

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

AGENDA DATE: 10/11/2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Elizabeth Triggs, 915-212-0094

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 1 - Cultivate an Environment Conducive to Strong, Economic Development

SUBGOAL: 1.2 - Enhance visitor revenue opportunities

SUBJECT:

A Resolution to authorize the City Manager to sign a Consulting Services Agreement by and between the CITY OF EL PASO and the JLL VALUATION & ADVISORY SERVICES, LLC ("JLL"), for JLL to provide consulting services related to the planning of a regional economic development strategy in an amount not to exceed \$240,000.

BACKGROUND / DISCUSSION:

On September 5, 2017, the El Paso City Council authorized the City Manager to enter into and sign an agreement with JLL to provide consulting services related to the planning of a regional economic development strategy and specifically, evaluating market and financial feasibility associated with the development of a water-park resort in the City of El Paso.

PRIOR COUNCIL ACTION:

On September 5, 2017, the El Paso City Council authorized the City Manager to enter into and sign an agreement with JLL.

AMOUNT AND SOURCE OF FUNDING:

General Fund

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Economic & International Development Department

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD:



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

RESOLUTION

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

That the City Manager be authorized to sign a Consulting Services Agreement by and between the CITY OF EL PASO and the JLL VALUATION & ADVISORY SERVICES, LLC (“JLL”), for JLL to provide consulting services related to the planning of a regional economic development strategy in an amount not to exceed \$240,000.

APPROVED THIS _____ **DAY OF** _____ 2022.

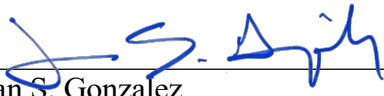
CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director
Economic and International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONSULTING SERVICES AGREEMENT
JLL Valuation & Advisory Services, LLC

THIS CONSULTING SERVICES AGREEMENT (“Agreement”) is entered into by and between **THE CITY OF EL PASO** (the “City”), a home rule municipal corporation, and **JLL VALUATION & ADVISORY SERVICES, LLC**, a corporation organized under the laws of the State of Maryland (“JLL”).

RECITALS

WHEREAS, on September 5, 2017, the El Paso City Council authorized the City Manager to enter into and sign an agreement with Jones Land LaSalle Americas Inc. (JLL Americas, Inc.) to provide consulting services related to the planning of a regional economic development strategy and specifically, evaluating market and financial feasibility associated with the development of a waterpark resort in the City of El Paso; and

WHEREAS, in February 2018, JLL Americas, Inc. delivered that report and its findings to the City, including the project’s market and financial feasibility, as well as its impact to the local economy; and

WHEREAS, following the development of and using information contained in this report, the City entered into a Chapter 380 Program Agreement with Great Wolf Resorts; and

WHEREAS, the City desires to engage JLL to provide professional consulting services (the “Services”) to update the market and financial feasibility study and economic impact analysis completed in February 2018 to assist the City with evaluating the development of a waterpark resort and theme park attraction at two locations in the City of El Paso; and

WHEREAS, the City cannot adequately perform the Services with its own personnel; and

WHEREAS, JLL possesses the skills, knowledge and experience necessary to perform said services for the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**. JLL hereby agrees to perform the services in accordance with the proposal set forth in *Attachment A*, attached hereto and incorporated herein for all purposes.

2. TERM. The services of JLL are to commence upon full execution of this Agreement and shall continue through completion of the services set forth in *Attachment A*, unless terminated sooner as permitted herein.
3. COMPENSATION AND METHOD OF PAYMENT. JLL shall be paid in accordance with the fee schedule set forth on page 4 of *Attachment A*. In no event shall the total amount of this Agreement exceed \$240,000.00. Payment shall be due thirty (30) days from the date of the City's receipt of an invoice in accordance with state laws. The City will provide no fringe benefits to JLL or its employees. JLL hereby agrees that at no time will JLL make a claim against the City for more than the rates provided under the terms of this Agreement.
4. LOCATION OF PERFORMANCE. JLL shall perform the services in the City and County of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.
5. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City shall be entitled to enter into other consulting service agreements with other properly selected individuals or businesses that qualify to provide such services.
6. INDEMNIFICATION. JLL will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSES, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR JLL'S NEGLIGENT PERFORMANCE OF ANY DUTIES AND ACTIVITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to JLL every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. JLL will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as JLL may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. JLL will pay all judgments finally establishing liability of the City in actions defended by JLL pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by JLL, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to JLL's property from any cause.
7. INDEPENDENT CONTRACTOR RELATIONSHIP. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities of JLL incurred in the performance of this Agreement unless otherwise herein authorized.
8. CONFIDENTIAL WORK. JLL recognizes that all materials to be prepared hereunder and all data received by JLL shall be kept in strictest confidence, to the extent permitted by law. JLL shall not divulge such confidential information except as approved in writing by the City or as otherwise required by law. If JLL receives inquiries regarding documents within its possession

