Agreement, they are performing governmental functions, as defined by the Texas Tort Claims Act, and that every act or omission of the Parties which, in any way, pertains to or arises out of this Agreement, falls within the definitions of governmental function. Furthermore, no Party shall be required hereunder to incur any monetary obligations or expend any funds that are not appropriated and budgeted by it; payment of any amounts in excess of budgeted figures by each Party is conditioned upon it being able to obtain and appropriate funds for such payment.

SECTION 7. TERMINATION. Any Party may terminate this Agreement at any time and for any reason by giving the other Party(ies) at least a ninety (90) day prior written notice. Each Party also reserves the right to terminate this Agreement at the end of its fiscal year by providing at least a twenty (20) day prior written notice to the other Party(ies).

SECTION 8. LIMITATION OF LIABILITY AND DAMAGES. No Party shall have the right to seek indemnification or contribution from any other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement. No Party shall be liable to any other Party or to any person claiming rights derived from such 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 without limitation to property, mental anguish and emotional distress] as a result of breach of any term of this Agreement, regardless of whether the Party was advised, had other reason to know, or in fact knew of the possibility thereof. No Party shall be liable to any other Party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other Parties regardless of whether the Party receiving said information was advised, had other reason to know, or in fact knew thereof. The Parties each acknowledge 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.

SECTION 9. NO SEPARATE ENTITY. Notwithstanding the formal or informal use by the Parties or others of "collaborative," "consortium," or similar terms in referring to the Parties' arrangement under this Agreement, the Parties do not intend to create, and have not created, a separate, legal entity. The relationship of the Parties is only one of independent contractors, and not a joint venture, partnership, unincorporated association, or other entity.

SECTION 10. ASSIGNMENT. Neither the City nor the County may assign, sell, transfer, or otherwise dispose of this Agreement or portion thereof, or its rights, title or interest therein, without the written consent of the other. An Associate Party may not assign, sell, transfer, or otherwise dispose of this Agreement or portion thereof, or its rights, title or interest therein, without the consent of both Charter Parties.

SECTION 11. LEGAL CONSTRUCTIONS. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

SECTION 12. DISPUTE RESOLUTION. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. The parties further agree that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Agreement fail,

that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

SECTION 13. NOTICES. Any notice, demand, requests, consent, or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via Certified Mail, Return Receipt requested, to the following addresses:

To the City: The City of El Paso
 Attention: City Manager
 2 Civic Center Plaza, 10th Floor
 El Paso, Texas 79901

With a copy to: The City of El Paso
 Attn: Purchasing Manager
 2 Civic Center Plaza, 7th Floor
 El Paso, Texas 79901

To the County: El Paso County
 Attn: County Judge
 500 East San Antonio, Ste 301
 El Paso, Texas 79901

With a copy to: Piti Vasquez
 El Paso County Purchasing Agent
 500 East San Antonio, Ste 500
 El Paso, Texas 79901

Changes may be made to the above addresses and addressees through timely written notice to the other party.

SECTION 14. VENUE. For the purpose of determining the place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

SECTION 15. AUTHORITY TO EXECUTE AGREEMENT. Each person signing below represents that he or she has read this Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the Party, and agrees on behalf of such party that such Party will be bound by those terms.

SECTION 16. HEADINGS. The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the parties hereto,

and shall not in any way be deemed to affect the meaning, interpretation, or applicability of this Agreement or any term, condition or provision hereof.

SECTION 17. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

SECTION 18. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statements of promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

(Signature page to follow)

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

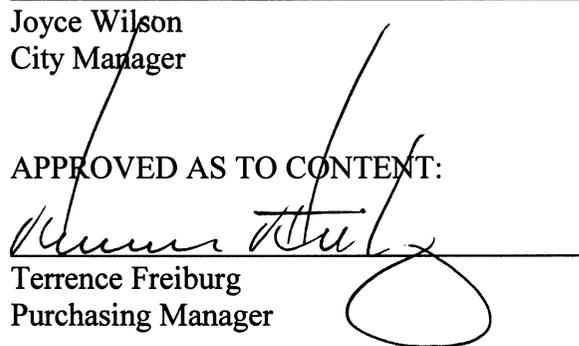
**INTERLOCAL PURCHASING AGREEMENT
BETWEEN THE CITY OF EL PASO AND
THE EL PASO COUNTY**

Signature Page

CITY OF EL PASO

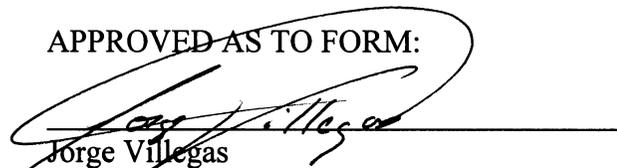
Joyce Wilson
City Manager

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager

APPROVED AS TO FORM:



Jorge Villegas
Assistant City Attorney

EL PASO COUNTY

Anthony Cobos
County Judge

APPROVED AS TO FORM:

Holly C. Lytle
Assistant County Attorney