

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

AGENDA DATE: April 26, 2022

PUBLIC HEARING DATE: N/A

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

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No.1 Create an Environment Conducive to Strong Sustainable Economic Development

SUBGOAL: 1.1 Stabilize and Expand El Paso's Tax Base.

SUBJECT:

That the City Manager be authorized to sign a Professional Services Agreement for the project known as "Feasibility Study for the Multi-Purpose Performing Arts and Entertainment Center" (MPC) to M. Arthur Gensler & Associates, Inc., a California, USA Foreign For-Profit Corporation. The Agreement will be for an amount not to exceed Seven Hundred Ninety-Eight Thousand Six Hundred Sixty-One and 00/100 Dollars (\$798,661.00). 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.

BACKGROUND / DISCUSSION:

The Multi-Purpose Performing Arts and Entertainment Center was one of three signature projects included in the 2012 Quality of Life Bond. The City conducted numerous studies to determine the location of the proposed MPC and selected the downtown area known as Union Plaza. The City acquired much of the property and applied for an Antiquities Permit as required by the Texas Historic Commission for a development of the size of the MPC. The project came to a standstill in 2017 and all activities were suspended as a result of numerous lawsuits. On October 26, 2021, City Council directed the City Manager and staff to present an estimated cost for the MPC in the November 23, 2021 Council meeting. On November 9, 2021, Council extended the date for presenting the estimate until February 2022.

To provide an accurate estimate it is necessary to retain the expertise of consulting resources specializing in the development of entertainment venues. This action authorizes the award of a consulting service contract to develop an estimate.

PRIOR COUNCIL ACTION: October 26, 2021 Directing the City Manager to provide an estimate of the cost of the MPC.

November 9, 2021 extending the deadline for providing the MPC estimate to February 2022

AMOUNT AND SOURCE OF FUNDING:

2012 QoL Bonds: \$798,661

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

Revised 04/09/2021

PRIMARY DEPARTMENT: Capital Improvement Department
SECONDARY DEPARTMENT: Museums and Cultural Affairs

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

DEPARTMENT HEAD:

X *Jerry DeMuro/for*

Sam Rodriguez, P.E., City Engineer

RESOLUTION

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

That the City Manager, or designee, be authorized to sign an Agreement for Professional Services by and between the City Of El Paso, and M. Arthur Gensler Jr. & Associates, Inc., a California, USA Foreign For-Profit Corporation, for a project known as “Feasibility Study for the Multi-Purpose Performing Arts and Entertainment Center” for an amount not to exceed \$798,661.00.

In addition, the City Manager, or designee, is authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of the Agreement for Professional Services.

APPROVED THIS _____ day of _____ 2022.


CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

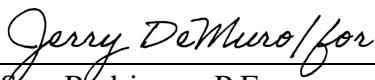
Laura Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Sam Rodriguez, P.E.
City Engineer

CITY OF EL PASO A/E SELECTION SCORESHEET

Rater	SOLICITATION #2022-0450R									
	FEASIBILITY STUDY FOR THE MULTI-PURPOSE PERFORMING ARTS AND ENTERTAINMENT CENTER									
	CALLISON RTKL	DAVID M. SCHWARZ ARCHITECTS	GENSLER	HKS	HOK	JOHNSON CONSULTING	MYCOTOO	PERKINS & WILL	POPULOUS	TRAHAN ARCHITECTS
Rater 1	75	55	58	55	74	70	58	56	66	60
Rater 2	72	51	75	61	80	51	47	57	52	66
Rater 3	72	63	82	70	64	80	55	84	75	62
Rater 4	57	58	85	81	80	65	53	81	64	63
Rater 5	84	73	86	70	77	65	60	70	70	81
<u>Total rater scores</u>	360	300	386	337	375	331	273	348	327	332
References	6	10	9	9	6	3	10	10	9	6
<u>OVERALL SCORE</u>	<u>366</u>	<u>310</u>	<u>395</u>	<u>346</u>	<u>381</u>	<u>334</u>	<u>283</u>	<u>358</u>	<u>336</u>	<u>338</u>

