

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

AGENDA DATE: June 11, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER Joaquin Rodriguez, Director of Grant Funded Programs
(915) 212-0065

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: **6. Set the Standard for Sound Governance and Fiscal Management**

SUBGOAL: **6.5. Deliver Services Timely and Effectively with Focus on Continual Improvement**

SUBJECT:

That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants:

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services
3. Lowery Property Advisors

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

BACKGROUND / DISCUSSION:

This item's purpose is to establish on call agreements with appraisals services companies to improve efficiencies in procuring appraisals.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

\$100,000 Per Agreement – MPO MATCH

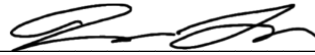
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: Capital Improvement Department

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



Joaquin Rodriguez, AICP, Director of Grant Funded Programs

RESOLUTION

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

That the City Manager, or designee, be authorized to sign a two-year On-Call Agreement for Professional Services to perform appraisal services on a task order basis between the City of El Paso and each of the following three consultants:

1. CBRE, Inc.
2. Gayle-Reid Appraisal Services
3. Lowery Property Advisors

Each On-Call Agreement will be for an amount not to exceed One Hundred Thousand and No/00 Dollars (\$100,000.00). In addition, the City Manager is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of each On-Call Agreement. Further, that the City Manager, or designee, is authorized to execute any amendments to the agreements provided such amendments do not increase the contract amounts. Further, that the City Manager, or designee, is authorized to exercise an option to extend the contracts for one year each, such option increasing each contract amount by an additional \$50,000.00 for a total contract amount, including options, not to exceed \$150,000.00.

APPROVED THIS _____ **DAY OF** _____ **2024.**

CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

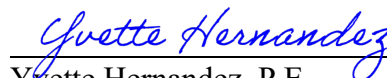
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
City Engineer



CITY OF EL PASO
 CAPITAL IMPROVEMENT DEPARTMENT
 218 N. CAMPBELL, 2ND FLOOR
 EL PASO, TEXAS 79901

EVALUATION COMMITTEE SCORESHEET SUMMARY

**SOLICITATION #2024-0482R
 ON-CALL REAL ESTATE APPRAISAL SERVICES**

CONSULTANT	CBRE	GAYLE-REID	GRAGG RISK MANAGEMENT	LOWERY PROPERTY ADVISORS	RALPH SELLERS & ASSOCIATES
Rater 1	73	72	30	64	51
Rater 2	68	71	72	61	70
Rater 3	80	79	70	81	69
Total Rater Scores	221	222	172	206	190
References	3.3	10	0	0	3.3
Overall Score:	224.3	232	172	206	193.3

Rankings	Consultant
1	GAYLE-REID
2	CBRE
3	LOWERY PROPERTY ADVISORS

Rankings	Consultant
4	RALPH SELLERS & ASSOCIATES
5	GRAGG RISK MANAGEMENT

**ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES
(APPRAISAL SERVICES)**

This On-Call Agreement for Professional Services Appraisal Services (“**Agreement**”) is entered into this _____ day of _____, 2024 (“**Effective Date**”), and is between the **CITY OF EL PASO, TEXAS** (the “**City**”) and **Gayle-Reid Appraisal Services, Inc., a Texas Corporation**, (the “**Appraiser**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

WHEREAS, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

WHEREAS, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

WHEREAS, the services to be provided under this Agreement are necessary to comply with local, state and federal polices, regulations and procedures.

The parties agree as follows:

SECTION 1. TERM.

- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

- A. The Appraiser shall appraise the property identified in each task order pursuant to this Agreement.

SECTION 3. PAYMENT

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the

completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment “A”**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment “A” to this Agreement during any option periods exercised by the City.

SECTION 4. SCOPE OF APPRAISER’S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City (“**Task Order**”). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment “A”. The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.

- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
 - 1. **APPRAISAL.** The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the “**City Representative**” is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative’s written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.

 - 2. **PROPERTY INSPECTION.** The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser’s inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.

 - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

SECTION 5. CONTENTS OF APPRAISAL REPORT.

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the date and analyses.
- B. APPRAISAL SUMMARY. Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
 1. The Property Address.
 2. Date of report.
 3. Legal description of the Property.
 4. Date or dates of the Appraiser's inspection(s) of the Property.
 5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
 6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and

2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

SECTION 6. ITEMS TO BE PROVIDED BY CITY.

A. The City agrees to furnish the Appraiser with the following:

1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.