pursuant to this Agreement, JLL shall immediately forward such request to the City Attorney's office for disposition.

9. OWNERSHIP. All files and documents generated by JLL as a result of its activity under this Agreement shall remain at all times the property of the City.
10. TERMINATION. Either party may terminate this Agreement without cause after thirty (30) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. Should the City have cause to terminate this Agreement or if JLL is in breach of this Agreement, the Agreement may be terminated immediately upon written notification to JLL of the cause for termination.
11. LAW GOVERNING AGREEMENT/VENUE. For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.
12. NOTICE. Any notice, demand, request, consent or approval that either party may or is required to provide to the other party be in writing and electronically delivered and sent via certified mail, return receipt requested, postage prepaid, to the following addresses:

CITY: City of El Paso
ATTN: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890
EDFinance@elpaasotexas.gov

With a copy to: Economic and International Development Department
ATTN: Director
P.O. Box 1890
El Paso, Texas 79950-1890
EDFinance@elpasotexas.gov

JLL: JLL Hotels & Hospitality Group
ATTN: Charlotte Kang, Managing Director
3344 Peachtree Road NE, Suite 1100
Atlanta, Georgia 30326
Charlotte.Kang@jll.com

With a copy to: Jones Lang LaSalle Americas, Inc.
200 East Randolph Dr.
Chicago, IL 60601
Attention: General Counsel
Michelle.fellows@jll.com

Changes may be made to the names and addresses noted herein through timely written notice to the other party.

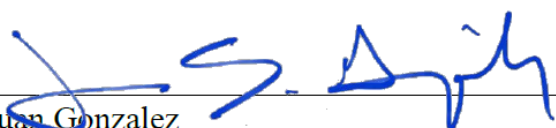
13. COMPLETE AGREEMENT. This Agreement and its attachments constitute and express the entire agreement between the parties hereto in reference to the Consulting Services. In the event that a provision of this Agreement and Exhibit A conflict with one another, the provision contained in this Agreement controls.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of October, 2022.

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:



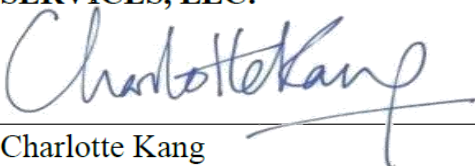
Juan Gonzalez
Senior Assistant City Attorney
Department

APPROVED AS TO CONTENT:



Elizabeth K. Triggs, Director
Economic and Int'l Development

**JLL VALUATION & ADVISORY
SERVICES, LLC:**



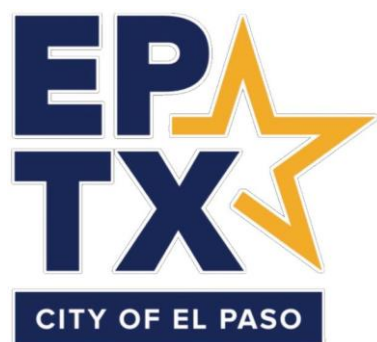
Charlotte Kang
Managing Director
National Practice Lead, Hotels & Hospitality

EXHIBIT A

**JLL VALUATION & ADVISORY SERVICES, LLC
Proposal dated October 5, 2022**

(Follows on the next page)

Prepared for



**Market Study Advisory Proposal
Proposed Waterpark Resort and
Proposed Theme Park Resort at
two non-contiguous sites, El Paso, Texas**