#1	Gensler	395
#2	HOK	381
#3	Callison RTKL	366
#4	Perkins & Will	358
#5	HKS	346
#6	Trahan Architects	338
#7	Populous	336
#8	Johnson Consulting	334
#9	David M. Schwarz	310
#10	MYCOTOO	283

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

**AN AGREEMENT FOR
PROFESSIONAL SERVICES**

This Agreement is made this _____ day of _____, 2022 by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the “**Owner**”, and M. Arthur Gensler Jr. & Associates, Inc., a California, USA Foreign For-Profit Corporation, hereinafter referred to as the “**Consultant**”.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for the project known as “Feasibility Study For Multi-Purpose Performing Arts And Entertainment Center”, hereinafter referred to as the “**Project**”, as further described in **Attachment “A”**; and

WHEREAS, Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner’s selection procedure, in accordance with all applicable state and local laws and ordinance.

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

**ARTICLE I.
ATTACHMENTS**

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment “A”	Scope of Services and Budget
Attachment “B”	Consultant’s Fee Proposal and Hourly Rates
Attachment “C”	Intentionally Deleted
Attachment “D”	Payment and Deliverable Schedules
Attachment “E”	Insurance Certificate

**ARTICLE II.
PROJECT**

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform the services identified in this Agreement for the Project. The Project shall consist of the Consultant’s completion of the Scope of Services as further described in **Attachment “A”**. Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment “D”**.

2.2 The Consultant shall comply with the City of El Paso Capital Improvement Department Construction Document Guidelines in effect on the execution date of this Agreement in the performance of the services requested under this Agreement. Such Guidelines are available in the Capital Improvement Department.

2.3 The Consultant shall serve as the Owner's professional representative for the construction of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each Project's the construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five (5) working day time period.

ARTICLE III. CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **\$798,661.00** for all basic services and reimbursables performed pursuant to this Agreement.

The parties agree and understand that all fees and compensation to the Consultant shall only become due and payable in accordance with the terms of this Agreement and the fees to be charged for the Project shall be pursuant to the Consultant's fee proposal for such Basic and Additional Services at the rates which is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to **Attachment "D"**.

3.2 CONSULTANT'S SERVICES. The Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "A"**.

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days (90) of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of the Project. The established schedule for

completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 INTENTIONALLY DELETED.

3.5 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "A"** and the Notice to Proceed.

4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

4.3 TERMINATION. This Agreement may be terminated as provided herein.

4.3.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days'** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any

payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION FOR FAILURE TO COMPLY WITH SUBCHAPTER J, CHAPTER 552, GOVERNMENT CODE. The requirements of subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

4.3.4 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE V. INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall procure and maintain insurance coverage as required herein and attached in **Attachment “E”**. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS’ COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers’ Compensation Insurance as required by applicable Texas law for all of the Consultant’s employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

“The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured.”

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant’s employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

- a) **Commercial General Liability**
\$1,000,000.00 Per Occurrence
\$1,000,000.00 Products/Completed Operations
\$1,000,000.00 Personal and Advertising Injury

- b) **AUTOMOBILE LIABILITY**
Combined Single Limit
\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant’s sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000 on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant’s Insurance Policies, with the exception of Workers’ Compensation and Professional Liability Insurance required by this Agreement.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type 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 the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment “E”**. All certificates shall also include the name of the project on the corresponding insurance certificate.

5.2 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY HOLD HARMLESS, AND DEFEND OWNER, AND OWNER’S OFFICERS, DIRECTORS, PARTNERS, AGENTS CONSULTANTS, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PROJECT, PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT’S OFFICERS, DIRECTORS, PARTNERS, AGENTS, CONSULTANTS OR EMPLOYEES. THE CONSULTANT SHALL NOT BE RESPONSIBLE FOR ANY ACTS OF ANY OF THE CITY’S INDEPENDENT PROJECT MANAGERS.