2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

SECTION 8. INTEREST OF OFFICIALS OF CITY.

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 9. CHANGES.

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

SECTION 10. TERMINATION.

A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

SECTION 11. INSURANCE.

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
 2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:
 - a. **COMMERCIAL GENERAL LIABILITY**
 - \$1,000,000.00 Per Occurrence
 - \$2,000,000.00 General Aggregate
 - \$2,000,000.00 Products/Completed Operations Aggregate
 - \$1,000,000.00 Personal and Advertising Injury

Personal Injury or Death & Property Damage

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

Combined Single Limit

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

SECTION 12. INDEMNIFICATION.

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

SECTION 13. GENERAL PROVISIONS.

- A. NON-EXCLUSIVE AGREEMENT.** This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement

- F. CONFIDENTIALITY. The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. GOVERNING LAW. This Agreement is governed by Texas law.
- H. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. GOVERNMENTAL FUNCTIONS. The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. AUDITING RECORDS FOR THE SPECIFIC PROJECT. The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. RECORDS. The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. FORCE MAJEURE. There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

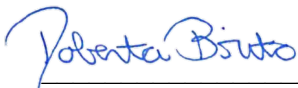
W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

IN WITNESS WHEREOF, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

CITY OF EL PASO

Cary Westin, City Manager

APPROVED AS TO CONTENT:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
City Engineer

APPRAISER:

Gayle-Reid Appraisal Services, Inc.

Martha Gayle Reid Lynch

Name: Martha Gayle Reid Lynch

Title: President / Appraiser

Attachment "A"
Fee Schedule

Attachment "A"
Fee Schedule

GAYLE-REID APPRAISAL SERVICES

Appraisal Fee: \$1,500 - \$6,500

Consultant Fee: \$275

Trial Preparation: \$275

Expert Testimony Fee: \$275

**ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES
(APPRAISAL SERVICES)**

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WHEREAS, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

WHEREAS, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

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The parties agree as follows:

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- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

- A. The Appraiser shall appraise the property identified in each task order pursuant to this Agreement.

SECTION 3. PAYMENT

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the

completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment “A”**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment “A” to this Agreement during any option periods exercised by the City.

SECTION 4. SCOPE OF APPRAISER’S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City (“**Task Order**”). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment “A”. The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.

- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
 - 1. **APPRAISAL.** The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the “**City Representative**” is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative’s written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.

 - 2. **PROPERTY INSPECTION.** The Appraiser shall personally inspect the property identified in the Task Order, to include any buildings, structure improvements, fixtures and appurtenances, thereon or belonging thereto. If the Appraiser’s inspection or investigation discloses a sale of a portion of a property by an unrecorded contract of sale or otherwise, the Appraiser shall notify the City.

 - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

including but not limited to, the three (3) most recent comparable sales which precede the appraisal, if any.

4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

SECTION 5. CONTENTS OF APPRAISAL REPORT.

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the data and analyses.
- B. APPRAISAL SUMMARY. Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
 1. The Property Address.
 2. Date of report.
 3. Legal description of the Property.
 4. Date or dates of the Appraiser's inspection(s) of the Property.
 5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
 6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and

2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

SECTION 6. ITEMS TO BE PROVIDED BY CITY.

A. The City agrees to furnish the Appraiser with the following:

1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.

2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

SECTION 8. INTEREST OF OFFICIALS OF CITY.

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 9. CHANGES.

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

SECTION 10. TERMINATION.

A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

SECTION 11. INSURANCE.

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
 2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:

a. **COMMERCIAL GENERAL LIABILITY**

\$1,000,000.00 Per Occurrence
\$2,000,000.00 General Aggregate
\$2,000,000.00 Products/Completed Operations Aggregate
\$1,000,000.00 Personal and Advertising Injury

Personal Injury or Death & Property Damage

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

Combined Single Limit

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

SECTION 12. INDEMNIFICATION.

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

SECTION 13. GENERAL PROVISIONS.

- A. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement

- F. CONFIDENTIALITY. The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. GOVERNING LAW. This Agreement is governed by Texas law.
- H. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. GOVERNMENTAL FUNCTIONS. The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. AUDITING RECORDS FOR THE SPECIFIC PROJECT. The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. RECORDS. The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. FORCE MAJEURE. There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

IN WITNESS WHEREOF, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

CITY OF EL PASO

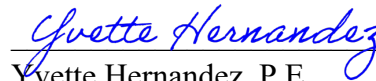
Cary Westin, City Manager

APPROVED AS TO CONTENT:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
City Engineer

APPRAISER:
CBRE, Inc.

