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

**DEPARTMENT:** **General Services – Fleet Division**

**AGENDA DATE:** **September 14, 2010**

**CONTACT PERSON NAME AND PHONE NUMBER:** **Stuart Ed, General Services Director, (915) 621-6822**

**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 Town of Horizon City, Texas whereby the Town of Horizon City may purchase fleet maintenance services from the City of El Paso.

**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?**
Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the City of El Paso and the Town of Horizon City, to contract with each other to perform governmental functions and services. The Town of Horizon City is seeking the Government Function of maintaining governmental vehicles from the City of El Paso as defined by the Interlocal Cooperation Act for the purpose of reducing duplication of administrative effort, gaining economies of scale, and saving money.

**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?**
Item will be funded as a cost reimbursement.

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**BOARD / COMMISSION ACTION:**
**Enter appropriate comments or N/A**

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

**DEPARTMENT HEAD:** **Stuart C. Ed**
**General Services Director**

**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**

*Information copy to appropriate Deputy City Manager*

# RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso, Texas and the Town of Horizon City, Texas, to provide a mutual benefit to both entities and to those persons served by each entity, and serve a governmental purpose of providing public vehicle maintenance and potential cost savings to the citizens of the City of El Paso and the Town of Horizon City.

Dated this _____ day of _____, 2010.

CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT

Stuart C. Ed, Director
General Services Department

CITY CLERK DEPT.
10 SEP -9 AM 10: 35

#58134 v1 - FLEET/1/RESO/HORIZON CITY INTERLOCAL/COMBINED SERVICES
Document Author: KCHO

**STATE OF TEXAS** }
}
**COUNTY OF EL PASO** }

# INTERLOCAL AGREEMENT

This Agreement is entered into on the _____ day of _____, 2010, by and between the City of El Paso, Texas, a Texas Municipal Corporation, hereinafter called the "CITY" and the Town of Horizon City, a political subdivision of the State of Texas, hereinafter called the "CONTRACTOR" pursuant to the Interlocal Cooperation Act, Art. 791.001, et seq., Texas Government Code.

**WHEREAS,** Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the CITY and the CONTRACTOR, to contract with each other to perform governmental functions and services, and

**WHEREAS,** the CITY and the CONTRACTOR believe that a cooperative agreement between the parties will provide a mutual benefit to both entities and to those persons served by each entity, and serve a governmental purpose of providing public vehicle maintenance and potential cost savings to the citizens of the City of El Paso and the Town of Horizon City; and

**WHEREAS,** the CITY and the CONTRACTOR desire to work together to carry out various functions for the mutual benefit of both parties; and

**WHEREAS,** the CITY's General Services Department performs the governmental function of maintenance of the City's Fleet vehicles through technicians that are certified by the National Institute for Automotive Service Excellence ("ASE"); and

**WHEREAS,** the CITY has the capacity to provide additional fleet maintenance services and desires to provide such services to governmental agencies including CONTRACTOR for the purpose of reducing duplication of services in the Metropolitan Service Area and providing such services to CONTRACTOR at a potential savings, and this would constitute a Governmental Function of maintaining governmental vehicles as defined by the Interlocal Cooperation Act and the Tort Claims Act; and

**WHEREAS,** CONTRACTOR requires assistance from the CITY in maintaining CONTRACTOR's fleet; and

**WHEREAS,** CONTRACTOR has determined that all procurement requirements for fleet maintenance services to be provided will be met by CITY's procurement processes; and

**WHEREAS,** the City and Contractor each agree to accept the responsibility to adhere to all pertinent federal, state and local laws or regulations; and

**WHEREAS,** the City and Contractor agree that it is in the best interest of the citizens of the Town of Horizon City and the City of El Paso to enter into this Interlocal Agreement.

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**NOW THEREFORE,** be it known that the CITY and CONTRACTOR enter into this Interlocal Agreement under the following terms and conditions:

## 1.0 CONTRACTUAL RELATIONSHIP.

1.1 The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

1.2 The CONTRACTOR acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CONTRACTOR to any obligation other than the obligations set forth in this Agreement.

## 2.0 SCOPE OF SERVICES.

2.1 The parties acknowledge and expressly agree that, in all things relating to this Agreement, the City and CONTRACTOR are performing governmental functions, as defined by the Texas Torts Claims Act. The parties hereby agree that the City and the CONTRACTOR enter into this Agreement as governmental entities for the purpose of performing a governmental function.

