

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

AGENDA DATE:
PUBLIC HEARING DATE:

CONTACT PERSON(S) NAME AND PHONE NUMBER:

DISTRICT(S) AFFECTED:

STRATEGIC GOAL:

SUBGOAL:

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.

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?

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

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?

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ___ YES ___ NO

PRIMARY DEPARTMENT:

SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD:



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

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Attorney is authorized to retain outside counsel, Davidson Troilo Ream & Garza, attorney Frank J. Garza in matters regarding allegations of potential violations of the City's Ethics Ordinance, Standards of Conduct, Charter Provisions, and State Statutes.

APPROVED this ____ day of May, 2023.

CITY OF EL PASO

Oscar Leaser, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Javier Macias

Javier Macias
Assistant City Attorney

APPROVED AS TO CONTENT:

Karla M. Nieman

Karla M. Nieman
City Attorney



Office of the City Attorney

April 27, 2023

MAYOR

Oscar Leeser

CITY COUNCIL

District 1

Brian Kennedy

District 2

Alexandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

Via Electronic Mail

Frank J. Garza
Davidson Troilo Ream & Garza
The Pyramid Building
601 NW Loop 410, Suite 100
San Antonio, TX 78216-5511
Email: fgarza@dtgrglaw.com

Re: Fee Arrangement / Professional Services Letter of Engagement

Matters regarding allegations of potential violations of the City's Ethics Ordinance, Standards of Conduct, Charter Provisions, and State Statutes

Dear Mr. Frank J. Garza:

This Engagement Letter confirms that **Frank J. Garza** and **Davidson Troilo Ream & Garza** ("You") will represent the City of El Paso to provide legal services in connection with the above referenced matter ("this matter"). The City requires You to follow the terms outlined in the City of El Paso Terms of Engagement, attached hereto as Addendum 1, and incorporated herein for all purposes. Please sign and return this Engagement Letter to the City Attorney's Office, confirming that you agree to the following and accompanying addendums:

1. **Karla M. Nieman** ("Managing Attorney") will be your point of contact and will be managing this matter; NiemanKM@elpasotexas.gov.
2. You shall provide all legal services necessary to conduct and complete this matter on behalf of the City. You shall coordinate all aspects of representation in connection with this matter exclusively with the City Attorney's Office through the Managing Attorney. No contact with City officials regarding this matter shall occur without prior notice to and approval from the City Attorney's Office. All such contact shall be coordinated through the City Attorney's Office.





3. You shall conform all aspects of your invoicing and billing practices to reflect the terms of the Billing Policies, attached hereto as Addendum 3, and incorporated herein for all purposes.

4. The City agrees that your hourly rates for this matter are as specified in the Fee Schedule, attached hereto as Addendum 2, and incorporated herein for all purposes. Unless otherwise agreed to in writing, these hourly rates are fixed for the duration of this engagement. Additionally, the City will not pay for work by any person not listed in Addendum 2 unless preauthorized by the City Attorney in writing.

5. The City will pay for routine expenses at a fixed amount of 4% of billed legal fees, and will reimburse for the actual cost of non-routine expenses, as more fully detailed in the Terms of Engagement. You are expected to provide monthly invoices itemized with tasks performed in the billing cycle in which they are performed.

6. This Agreement will be in effect through and including the resolution of this matter, unless mutually extended or sooner terminated, as provided in the Terms of Engagement.

Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above and the accompanying addendums.

Sincerely,

KARLA M. NIEMAN

City Attorney

5/1/2023

DATE

AGREED & ACCEPTED:

Frank J. Garza

Davidson Troilo Ream & Garza

DATE

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov



Office of the City Attorney

April 27, 2023

MAYOR

Oscar Leeser

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Via Electronic Mail

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Davidson Troilo Ream & Garza
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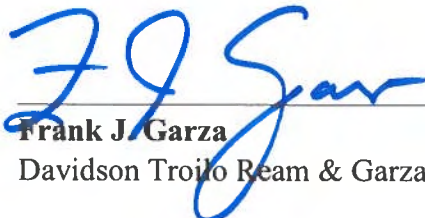
Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above and the accompanying addendums.

Sincerely,

KARLA M. NIEMAN
City Attorney

DATE

AGREED & ACCEPTED:



Frank J. Garza
Davidson Troilo Ream & Garza



DATE

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov



ADDENDUM 1

TERMS OF ENGAGEMENT

I. Definitions

The term “**Agreement**” means this Terms of Engagement, the corresponding Engagement Letter, the Billing Guidelines, and any exhibits or written amendments thereto.

The term “**You**” means **Frank J. Garza** and **Davidson Troilo Ream & Garza**, as applicable, any third-party consultants or experts retained by You, to represent the interests of the City, as reflected in the corresponding Engagement Letter.

II. Representation

You will coordinate all aspects of representation with the Managing Attorney and/or the City Attorney. No contact with City Officials regarding this matter shall occur without prior notice to and approval by the Managing Attorney.

You will regularly report to the Managing Attorney on the status, progress, time schedules, evaluation, costs or other matters relating to the engagement, including when requested, making written reports of the same. Upon reasonable notice, You will be available to brief the City Council or city management regarding the representation. Please note that formal action by the El Paso City Council may be required to approve certain actions, including settlement.

