

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

**AGENDA DATE:** November 9, 2021

**PUBLIC HEARING DATE:** N/A

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Sam Rodriguez, P.E., City Engineer  
(915) 212-1808

**DISTRICT(S) AFFECTED:** 5

**STRATEGIC GOAL:** No. 4 Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

**SUBGOAL:** 4.1 Deliver bond projects impacting quality of life across the city in a timely, efficient manner

**SUBJECT:**

That the City Manager be authorized to sign an Amendment to a Standard Form of Agreement between the Owner and Design-Builder entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price (GMP) for construction and time for completion of construction.

Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement, the Owner's Contingency, Design-Builder's Fee, General Conditions and Design-Builder's Contingency.

**BACKGROUND / DISCUSSION:**

On December 18, 2017, City Council approved funding for the 2018 Capital Plan. The Eastside Sports Complex Phase II Project includes 8 soccer fields, paved parking to include stripping, parking lights, landscape, pedestrian pathways between the parking stalls, sidewalks, lighting and ADA accessible restrooms.

**PRIOR COUNCIL ACTION:**

On March 19, 2019 – City Council approved a Design- Build Agreement between the City of El Paso and Jordan Foster Construction, LLC. Solicitation Number 2018-1186R

**AMOUNT AND SOURCE OF FUNDING:**

2018 Capital Plan

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?**  YES  NO

**PRIMARY DEPARTMENT:** Capital Improvement Department

**SECONDARY DEPARTMENT:** Parks and Recreation

---

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

---

**X** *Jerry DeMuro/for*  
Sam Rodriguez, P.E., City Engineer

**RESOLUTION**

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

That the City Manager, or designee, is authorized to sign the Guaranteed Maximum Price Amendment to the Standard Form of Agreement by and between the City of El Paso and Jordan Foster Construction, LLC (“Design-Builder”) for the project known as “Eastside Sports Complex Phase II 2018-1186R”, to accept and incorporate the Design-Builder’s Guaranteed Maximum Price Proposal and establishing the Guaranteed Maximum Price (“GMP”) for the project in the amount of \$12,105,896.36; and

That the City Manager or designee be authorized to approve contract changes, and sign contract amendments, which are necessary for proper execution of the work and carrying out the intent of the project, which are in accordance with applicable law and do not make changes to the prices and are within the appropriate budget; and

That the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this agreement.

PASSED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2021.


CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leeser, Mayor

ATTEST:

\_\_\_\_\_  
Laura D. Prine,  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Omar De La Rosa,  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Samuel Rodriguez, P.E., City Engineer  
Capital Improvement Department

**GUARANTEED MAXIMUM PRICE AMENDMENT  
TO THE  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER**

This Guaranteed Maximum Price Amendment to the Standard Form of Agreement between Owner and Design-Builder (the “**Amendment**”) is entered into by and between the City of El Paso (the “**City**” or “**Owner**”) and Jordan Foster Construction, LLC. (the “**Design-Builder**”) for the construction of Eastside Sports Complex Phase II 2018-1186R. This Amendment amends the one certain Standard Form of Agreement Between the Owner and Design-Builder (the “**Agreement**”) entered into by and between the City and Jordan Foster Construction, LLC, dated March 19, 2019, and establishes a Guaranteed Maximum Price (“**GMP**”) for construction and time for completion of construction as set forth below:

**RECITALS**

**WHEREAS**, the City and Design-Builder entered into the Agreement dated as of March 19, 2019, for the construction of Eastside Sports Complex Phase II 2018-1186R

**WHEREAS**, unless clearly provided otherwise herein, all terms and phrases used herein shall have the same meaning as the terms and phrases used in the Agreement; and

**WHEREAS**, the Agreement contemplates the delivery of a Design-Builder’s GMP Proposal to the City; and

**WHEREAS**, the Agreement requires that said proposal contain certain representations and documentation; and

**WHEREAS**, the Agreement provides that in the event the City timely accepts the Design-Builder GMP Proposal, this Amendment shall be executed; and

**WHEREAS**, Design-Builder has delivered a Design-Builder GMP Proposal to the City; and

**WHEREAS**, the City desires to accept the Design-Builder’s GMP Proposal, subject to any amendments or revisions as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Design-Builder agree to modify and amend the Agreement as follows:

1. The City hereby accepts the Design-Builder's GMP Proposal submitted by Design-Builder, a true and complete copy of which is attached hereto and incorporated herein by reference, marked as **Exhibit "1-A"**.