To the extent allowed by state law, the Owner will be responsible for its own actions.

ARTICLE VI. FEDERAL AND STATE PROVISIONS

6.1 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE FUNDING REQUIREMENTS. Consultant, at Consultant’s sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration (FAA) through a Grant Agreement or Cooperative Agreement with the Owner, as further described in Attachment “F”.

--The Texas Department of Transportation through an Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal and State agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal will be identified pursuant to the federal funding requirements for an individual task order established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this Agreement.

The Consultant will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

6.2 TERMINATION FOR CANCELLATION OF GRANT. Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

6.3 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT.252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION.

During the performance of this contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”) agrees as follows:

- (1) **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. ADP shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information Consultant shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Consultant’s noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Consultant under the contract until the Consultant complies, and / or
 - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-

compliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request Client to enter into such litigation to protect the interests of Client and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE VII. GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment “D”**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant.

7.2 INTENTIONALLY DELETED..

7.3 CONSULTANT’S QUALITY OF WORK. The Owner’s review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant’s services shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the Project and in accordance with the time periods established in **Attachment “D”** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

7.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the “Instruments of Service”) are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner has the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings,

Specifications and other documents for additional projects, other than the construction of the Project, shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times (limited to Consultant's office hours) and places upon reasonable notice.

7.6 CONTRACTING INFORMATION

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

7.7 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.8 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.9 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.10 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.11 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.12 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
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With a Copy to:	The City of El Paso Attn: City Engineer P. O. Box 1890 El Paso, Texas 79950-1890
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To the Consultant:	M. Arthur Gensler Jr. & Associates, Inc. Attn: Barry Hand 5005 Greenville Ave. Dallas, TX 75206
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Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.13 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.14 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

7.15 TEXAS GOVERNMENT CODE. In accordance with Chapter 2274 of the Texas Government Code, as amended from time to time, the Consultant represents and warrants to the Owner 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

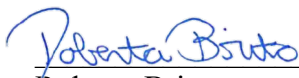
not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

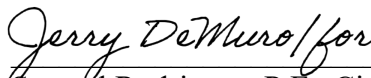
Tomás González
City Manager

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



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

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2022,
by **Tomás González**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures begin on following page)

CONSULTANT:

M. Arthur Gensler Jr. & Associates, Inc.

By: 

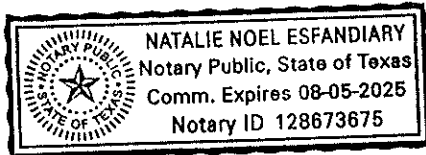
Name: Barry Hand

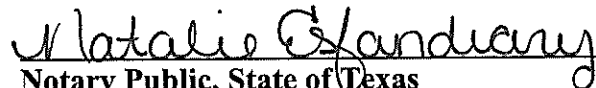
Title: Principal

ACKNOWLEDGEMENT

THE STATE OF Texas §
§
COUNTY OF Dallas §

This instrument was acknowledged before me on this 18 day of April, 2022,
by Barry Hand, Principal, on behalf of Consultant.




Notary Public, State of Texas

My commission expires:

8-5-25

**ATTACHMENT “A”
SCOPE OF SERVICES**

ATTACHMENT “A” PROJECT SCOPE

The scope of services includes studies such as economic impact analysis and programming operations; and development of the following: project concept; partnership opportunity guidelines include public-private partnership specifications; and financial model to include estimate of capital costs and operating costs which is in compliance with all court rulings and legal decisions to incorporate preservation of historic buildings and to preserve historic of the proposed location of the Multi-Purpose Performing Arts and Entertainment Center (MPC). The objective is to define a program, master plan and economic impact analysis of a first-class, sustainable MPC and supporting programs that provide a flexible and usable performing arts, and entertainment destination to the public, while develop concepts of incorporating the adaptive re-use of select existing buildings that preserve the cultural heritage of downtown El Paso. This includes industry standard concessions and food services facilities, merchandising, branding, efficient building systems, team and event support facilities and amenities, potentially as dispersed programs among the existing urban fabric, as part of the adaptive re-use of existing buildings. As part of the final deliverable, a life cycle cost analysis that includes maintenance, operations, and energy consumption is to be provided.