You will consult with the Managing Attorney on significant tactical and procedural decisions, particularly when negotiations are involved. The City Attorney or Managing Attorney must be informed of the scheduling of meetings, hearings and/or contract negotiations and mediations regarding this matter.

You will submit copies of all pleadings, legal memoranda and correspondence to the Managing Attorney. All policy decisions shall be made by the City Attorney. Any questions regarding such matters shall be directed to the Managing Attorney.

There shall be no direct communication with City staff without prior coordination with the City Attorney’s office to arrange all meetings and/or interviews. All such contact shall be coordinated through the Managing Attorney.

You shall have no communication with the press regarding this matter without prior notice to and approval from the City Attorney. Should the press contact You or your office regarding this matter you shall promptly notify the Managing Attorney.

You will cooperate with the City with respect to requests that the City may receive under the Public Information Act, relating to the matter for which you have been retained.

Karla M. Nieman – City Attorney

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III. Conflict of Interest

You may be asked to represent various clients whose interests may be adverse to those of the City. By accepting this engagement, you affirm that, at present, no such conflict exists. Furthermore, during the course of this representation, you shall refrain from representing clients whose interests may conflict with those of the City. Should such a conflict arise, You shall contact the City Attorney immediately to discuss the situation.

IV. Indemnity

You shall indemnify and hold the City harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of You simultaneous to or in conjunction with the rendering of legal services.

V. Insurance

You shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence, and shall not permit such insurance to be canceled or lapse during this engagement. You shall provide an insurance certificate or other proof of insurance to the City upon execution of this agreement.

VI. Ethics

In providing legal services to the City, you will fully comply with the Texas Disciplinary Rules of Professional Conduct. You shall promptly notify the City if any disciplinary action or malpractice action is instituted against You simultaneous to or in conjunction with providing services to the City.

VII. Termination of Agreement

It is understood that the City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, You shall immediately discontinue work under this Agreement. Thereafter, only those services necessary to effectuate termination or transfer the matter may be performed. All such services must be expressly authorized in advance and in writing by the City Attorney.

VIII. Work Product

It is agreed and understood that all files, reports, exhibits, pleadings, data compilations, memoranda and other work product produced under this Agreement are the property of the City of El Paso. Upon termination of the agreement or final disposition of the case, all files, reports, pleadings and memoranda shall be sent to the City Attorney's office within 60 days, without additional charge. A copy of the information may be retained by You at Your own expense.

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IX. Assignment

You may not assign this Agreement in whole or in part or subcontract any legal services without the prior written consent of the City Attorney.

X. Monthly Report to Client Required

Your firm shall submit to the City Attorney a written report for each calendar month outlining the time spent, actions taken, reasonable travel expenses incurred, and major events regarding the subject matter of this Agreement. Such reports shall be due no later than the 5th day of each month occurring during the term of this Agreement. Said reports shall be kept confidential to the extent allowed by law.

XI. Applicable Law

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in El Paso County, Texas. All obligations of the parties shall be deemed performable in El Paso County, Texas.

XII. Entire Agreement

This Agreement, in conjunction with Addendums 1-3, shall constitute the entire agreement and understanding of the parties concerning your engagement. There shall be no enforceable amendment or modification to this Agreement, unless it is in writing signed by all parties.

XIII. Severability

In case any provision of this Agreement shall be declared invalid, illegal or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Karla M. Nieman – City Attorney

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ADDENDUM 2 FEE SCHEDULE

The fees of **Frank J. Garza** and **Davidson Troilo Ream & Garza** shall be set at the following rates:

<u>Professional</u>	<u>Hourly Rate</u>
Partner	\$290.00
Senior Associate	\$200.00
Associate	\$180.00
Paralegal	\$90.00

All attorneys assigned by you to work on this matter must be identified in the Fee Schedule. As applicable, any substitution or addition of partners and/or associates must be approved in advance by the City Attorney. The City will not increase billing rates for any matter that is in progress without the written approval of the City Attorney.

The City reserves the right to refuse modification of hourly rates as determined by the initial fee schedule. In the event you seek to change the hourly rates agreed upon in the initial Fee Schedule, you will provide the City with an updated Fee Schedule Offer for review and approval. The City reserves the right to refuse proffered rate adjustments for City matters that are active and have a Fee Schedule already in place. In the event a Fee Schedule is approved for adjustment, parties will execute a fee schedule addendum reflecting those changes. The City reserves the right to terminate the engagement contract with Outside Counsel in the event the proffered rate adjustments are not agreed upon.

If you have not previously done so, please complete and return the enclosed W-9. For your convenience, the Office of the City Attorney has established an Accounts Payable mailbox. Please submit your invoices electronically at EPCityAttorney-AccountsPayable@elpasotexas.gov or at the address as follows:

City of El Paso
Attn: Office of the City Attorney
P.O. Box 1890
El Paso, TX 79950-1890

Karla M. Nieman – City Attorney

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ADDENDUM 3 BILLING POLICIES

I. Legal Fees and Expenditure Ceiling

The total cost of fees and expenses incurred in this matter shall not exceed ten thousand dollars (\$10,000).