2. **GUARANTEED MAXIMUM PRICE.** Design-Builder's GMP for cost of the Eastside Sports Complex Phase II 2018-1186R project is \$12,105,896.36, which includes amounts previously paid under the Agreement and the Owner's Contingency of Two Hundred Thousand (\$200,000) subject to additions and deductions by Change Order as provided in the Contract Documents. As agreed by the City and Design-Builder, the GMP is an amount that the cost of the Eastside Sports Complex Phase II 2018-1186R project shall not exceed, and is based on and detailed in the attached Exhibit "1-A".

3. **DESIGN-BUILDER'S FEE.** The Design-Builder's Fee for the Construction of the Work is hereby established in the sum not to exceed \$444,521.44, based on the product of 4.33% multiplied by the Cost of the Work, and said sum is included within the above stated GMP.

4. **GENERAL CONDITIONS EXPENSES.** The General Conditions expenses for the construction of the Work are hereby established in the sum of \$580,680.00, and said sum is included in the above stated GMP. Design-Builder acknowledges and agrees that the City shall have no liability for any General Condition expenses beyond payment of the above noted amount and Design-Builder agrees that it shall not be entitled to receive any additional compensation from the City for the General Conditions beyond this amount unless expressly adjusted by a Change Order.

5. **OWNER'S CONTINGENCY.** The City has established a contingency fund in the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) for this Project. Design-Builder has no right or entitlement to the contingency fund and use of such funds are subject to the prior written approval and issuance of a Change Order by the City. Any contingency funds remaining at the completion of the Project will be credited back to the Owner from the GMP.

6. **DESIGN BUILDER CONTINGENCY.** The Design Builder Construction Contingency in an amount of \$200,000.00 is included in the Guaranteed Maximum Price to allow the Design Builder to accommodate changes in the market place and to complete the project as designed. The Design Builder may use the Design Builder Construction Contingency without the Owner's approval. The Design Builder shall report to the Owner the status of the Design Builder Construction Contingency with each Application for Payment. The Owner will not increase the Design Builder's fee for any funds expended from the Design Builder Construction Contingency. The Design Builder Construction Contingency for the project is Two Hundred Thousand Dollars (\$200,000.00) included in the GMP.

- The Design Builder Construction Contingency is not available for use by the Design Builder for mistakes of subcontractors or material suppliers, or any warranty work.
- The Design Builder Construction Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions.

At Final Completion of the Project, any unused portion of the Design Builder Construction Contingency remaining in the Guaranteed Maximum Price shall be split 50/50 with the Owner.

7. Pursuant to the terms of the Agreement, The Design-Builder shall achieve Substantial Completion of the entire Work not later than 345 calendar days from the date the Notice to Proceed is issued,

subject to and adjustments of this Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the substantial completion of the Work, and that failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

8. Pursuant to the terms of the Agreement, Construction Manager shall achieve Final Completion of the entire Work not later than 30 calendar days from the date of Substantial Completion, subject to and adjustments of this Contract Time as provided in the Contract Documents and Change Orders modifying and extending this Agreement. It is specifically understood and agreed to by and between Owner and Design-Builder that time is of the essence in the final completion of the Work, and that failure to complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

9. Design-Builder acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Design-Builder further acknowledges and agrees that, if the Design-Builder fails to reach the Substantial Completion and/or Final Completion dates of any portion of the Work within the Contract time, the Owner will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Design-Builder agree that, if the Design-Builder shall neglect, fail, or refuse to achieve substantial completion and/or final completion of the Work by the Substantial Completion and/or Final Completion date, subject to proper extension granted by the Owner, then the Design-Builder agrees to pay the Owner as liquidated damages (“**Liquidated Damages**”), not as a penalty, for the damages that would be suffered by Owner as a result of delay the sum of:

- \$794.72 for each consecutive calendar day after the date of Substantial Completion in which the Work is not completed.
- \$547.33 for each consecutive calendar day after the date of Final Completion in which the Work is not completed.

10. Except as modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, the City and Design-Builder agree that the terms of this Amendment shall take precedence.

**IN WITNESS WHEREOF**, the parties have executed this Amendment to be effective as of the \_\_\_ day of \_\_\_\_\_, 2021.

