

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: GENERAL SERVICES

AGENDA DATE: June 24, 2008

CONTACT PERSON/PHONE: JEFF BELLES, 621-6821
TERRY FREIBURG, PURCHASING MANAGER, 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.

That the City Manager be authorized to sign a Consent to Assignment of the contract by and between the City of El Paso, Transmountain Oil Company, L.C. ("Assignor") and Western Refining Wholesale ("Assignee") with respect to the City of El Paso Contract No. 2003-179 Vehicle Fueling-Offsite for City Vehicles and Contract No. 2003-205 Automotive Fuel, Diesel and Unleaded for City storage tanks.

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?

On or after July 22, 2003, the City entered into Contract No. 2003-179, and on or after September 9, 2003, the City entered into Contract No. 2003-205 with Transmountain Oil Company, L.C. Transmountain Oil Company, L.C. was purchased by Western Refining Wholesale. Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract No. 2003-179 and Contract No. 2003-205.

PRIOR COUNCIL ACTION: Has the Council previously considered this item or a closely related one?

Common Council action when vendor changes ownership/name and vendor agrees to assume and perform all duties, obligations and responsibilities of a contract.

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?

No change to funding

*****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 sign Consent to Assignment of the contract by and between the City of El Paso, Transmountain Oil Company, L.C. ("Assignor") and Western Refining Wholesale, Inc. ("Assignee") with respect to the City of El Paso Contract No. 2003-179 Vehicle Fueling-Offsite for City vehicles and Contract No. 2003-205 Automotive Fuel, Diesel and Unleaded for City storage tanks.

PASSED AND ADOPTED this _____ day of _____, 2008.

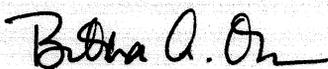
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

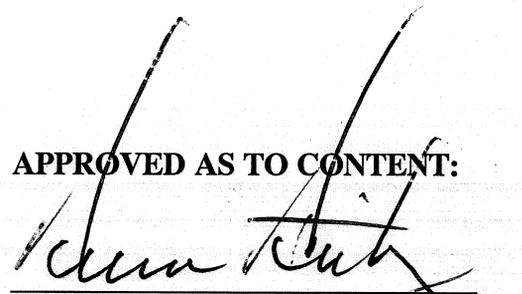
Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager, Financial Services

1. The City consents to the assignment of the rights, duties and obligations under Contract No. 2003-179 to Assignee and Contract No. 2003-205.
2. Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract 2003-179 and Contract No. 2003-205.
3. All terms and conditions of Contract No. 2003-179 and Contract No. 2003-205 shall remain in full force and effect.
4. **Assignee agrees to indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, court costs, expenses, and attorney's fees which are connected with or arise from the assignment of these Contracts or the City's acceptance and recognition of the assignment of Contract No. 2003-179 and Contract No. 2003-205.**

(Signature Page to follow)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONSENT TO ASSIGNMENT

(Signature Page)

EXECUTED this the _____ day of _____, 2008.

THE CITY OF EL PASO

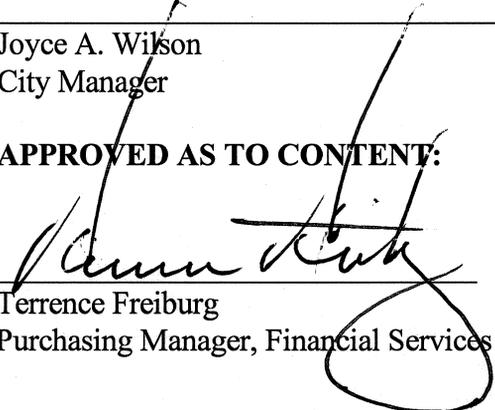
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

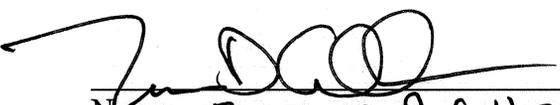
APPROVED AS TO CONTENT:



Terrence Freiburg
Purchasing Manager, Financial Services

ASSIGNOR:

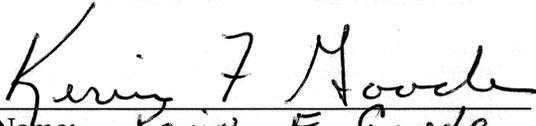
Transmountain Oil Company, L.C.



Name: TERENCE D CALHORN
Title: President

ASSIGNEE:

Western Refining Wholesale, Inc.