II. Submission

The City functions on a fiscal year beginning on September 1st to August 31st. All invoices, except those relating to services provided in August **need to be submitted in the fiscal year in which the work was performed.**

Invoices should be submitted monthly, via the Purchasing Department. **Invoices are due on or before the 5th of the following month** or the following business day if the deadline occurs on a weekend (e.g., the bill for all January time and expenses is due on or before February 5th or the following business day if the 5th falls on a Saturday or Sunday).

We reserve the right to refuse to pay any invoice that relates to fees or expenses that are more than thirty (30) days old.

Your tax identification number must be included on all invoices. If you have not previously done so, please complete and return the City's vendor forms, which must be submitted before payment can be processed. If not included with this letter, you may request the vendor forms through the email address below.

Please submit your invoices electronically or by mail to:

EPCityAttorney-AccountsPayable@elpasotexas.gov

City of El Paso
Attn: Office of the City Attorney
P.O. Box 1890
El Paso, TX 79950-1890

III. Alternative Fee Arrangements

The City is receptive to alternatives to the conventional hourly billing model, including the use of fixed or flat fees, blended rates, contingency fees etc. We encourage your firm to consider and propose alternative legal spend arrangements at the inception of matters.

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IV. Matter Management

The City may find it necessary to impose other billing requirements and policies during the engagement as appropriate to effectively and efficiently manage the matter. Prior notice will be given and the matter discussed with counsel if this is deemed necessary. At the outset of representing the City on a new matter, the primary internal legal contact(s) for the City should be identified. Please make sure that the legal contacts are copied on all communications.

Surprises, whether in the form of results or bills, should be avoided. We expect regular, open, timely and effective communication with respect to all aspects of your engagement. It is generally our preference to receive written communications via email. The specific communications requirements of your City contact should be discussed for each matter you are assigned.

Unless approved in advance, a City attorney should be present during all communications with City personnel. In addition, copy your primary City legal contacts on all communications you may have with City employees.

V. Staffing

Firms are selected based on expertise and efficiency. The City expects its outside counsel to staff projects appropriately based on the nature and complexity of the legal work, engaging the smallest number of knowledgeable professionals necessary to the matter to get the job done well. A balance should be struck between the efficiency a more experienced lawyer brings to a given task and the advantages of having other tasks performed by a less senior lawyer or paralegal.

We will always be available for discussion regarding the appropriate skill and experience level if you have any question or doubt in this regard. Attorney, paralegal, and legal assistant time billed should not include tasks that are more appropriate for clerical or secretarial personnel, such as stamping or numbering documents, indexing or tagging exhibits, organizing files or reproducing documents.

Unless approved by us in advance, we will not reimburse you for time spent by more than one attorney or timekeeper attending telephone conferences, meetings, witness interviews, depositions, hearings, negotiations, mediations, etc. Additional timekeepers including the addition of an associate should be discussed and approved by us in advance. Duplication of effort within the firm is to be avoided and the City will not pay for tasks or work done that appears duplicative.

In addition, we will not pay for two or more timekeepers having an internal conference (most commonly, discussion between attorneys at your firm about the status or substance of a matter). For example, if an attorney must transition the matter to a colleague, we do not expect to be charged for the time necessary to make the replacement attorney familiar with the matter. If an internal conference is needed because of particularly complex or unusual circumstances, only one timekeeper may bill the time, unless approved in advance. The City will also not pay for tasks that are supervisory in nature, including instructions regarding work assignments or involvement by a more junior attorney for the purposes of shadowing.

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We expect all timekeepers to work efficiently and avoid devoting excessive hours to a single project on any particular day. We will not pay for more than ten (10) hours of time spent by any one timekeeper on any one City matter in a given day, unless approved in advance.

VI. Invoicing

A. Hourly Rates

The negotiated hourly rates shall include all overhead and internal charges associated with your firm's practice. Billing done on an hourly basis is to be at the current approved hourly rate. Outside Counsel/Vendor will submit a Fee Schedule of current individual timekeeper rates for those timekeepers who perform work for the City. The Fee Schedule will be submitted to the City for review and approval by the City Attorney. Charges submitted at a rate that exceeds the approved Fee Schedule rate for a timekeeper will be reduced to the approved rate. The approved fee schedule for this matter is set forth in Addendum 2.

B. Timekeeping

Except where otherwise approved by the City, timekeeping entries will conform to increments of one-twentieth of an hour. Time values must reflect three (3) minute increments as follows:

Time (in minutes)	Value	Time (in minutes)	Value
3	0.05	33	0.55
6	0.10	36	0.60
9	0.15	39	0.65
12	0.20	42	0.70
15	0.25	45	0.75
18	0.30	48	0.80
21	0.35	51	0.85
24	0.40	54	0.90
27	0.45	57	0.95
30	0.50	60	1.00

C. Standard Form

Invoices should set forth the following line items (in no particular order): (1) date (2) timekeeper (3) description (4) hours or time expended (5) rate, and (6) amount.

For example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/15/22	ACA	Review plaintiff's discovery	1.50	\$180	\$270

Karla M. Nieman – City Attorney

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D. Block Billing

Descriptions of blocks, batches of activities or tasks under one charge or the grouping of multiple activities under a single time charge (i.e., “block-billing”) are unacceptable. Invoices that contain any “block” billing entries will be returned. The description should clearly state the nature of the task performed sufficient to allow the primary City contact or reviewer to determine why it was necessary. Incomplete or vague charge descriptions are unacceptable.

