

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

DEPARTMENT: FINANCIAL SERVICES – PURCHASING

AGENDA DATE: APRIL 14, 2009

CONTACT PERSON/PHONE: TERRENCE FREIBURG, 541-4313

DISTRICT (S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Approve a Resolution and Interlocal Agreement by and between the City of El Paso, Texas and the Housing Authority of City of El Paso, Texas whereby Housing Authority may purchase fuel under City Contract No. 2008-065 previously awarded by the City of El Paso to C&R Distributing, Inc.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The terms of C&R Distributing, Inc. contract allows other government entities to purchase fuel from C&R Distributing, Inc. under the same terms and conditions as the C&R Distributing, Inc. contract; and Chapter 791 (Interlocal Cooperation Contracts) of the Texas Government Code authorizes local government 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:

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

Council awarded Contract No. 2008-065, Vehicle Fueling Offsite on September 30, 2008, to C&R Distributing, Inc.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

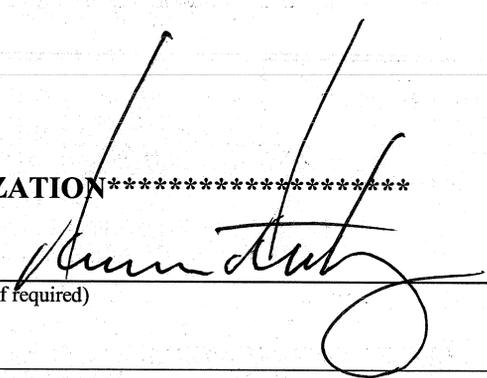
Enter appropriate comments or N/A

N/A

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

LEGAL: _____
(If required)

FINANCE: _____
(If required)



DEPARTMENT HEAD:

Name Signature Date

(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 Housing Authority of City of El Paso, Texas whereby the Housing Authority may purchase fuel under Contract No. 2008-065 (Vehicle Fueling Offsite) previously awarded by the City of El Paso to C&R Distributing, Inc.

ADOPTED this _____ day of _____ 2009.

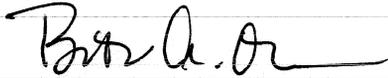
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

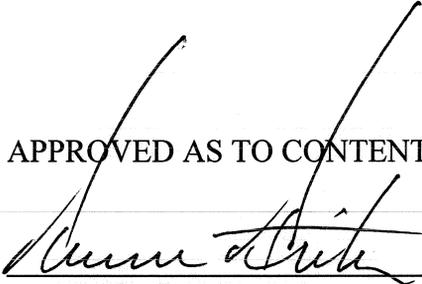
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager

A G R E E M E N T :

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 authorize Housing Authority to purchase fuel under the C&R Contract to the extent that the fuel purchased does not cause the City to exceed the quantities bid and awarded by City Council, including any increased quantities allowable by law, and that the City reserves the right to terminate the Fuel Agreement at any time for cause or convenience pursuant to the terms and conditions of that agreement.

Section 2. TERM. The term of this Agreement shall end on or about October 7, 2011.

Section 3. DUTIES. Other than authorizing Housing Authority to purchase fuel under the C&R Contract, El Paso shall have no obligations whatsoever with respect to any and all purchases made by Housing Authority under the C&R Contract. Housing Authority shall be responsible for issuing their own purchase orders to C&R Distributing, Inc., making payment to C&R Distributing, Inc. for fuel purchased under the C&R Contract, any and all warranty matters and resolution of any disputes between C&R Distributing, Inc. and Housing Authority, and any other contract compliance under the terms of the Contracts.

Section 4. INDEMNIFICATION. BY ACCEPTANCE OF THIS AGREEMENT, HOUSING AUTHORITY HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS (INCLUDING DEATH) OR PROPERTY ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF HACEP OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT.

Section 5. AMENDMENTS. Any alterations, additions, or deletions to the terms of this Agreement which are required by federal or state law or regulation are automatically

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Document Author: BONT

incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

Section 6. TERMINATION. El Paso or Housing Authority may cancel this Agreement at any time upon thirty (30) days written notice via certified mail, return receipt requested.

Section 7. 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 8. 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 9. 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 El Paso: The City of El Paso
 Attention: City Manger
 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 Housing Authority: Housing Authority of City of El Paso
Attn: Executive Director
5300 E. Paisano Dr.
El Paso, Texas 79905

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

Section 10. VENUE. For the purpose of determining the place of 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 11. 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 12. 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 13. 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 14. 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)

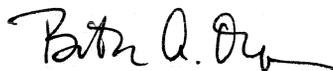
**INTERLOCAL AGREEMENT WITH THE
HOUSING AUTHORITY OF CITY OF EL PASO**

Signature Page

CITY OF EL PASO

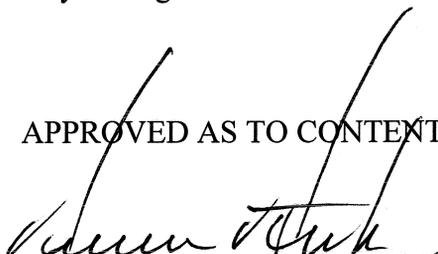
Joyce Wilson
City Manager

APPROVED AS TO FORM:



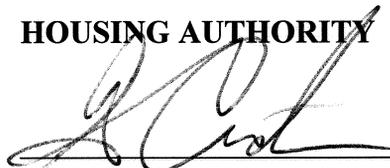
Bertha Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager

HOUSING AUTHORITY



Gerald Cichon
Executive Director

APPROVED AS TO FORM:



Michael Spurlock
Corporate Attorney for the Housing Authority