October 5, 2022

Proposal

JLL Valuation Advisory

Charlotte Kang, MAI, FRICS
Managing Director
National Practice Lead, Hotels & Hospitality
+1 404 995 2108 | charlotte.kang@am.jll.com

October 5, 2022

Miranda E. Diaz, M.B.A.
Administrative Division Manager
City of El Paso
Economic & International Development |
123 W. Mills Avenue, Ste. 111
El Paso, Texas 79901
T: +1 (915) 212-1571

sent via email: DiazME@elpasotexas.gov

RE: Market Study Advisory Services for the Property:
Proposed Waterpark Resort and Proposed Theme Park Resort at
two non-contiguous sites, El Paso, Texas (“Property”, “Project”, or collectively “Properties”, “Projects”)

Dear Ms. Diaz:

JLL Valuation & Advisory Services, LLC (JLL VA) is pleased to provide this proposal and engagement letter to City of El Paso (“Client” or “City”) for the market study advisory services regarding the Property.

PROPERTY IDENTIFICATION: **Proposed Waterpark Resort at the southeast corner of Paseo del Norte and Desert Boulevard North El Paso, TX 79932; and Proposed Theme Park Resort in El Paso, Texas**

OUR UNDERSTANDING The City of El Paso is evaluating the development opportunity of a Waterpark Resort (Waterpark Resort) and a Theme Park (Theme Park Resort).

JLL has previously provided a market study, financial projections, and economic impact analysis of the Waterpark Resort in 2018. The Site earmarked for the proposed project consists of approximately 44 acres located at the southeast corner of Paseo del Norte and Desert Boulevard North, El Paso, TX 79932. JLL has been requested to update the aforesaid study.

Theme Park or experiential resort is a new economic endeavor currently being evaluated by the City. The proposed location is contemplated to be in an undisclosed site location in El Paso, Texas. JLL has been requested to study the market demand and conduct financial and economic impact analysis of the proposed theme park and/or experiential resort, as well as the potential viability of a large-scale full-service hotel with conference space.

The eventual objective of the exercise is to help City determine whether the City could accommodate one or both resort hotels and at what size and which site location.

| | |
|------------------------|------------------------------------------------------------------------------------------------------------------------|
| INTENDED USERS: | City of El Paso [NO OTHER USERS ARE INTENDED BY JLL VALUATION & ADVISORY SERVICES, LLC.] |
| INTENDED USE: | To assist client in strategic decision-making purposes |
| SCOPE OF WORK: | Based on our understanding of the assignment objective, we propose the following scope of work for your consideration: |

Project Kick-Off

1. Meet with Client and if necessary, other local groups and parties as identified by the Client that would be impacted by the success or failure of the proposed Projects, to determine the level of research and evaluation completed to date regarding the sites and the development of the Projects.
2. Review conceptual thoughts, preliminary development programs, development cost estimates, opportunities and concerns about the proposed development in El Paso.
3. Understand the calculations of various city, state and/or county incentives that might be available for the proposed development.
4. Obtain from Client a high-level development costs (excluding and including land) for both the proposed Projects.
5. Request any additional information required to complete the feasibility study.

Proposed Waterpark Resort

1. Tour the proposed site and its surrounding environs; schedule to coincide with the project kick-off meeting.
2. Conduct research and analysis to update the JLL previous study issued in February 2018, including all sections of the report (Sections I – VII).
3. Incorporate new trends or recommendations.

Proposed Theme Park Resort

1. Tour the proposed site and its surrounding environs; schedule to coincide with the project kick-off meeting.
2. Conduct SWOT (strength, weakness, opportunity, threat) analysis.
3. Conduct Market Analysis, including
 - a. Review pertinent area demographics in a multitude of drive-in markets in nearby neighboring states and State of Chihuahua, Mexico.
 - b. Research and review local existing attractions in El Paso, Texas.
 - c. Research and review similar large scale theme parks in the U.S. and Mexico and evaluate their concepts and attractions.
 - d. Research and review large-scale entertainment venues in the U.S. and Mexico and evaluate their concepts and attractions.