Invoices should set forth in detail the related professional, the distinct tasks, and activities performed by each professional, the time expended in one-twentieth of an hour and fees charged for that work in separate time entries. Additionally, the task description must be sufficiently descriptive in order to identify the item, document or task involved including the native date of the item, document or task (e.g. a task involving interrogatories should not be described as “review interrogatories” they should be described as “review plaintiff’s January 7, 2021 interrogatories”). Documents of any sort should be referred to by date and title so as to sufficiently identify them.

For example, an invoice containing the following entry is *unacceptable* and will be returned:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s discovery; prepare correspondence to opposing counsel; continue drafting motion	1.50	\$180	\$270

Acceptable methods for itemized time entries include:

Example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s January 7, 2021 interrogatory responses (0.3); prepare correspondence to opposing counsel regarding settlement options (0.40); continue drafting motion for summary judgment (0.80)	1.50	\$180	\$270

Example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s January 7, 2021 interrogatory responses	0.30	\$180	\$54
1/17/22	ACA	Prepare correspondence to opposing counsel regarding settlement options	0.40	\$180	\$72

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1/17/22	ACA	Continue drafting motion for summary judgment	0.80	\$180	\$144
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Billing entries should be organized in chronological order by date. Billing entries categorized chronologically by timekeeper will not be accepted. Entries should be in date order reflecting work that is done collectively on any given day even if billed by different timekeepers. The invoice will in its entirety bill only that time that corresponds with the previous billing period.

At no point should an invoice reflect billing entries for services rendered outside that particular month’s billing cycle. For example, an invoice for January that is submitted on or before February 5th, should reflect billing entries for tasks performed during the month of January.

VII. Excluded Activities

Fees for the following tasks or activities will not be compensated:

- Services that are clerical in nature, such as word processing, regardless of who performs such services or at what rate they are performed (normal, temporary or overtime);
- Repetitive file review;
- Duplicative tasks;
- File or document organization;
- Preparing and processing invoices;
- Conferences involving attorneys, paralegals and other personnel from the firm, which involve routine administrative coordinating or assignment related matters;
- Time spent upon reassignment of a matter to another attorney, in familiarizing that attorney with the file;
- Charges for opening and/or updating files;
- Work performed by or attendance of multiple attorneys of the same firm, including but not limited to, attendance of multiple attorneys at any meeting or conference, unless approved by the City Attorney;
- Research of relatively routine matters, which should be within the knowledge of experienced attorneys, or research on one topic/issue in excess of ten (10) hours;
- Time spent training lawyers on applicable substantive law.

The City does not expect to be billed and will not pay for time submitted by librarians, secretaries, billing, filing, clerks, internal messengers/couriers, law clerks, summer associates, temporary or clerical support staff, word processors, and IT professionals.

VIII. Legal Research

Legal research should be undertaken when necessary to protect the City’s interests. We view access to electronic resources as overhead and will not pay for general online or electronic research. The City will pay for time spent conducting necessary legal research as required by the

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facts of the case. We would normally expect research projects to be conducted by experienced associates instead of partners. The City will not pay for research regarding fundamental concepts or local rules, the understanding of which is assumed by your firm's retention. We expect to benefit from previously prepared briefs and memoranda, and when such briefs or memoranda exist we will pay only for actual time spent updating or tailoring those documents to our needs.

IX. Consultants & Experts

The City expects to be informed and consulted on the engagement of any experts, consultants, litigation support vendors and e-discovery vendors. If it becomes necessary to retain consultants or experts in this matter, you must receive prior written approval from the City Attorney. You must bill the City on your letterhead for services rendered by consultants and experts. The City cannot pay outside consultant or expert invoices directly if he or she was not hired directly by the City.

X. Travel

The City will not pay for time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in advance of the travel. The City will not reimburse you for air travel expenses in excess of standard coach or economy fares. Reimbursement for automobile mileage shall not exceed the amount per mile deductible under the Internal Revenue Code as a business expense. The amount paid by the City for lodging and meals shall not exceed those established in the most recent GSA schedule that the Federal Government allows for travel. All travel expenses submitted for reimbursement are subject to the guidelines set forth in the City's Travel Manual. Expenses over and above the limits set forth herein shall be borne solely by you and shall not be reimbursed by the City.

XI. Expenses

The City will pay a fixed fee of 4% of approved billed fees to cover the cost of routine expenses. You agree to pay for all reasonable routine expenses incurred during the representation of the City in this matter, including litigation expenses, if applicable, from the 4% paid to You for payment of routine expenses. Outside expert and consulting fees, travel expenses, costs for deposition, and court and administrative proceeding transcripts are not part of the 4% fee and will be reimbursed by the City upon provision of invoices showing such expenses.

The total cost of routine expenses for representation in this matter, other than those expenses excluded in above paragraph, shall not exceed the 4% amount. In the event of any unforeseen circumstances during the course of representation that may lead to a cost overrun, you will notify this office promptly in writing, identifying the contingency and its anticipated cost impact. The City will not honor any invoice seeking reimbursement of expenses in excess of the 4% amount without written approval from the City Attorney.

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XII. Right to Audit

The City shall have the right to inspect and audit all of your books, records and documents pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge or computation.

