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

DEPARTMENT: **Financial Services – Purchasing Division**

AGENDA DATE: **September 27, 2011**

CONTACT PERSON/PHONE: **Bruce D. Collins, Purchasing Manager at 915-541-4308**

DISTRICT(S) AFFECTED: **All**

SUBJECT:

Approve an Interlocal Agreement by and between the City of El Paso, Texas and El Paso Independent School District (EPISD) to combine procurement efforts, from time to time, for the purchase of goods and services.

BACKGROUND / DISCUSSION:

The City of El Paso, Texas and El Paso Independent School District (EPISD) 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 of the City of El Paso and El Paso Independent School District (EPISD). 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:

No

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A.

**********AUTHORIZATION**********

DEPARTMENT HEAD: _____

STATE OF TEXAS	)	**INTERLOCAL PURCHASING AGREEMENT**
	)	**BETWEEN CITY OF EL PASO**
	)	**AND EL PASO INDEPENDENT**
COUNTY OF EL PASO	)	**SCHOOL DISTRICT**

This Interlocal Purchasing Agreement (this "***Agreement***") is made and entered into this _____ day of _____, 2011 by and between CITY OF EL PASO, a Texas municipal home rule municipal corporation ("City") and EL PASO INDEPENDENT SCHOOL DISTRICT ("EPISD").

RECITALS:

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

WHEREAS, City and EPISD desire to increase their efficiency and effectiveness with respect to their respective purchases of goods and services and 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, City and EPISD acknowledge that other local government agencies might also benefit from participation in joint purchasing efforts and, therefore, the parties are members of the El Paso Purchasing Alliance, organized to exchange purchasing information and facilitate joint purchasing efforts by local government;

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 desire to enter into this Interlocal Agreement to coordinate joint purchasing efforts for those goods and services each party may need for its governmental operations and further desire to authorize City to purchase goods and services based on solicitations awarded by EPISD, and to authorize EPISD to purchase goods and services based on solicitations awarded by City.

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 and authorize each entity to purchase goods and services using the solicitations awarded by the other governmental entity.

SECTION 2. TERM. This Agreement shall commence on the date approved by both parties and shall be automatically renewed for successive one-year terms on January 1 of each year, unless sooner terminated pursuant to Section 8 of this Agreement.

SECTION 3. SCOPE OF AGREEMENT; MUTUAL COOPERATION. The parties acknowledge that they are participants of the El Paso Purchasing Alliance (the "Alliance"), which is open to the participation by any local governmental entity located within El Paso County. 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) authorizing other governmental entities to "piggyback" on its solicitations in order to satisfy the legal requirement to seek competitive bids for the purchase of the goods and services (v) participating in or performing such other actions involving the procurement of goods and services.

The proposed joint cooperation under this Agreement shall in no way limit, impair, or otherwise affect the authority of the governing body of each entity to approve or disapprove under its own guidelines and standards, any proposed contract or transaction. Participation in joint procurement efforts contemplated herein are voluntarily and, therefore, no entity shall be required to participate in any transaction against such entity's wishes. In addition, the parties agree that joint cooperation under this Agreement does not limit or prohibit the ability or authority of either entity from soliciting or purchasing goods or services or participating with other entities or purchasing cooperatives to solicit or purchase goods or services as each deems appropriate.

SECTION 4. <u>PURCHASING USING OTHER ENTITY'S SOLICITATIONS</u>.

City agrees that EPISD is authorized to piggyback for the purchase goods and services based on solicitations awarded by City, and EPISD agrees that City is authorized to piggyback to purchase goods and services based on solicitations awarded by EPISD, to the extent allowable by law and under the following terms and conditions:

A. There are available quantities of the goods and services in the contract awarded by the party who issued the competitive solicitation (the "Procuring Entity").

B. Each party shall be responsible for awarding its own contract, issuing its own purchase orders, ordering the solicited goods and services for its own entity's use and all

communications with the vendor regarding such purchases.

C. Each party shall pay the vendor directly and on a timely basis for the purchase of goods and services in accordance with the terms and conditions of the solicitation and/or any contract, purchase order or other legal instrument between that party and the vendor and shall be solely liable to the vendor for such payment.

D. Each party shall designate a contact person who shall be responsible for participation in the joint purchasing activities under this Agreement.

E. Cooperate with the Alliance and other parties in the evaluation of vendor services procured or contracted under this Agreement.

F. Except as may be agreed to by the Alliance, no fee shall be charged by any party for permitting other parties to piggyback on any competitive solicitation on the Alliance Website or any procurement activities performed pursuant to this Agreement.

F. Disputes between any party and any vendor shall be resolved by that party in accordance with applicable law.

SECTION 5. JOINT PROCUREMENT ACTIVITIES; ALLIANCE WEBSITE.

A. The parties agree that they will cooperate in facilitating the purchase of goods or services to the extent that each party may deem appropriate in the interest of its governmental entity and given all of the circumstances and information available.

B. In order to facilitate such cooperation, the parties agree that each party shall participate and make information about the solicitations available at the website of the Purchasing Alliance (the "Alliance Website").

C. The party who intends to issue a competitive solicitation (the "Procuring Entity") shall make available information about such solicitations to the Alliance participants before or at the time the solicitations are posted for advertising.

D. The party that intends to piggyback on the Procuring Entity's solicitation (the "Participating Entity") may request, on a timely basis and at its sole option and discretion, that the Procuring Entity add additional optional quantities to the solicitation on the same specifications set forth in the solicitation. To the extent deemed appropriate, the Procuring Entity will add such optional quantities to the solicitation to enable Participating Entity to purchase such goods and services.