A handwritten signature in black ink, appearing to read 'P Chastine', written over a horizontal line.

Name: Preston Chastine
Title: First Vice President

Attachment "A"
Fee Schedule

Attachment "A"
Fee Schedule

CBRE, INC.

Appraisal Fee: \$1,750 - \$10,500

Consultant Fee: \$270

Trial Preparation: \$270

Expert Testimony Fee: \$270

**ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES
(APPRAISAL SERVICES)**

This On-Call Agreement for Professional Services Appraisal Services (“**Agreement**”) is entered into this _____ day of _____, 2024 (“**Effective Date**”), and is between the **CITY OF EL PASO, TEXAS** (the “**City**”) and **Lowery Property Advisors, LLC, a Texas Corporation**, (the “**Appraiser**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

WHEREAS, the Appraiser was selected on the basis of demonstrated competence and qualifications to perform the services described in this Agreement;

WHEREAS, the City intends to engage the Appraiser to perform appraisal services on a task order basis through the use of task orders referencing this Agreement, the scope of which is described in this Agreement;

WHEREAS, the services to be provided under this Agreement are necessary to comply with local, state and federal polices, regulations and procedures.

The parties agree as follows:

SECTION 1. TERM.

- A. The term of this Agreement is for a period not to exceed two years from the Effective Date. The services called for by each task order begin upon the issuance of a notice to proceed from the City Engineer and shall continue through the completion of the project as described in the task order. The Appraiser agrees that the City Manager or designee, for the City may extend the term of this Agreement by exercising up to one option of one year each option.

SECTION 2. SUBJECT PROPERTY TO BE APPRAISED.

- A. The Appraiser shall appraise the property identified in each task order pursuant to this Agreement.

SECTION 3. PAYMENT

- A. The City will pay the Appraiser an amount not to exceed \$100,000.00. No services are being requested through this Agreement, nor shall any indebtedness accrue through the mere execution of this Agreement. The Appraiser will invoice the City following the

completion of each task order in accordance to the fee schedule attached to this Agreement as **Attachment “A”**. If the City exercises an option to extend the term as described in this Agreement above, then the maximum payment amount under this contract will be increased by \$50,000 for each option exercised by the City. The parties agree that the exercise of an option only increases the maximum contract amount and does not constitute a request for services from the Appraiser unless accompanied by a Task Order. The Appraiser will abide by the fees listed in Attachment “A” to this Agreement during any option periods exercised by the City.

SECTION 4. SCOPE OF APPRAISER’S SERVICES.

- A. The Appraiser will perform the services as provided by each Task Order issued by the City (“**Task Order**”). The Appraiser will perform the services for the fees stipulated on the fee schedule attached to this Agreement as Attachment “A”. The Appraiser will not perform any services until the Appraiser has received a Task Order from the City. Notwithstanding anything to the contrary, the City will not owe the Appraiser any payments for any work that is performed without a Task Order.

- B. Unless otherwise provided in the Task Order, the Appraiser will perform the following services for all Task Order’s issued by the City:
 - 1. **APPRAISAL.** The Appraiser shall appraise the property identified in the task order and prepare and deliver one (1) draft appraisal report for on or before the date specified in the Task Order to the City Representative. For purposes of this Agreement, the “**City Representative**” is the City Engineer or designee. The City Representative will review the draft appraisal report in a timely manner. Within seven (7) City business days after the Appraiser receives the City Representative’s written comments, the Appraiser will deliver three (3) hard copies and an electronic file (a pdf and tiff file on one CD) of the appraisal report to the City. The City Representative may waive the requirement for hard copies and/or CD.