Upon request by the City or its representatives to provide information concerning your representation in this matter, you will provide such information at no additional cost to the City, unless the City Attorney or her representative agrees in writing, in advance, to the additional charges.

Karla M. Nieman – City Attorney

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FRANK J. GARZA



Education: Trinity University (B.A., 1983)
Catholic University (J.D., 1986)

Experience: Mr. Garza is a shareholder of the law firm **DAVIDSON, TROILO, REAM & GARZA**, and helps manage the Firm by serving on the Management Committee.

He currently serves as City Attorney for the cities of Alamo Heights, Balcones Heights, Cibolo, Helotes, Robstown, Rockwall and Terrell Hills. He serves as Special Counsel for the cities of Ingleside, Richmond, San Antonio, Windcrest and also serves as Special Counsel for Brownsville Public Utilities and New Braunfels Utilities. Mr. Garza serves as General Counsel to Brooke Development Authority, City of San Antonio Civil Service Commission, City of San Antonio Police and Fire Civil Service Commission, Alamo Area Metropolitan Policy Organization, VIA Metropolitan Transit Authority, Cibolo Canyon Special Improvement District, Westside 211 Special Improvement District, Crosswinds Special Improvement District and Talley Road Special Improvement District. Mr. Garza has assisted the cities of El Paso, Laredo, New Braunfels, San Antonio, San Marcos and Kyle with updating ethics ordinances and/or investigations of public officials and employees. Has conducted over 15 CLE courses on municipal law and ethics of public officials.

Mr. Garza served as **City Attorney for the City of San Antonio from 1995 to 2002.** His duties as City Attorney included providing general counsel services to the Mayor and Council Members as well as to the City Manager and the executive team. The executive team included over 50 department directors and assistant directors as well as the City Manager and her assistants. His duties also included providing general counsel services to the over 30 boards and commissions. His approach is to have hands on responsibility to the legal needs of the public officials and the executive administrator while also making sure that the legal needs of the governmental entity are being addressed.

Mr. Garza served as a Deputy City Attorney and Assistant City Attorney for the City of Dallas from 1986 to 1995. Mr. Garza provided legal representation to all city departments in the employee grievance and disciplinary process, as well as provided legal advice to all city departments in responding to claims and lawsuits involving labor and employment matters. During his tenure with the City of Dallas, Mr. Garza developed the sexual harassment policy, drug testing policy and related policies. He was lead counsel in over ten employment and civil rights jury trials. During this time, he wrote briefs and argued on six occasions to the Fifth Circuit Court of Appeals and twice writing Briefs in Opposition for Writ of Certiorari to the **United States Supreme Court.**

Mr. Garza has been an Adjunct Professor in the Public Administration Graduate Program since 2002 at **St. Mary's University.** He teaches two classes, Ethics and Public Officials and the Basics of Municipal Government.

Membership: United States District Court for the Western District of Texas
United States District Court for the Northern District of Texas
Fifth Circuit Court of Appeals
United States Supreme Court
San Antonio Bar Association
Mexican American Bar Association

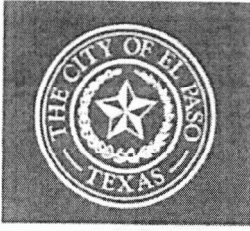
Affiliations: Texas City Attorney's Association Board of Directors (2008-2015)
President, Texas City Attorney's Association (2014)
International Municipal Lawyers Association
Texas Municipal League Board of Directors (2022 to present)

Community Service: Big Brothers and Sisters of Dallas Fort Worth (1987 -1995)
Board of Directors Big Brothers and Sisters (1989-1995)
President, Big Brothers and Sisters (1992-1995)
University Hospital Foundation Board of Directors (2005 to present)
President University Hospital Board of Directors (2017 to 2019)
Consejo Education Foundation Member (2009 to present)
Board of Directors Consejo Education Foundation (2016 to present)
Rey Feo Scholarship Committee
Hope for the Future Khaki and Plaid King (2018) – Raised \$156,000
Hope for the Future Khaki and Plaid Chair (2019) - Raised over \$900,000

CITY ATTORNEY'S OFFICE

OUTSIDE COUNSEL/CONSULTANT SERVICES REQUEST

TO BE COMPLETED BY REQUESTING ATTORNEY		Date: December 12, 2019
Requesting Attorney: Maria Guadalupe Martinez	Title: Deputy City Attorney	Initials MGM
Firm and Lead Attorney: Frank J. Garza Davidson Troilo Ream & Garza	Address: 601 NW Loop 410, Suite 100 San Antonio, TX 78216-5511	Telephone/Email: (210) 349-6484
Type of Contract: () Professional Services () Consultant Services () Letter of Engagement	() NEW Contract (attach copy of prior contract, if any) () RENEWAL Contract (attach copy of existing contract) (X) AMENDED (attach copy of existing contract)	
Funding Source (Department): N/A	Term Dates: Beginning: Date of engagement letter Ending: through and including the date of judgment and/or settlement	
Social Security No./EIN:		* W-9 & Vendor Forms to be attached to contract
Rate: Terms of initial Fee Letter of Engagement dated 12/21/18, remain the same.	() Hourly () Lump Sum () Contingent () Other:	Expenses: () Percentage of Fee % () Itemized per Fee Addendum
Contract not to Exceed: \$50,000.00	Authority: () City Attorney (\$10,000) (X) City Manager (\$50,000)* () City Council Date Council Notification/Action: _____ () Motion Attached	
Purpose: () Litigation () Utility () Bond () General (X) Consultant Scope of Work: Allegations of potential violations for the City's Ethics Ordinance, etc. 18-1033-139 City Attorney's Office point of contact (Assistant City Attorney): Maria Guadalupe Martinez		
<input checked="" type="checkbox"/> Approved Prepare Contract by: _____ <input type="checkbox"/> Denied Reason: _____ City Attorney: _____ Date: 12/12/19 Signature		
* City Manager approval required if \$50,000. <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied City Manager: _____ Date: 12/16/19 Signature		
**No invoices will be processed unless fully executed agreement on file.		