Name: Kevin F Goode
Title: VP



212 N. Clark • El Paso, TX 79905 • P. O. Box 10093 • El Paso, TX 79995-0093 • Ph (915) 779-3211 • Fax (915) 779-7971

April 30, 2008

Mr. Jeffrey Belles, Deputy Director
Equipment Maintenance
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901

Re: Contract No. 2003-179 Vehicle Fueling Offsite by and between Transmountain Oil Company, L.C. and City of El Paso, Purchasing Department dated June 3, 2008

Dear Mr. Belles:

Transmountain Oil Company, L.C. ("**TMO**") and Transmountain Development Company LP ("**TDC**") have entered into that certain Asset Purchase Agreement dated May 1, 2008, pursuant to which the Wholesale Fuel business of TMO will be transferred to Western Refining Wholesale, Inc. or its designee ("**Purchaser**" and such transaction, the "**Transaction**").

This letter serves as written notice to you that, in connection with the Transaction, TMO intends to transfer their respective interests in the Agreement to Purchaser. The transfer would be effective upon closing of the Transaction which is currently expected to occur on or about May 1, 2008. We will notify you in writing of the actual effective date of the closing (the "**Effective Date**"). Except for the change in the contracting parties, the transfer of the Agreement to Purchaser will not alter the contractual rights and obligations of the parties as provided in the Agreement, and any changes in contact information, contract numbers, and billing information will be provided in a timely manner.

We hereby request your consent to the transfer and assignment to Purchaser of the respective rights of TMO in the Agreement. Please sign this letter in the space indicated below to evidence your consent and acknowledgement (i) to the transfer and assignment of the Agreement to Purchaser, (ii) that no default or breach under the Agreement has or will occur as a result of transfer and assignment of the Agreement as contemplated herein, (iii) that, to your knowledge, no default currently exists under the Agreement nor are you aware of any circumstances that exist which with notice or the passage of time would create or be likely to create a default under the Agreement, (iv) that the Agreement remains in full force and effect in accordance with its terms, and (v) that Purchaser shall be entitled to all rights arising from the Agreement on and after the Effective Date. The undersigned shall remain responsible for all of its obligations and liabilities under the Agreement attributable to periods preceding the Effective Date.

Mr. Jeffrey Belles, Deputy Director
Equipment Maintenance
City of El Paso
April 30, 2008
Page 2

After signing below, kindly return an originally executed copy of this letter by facsimile and regular mail as follows:

Transmountain Oil Company, L.C.
212 North Clark
El Paso, Texas 79905
Attention: James D. Hartshorn
Fax: (915) 779-7971

If you should have any questions regarding the above-referenced matters, please contact James Hartshorn, at 915.779.3211.

Very truly yours,

**TRANSMOUNTAIN OIL
COMPANY, L.C.**

By: _____

James D. Hartshorn

Agreed, accepted and acknowledged
this ____ day of _____, 2008:

**City of El Paso
Equipment Maintenance**

By: _____
Name: _____
Title: _____



212 N. Clark • El Paso, TX 79905 • P. O. Box 10093 • El Paso, TX 79995-0093 • Ph (915) 779-3211 • Fax (915) 779-7971

April 30, 2008

Mr. Jeffrey Belles, Deputy Director
Equipment Maintenance
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901

Re: Contract No. 2003-205 by and between City of El Paso and Transmountain Oil Company, LC for the contract period from September 30, 2003 to September 30, 2008

Dear Mr. Belles:

Transmountain Oil Company, L.C. ("**TMO**") and Transmountain Development Company LP ("**TDC**") have entered into that certain Asset Purchase Agreement dated May 1, 2008, pursuant to which the Wholesale Fuel business of TMO will be transferred to Western Refining Wholesale, Inc. or its designee ("**Purchaser**") and such transaction, the "**Transaction**".

This letter serves as written notice to you that, in connection with the Transaction, TMO intends to transfer their respective interests in the Agreement to Purchaser. The transfer would be effective upon closing of the Transaction which is currently expected to occur on or about May 1, 2008. We will notify you in writing of the actual effective date of the closing (the "**Effective Date**"). Except for the change in the contracting parties, the transfer of the Agreement to Purchaser will not alter the contractual rights and obligations of the parties as provided in the Agreement, and any changes in contact information, contract numbers, and billing information will be provided in a timely manner.

We hereby request your consent to the transfer and assignment to Purchaser of the respective rights of TMO in the Agreement. Please sign this letter in the space indicated below to evidence your consent and acknowledgement (i) to the transfer and assignment of the Agreement to Purchaser, (ii) that no default or breach under the Agreement has or will occur as a result of transfer and assignment of the Agreement as contemplated herein, (iii) that, to your knowledge, no default currently exists under the Agreement nor are you aware of any circumstances that exist which with notice or the passage of time would create or be likely to create a default under the Agreement, (iv) that the Agreement remains in full force and effect in accordance with its terms, and (v) that Purchaser shall be entitled to all rights arising from the Agreement on and after the Effective Date. The undersigned shall remain responsible for all of its obligations and liabilities under the Agreement attributable to periods preceding the Effective Date.