ATTACHMENT “B”
CONSULTANT’S FEE PROPOSAL AND HOURLY RATES

Compensation to Gensler for Basic Services, Additional Services, and Project Expenses will be as summarized below and detailed in Exhibit B. When Gensler's compensation is based on hourly rates, the rates will be those set forth in Gensler's Standard Hourly Billing Rates.

Compensation for Basic Services will be the lump sum of Seven-Hundred Fifty-Five Thousand Six-Hundred Sixty-One dollars (\$755,661).

Gensler Fee:	\$393,360
Legends :	\$287,000
Mijares-Mora Architects:	\$ 27,211
Rider Levett Bucknall (RLB):	\$ 23,000
Countryman & Co.:	\$ 25,090

PROJECT EXPENSES

Project Expenses include expenses incurred by Gensler and Gensler's consultants in the interest of the Project, including, but not limited to the following:

- Postage, delivery and courier fees.
- Travel and associated travel costs to and from Client location (Bi-Weekly in person meetings)
- Reproductions, photocopies

OPTIONAL/ADDITIONAL SERVICES

Gensler will provide services beyond the Basic Services described if requested by Client and confirmed in advance, in writing by Gensler. Additional Services may include, but are not limited to:

- Plotting and printing
- Professional renderings
- Material finish boards
- Computer animations
- Physical models
- Additional consultant fees deemed necessary and mutually agreed upon with prior written approval by the Client
- Services required due to accelerated deadlines, delays, untimely Client information, approvals, or instructions, out-of-sequence phasing, Project pauses or remobilization, or other schedule changes due to reasons beyond Gensler's reasonable control
- Authorized out-of-town travel, including travel time and reasonable living expenses (i.e. Project Tours)

PAYMENTS AND BILLINGS

Progress payments for Basic Services shall be due and payable upon receipt of Gensler's invoices. Disputes or questions regarding an invoice or a portion of an invoice shall not be cause for withholding payment for the remaining portions due. Amounts unpaid thirty (30) days after the issue date of Gensler's invoice shall be assessed a service charge of one and one-half percent (1.5%) per month.

This Agreement anticipates that Gensler's services will proceed continuously in accordance with the Project schedule. If the Project is suspended or delayed for reasons beyond Gensler's control, Gensler shall be compensated for expenses incurred due to the interruption and resumption of its services, and the Parties shall mutually agree upon an equitable adjustment of Gensler's fees and the duration for the remaining services.

Note: Rate escalation occurs on July 1 of each calendar year.

GENSLER HOURLY RATES

2022 – 2023 Hourly Rate Schedule

The following are the hourly billing rate ranges for the professionals available to work on your project. If necessary, additional staff may be required during the various phases of your project. These billing rates include salary cost, benefits, overhead, profit, and the cost of administrative staff. These rates are valid May 1, 2022 - April 30, 2023, and are subject to adjustment thereafter

Managing Principals	\$370.00 - \$450.00
Principals	\$245.00 - \$390.00
Design Directors	\$150.00 - \$310.00
Technical Directors	\$190.00 - \$330.00
Digital Design Director	\$320.00 - \$390.00
Senior Design Managers	\$200.00 - \$280.00
Design Managers	\$150.00 - \$210.00
Senior Tech/Architects	\$200.00 - \$280.00
Tech/Architects	\$100.00 - \$210.00
Senior Interior Designers	\$160.00 - \$230.00
Interior Designers	\$100.00 - \$170.00
Graphic/Brand Designers	\$100.00 - \$190.00
Digital Design Strategists	\$150.00 - \$270.00
Industry Specialists	\$210.00 - \$290.00
Consulting Strategist	\$210.00 - \$300.00
Consulting Analyst	\$120.00 - \$180.00
Spec Writers	\$150.00 - \$240.00
Project Coordinators	\$120.00 - \$160.00