Office of the City Attorney

Mayor
Dee Margo

December 13, 2019

Via E-mail

City Council

District 1
Peter Svarzbein

District 2
Alexandra Annello

District 3
Cassandra Hernandez

District 4
Dr. Sam Morgan

District 5
Isabel Salcido

District 6
Claudia Ordaz Perez

District 7
Henry Rivera

District 8
Cissy Lizarraga

City Manager
Tommy Gonzalez

Frank J. Garza
Davidson Troilo Ream & Garza
The Pyramid Building
601 NW Loop 410 Suite 100
San Antonio, TX 78216-5511
fgarza@dtrglaw.com

***Re: Amendment to Fee Arrangement/Professional Services Letter of Engagement
Allegations of potential violations of the City's Ethics Ordinance, Standards of
Conduct, Charter Provisions, and State Statutes***

Dear Mr. Garza:

On December 21, 2018, the City of El Paso ("City") engaged you and your firm to provide professional legal services in connection with the above-referenced matter. The parties now desire to amend their December 21, 2018 Professional Letters of Engagement to increase the \$10,000 limit on fees and expenses to \$50,000.00.

This Amended Professional Services Letter of Engagement contains the City's new terms and conditions with regards to paragraph 4 of the December 21, 2018 Engagement Letter and Addendum 2 (Fee Schedule):

Fee Arrangement/Professional Services Letter of Engagement, Paragraph 4

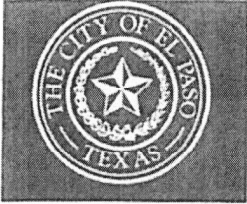
4. The City will pay you at the hourly rates set forth in Addendum 2, plus a fixed fee of 4% for all routine expenses as set forth in Addendum 1, both of which are attached and incorporated herein by reference. Notwithstanding any other portion of this Agreement, you are directed not to expend time or incur expenses in connection with this matter in an amount causing the City's obligation under this Agreement to exceed \$50,000.00. You are expected to provide monthly invoices.

Unless otherwise agreed to in writing, these hourly rates are fixed for the duration of this engagement. Additionally, the City will not pay for work by any person not listed in Addendum 2 unless preauthorized by the City Attorney in writing.

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
Matter No. 19-1021-1190/952807/Amendment to Letter of Engagement/Frank Garza

"Delivering Outstanding Services"



Office of the City Attorney

Addendum 2-Fee Schedule.

ADDENDUM 2

Fee Schedule

All of the fees of Frank J. Garza of Davidson Troilo Ream & Garza, shall be paid at the following hourly rates; provided, however, that such fees shall not exceed \$50,000.00, including expenses, without prior written consent of the City.

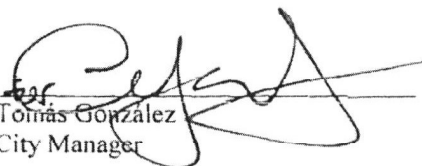
<u>Attorney</u>	<u>Hourly Rate</u>
Partners	\$290.00
Senior Associates	\$200.00
Associates	\$180.00
Paralegals	\$90.00

Except as amended herein, the terms and conditions of the parties' December 21, 2018 Fee Arrangement/Professional Services Letter of Engagement remain the same.

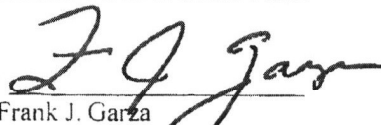
Please sign and return this Amendment to the Professional Services Engagement Letter to the City Attorney's Office, confirming that you agree to the above referenced terms.

If you have any questions, please do not hesitate to contact the Managing Attorney.

Sincerely,

By: 
Tomás González
City Manager

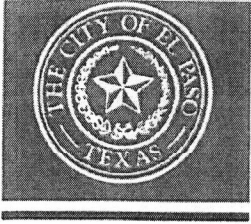
AGREED AND ACCEPTED:

By: 
Frank J. Garza

Date: 12-19-19


Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
Matter No. 19-1021-1190/952807/Amendment to Letter of Engagement/Frank Garza



Office of the City Attorney

APPROVED AS TO FORM:

By: 
Ana M. Schumacher
Assistant City Attorney

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov

Matter No. 19-1021-1190/952807/Amendment to Letter of Engagement/Frank Garza



Office of the City Attorney

Mayor
Dee Margo

Via E-mail: fgarza@dtgrglaw.com

December 21, 2018

City Council

District 1
Peter Svarzbein

Frank J. Garza
Davidson Troilo Ream & Garza
The Pyramid Building
601 NW Loop 410 Suite 100
San Antonio, TX 78216-5511