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 - 3. **VALUATION DATA.** The Appraiser shall make such investigations, studies and property inspections as are appropriate to enable the Appraiser to derive sound conclusions and to prepare the appraisal report to be furnished under this Agreement,

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4. **PURPOSE AND SIGNIFICANCE OF APPRAISAL.** The appraisal to be furnished under each Task Order under this Agreement is required by the City for its guidance in setting fair and impartial determinations of market value. The Appraiser agrees to provide the City appraisal services that meet the definition of an appraisal as required by applicable federal, state and local laws, regulations, policies and procedures. The Appraiser shall be guided by those objectives when estimating values and when making investigations and studies and analyzing the property identified in the Task Order and the evidences of its value. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the Appraiser reached the valuation conclusions. If required, the City will contract separately for a review appraisal with another appraiser. The appraisal to be furnished under this Agreement is required by the City for its guidance in making an impartial determination of the market value of the Property. Because Federal funds are often involved in the City project for which the property is being appraised, unless instructed to the contrary in writing by the City, the Appraiser and the appraisal must meet the specific requirements under the URA and 24 CFR 24.103 in Title 49, unless the appraisal is a review appraisal in which event the appraiser must meet the specific requirements of 24 CFR 24.104.
5. **DATE OF VALUATION.** The Appraiser's valuation date shall be mutually agreed upon and identified in the Task Order issued by the City Representative.
6. **APPRAISER CERTIFICATION.** The Appraiser represents that the appraiser appraising the Property for the Appraiser, is state-certified as a "Certified General Appraiser" by the State of Texas, and will remain certified during the term of this Agreement and shall provide the City with proof of current certification. The Appraiser represents that it is a member of the Appraisal Institute and that the Appraiser currently employs a qualified expert witness. Further, the Appraiser represents and warrants that the Appraiser is familiar with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs at 42 USC Sec. 4601-4655 (the URA) as well as the Code of Federal Regulations (CFR) applying to the URA sections.
7. Appraiser will provide the services in two parts. First Appraiser will provide a Restricted Report & second a Full Report in accordance to the timelines set in the Task Order.

8. EXPERT WITNESS. If specifically requested by a Task Order, the Appraiser will provide expert witnesses services in any Eminent Domain proceeding or other judicial proceedings as directed by the Task Order.

SECTION 5. CONTENTS OF APPRAISAL REPORT.

- A. The appraisal report to be furnished by the Appraiser under each Task Order in accordance with this Agreement shall contain the Appraiser's conclusions and opinions, together with the data and analyses by which they are derived, as set forth below. The appraisal report on the property described in each Task Order shall include a summary, legal and title matters affecting value, highest and best use analysis, and property valuation and appraisal analyses as more particularly described in this Section below followed by a report furnishing the Appraiser's opinions and conclusions on the date and analyses.
- B. APPRAISAL SUMMARY. Each appraisal under a Task Order shall include a summary sheet titled "Appraisal Report for the City of El Paso and its Agents," which may be a printed form, completed to provide the following:
 1. The Property Address.
 2. Date of report.
 3. Legal description of the Property.
 4. Date or dates of the Appraiser's inspection(s) of the Property.
 5. The Appraiser's estimate of the market value of the property identified in the Task Order based on the highest and best use. The Appraiser will estimate the market value of the property identified in the Task Order for the real estate interest specifically listed in the Task Order.
 6. The certifications of the Appraiser that: (i) it personally made a thorough inspection of the property identified in the Task Order; (ii) to the best of its knowledge and belief, everything contained in the report is true and no relevant or important fact has been omitted; (iii) neither its employment nor compensation is contingent on the valuation reported; and (iv) it has no past, present or prospective interest (including that of real estate agent or broker) in the property identified in the task order, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial appraisal report;

7. A certification that, in the Appraiser's opinion, the market value of the property identified in the Task Order is an amount to be stated as of the date of valuation determined in accordance with the Task Order; and

8. The signature of the Appraiser.

C. LEGAL AND TITLE MATTERS AFFECTING VALUE. The appraisal report shall include a report of any official citations or personal observations by the Appraiser of any condition or occupancy of the Property in violation of law, and any other legal or title matters that the Appraiser is aware of affecting the available lawful uses or the value of the Property.

D. HIGHEST AND BEST USE. The appraisal report shall include the Appraiser's opinion as to the highest and best use for the property identified in the task order.

E. PROPERTY VALUATION AND APPRAISAL ANALYSES. The appraisal report shall utilize basic appraisal principles and standards of professional practice to set forth the market value of the property identified in the Task Order. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching a conclusion as to value and all data and analyses needed to explain and support the valuation, including:

1. Such maps, plans, photographs or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser; and
2. The Appraiser's evaluation of the indications of value deduced from its separate analyses of the various evidences of value and an explanation of how it reached its final conclusion as to the market value of the property identified in the task order.

SECTION 6. ITEMS TO BE PROVIDED BY CITY.