- e. Compile pertinent physical, pricing and operating characteristics for up to ten to twenty comparable scale theme parks and/or entertainment resorts as benchmarks.
- f. Review overall state of the theme park and entertainment industry trends.
- g. Review area economic profile, airport, real estate and infrastructure developments.
- 4. Conduct Demand Analysis, including
 - a. Review and analyze potential sizing of the available resident and visitor markets and their characteristics to the extent information is available.
 - b. Review and analyze convention activity.
 - c. Analyze potential market capture, attendance and pricing.
- 5. Produce high level development program parameters, including
 - a. Operating schedule
 - b. Design day
 - c. Concept recommendations
 - d. Estimated land area requirements considering entertainment capacity, food service, merchandise sales space and parking.
- 6. Conduct Hotel Analysis, including
 - a. Review comparable hotels/resorts market trends regionally and/or nationally as applicable
 - b. Assess seasonal fill patterns and market mix segmentation (transient, group) for a proposed hotel
 - c. Recommend high level development program for the proposed hotel including number of rooms, meeting space, restaurants, and amenities
 - d. Estimated land area requirements considering size, meeting space and amenities
- 7. Produce preliminary financial feasibility analysis, including
 - a. Ten-year potential operating revenue and net operating income for the theme park resort and full-service hotel.
 - b. High level order-of-magnitude development cost with input from Client.
 - c. Return on investment.
- 8. Conduct high level economic impact and funding and finance analysis, including
 - a. Construction and on-going impact.
 - b. Financial aid (with input from Client) and gap analysis.

Deliverable

- 1. One (1) written report for each Project, totaling two (2) written reports
- 2. One draft report in PDF format and one final report in PDF format
- 3. Up to two (2) 1-hour briefings of our valuation methodology and results in our deliverable with the Client. Additional time and support required from the JLL team will be charged in accordance with our standard hourly billing rate as summarized below. The amount will be charged on a monthly progress billing basis.

| JLL Position | Hourly Rate (USD) |
|--------------------------|-------------------|
| Managing Director | 600 |
| Executive Vice President | 500 |
| Senior Vice President | 400 |
| Vice President | 300 |
| Associate | 200 |
| Analyst | 100 |
| Project Coordinator | 80 |

In-Person Presentation of Findings

1. Prepare presentation material relevant to the public funding request
2. Present findings to stakeholders identified by the Client in person

FEE:

Proposed Waterpark Resort

| | |
|------------------------------------------------|----------|
| Market and Financial Feasibility Study Update: | \$45,000 |
| Economic Impact and Finance Analysis Update | \$30,000 |

Proposed Theme Park Resort

| | |
|-----------------------------------------|----------|
| Market and Financial Feasibility Study: | \$95,000 |
| Economic Impact and Finance Analysis | \$45,000 |

Total **\$215,000**

In-person Presentation (Optional)

| | |
|--------------|----------|
| Presentation | \$15,000 |
|--------------|----------|

Total (with optional in-person presentation) **\$230,000**

PAYMENT SCHEDULE:

| | |
|---------------------------------------------------|----------|
| Upon signing of Letter (non-refundable retainer): | \$50,000 |
| Upon kick-off meeting and site tour: | \$25,000 |
| Upon completion of Waterpark study update | \$50,000 |
| Upon completion of Theme Park Study & Analysis | \$90,000 |
| Upon final presentation | \$15,000 |

PAYMENT TERMS:

Within 30 days of delivery of draft report and invoice from JLL.

EXPENSES:

Reasonable out-of-pocket expenses relating to the assignment will be billed in addition to the fee outlined in this engagement. We will seek Client's approval in advanced for expense amount exceeding \$7,500 for the studies phase of work and \$2,500 for the in-person presentation phase of work.

DELIVERY DATE:

10-12 weeks from engagement and receiving retainer. Delays in obtaining the data, site visits or meetings needed to complete this assignment may result in delays in the date our analysis is completed and delivered.

DELIVERY METHOD:

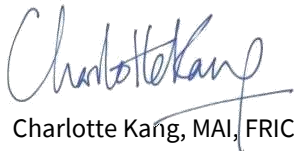
One draft PDF report via E-mail and one final PDF report via E-mail.