District 2
Alexandra Annelo

District 3
Cassandra Hernandez

District 4
Dr. Sam Morgan

District 5
Dr. Michiel R. Noe

District 6
Claudia Ordaz Perez

District 7
Henry Rivera

District 8
Cissy Lizarraga

City Manager
Tommy Gonzalez

**Re: Fee Arrangement/ Professional Services Letter of Engagement
*Allegations of potential violations of the City's Ethics Ordinance, Standards of Conduct, Charter Provisions, and State Statutes***

Dear Mr. Garza:

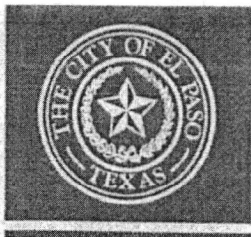
The City of El Paso would like to engage you and your firm to provide professional legal services and advice regarding violations of the City Ethics Ordinance, standards of conduct, charter rules, and state statutes regarding Mayor and City Representatives leaking, disclosing and dissemination of confidential documents and/or contracts under review, including any civil and penal penalties.

Please read this letter carefully and review the City of El Paso Outside Counsel Terms of Engagement attached hereto. These describe the terms and conditions under which the City will retain you in connection with the above-described matter. The City's policy and the Texas Disciplinary Rules of Professional Conduct require that this letter be signed before you engage in any work on behalf of the City. The terms and conditions of your engagement are as follows:

1. You shall provide all traditional legal services necessary to assist the City with its defense in the above-referenced matter. You will:
 - a) Coordinate all aspects of representation in connection with this matter with the City Attorney or assigned Assistant City Attorney. Contemporaneous copies of all opinions, drafts, pleadings, legal memoranda, correspondence, and other documents shall be submitted to her. Any questions regarding such matter shall be directed to the City Attorney or her designee. Please note that formal action by the El Paso City Council may be required to approve certain actions involved in this matter. No contact with City officials regarding this matter shall occur

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov



Office of the City Attorney

without prior notice to the City Attorney. All such contact shall be coordinated through City Attorney or her designee.

- b) Consult with the City and its administrative personnel regarding any and all aspects of this matter; and keep the City reasonably informed about the status and progress of the representation.
 - c) Draft and prepare all preliminary drafts, opinions, memoranda, and all legal documents, pleadings, notices and instruments necessary and appropriate on behalf of the City.
2. The Services shall be undertaken and completed in compliance with schedules established by the City, as appropriate to carry out the purposes of this Agreement, the provisions of the attached Addendum 1, City of El Paso Outside Counsel Terms of Engagement, and with the hourly rates identified on Addendum 2, Fee Schedule.
 3. The parties to this Agreement understand and agree that Frank J. Garza of Davidson Troilo Ream & Garza will represent the City of El Paso.
 3. This agreement will be in effect through and including the resolution of this matter, unless mutually extended or sooner terminated, as provided by Addendum 1, attached hereto.
 4. The City will pay you at the hourly rates set forth in Addendum 2, plus a fixed fee of 4% for all routine expenses as set forth in Addendum 1, both of which are attached and incorporated herein by reference. Notwithstanding any other portion of this Agreement, you are directed not to expend time or incur expenses in connection with this matter in an amount causing the City's obligation under this Agreement to exceed \$10,000.00. You are expected to provide monthly invoices.

Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "Karla M. Nieman".

Karla M. Nieman
City Attorney

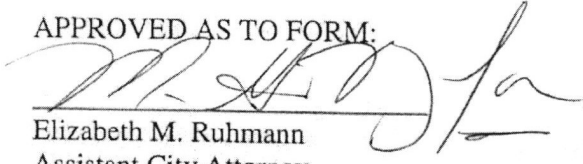
Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov

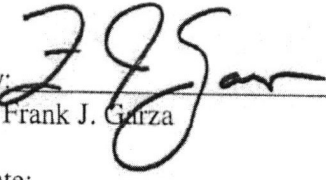


Office of the City Attorney

APPROVED AS TO FORM:


Elizabeth M. Ruhmann
Assistant City Attorney

AGREED AND ACCEPTED:

By: 
Frank J. Garza

Date: _____

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov

18-1033-139/850263

ADDENDUM 1

CITY OF EL PASO OUTSIDE COUNSEL TERMS OF ENGAGEMENT

I. Representation

You ("Outside Counsel") will coordinate all aspects of representation with the City Attorney. Copies of all pleadings, legal memoranda and correspondence shall be submitted to her. All policy decisions, including but not limited to all settlement actions, shall be made by this Office. Any questions regarding such matters shall be directed to the City Attorney. Please note that formal action by the El Paso City Council may be required to approve certain actions, including settlement. No contact with City Officials regarding this matter shall occur without prior notice to the City Attorney. All such contact shall be coordinated through the City Attorney.

