

**INTERLOCAL PURCHASING AGREEMENT**  
**BETWEEN THE CITY OF EL PASO, TEXAS AND**  
**THE CITY OF AUSTIN, TEXAS**

This Interlocal Purchasing Agreement (the "Agreement") is entered into by El Paso, Texas, and the City of Austin, Texas, acting by and through their respective signature authorities, pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Texas Local Government Code, for the purpose of participating in cooperative purchasing. The undersigned Local Governments may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271 of the Texas Local Government Code; and

**WHEREAS**, the Parties are local governments as that term is defined in Section 271.101(2) of the Texas Local Government Code; and

**WHEREAS**, Section 271.102 of the Texas Local Government Code authorizes local governments to participate in a cooperative purchasing program with another local government or local cooperative organization; and

**WHEREAS**, a local government that purchases materials, supplies, goods, services or equipment pursuant to a cooperative purchasing program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods or services; and

**WHEREAS**, local governments in the State of Texas have the ability to realize substantial savings and economies of scale by cooperatively procuring materials, supplies, goods, services or equipment; and

**WHEREAS**, the Parties desire to enter into a cooperative purchasing program which will allow Parties to purchase materials, supplies, goods, services or equipment pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code; and

**WHEREAS**, the Parties, acting by and through their respective signature authorities, adopt the foregoing premises as findings of said governing bodies; and

**NOW THEREFORE**, in consideration of the mutual promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

## **ARTICLE I PURPOSE**

1. The purpose of this Agreement is to establish a cooperative purchasing program between the Parties which will authorize each entity to purchase goods and services using the solicitations awarded by the other governmental entity and allow the Parties to realize savings when purchasing these items, and which will facilitate the Parties' ability to satisfy state laws requiring the Parties to seek competitive bids for the purchase of goods and services. Each Party, in contracting for the purchase of supplies, materials, equipment, and services agrees, at its discretion, to extend contracts for shared use to the extent permitted by law and agreed upon by the Parties and vendors.

## **ARTICLE II TERM**

2. The term of this Agreement shall commence on the date on which all Parties have executed this Agreement ("Effective Date"). This Agreement shall remain in full force and effect unless superseded by a supplemental agreement or terminated as provided in this Agreement.

## **ARTICLE III TERMINATION**

3. A Party may withdraw its participation from this Agreement by providing thirty (30) days prior written notice to the other Parties. However, termination of this Agreement by a Party shall not terminate an existing contract between a Party and a vendor.

## **ARTICLE IV PURCHASING**

4. Each Party shall designate a person to act on their behalf in all matters relating to the cooperative purchasing program. 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. 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. The purchasing Party shall be responsible for the vendors' compliance with provisions relating to the quality of items and terms of delivery. The originating contracting Party is not responsible or liable for the performance of any vendor used by the purchasing Party as a result of this Agreement. Disputes between any party and any vendor shall be resolved by that party in accordance with applicable law.

## **ARTICLE V CURRENT REVENUE**

5. The Parties warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of it hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party. The Parties hereby warrant that no debt is created by this Agreement and that any debt created through a purchase shall be the sole obligation of the purchasing Party and no obligation or liability for such debt shall be a liability or obligation of the other Parties.

## ARTICLE VI FISCAL FUNDING

6. The financial obligations of the Parties, if any, under this Agreement are contingent upon the availability and appropriation of sufficient funding. Any Party may withdraw from this Agreement without penalty in the event funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding.

## ARTICLE VII MISCELLANEOUS

7A. **Notice**: Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective Party at the address set forth opposite the signature of the Party.

7B. **Amendment**: This Agreement may be amended by the mutual written agreement of the Parties.

7C. **Severability**: In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

7D. **Governing Law**: The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas. Venue for any action concerning this Agreement shall lie in Travis County, Texas.

7E. **Entire Agreement**: This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

7F. **Recitals**: The recitals to this Agreement are incorporated herein.

7G. **Counterparts**: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.

7H. **No Assignment**: The Parties may not assign or transfer their rights under this Agreement.

7I. **Compliance with Law**: Each Party is responsible for complying with any additional or varying laws and regulations regarding purchases.

7J. **No Waiver of Rights**: Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or equity to a Party, including the defense of sovereign immunity, nor to create any legal rights or claims on behalf of a person not a party to this Agreement.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_

Name: Byron E. Johnson, CPM  
Title: Purchasing Officer  
Address for Notice:  
P.O. Box 1088  
Austin, Texas 78767-8845

**ATTEST:**

By: \_\_\_\_\_  
City Secretary

**FOR CITY, APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David Sorola, Assistant City Attorney

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_

Name: Joyce Wilson  
Title: City Manager  
Address for Notice:  
2 Civic Center Plaza  
El Paso, Texas 79901

**ATTEST:**

By: \_\_\_\_\_  
Richarda Momsen, City Clerk

**FOR CITY, APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Elizabeth Rühmann, Assistant City Attorney

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**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_

Name: Byron E. Johnson, CPM  
Title: Purchasing Officer  
Address for Notice:  
P.O. Box 1088  
Austin, Texas 78767-8845

**ATTEST:**

By: \_\_\_\_\_  
City Secretary

**FOR CITY, APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David Sorola, Assistant City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF EL PASO, TEXAS**

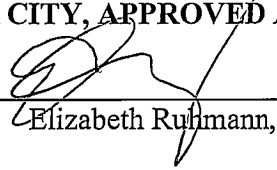
By: \_\_\_\_\_

Name: Joyce Wilson  
Title: City Manager  
Address for Notice:  
2 Civic Center Plaza  
El Paso, Texas 79901

**ATTEST:**

By: \_\_\_\_\_  
Richarda Momsen, City Clerk

**FOR CITY, APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Elizabeth Ruhmann, Assistant City Attorney