Mr. Jeffrey Belles, Deputy Director
Equipment Maintenance
City of El Paso
April 30, 2008
Page 2

After signing below, kindly return an originally executed copy of this letter by facsimile *and* regular mail as follows:

Transmountain Oil Company, L.C.
212 North Clark
El Paso, Texas 79905
Attention: Terry Calhoun
Fax: (915) 779-7971

If you should have any questions regarding the above-referenced matters, please contact James D. Hartshorn or Walter R. McCauley at (915) 779-3211.

Very truly yours,

TRANSMOUNTAIN OIL COMPANY, LC.

By: Walter R. McCauley
Walter R. McCauley,

Wholesale Fuel

Agreed, accepted and acknowledged
this ____ day of _____, 2008:

City of El Paso

By: _____
Name: _____
Title: _____



WHOLESALE

WNR
LISTED
NYSE

April 24, 2008

Dear Valued Customer:

I am pleased to announce Western Refining Wholesale's recent purchase and consolidation of Transmountain Oil's wholesale fuel operations, effective May 1, 2008. The basis of operation for this expanded offering is through our new warehouse facility located at 4385 Ripley, El Paso, Texas, 79922.

With this acquisition, we are able to market a wide range of fuel and lubricating products in El Paso and surrounding communities; including commercial, automotive and industrial lubricants, wholesale fuel and fleet fuel management programs. Our cardlock fueling program will utilize the Transmountain network of fuel sites and operate as Firebird Fuel. This network of fueling sites provides truck fleets access to local, regional and nationwide fuel facilities and will be affiliated with CFN (Commercial Fueling Network). In addition to fuel and lubricants, Western Refining Wholesale markets a complete line of automotive and heavy duty antifreeze products, diesel fuel additives, oil analysis programs, and lubricant storage and dispensing solutions.

For your convenience, all fuel and lubricant orders may be called in to our customer service center at 1-800-444-5823. Customers interested in learning more about our cardlock fueling program may call 602-477-3306. We have retained the services of Jim Hartshorn as your local sales representative as well as Gloria Martinez and Yolanda Zubiate. Jim can be reached on his cell phone at 915-472-2910.

In order to make sure we have the most up to date information for your company, we would appreciate it if you would complete the attached credit application for our files. We have already created your account and this application will not delay our ability to service your needs. However, we will need to have this completed application on file in order to keep your account open long term. We would also appreciate receiving any tax exemption certificates that may apply. Thank you for your attention to this matter and we look forward to a long and mutually beneficial relationship.

We appreciate your business and the opportunity to serve your total lubrication and fuel requirements.

Sincerely,

A handwritten signature in black ink that reads 'Jim Wilt'.

Jim Wilt
Sales & Marketing Manager

May 20, 2008

Mr. Terry Calhoun
Transmountain Oil Company, L.C.
212 N. Clark
El Paso, TX 79905

RE: Consent to Assignment between the City of El Paso, Transmountain Oil Company, L.C. and Western Refining Wholesale, Inc.

Dear Mr. Calhoun,

Enclosed, please find the Consent to Assignment between the City of El Paso, Transmountain Oil Company, L.C. and Western Refining Wholesale, Inc. This document has been signed by Kevin Goode for Western Refining Wholesale, Inc. Upon execution by the City of El Paso, and by Transmountain Oil Company, L.C., please return a copy to Mr. Goode's attention:

Kevin Goode
Vice President
Western Refining Wholesale, Inc.
2502 N. Black Canyon Highway
Phoenix, AZ 85009
kevinf.goode@wnr.com
602-269-6504
Fax: 602-269-6520

You may contact Mr. Goode at 602-269-6504 if you have questions or concerns.

Thank you for your attention.

Sincerely,



Jan Ober
Administrative Assistant to Mr. Goode
Western Refining Wholesale, Inc.

Enclosure

Cc: Kevin F. Goode

June 9, 2008

City of El Paso
Purchasing, 7th Floor
2 Civic Center Plaza
El Paso, TX 79901
Attn: Mr. Michael Lau

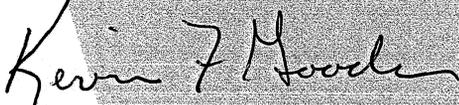
Re: "Consent to Assignment" between City of El Paso, Transmountain Oil Company, L.C. and Western Refining Wholesale, Inc.

Dear Mr. Lau:

I have enclosed three executed copies of the "Consent to Assignment" regarding the City of El Paso, Transmountain Oil Company, L.C. and Western Refining Wholesale, Inc.

If you have any questions, please contact me at 602-269-6504.

Sincerely,



Kevin F. Goode
Vice President
Wholesale

KFG:jo

Enclosures