

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

DEPARTMENT: Office of Management and Budget
AGENDA DATE: May 29, 2007
CONTACT PERSON/PHONE: David Almonte, Director, Office of Management and Budget
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.

That the City Manager is hereby authorized to execute a novation agreement whereby the City agrees to recognize John D. Williams d/b/a JDW Insurance as the successor in interest in and to the Contract (defined hereafter).

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 City of El Paso (the "City") entered into that certain agreement (the "Contract") with Crest Benefits Consulting, Inc. (the "Transferor") dated March 2, 2004. The Transferor has transferred and assigned to John D. Williams Company d/b/a JDW Insurance (the "Transferee"), all the right, title, and interest of the Transferor in and to the Contract by virtue of a Bill of Sale and Assignment (the "Assignment") dated October 31, 2006, between the Transferor and the Transferee. The Transferee has acquired all of Transferor's right, title and interest in and to the Contract by virtue of the Assignment. The Transferee has assumed all obligations and liabilities of the Transferor under the Contract by virtue of the above transfer. The Transferee is in a position to fully perform all obligations that may exist under the Contract. It is consistent with the City's interest to recognize the Transferee as the successor party to the Contract.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? NO

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: David Almonte
CITY MANAGER: _____

CITY CLERK DEPT.
07 MAY 23 PM 3:01

CITY CLERK DEPT.

07 MAY 23 PM 3:01

RESOLUTION

WHEREAS, the City of El Paso (the "*City*") entered into that certain agreement (the "*Contract*") with Crest Benefits Consulting, Inc. (the "*Transferor*") dated March 2, 2004;

WHEREAS, the Transferor has transferred and assigned to John D. Williams Company d/b/a JDW Insurance (the "*Transferee*"), all the right, title, and interest of the Transferor in and to the Contract by virtue of a Bill of Sale and Assignment (the "*Assignment*") dated October 31, 2006, between the Transferor and the Transferee;

WHEREAS, the Transferee has acquired all of Transferor's right, title and interest in and to the Contract by virtue of the Assignment;

WHEREAS, the Transferee has assumed all obligations and liabilities of the Transferor under the Contract by virtue of the above transfer;

WHEREAS, the Transferee is in a position to fully perform all obligations that may exist under the Contract;

WHEREAS, it is consistent with the City's interest to recognize the Transferee as the successor party to the Contract; and

WHEREAS, no interested party is aware of any default under the Contract. Furthermore, no interested party is aware of any act or omission that would give rise to a default under the Contract after the mere passage of time.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is hereby authorized to execute a novation agreement whereby the City agrees to recognize John D. Williams d/b/a JDW Insurance as the successor in interest in and to the Contract.

PASSED AND APPROVED this _____ day of _____, 2007.

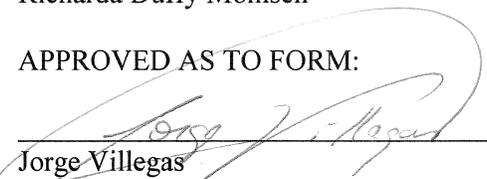
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

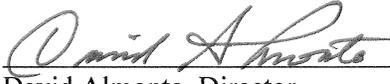
Richarda Duffy Momsen

APPROVED AS TO FORM:



Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:



David Almonte, Director
Office of Management & Budget

NOVATION AGREEMENT

CITY CLERK DEPT.
07 MAY 23 PM 3:02

THIS AGREEMENT is entered into on this _____ day of _____, 2007, by and among **CREST BENEFITS CONSULTING, INC.**, a Texas corporation (“Transferor”), and **JOHN D. WILLIAMS COMPANY d/b/a JDW INSURANCE**, a Texas corporation (“Transferee”), and The City of El Paso (“Client”).

THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. The Client has entered into that certain agreement with the Transferor, namely: Crest Benefits consulting (as amended and modified, the “Contract”) dated as of March 2, 2004.
2. The Transferor has transferred and assigned to the Transferee, all the right, title, and interest of the Transferor in and to the Contract by virtue of a Bill of Sale and Assignment (the “Assignment”) dated October 31, 2006, between the Transferor and the Transferee.
3. The Transferee has acquired all of Transferor’s right, title and interest in and to the Contract by virtue of the Assignment.
4. The Transferee has assumed all obligations and liabilities of the Transferor under the Contract by virtue of the above transfer.
5. The Transferee is in a position to fully perform all obligations that may exist under the Contract.
6. It is consistent with the Client’s interest to recognize the Transferee as the successor party to the Contract.
7. No party is aware of any default under the Contract. Furthermore, no party is aware of any act or omission that would give rise to a default under the Contract after the mere passage of time.

IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:

8. The Transferor confirms the transfer of the Contract to the Transferee. The Transferor waives any claims and rights against the Client that it now has or may have in the future in connection with the Contract, provided, however, it is understood and agreed that all remedies under law, if any, and rights of Transferor are transferred and assumed by Transferee.
9. The Transferee agrees to be bound by and to perform each Contract in accordance with the conditions contained in the Contract as if the Transferee were the original party to the Contract.
10. The Client recognizes the Transferee as the Transferor’s successor in interest in and to the Contract. The Transferee by this Agreement becomes entitled to all rights, titles, claims and interests of the Transferor in and to the Contract as if the Transferee were the original party to the Contract. Following the effective date of this Agreement, the term “Crest Benefits Consulting,” as used in the Contract, shall refer to the Transferee.
11. Nothing in this Agreement shall be construed as a waiver of any rights of the Client against the Transferor, or the Transferee against the Client.

12. All payments and reimbursements previously made by the Client to the Transferor, and all other previous actions taken by the Client under the Contract, shall be considered to have discharged those parts of the Client's obligations under the Contract, provided, however, it is understood and agreed that all remedies under law, if any, and rights of Transferor are transferred and assumed by Transferee. All payments and reimbursements made by the Client after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Client's obligations under the Contract, to the extent of the amounts paid or reimbursed.

13. The Transferor and the Transferee agree that the Client is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Client in the absence of this transfer or Agreement would have been, or is, obligated to pay or reimburse under the terms of the Contract.

14. The Contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

(Signature page to follow)

CITY CLERK DEPT.
07 MAY 23 PM 3:02

NOVATION AGREEMENT

CITY CLERK DEPT.
07 MAY 23 PM 3:02

Signature Page

PASSED AND APPROVED this _____ day of _____, 2007.

CLIENT:

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:

David Almonte, Director
Office of Management and Budget

TRANSFEROR:

CREST BENEFITS CONSULTING, INC.

Named Printed: _____
Title: _____

TRANSFeree:

JOHN D. WILLIAMS COMPANY d/b/a
JDW INSURANCE

Name Printed: _____
Title: _____