A. The City agrees to furnish the Appraiser with the following:

1. PROPERTY MAP. Each Task Order will have a map or plat, based on official records, of the Property showing the boundaries and dimensions of the property to be appraised.
2. OWNERSHIP DATA. The name and, if known or shown of record, the address of the ostensible owner as it appears of record and the legal description of the property in the Task Order as shown by the conveyance or conveyances or other instrument by which the record owner acquired title.

3. **LEGAL ADVICE.** Advice, upon request of the Appraiser, on legal matters affecting the appraisal of the owner's interest in the property described in the Task Order.

SECTION 7. REPRESENTATIONS AND AGREEMENTS OF APPRAISER.

A. As an inducement to the execution of the Agreement by the City and in consideration of the agreements to be performed by the City, the Appraiser represents and agrees that:

1. **SOLICITATION OR PROCUREMENT OF AGREEMENT.** The Appraiser has not employed any person to solicit or procure this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.
2. **INTEREST OF APPRAISER AND APPRAISER'S EMPLOYEES.** The Appraiser does not have any interest, including that of real estate agent or broker, direct or indirect, present or prospective, in the properties described in each Task Order or in the sale thereof, or any other interest, whether or not in connection with said property, which would conflict in any manner or degree with the performance of the services and the submission of any reports, and has not employed and will not employ, in connection with the services to be furnished hereunder, any person having any such interest; and, until such property identified in a Task Order is acquired by the City or excluded from its project by a determination of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of said property, perform services in connection with said property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to such property.
3. **SERVICES TO BE CONFIDENTIAL.** All services, including reports, opinions and information to be furnished under this Agreement, are confidential and the Appraiser shall not divulge, in whole or in part, to any person other than to the duly authorized representatives of the City without the prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of its staff or organization divulges any information concerning such appraisal or services except as provided above. The Appraiser agrees, that the City may, at the City's discretion, release to the public any appraisals provided by the Appraiser without the Appraiser's consent.

4. **FACILITIES AND PERSONNEL.** The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed hereunder. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of the property identified in the Task Order, the employment of such person or persons for such purpose shall not place the City under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished hereunder.

B. The representations and warranties made by the Appraiser under this Section will extend to the work done under each Task Order issued by the City under this Agreement.

SECTION 8. INTEREST OF OFFICIALS OF CITY.

No official of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, any personal interests. No such officer, agent or employee of the City having any responsibility or function in connection with this Agreement shall have any private interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 9. CHANGES.

The City, at any time, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under each Task Order issued under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for its performance, equitable adjustment shall be made in the provisions of the Task Order (and this Agreement if necessary) for payments to the Appraiser, in accordance to the Attached Fee Schedule or for the time for performance of the services, or for both.

SECTION 10. TERMINATION.

A. **TERMINATION FOR FAILURE TO FULFILL.** If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner all obligations under this Agreement or a Task Order, or if the Appraiser shall violate any of the covenants or agreements thereof, the City may, upon written notice to the Appraiser, terminate the right of the Appraiser to proceed under this Agreement or with such part or parts thereof as to which there has been default, and may hold the Appraiser liable for any damage caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach

of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the City from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Section solely for reasons of delay if the delay is due to causes beyond the control and without the fault or negligence of the Appraiser, but this shall not prevent the City from terminating this Agreement because of such delay.

- B. **TERMINATION BY EITHER PARTY.** It is mutually understood and agreed by the City and the Appraiser that either party may terminate this Agreement or any issued Task Order, in whole or in part for any or no reason, upon **5 consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Appraiser shall cease the performance of services under this Agreement. Upon such termination, the Appraiser shall provide one final invoice for all services completed prior to the notice of termination. The City shall compensate the Appraiser in accordance with this Agreement; however, the City may withhold any payment to the Appraiser that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Appraiser from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments. The City will be entitled to exercise ownership over any documents or services for which the City paid the Appraiser.

SECTION 11. INSURANCE.