This engagement letter is subject to the General Terms and Conditions attached to this letter as Exhibit A, the Statement of Assumptions and Limiting Conditions attached to this letter as Exhibit B.

We appreciate the opportunity to be of service. Please let me know if you have any questions.

Sincerely,

JLL VALUATION & ADVISORY SERVICES, LLC



Charlotte Kang, MAI, FRICS
Managing Director
National Practice Lead, Hotels & Hospitality
t: +1 (404) 995-2108 | e: charlotte.kang@am.jll.com

AGREED AND ACCEPTED BY:
City of El Paso

Signature

Date

Printed Name

Email Address

Title

Phone Number

Exhibit A
Terms and Conditions

1. INTRODUCTION

- 1.1** These Terms and Conditions supplement the proposal, agreement, letter of engagement or email (the “engagement”) between JLL Valuation and Advisory Services, LLC and the Client indicated in the engagement that sets out details of the Services to be provided to the Client. All capitalized terms in this exhibit have the meanings given to them in the engagement unless given a different meaning in this exhibit. These Terms and Conditions, together with the engagement and all other exhibits, schedules and riders to the engagement, are collectively called the “agreement”.

2. SERVICES

- 2.1** We will provide the Services using reasonable care and skill.
- 2.2** We may make changes to the Services if necessary to comply with any law or safety requirement. We will notify you if that happens. Otherwise, JLL and the Client must agree in writing to any changes to the Services, the Fees, or any other provision of the agreement.

3. CLIENT OBLIGATIONS

- 3.1** You agree to give us all documents and other information that we advise you are reasonably necessary for us to provide the Services.
- 3.2** You will maintain adequate property and public liability insurance to reasonably insure property that you own or occupy and any activities on that property. You will obtain all necessary licenses, permissions and consents which may be required to enable us to perform the Services (other than professional licenses that we are required to maintain to perform the Services). You are responsible to keep your property in a safe condition so that we may perform the Services in reasonable safety.
- 3.3** You will notify us promptly if you believe any information you have provided is incomplete or inaccurate.

4. DELAY

- 4.1** We are not responsible for any delay in our performance of the Services if caused by any

event beyond our reasonable control, or for any delay caused by your failure to comply with the agreement.

5. FEES, EXPENSES AND PAYMENT

- 5.1** Our fee in its entirety is earned upon delivery of the first report. We will invoice you at time of delivery for any outstanding balance.
- 5.2** You agree that your obligation to pay the Fee is not contingent upon the results, conclusions or recommendations we provide.
- 5.3** If we are asked to invoice any other party, you agree to settle our invoice immediately if the other party does not do so within 30 days of the date of the invoice.
- 5.4** Delinquent payments under the agreement will earn interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid, or if lower, the maximum rate permitted by law. If the Fee or any part of it remains unpaid 30 days after it was due, you may not use any report or work product we have delivered to you for any reason.
- 5.5** If you terminate this agreement before the Services are completed, you will pay us, no later than the termination date, a reasonable fee proportionate to the part of the Services performed to the date of termination.
- 5.6** Our rights under Section 5.3 and 5.4 are in addition to, and will not limit, our right to pursue any other rights and remedies under the agreement or at law or in equity.

6. INDEMNITY

- 6.1** You agree to indemnify and defend us and hold us harmless from any loss, liability or expense (including attorneys’ fees) arising from a third party action, claim or proceeding (“Loss”) that we suffer arising out of the agreement or the Services, other than Loss that a court of competent jurisdiction has determined was the result of our negligence or willful misconduct. We agree to indemnify and defend you and hold you harmless from any Loss that you suffer arising out of our negligent performance of Services under the agreement, other than Loss that is found by a court of competent jurisdiction to result from your negligence or willful misconduct.

7. EXCLUSIONS OF, AND LIMITATIONS ON, LIABILITY

- 7.1** EACH OF JLL AND THE CLIENT WAIVES ANY CLAIMS AGAINST EACH OTHER FOR LOSS OF PROFITS, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES IN CONNECTION WITH THE AGREEMENT. IN NO EVENT SHALL JLL'S LIABILITY IN CONNECTION WITH THE AGREEMENT EXCEED THE FEE PAID TO JLL HEREUNDER.