E. In the event that Participating Entity has additional or modified specifications that it desires for the optional quantities requested, the parties agree to cooperate to the extent reasonably possible. The parties acknowledge that any additional or modified specifications may not be agreeable to the Procuring Entity if the changes would delay the opening of solicitations, the time or amount of resources available to change the specifications are limited, the changes

are extensive, or there exist other factors such that the Procuring Entity may determine that making such changes is not deemed appropriate in the interest of its governmental entity.

F. Nothing in this Agreement shall prohibit nor require the Procuring Entity at its sole discretion to include optional quantities in any solicitation issued with or without a request from the Participating Entity, other Alliance Participant or governmental entity with which the Procuring Entity desires to assist.

G. The Alliance Website will be hosted by the City of El Paso or by any other party which may be designated in the future by the Alliance. Each party agrees that it will comply with the host's Terms of Use Policy for Internet Use and adhere to the host's policies posted on the website. Each party shall designate one or more persons that will be authorized by the host to have access to the website for the purpose of implementing the joint procurement activities under this Agreement.

H. The parties agree that in order to facilitate the joint purchasing of goods and services by governmental entities, to the extent deemed appropriate by each entity, solicitations shall include the following provision, or such language as the members of the Purchasing Alliance may subsequently agree:

> **THIS SOLICITATION MAY BE UTILIZED FOR PURCHASES BY ONE OR MORE OTHER LOCAL GOVERNMENT ENTITIES UNDER AN INTERLOCAL COOPERATION AGREEMENT, TEXAS GOVERNMENT CODE CHAPTER 791.** This is a purchasing method that allows other Local Government entities to "piggy back" on the competitively bid solicitation issued by another Local Government entity. Any award by [the Procuring Entity] on behalf of the other Local Government entity shall be contingent upon the issuance of a purchase order or execution of a separate contract by the other Local Government entity. The Contractor must deal directly with the Local Government entity concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms and conditions that the other Local Government entity may require. The actual utilization of this award by the other Local Government entity is at the sole discretion of the other Local Government entity.
>
> [Procuring Entity] is acting on the behalf of other Local Government entity for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by any bidder with regard to any purchase by the other Local Government entity. [Procuring Entity] shall be legally responsible only for payment for goods and services in the quantities detailed in its own purchase order or contract.

I. If a vendor takes an exception or otherwise refuses to permit other government entities to purchase the goods and services solicited by Procuring Entity, the Procuring Entity at its sole option may procure the goods and/or services, find that a solicitation is not responsive or not responsible or reject any or all bids, or exercise any of the Procuring Entity's lawful

authority. The Procuring Entity shall not be responsible in any way to the Participating Entity or any third party in its exercise of its lawful authority to purchase goods and services.

J. The parties agree that, to the extent applicable, the parties hereto shall pay their respective costs associated with this Agreement from current revenues available to the paying party.

SECTION 6. INDEPENDENT ACTIONS AND APPROVALS. Notwithstanding any other provision of this Agreement, each party may independently solicit or 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 the other party. Either party may withdraw from participation on any solicitation at any time without liability or continuing obligation to any other party. In no event shall participation in this Agreement prevent either party from entering into any other procurement agreement or cooperative arrangement.

SECTION 7. 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 8. TERMINATION. This Agreement may be terminated by either party at any time and for any reason by giving the other party at least thirty (30) day prior written notice. In the event this Agreement is terminated, the rights and responsibilities of each party under any contract with a vendor that has been awarded pursuant to this Agreement shall not be impaired.

SECTION 9. LIMITATION OF LIABILITY AND DAMAGES. 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. Neither party shall be liable to the 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 party regardless of whether the party receiving said information was advised, had other reason to know, or in fact knew thereof.

SECTION 10. NO SEPARATE ENTITY CREATED. 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 11. ASSIGNMENT. Neither party 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.

SECTION 12. 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 13. 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 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 14. 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 City :

City of El Paso
Attn: City Manager
2 City Hall Plaza
El Paso, Texas 79905

With a copy to:

City of El Paso
Attn: Purchasing Manager
2 City Hall Plaza
El Paso, Texas 79905

To EPISD: El Paso Independent School District
Attention: Superintendent
6531 Boeing Drive
El Paso, Texas 79925

With a copy to:

El Paso Independent School District
Attention: Director of Procurement
6531 Boeing Drive
El Paso, Texas 79925

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

SECTION 15. 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 City of El Paso, Texas.

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	)	**INTERLOCAL PURCHASING AGREEMENT**
	)	**BETWEEN CITY OF EL PASO**
	)	**AND EL PASO INDEPENDENT**
COUNTY OF EL PASO	)	**SCHOOL DISTRICT**

Signature Page

CITY OF EL PASO

_____
Joyce Wilson
City Manager

ATTEST:

_____
Richarda Momsen, City Clerk

APPROVED AS TO FORM:

_____
Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Bruce D. Collins, Manager
Financial Services, Purchasing Division

EL PASO INDEPENDENT SCHOOL DISTRICT

_____
Isela Castanon-Williams, President
Board of Trustees

ATTEST:

_____
Joel Barrios, Secretary
Board of Trustees

APPROVED AS TO FORM:

_____
S. Anthony Safi
Attorney for EPISD

#79883 - Purchasing/Interlocal Purchasing Agreement EPISD
Document Author: ERUH