- A. Appraiser will obtain and maintain for the term of this Agreement the following insurance policies as provided below:
1. Worker's Compensation Insurance as may be required by law.
 2. Commercial Liability Insurance to cover the work performed under this Agreement from claims for damages to personal injury, including accidental death, as well as from claims for property damages, whether such operations be by the Appraiser or by anyone directly or indirectly employed by the Appraiser. The minimum amounts for liability coverages must be as follows:
 - a. **COMMERCIAL GENERAL LIABILITY**
 - \$1,000,000.00 Per Occurrence
 - \$2,000,000.00 General Aggregate
 - \$2,000,000.00 Products/Completed Operations Aggregate
 - \$1,000,000.00 Personal and Advertising Injury

Personal Injury or Death & Property Damage

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

b. **AUTOMOBILE LIABILITY**

Combined Single Limit

\$1,000,000.00 per accident

3. Professional Liability Insurance in the minimum amount of \$1,000,000 on a claims made basis.
4. Additional Insured. The Appraiser will add the City to all insurance policies (except Worker's Compensation and Professional Liability Insurance) as an additional insured.
5. The Appraiser will furnish the City with certificates of insurance and endorsements showing the types of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing insurance coverages, and name of agent/broker. If requested by the City's Risk Manager, the Appraiser will provide copies of the insurance policy in order to allow the City to verify that the insurance policies provide coverage as required under this Agreement.
6. All policies will provide an endorsement that provides that the insurance policy cannot be canceled or the amount of coverage changed without thirty calendar days prior written notice to the City or ten calendar days prior written notice for non-payment of insurance policy premiums.

SECTION 12. INDEMNIFICATION.

- A. TO THE EXTENT ALLOWED BY LAW, THE APPRAISER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES OF PROPERTY DAMAGE, INJURY, OR DEATH ARISING OUT OF ANY SERVICES PERFORMED BY THE APPRAISER UNDER THIS AGREEMENT, PROVIDED THAT THE APPRAISER WILL NOT BE RESPONSIBLE FOR ANY ACTS OR OMISSIONS OF THE CITY OR THE CITY'S EMPLOYEES.**

SECTION 13. GENERAL PROVISIONS.

- A. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City is entitled to enter into appraisal services agreements at any time with other appraisers in addition to the Appraiser who is the party to this Agreement. The City has the sole discretion as to whether it makes an assignment of an appraisal under this Agreement

- F. CONFIDENTIALITY. The Appraiser acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- G. GOVERNING LAW. This Agreement is governed by Texas law.
- H. VENUE. The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- I. SEVERABILITY. A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- J. HEADINGS. The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- K. GOVERNMENTAL FUNCTIONS. The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- L. COMPLIANCE WITH THE LAWS. The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Appraiser will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- M. AUDITING RECORDS FOR THE SPECIFIC PROJECT. The Appraiser will allow the City to inspect and copy all records pertaining to the Work provided in this Agreement.
- N. RECORDS. The Appraiser will maintain records of all details with respect to the services to be performed hereunder, including one complete copy of each report, for three (3) years after delivering such report, or until the Property is conveyed, or its conveyance is abandoned by the City, whichever is later.
- O. FORCE MAJEURE. There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party

must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- P. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Appraiser, and the Appraiser's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- Q. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- R. **PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- S. **REPRESENTATIONS AND WARRANTIES.** The Appraiser warrants to the City that the Appraiser has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- T. **TEXAS GOVERNMENT CODE.** In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Appraiser represents and warrants to the City the following: (1) the Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Consultant will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- U. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties.
- V. **NON-DISCRIMINATION COVENANT.** The Appraiser, for itself, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:
1. That no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the preparation of this appraisal report.
 2. That in the furnishing of services, no person on the grounds of race, creed, color, sex or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

3. That the Appraiser shall furnish services in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. The Appraiser shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
4. That, in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement.

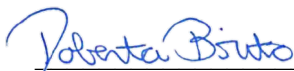
W. **AFFIRMATIVE ACTION.** The Appraiser assures that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments, or otherwise applicable to persons leasing premises from the City of El Paso. The Appraiser assures that it will require that its covered sub-organizations provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations to the same effect.

IN WITNESS WHEREOF, the City and the Appraiser have approved of this Agreement to be effective as of the date first written above.

CITY OF EL PASO

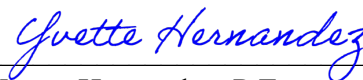
Cary Westin, City Manager

APPROVED AS TO CONTENT:



Roberta Brito
Senior Assistant City Attorney


APPROVED AS TO CONTENT:



Yvette Hernandez, P.E.
City Engineer

APPRAISER:

Lowery Property Advisors, LLC



Name: Mark Lowery

Title: Chief Executive Officer

Attachment "A"
Fee Schedule

Attachment "A"
Fee Schedule

LOWERY PROPERTY ADVISORS, LLC

Appraisal Fee: \$2,000 - \$8,500

Consultant Fee: \$225

Trial Preparation: \$250

Expert Testimony Fee: \$250