8. TERMINATION

- 8.1** Either of us may terminate the agreement without reason by giving 30 days' advance written notice to the other.
- 8.2** Either of us may terminate the agreement immediately if the other breaches the agreement and fails to remedy the breach within 10 days of notice by the non-breaching party.
- 8.3** We may terminate the agreement immediately for any of the following reasons:
- (a) We cannot provide any of the Services due to conditions beyond our reasonable control.
 - (b) In our reasonable opinion, there is insufficient information available to provide a report or other work product that meets our standards.
 - (c) A conflict of interest arises which prevents us from acting for you.
 - (d) You have asked us to provide reports or work product that we do not consider to be accurate.

9. ASSUMPTIONS AND LIMITATIONS

- 9.1** Any report or other work product we deliver as part of the Services will be subject to our standard Statement of Assumptions and Limiting Conditions, provided as an exhibit and as part of the agreement, which will be incorporated into the report or work product.

10. CONFIDENTIALITY

- 10.1** We each agree to maintain the confidentiality of each other's confidential information and will not disclose any information received in confidence from each other, until two years after termination or expiration of the agreement, except where required to do so by law.
- 10.2** Any report or other work product that we deliver to you in connection with the Services is confidential and may be used by only you, unless we agree otherwise in writing.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1** We retain all copyright (and other intellectual property rights) in all materials, reports, systems and other deliverables which we produce or develop for the purposes of the agreement, or which we use to provide the Services.
- 11.2** You will not reproduce or copy any part of any report or other work product we produce as part of the Services without our prior written consent.

12. GENERAL

- 12.1** The agreement may be modified only by a written agreement signed by both of us. Liability accruing before the agreement terminates or expires will survive termination or expiration.
- 12.2** The agreement states the entire agreement, and supersedes all prior agreements, between you and JLL with respect to the matters described in the agreement.
- 12.3** If a court determines that any part of the agreement is unenforceable, the remainder of the agreement will remain in effect.
- 12.4** The agreement is governed by the laws of the State of Illinois. Each of us irrevocably submits to the exclusive jurisdiction of the courts of that State.
- 12.5** The agreement may be executed in multiple counterparts.
- 12.6** No director, officer, agent, employee or representative of either of us has any personal liability in connection with the agreement.
- 12.7** Neither of us may assign or transfer any rights or obligations under the agreement without the prior written approval of the other. We each agree to be reasonable in evaluating such a request for approval.
- 12.8** If there is any conflict between the terms of the letter and this exhibit, the terms of the letter will prevail.
- 12.9** If either of us fails to enforce any provision or exercise any right under the Agreement at any time, that failure will not operate as a waiver to enforce that provision or to exercise that right at any other time.
- 12.10** The agreement does not establish any partnership or joint venture between us, or make either of us the agent of the other.
- 12.11** A person who is not a party to the agreement does not have any rights to enforce its terms unless specifically agreed in writing.
- 12.12** Neither of us may publicize or issue any specific information to the media about the Services or

the agreement without the written consent of the other.

12.13 Each of us represents to the other that it is not a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action. Each of us agrees to comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption.

12.14 If either party does not comply with the obligations under the agreement and legal action is commenced to enforce the rights under the agreement, the losing party will reimburse the prevailing party reasonable costs (including attorneys’ fees), associated with such action.

THE PARTIES HEREBY WAIVE TRIAL BY JURY.

12.15 Upon request by you, we will provide commercial general liability additional insured coverage to the property owner or its affiliates to the extent a loss is attributable to JLL VA’s negligence.

12.16 Sections 5, 6, 7, 10, 11, 12.1, 13, 17 and 18 will survive termination of the agreement.

13. USE OF DATA AND DATA PROTECTION

13.1 You agree as follows: (i) The data we collect in connection with the agreement will remain our property. (ii) We and our affiliates may utilize, sell and include data you have provided (either in the aggregate or individually) in the databases of JLL and its affiliates and for use in derivative products. (iii) We may utilize all data already in the public domain on an unrestricted basis.