**OWNER:**  
CITY OF EL PASO, TEXAS  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Construction Manager:**  
JORDAN FOSTER CONSTRUCTION, LLC  
By:   
Name: Matt Herdison  
Title: Area Manager

[Exhibit “1-A” begins on the following page]

**Exhibit “1-A” – Design-Builder’s Proposal**

# EXHIBIT "1-A"

## Eastside Sports Complex Phase II GMP

### Construction Cost.

Biditem	Description	Bid Quantity	Unit	Bid Price	Bid Total
1	REMOVE ASPHALT PAVEMENT	140.000	SY	\$ 4.86	\$ 680.40
3	REMOVE HEADWALL	1.000	EA	\$ 1,479.13	\$ 1,479.13
6	REMOVE CURB AND GUTTER	795.000	LF	\$ 3.52	\$ 2,798.40
8	REMOVE ROCK WALL W WROUGHT IRON	160.000	LF	\$ 19.19	\$ 3,070.40
9	REMOVE LANDSCAPE AREA	5,490.000	SY	\$ 1.51	\$ 8,289.90
10	CLEAR AND GRUB	38.500	ACRE	\$ 1,189.70	\$ 45,803.45
20	SITE CUT/ SITE FILL	36,000.000	CY	\$ 5.07	\$ 182,520.00
25	EXPORT MATERIAL AND HAUL OFF	40,000.000	CY	\$ 9.02	\$ 360,800.00
30	SCARIFY AND COMPACT BUILDING PAD	365.000	SY	\$ 3.49	\$ 1,273.85
35	SCARIFY AND COMPACT PAVED AREAS	30,300.000	SY	\$ 1.60	\$ 48,480.00
38	SCARIFY AND COMPACT SIDEWALK AREAS	11,705.000	SY	\$ 2.04	\$ 23,878.20
40	PREP FILL	118,340.000	SY	\$ 1.37	\$ 162,125.80
60	GRADE FOR CURB	11,640.000	LF	\$ 1.44	\$ 16,761.60
70	INSTALL BASE COURSE 5-INCH AT LIGHT DUTY	27,740.000	SY	\$ 6.22	\$ 172,542.80
73	INSTALL BASE COURSE 8-INCH AT HEAVY DUTY	1,225.000	SY	\$ 9.78	\$ 11,980.50
80	INSTALL ASPHALT PAVING 2-INCH AT LIGHT DUTY	27,740.000	SY	\$ 9.86	\$ 273,516.40
82	INSTALL ASPHALT PAVING 2.5-INCH AT HEAVY DUTY	2,560.000	SY	\$ 12.81	\$ 32,793.60
90	INSTALL 4-INCH SIDEWALK w BROOM FINISH	62,500.000	SF	\$ 3.92	\$ 245,000.00
95	INSTALL 4-INCH SIDEWALK W SAND BLAST FINISH	35,760.000	SF	\$ 4.92	\$ 175,939.20
97	INSTALL CONCRETE FLUME	245.000	SY	\$ 124.77	\$ 30,568.65
98	INSTALL 6-INCH REINFORCED SIDEWALK	7,030.000	SF	\$ 6.12	\$ 43,023.60
105	INSTALL CONCRETE HANDICAP RAMPS	6.000	EA	\$ 1,135.08	\$ 6,810.48
110	INSTALL CURB AND GUTTER	11,505.000	LF	\$ 10.71	\$ 123,218.55
130	INSTALL HEADER CURB 6" X 12"	135.000	LF	\$ 11.68	\$ 1,576.80
140	INSTALL IRRIGATION SYSTEM	1.000	LS	\$ 1,295,136.00	\$ 1,295,136.00
150	INSTALL TIFWAY SOD	1,000,000.000	SF	\$ 0.85	\$ 850,000.00
160	PLANT TREES	191.000	EA	\$ 331.26	\$ 63,270.66
165	INSTALL SEEDING	265,000.000	SF	\$ 0.37	\$ 98,050.00
175	INSTALL DESERT TAN CRUSHER FINES	60,000.000	SF	\$ 0.95	\$ 57,000.00
177	INSTALL DESERT TAN GRAVEL	38,300.000	SF	\$ 0.80	\$ 30,640.00
178	INSTALL PLANTS	2,365.000	EA	\$ 23.51	\$ 55,601.15
190	INSTALL PAVILLION CANOPY - Remove	0.000	EA	\$ -	\$ -
192	INSTALL RESTROOM BUILDING AT PAVILLION	1.000	EA	\$ 1,329,611.65	\$ 1,329,611.65
193	INSTALL POLYCARBONATE CANOPY - Remove	0.000	EA	\$ -	\$ -
194	INSTALL TRELLIS CANOPY - Remove	0.000	EA	\$ -	\$ -
195	INSTALL MAINTENANCE METAL CANOPY - Remove	0.000	EA	\$ -	\$ -
196	INSTALL MAINTENANCE BUILDING METAL BLDG - Remove	0.000	EA	\$ -	\$ -
200	INSTALL PLAYGROUND AREA - Remove	0.000	EA	\$ -	\$ -
265	INSTALL GATE ENTRY SIGNS	3.000	EA	\$ 32,270.94	\$ 96,812.82
270	INSTALL BANNER SIGNS	12.000	EA	\$ 1,640.26	\$ 19,683.12
275	INSTALL ADA SIGNS	12.000	EA	\$ 625.12	\$ 7,501.44
277	REMOVE AND RELOCATE PICNIC TABLES	12.000	EA	\$ 256.30	\$ 3,075.60
280	INSTALL ADA PICNIC TABLES	4.000	EA	\$ 3,205.72	\$ 12,822.88
300	INSTALL BACKLESS BENCHES	32.000	EA	\$ 2,190.58	\$ 70,098.56
302	INSTALL WHEEL STOPS	100.000	EA	\$ 110.09	\$ 11,009.00
303	INSTALL STRIPING	15,200.000	LF	\$ 0.91	\$ 13,832.00
304	INSTALL HANDICAP SYMBOLS	12.000	EA	\$ 69.46	\$ 833.52
305	INSTALL BIKE RACKS	6.000	EA	\$ 977.75	\$ 5,866.50
310	INSTALL TRASH RECEPTACLE	14.000	EA	\$ 2,211.95	\$ 30,967.30
315	INSTALL 12-INCH ROCK RIP RAP W MORTAR	440.000	SF	\$ 6.95	\$ 3,058.00
320	INSTALL MUSCO LIGHTING	1.000	LS	\$ 1,698,277.16	\$ 1,698,277.16
330	INSTALL LIGHT POLES AT PARKING AREA	1.000	LS	\$ 331,696.05	\$ 331,696.05
340	INSTALL POWER RISER DIAGRAM	1.000	LS	\$ 104,211.39	\$ 104,211.39
350	INSTALL SPECIAL SYSTEMS ROUGH IN	1.000	LS	\$ 31,720.62	\$ 31,720.62