**ATTACHMENT “C”
INTENTIONALLY DELETED**

ATTACHMENT “D” PAYMENT SCHEDULE

For the project known as “Feasibility Study For Multi-Purpose Performing Arts And Entertainment Center”, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **\$798,661.00** for all Basic Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

Basic services for design shall include the phases listed below at the fixed fee shown for each phase. The remainder of the fixed contract amount, if any, shall consist of the estimate for the time and materials for the bidding phase and construction phase.

Lump Sum Payment to Consultant

The compensation for each task described in Attachment “A”. Payment shall be made on a monthly basis. The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying Summary and Progress Report and the Owner’s written approval.

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant’s proposal found in **Attachment “B”**. The time shown in **Attachment “B”** is an estimate. Should the services rendered during the construction phase exceed the estimated amount, written authorization will be required prior to rendering service. Written authorization shall be only by contract amendment in accordance with the contract provisions and applicable law.

The Owner shall make payments upon presentation of the Consultant’s detailed Invoice and accompanying Summary and Progress Report and the Owner’s written approval.

The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hours and/or cost, and office/company location.

Reimbursable Costs: Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

Receipts: Legible itemized receipts are required for the following: 1. meals, 2. hotel (lodging) costs, 3. airfare travel costs, 4. parking costs, 5. automobile or equipment rental costs, 6. taxi, limousine, bus, subway, or other travel costs, 7. Reproduction, 8. shipping and handling, 9. local postage/deliveries (courier services), 10. communication costs. ***Tips and alcohol are not reimbursable.***

No single invoice may include items for both August and September of any given year. The Owner’s fiscal year begins on September 1st of each year and ends on August 31st of each year.

The Consultant's invoices must be separated into items that end August 31st and those that begin on Septembers 1st of any given year, to coincide with the Owner's fiscal year.

Communications Costs: Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by the Owner. A log is preferred showing the date, person's name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

Personal Automobile Mileage: Expense report must clearly identify the departure/arrival time, to/from destinations and purpose of trip.

Entertainment Costs: Entertainment costs are not reimbursable, including: 1. Movie costs for "Pay for View" or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

DELIVERABLE SCHEDULE

The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "A"** and the Notice to Proceed.

**ATTACHMENT “E”
INSURANCE CERTIFICATE**

Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

3/1/2023

DATE (MM/DD/YYYY)

3/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
INSURED 1041775 GENSLER 500 SOUTH FIGUEROA STREET LOS ANGELES CA 90071 DALLAS		INSURER(S) AFFORDING COVERAGE INSURER A: Zurich American Insurance Company 16535 INSURER B: Travelers Property Casualty Co of America 25674 INSURER C: Lloyds of London Co. 26247 INSURER D: American Guarantee and Liab. Ins. Co. 24319 INSURER E: Allied World Surplus Lines Insurance Company 10717 INSURER F: Aspen Specialty Insurance Company	

COVERAGES GENSL01 **CERTIFICATE NUMBER:** 2865525 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	GLO0081063	3/1/2022	3/1/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
D	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	BAP3707221	3/1/2022	3/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	N	N	CUP-0T141080	3/1/2022	3/1/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC0081062	3/1/2022	3/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C E F	PROFESSIONAL LIABILITY	N	N	LDUSA2100176 0312-2693 LR00FYF22	4/1/2022 4/1/2022 4/1/2022	4/1/2023 4/1/2023 4/1/2023	\$2,000,000 PER CLAIM/ AGGREGATE \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

2865525
 GENSLER
 5005 GREENVILLE AVENUE
 DALLAS TX 75206

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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