II. Calculation of Fees and Invoicing

Payment for services rendered will be made monthly, based upon the number of hours actually worked, and according to the Rate Schedule attached as Addendum 2. All attorneys assigned by you to work on this matter must be identified on the Schedule. Should an attorney be added at a date later than this Agreement, you shall provide a copy of his or her resume and billing rate to the City Attorney. A copy of all invoices, bills, and receipts for travel expenses shall be attached to the invoice. All invoices for professional service shall be submitted on your letterhead. The invoice shall describe in reasonable detail the services performed, the time spent, the applicable billing rate, and the attorney performing the services. The negotiated hourly rates attached shall include all overhead and internal charges associated with your firm's practice. The City shall not pay for overhead or law firm costs associated with services of secretaries, word processors, librarians, investigators or other support staff. Your firm should avoid assigning multiple attorneys to attend meetings or participate in conference calls unless it is approved by the City Attorney or her designee. Your tax identification number must be included on all invoices. Along with the invoices, the attached vendor form must be completed and returned before payment can be processed.

III. Expenses

You agree to pay timely for all reasonable expenses incurred during the representation of the City in this matter, including litigation expenses, if applicable, from the 4% paid to you pursuant to the agreement for payment of routine expenses. Travel expenses, cost for deposition, court transcripts, or transcripts of administrative proceedings are not part of the 4% fee and will be reimbursed by the City separately upon provision of invoices showing such expenses. The mode of travel whenever feasible shall be by air travel by commercial carrier and shall be the most economical available, but in any event shall never exceed coach fare by air. The City of El Paso will not reimburse you for air travel expenses in excess of standard coach or economy fares. Reimbursement for automobile mileage shall not exceed the amount per mile deductible under the Internal Revenue Code as a business expense. The amount paid by the City for lodging and meals shall not exceed those established in the most recent GSA schedule that the Federal Government allows for travel. Expenses over and above the limits set forth herein shall be borne solely by Outside Counsel and shall not be reimbursed under this Agreement.

IV. Expenditure Ceiling for Representation

The total cost of fees and expenses to the City for representation in this matter, other than those fees and expenses excluded in paragraph III, shall not exceed the 4% amount set forth in the agreement. In the event of any unforeseen circumstances during the course of representation that may lead to a cost overrun,

you will notify this office promptly in writing, identifying the contingency and its anticipated cost impact. The City will not honor any invoice for an amount in excess of this Agreement or modification thereof.

V. Audit Expenses

Should you be asked, at any time, to provide information to the City or the City's representatives, concerning your representation in this matter, including, but not limited to city auditors (be they City employees or professionals hired by the City to audit the City's records) or the city finance department; you will provide such information at no additional cost to the City, unless the City Attorney or her representative agree in writing, in advance, to additional charges.

VI. Consultant and Experts

If it becomes necessary to retain consultants or experts in this matter, written approval must be obtained from the City Attorney. Fees for consultants and expert witnesses must be invoiced in the manner and with the particularity described above. The City cannot pay outside consultant or expert invoices directly if he or she was not hired directly by the City.

VII. Right to Audit

The City shall have the right to inspect and audit all books, records and documents of your law firm pertaining to this engagement at any reasonable time, at City expense, and to the extent necessary to verify the accuracy of any statement, charge or computation.

VIII. Conflict of Interest

Your firm may be asked to represent various clients whose interests may be adverse to those of the City. By signing this Agreement, the undersigned affirms that, at present, no such conflict exists. Furthermore, during the course of this representation, your firm shall refrain from representing clients whose interests may conflict with those of the City. Should such a conflict arise, you shall contact the City Attorney immediately to discuss the situation.

IX. Termination of Agreement

It is understood that the City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the firm shall immediately discontinue work under the Agreement. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the City Attorney.

It is agreed and understood that all files, reports, exhibits, pleadings, data compilations, memoranda and other work product produced under this Agreement are the property of the City of El Paso. Upon termination, all files, reports, pleadings and memoranda shall be sent to the City as directed in writing by the City Attorney, without additional charge. A copy of the information may be retained by your firm at your own expense.

X. Insurance

The law firm shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence, and shall not permit such insurance to be canceled or lapse during this

engagement. The law firm shall provide an insurance certificate or other proof of insurance to the City upon request.

XI. Ethics

In providing legal Services to the City, the law firm and each attorney providing services to the City shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the City.

XII. Assignment

The law firm may not assign this Agreement in whole or in part or subcontract any legal services without the prior written consent of the City Attorney.

XIII. Applicable Law

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in El Paso County, Texas. All obligations of the parties shall be deemed performable in El Paso County, Texas.

XIV. Monthly Report to Client Required

Your firm shall submit to the City Attorney a written report for each calendar month outlining the time spent, actions taken, reasonable travel expenses incurred, and major events regarding the subject matter of this Agreement. Such reports shall be due no later than the 5th day of each month occurring during the term of this Agreement. Said reports shall be kept confidential to the extent allowed by law.

XV. Entire Agreement

This Agreement, together with the cover letter, attached fee schedule and addenda, shall constitute the entire agreement and understanding of the parties concerning the engagement of the law firm. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

XVI. Severability

In case any provisions of this Agreement shall be declared invalid, illegal or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ADDENDUM 2

Fee Schedule

All of the fees of Frank J. Garza of Davidson Troilo Ream & Garza, shall be paid at the following hourly rates; provided, however, that such fees shall not exceed \$10,000.00, including expenses, without the prior written consent of the City.

<u>Attorney</u>	<u>Hourly Rate</u>
Partners	\$290.00
Senior Associates	\$200.00
Associates	\$180.00
Paralegals	\$90.00