360	INSTALL WIFI SYSTEM	1.000	LS	\$ 127,803.59	\$ 127,803.59
365	COORDINATION & ARC FLASH STUDIES	1.000	LS	\$ 16,028.61	\$ 16,028.61
370	INSTALL 6FT ROCK WALL	640.000	LF	\$ 75.99	\$ 48,633.60
371	INSTALL 18-INCH ROCKWALL AT PLAYGROUND W CAP - Remove	0.000	LF	\$ -	\$ -
373	INSTALL 2FT ROCK WALL WITH 4FT WROUGHT IRON	4,985.000	LF	\$ 115.58	\$ 576,166.30
375	INSTALL 24FT WROUGHT IRON GATE	1.000	EA	\$ 2,885.15	\$ 2,885.15
376	INSTALL 10FT WROUGHT IRON GATE	6.000	EA	\$ 2,137.15	\$ 12,822.90
378	INSTALL 6FT CHAINLINK FENCE	450.000	LF	\$ 36.33	\$ 16,348.50
379	INSTALL 3FT CHAINLINK GATE	1.000	EA	\$ 641.14	\$ 641.14
380	INSTALL TEMPORARY CHAIN LINK FENCE	1,815.000	LF	\$ 5.34	\$ 9,692.10
390	INSTALL 24" HDPE	160.000	LF	\$ 87.15	\$ 13,944.00
440	INSTALL 36" HDPE	180.000	LF	\$ 121.34	\$ 21,841.20
450	INSTALL INLET 2GRATE	1.000	EA	\$ 6,826.89	\$ 6,826.89
460	INSTALL 72-INCH MANHOLE	1.000	EA	\$ 6,327.03	\$ 6,327.03
465	INSTALL NEW HEADWALLS	2.000	EA	\$ 6,984.99	\$ 13,969.98
475	INSTALL INLET 5GRATE	1.000	EA	\$ 10,843.89	\$ 10,843.89
477	REMOVE OUFALL STRUCTURE	1.000	EA	\$ 1,815.50	\$ 1,815.50
480	CONNCT TO EXISTING STORM DRAIN	1.000	EA	\$ 2,376.51	\$ 2,376.51
495	INSTALL BOOSTER STATION	1.000	EA	\$ 143,474.10	\$ 143,474.10
496	INSTALL 8-INCH FIRE LINE	910.000	LF	\$ 43.21	\$ 39,321.10
497	INSTALL 12-INCH WATER LINE	2,750.000	LF	\$ 60.31	\$ 165,852.50
500	INSTALL 3-INCH WATER	1,310.000	LF	\$ 27.71	\$ 36,300.10
520	INSTALL 3-INCH METER	1.000	EA	\$ 5,739.49	\$ 5,739.49
530	INSTALL 3-INCH BACKFLOW PREVENTER	1.000	EA	\$ 8,067.31	\$ 8,067.31
548	INSTALL FIRE HYDRANTS	1.000	EA	\$ 6,250.74	\$ 6,250.74
549	CONNECT TO EXISTING WATER	3.000	EA	\$ 4,214.97	\$ 12,644.91
550	INSTALL 6-INCH SANITARY SEWER	1,260.000	LF	\$ 41.39	\$ 52,151.40
560	INSTALL 6-INCH CLEANOUT	13.000	EA	\$ 627.68	\$ 8,159.84
570	INSTALL SEWER CONNECTION	1.000	EA	\$ 1,917.54	\$ 1,917.54
575	ASPHALT PATCH FOR UTILITIES	400.000	SY	\$ 25.53	\$ 10,212.00
578	WATER LOOP DESIGN FEE	1.000	LS	\$ 9,617.16	\$ 9,617.16
580	INSTALL SILT FENCING	5,580.000	LF	\$ 3.56	\$ 19,864.80
585	INSTALL ERSOSION LOGS	260.000	LF	\$ 3.56	\$ 925.60
590	INSTALL CONSTRUCTION ENTRANCE	2.000	EA	\$ 2,828.94	\$ 5,657.88
595	INSTALL CONCRETE WASHOUT	1.000	EA	\$ 4,644.83	\$ 4,644.83
600	SWPP PLAN	1.000	EA	\$ 5,342.87	\$ 5,342.87
6000	MOBILIZATION	1.000	LS	\$ 49,585.85	\$ 49,585.85
7000	TESTING	1.000	LS	\$ 15,000.00	\$ 15,000.00