2.2. The CITY agrees to provide fleet maintenance services to include repair, reconditioning and maintenance of a variety of diesel and gasoline fuel powered trucks, automobiles, buses and other Government vehicles and equipment that are either owned or leased by the CONTRACTOR for CONTRACTOR at any of the City of El Paso Municipal Service Centers depending upon ability and capacity. CITY may enter into agreements with third parties to provide the services under this Agreement. The Director of the General Services Department, or a designee shall establish a system that will address ability and capacity to include intake, expected timeframe and types of services, which will be available to the CONTRACTOR.

2.3 **THE CITY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, AS TO MERCHANTABILITY OR THE FITNESS FOR A PARTICULAR PURPOSE FOR ANY PRODUCT OR SERVICE, NOR WILL THE CITY BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM ANY MATTER COVERED BY OR RELATED TO THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THIS AGREEMENT.**

2.4 Charges for fleet maintenance to CONTRACTOR shall be as follows:

| | |
|---|---|
| Labor: | $60 per hour; |
| Parts On-Hand: | Cost + 20%; |
| Outsourced Work: | Cost + 5% |

2.5 The CONTRACTOR agrees that upon presentation by the CITY of a properly documented proof of performance and invoice, the CONTRACTOR shall make full payment to the CITY within thirty (30) days of the delivery of the invoice. Invoices will be sent to the CONTRACTOR by the City's Financial Services Department on a monthly basis.

2.6 CONTRACTOR shall purchase parts and equipment from the manufacturer or supplier of the parts and equipment through CITY's procurement process. CITY will manage and oversee such purchase. CITY will manage all recovery or replacement on warranties provided by the manufacturer or supplier if any. If there is a failure in a service or repair that included labor costs, within 90 days of any repair service, CITY will not charge CONTRACTOR labor fees to re-do the repair or service.

## 3.0 TERM.

3.1 This Interlocal Agreement shall be in effect for one year from the effective date. This contract may thereafter upon mutual agreement in writing between the parties, be renewed annually for up to three (3) years. The City Manager may exercise this provision of the agreement on behalf of the CITY.

## 4.0 TERMINATION

4.1 The CITY or the CONTRACTOR may cancel this Agreement at any time upon thirty (30) days written notice via certified mail, return receipt requested. The obligations of the CONTRACTOR, including to its obligations to pay the CITY for all costs incurred under this Agreement prior to such cancellation notice, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed.

4.2 To the extent the CITY is wholly or partially prevented from performance any obligation or duty placed on the CITY pursuant to this agreement, by reason of strikes; stoppage of labor; riot; fire; flood; earthquake; acts of war; insurrection; accident; judgment; act of God; or other cause reasonably beyond the CITY's control, in such event the time and performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of Force Majeure shall rest solely with the CITY.

## 5.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

5.1 Governmental Function. The CITY and the CONTRACTOR expressly agree that, in all things relating to this Agreement, the parties enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

5.2 Sovereign Immunity. The CITY and the CONTRACTOR reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

## 6.0 RISK ALLOCATION – LIMITATION OF LIABILITY

6.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

6.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor 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, and further including, mental anguish, emotional distress and attorneys fees- 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, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

6.1.2 Intentional Risk Allocation. The CITY and the CONTRACTOR 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.

6.1.3 No Indemnification. The Parties expressly agree that, except as provided herein, neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

6.1.4. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

## 7.0 GENERAL PROVISIONS

7.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

7.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the CITY.

7.3 Venue. The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

7.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

7.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or the provision itself, or a waiver of any right under this Agreement.

7.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

7.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

7.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

7.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

7.10 Notices. Any notice, demand, request, 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

United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below:

| | |
|---|---|
| CITY: | City of El Paso<br>Attention: Office of the City Manager<br>Two Civic Center Plaza, 10th Floor<br>El Paso, Texas 79901-1196 |
| Copy to: | City of El Paso<br>General Services Department - Fleet<br>1059 Lafayette Dr.<br>El Paso, Texas 79907 |
| CONTRACTOR: | Town of Horizon City<br>14999 Darrington Road<br>Horizon City, Texas 79928 |

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

7.11 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 when making such proof.

7.12 Complete 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 this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

7.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

*(Signatures appear on the following page)*

IN WITNESS WHEREOF, this Agreement has been executed by the parties named hereinabove as of the date, month and year first written above.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:

Stuart C. Ed, Director
General Services Department

TOWN OF HORIZON CITY

Walter Miller
Mayor

ATTEST:

Karen Ellefson
City Clerk

APPROVED AS TO FORM:

Robert Duran
Assistant City Attorney

APPROVED AS TO CONTENT:

Michael McConnell
Chief of Police

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