**Subtotal: \$ 9,685,404.04**

**Design Cost**

800	CONSULTANT DESIGN FEES THROUGH 60%	1.000	LS	\$ 521,304.88	\$ 521,304.88
810	CONSULTANT DESIGN FEES THROUGH 100%	1.000	LS	\$ 351,486.00	\$ 351,486.00
910	JFC DESIGN COST UNDER CONTRACT 60% TO 100%	1.000	LS	\$ 32,500.00	\$ 32,500.00

**Subtotal: \$ 905,290.88**

**General Conditions**

9900	SUPERINTENDENT	10.000	MO	\$ 13,090.00	\$ 130,900.00
9901	PROJECT MANAGER	6.000	MO	\$ 14,560.00	\$ 87,360.00
9903	OFFICE TRAILER	10.000	MO	\$ 350.00	\$ 3,500.00
9904	PORTABLE TOILETS	10.000	MO	\$ 200.00	\$ 2,000.00
9905	WATER ICE	10.000	MO	\$ 65.00	\$ 650.00
9906	CELL PHONE	10.000	MO	\$ 500.00	\$ 5,000.00
9907	FIRST AID SUPPLIES	10.000	MO	\$ 65.00	\$ 650.00
9908	ENTERTAINMENT	10.000	MO	\$ 210.00	\$ 2,100.00
9911	LAPTOP AND FURNITURE	10.000	MO	\$ 85.00	\$ 850.00
9912	SECURITY	10.000	MO	\$ 335.00	\$ 3,350.00
9913	CONSTRUCTION WATER	10.000	MO	\$ 2,500.00	\$ 25,000.00
9915	JOB PHOTOS	10.000	MO	\$ 210.00	\$ 2,100.00
9916	SMALL TOOLS	10.000	MO	\$ 500.00	\$ 5,000.00
9917	SURVEY	10.000	MO	\$ 15,532.00	\$ 155,320.00

9920	SAFETY COORDINATOR	6.000	MO	\$ 11,032.00	\$ 66,192.00
9925	OFFICE SUPPLIES	10.000	MO	\$ 75.00	\$ 750.00
9930	PROJECT ENGINEER	6.000	MO	\$ 14,560.00	\$ 87,360.00
9950	SAFETY PPE	1.000	LS	\$ 2,598.00	\$ 2,598.00
				<b>Subtotal:</b>	<b>\$ 580,680.00</b>

**Contingencies**

940	CONTRACTOR CONTINGENCY	1.000	LS	\$ 200,000.00	\$ 200,000.00
941	OWNER CONTINGENCY	1.000	ls	\$ 200,000.00	\$ 200,000.00
				<b>Subtotal:</b>	<b>\$ 400,000.00</b>

**Fee**

920	GENERAL CONTRACTOR FEE	4.33%	LS	\$ 444,521.44	\$ 444,521.44
				<b>Subtotal:</b>	<b>\$ 444,521.44</b>

**GMP Total: \$ 12,015,896.36**

Previously Paid: \$ 521,304.88

Balance: \$ 11,494,591.48