13.2 In order for us to provide the Services, we may need to record and maintain in hard copy and/or in electronic form, information regarding the Client, its officers and any other individuals connected with the Client (collectively “Data Subjects”). We may also verify the identity of Data Subjects, which could include carrying out checks with third parties such as credit reference, anti-money laundering or sanctions checking agencies.

13.3 We may use all information that we hold regarding Data Subjects to provide the Services. We may also use and share it with third parties for other purposes as described in our Privacy Statement available at www.jll.com. We may use both commercially available and proprietary

software programs to perform the Services (web based and others).

14. SPECIAL EXPERTS

14.1 If you request our assistance in hiring a special expert to contribute to any assignment (such as a surveyor, environmental consultant, land planner, architect, engineer, business, personal property, machinery and equipment appraiser, among others), you will perform your own due diligence to qualify the special expert. You will be responsible to pay for the services of the special expert.

14.2 We not responsible for the actions and findings of any special expert. You agree to indemnify and defend us and hold us harmless from all damages that may arise out of your reliance on any special expert.

15. CONFLICTS POLICY

JLL adheres to a strict conflict of interest policy. If we learn of a conflict of interest, we will notify you and recommend a course of action to resolve the conflict. If we learn of a conflict that we do not believe can be resolved, we may terminate the agreement without penalty.

16. FIRREA REQUIREMENTS

Federal banking regulations require banks and other lending institutions to engage appraisers where FIRREA compliant appraisals must be used in connection with mortgage loans or other transactions involving federally regulated lending institutions. Given that requirement, any report produced by JLL under the agreement, if ordered independent of a financial institution or agent, might not be FIRREA compliant or acceptable to a federally regulated financial institution.

17. USPAP REQUIREMENTS

The Ethics Rule of the Uniform Standards of Professional Appraisal Practice (“USPAP”) requires us to disclose to you any prior services (appraisal or otherwise) performed within three years prior to the date of this letter by the individual JLL appraiser who will be performing Services for the Property. We represent that to our knowledge, that JLL has not provided prior services within the designated disclosure period, outside of what we have identified.

18. USE OF WORK PRODUCT AND RELIANCE

v. 10_22_2020

- 18.1** You agree that any report or other work product we produce in connection with the Services are for your use only, and only for the purpose indicated in the agreement. No person or entity other than the Client may use or rely on any such report or work product unless we consent otherwise in writing, even if such reliance is foreseeable. Any person who receives a copy of any report or other work product we produce as a consequence of disclosure requirements that apply to the Client, does not become an intended user of this report unless the Client specifically identified them at the time of the engagement.
- 18.2** You will not use any such report or work product in connection with any public documents. You will not refer to JLL in any public documents without our prior written consent. We may give or withhold our consent in our sole discretion for any purpose under this Section 18.
- 18.3** Notwithstanding the foregoing, JLL understands that applicable law in eminent domain proceedings may require you to disclose our reports and work product to landowners and to otherwise make our reports and work product available to the public. To the extent required by applicable law, JLL consents to such disclosure. However, you and only you, and no such landowner or other person or entity, may rely on our reports or our work product.

19. LITIGATION MATTERS

- 19.1** We are not required to testify or provide court-related consultation or to be in attendance in court unless we have agreed to do so in the agreement or otherwise in writing, or if required by law.
- 19.2** If we receive a subpoena or other judicial command to produce documents or to provide testimony in a lawsuit or proceeding regarding the agreement, we will notify you if allowed by law to do so. However, if we are not a party to these proceedings, you agree to compensate us for our professional time at the then prevailing hourly rates of the personnel responding to the subpoena or providing testimony, and to reimburse us for our actual expenses incurred in responding to any such subpoena or judicial command, including attorneys' fees, if any, as they are incurred.

Exhibit B

Statement of Assumptions and Limiting Conditions

1. All reports and work product we deliver to you (collectively called “report”) represents an opinion of value, based on historical information and forecasts of market conditions. Actual results may vary from those forecast in the report. There is no guaranty or warranty that the opinion of value reflects the actual value of the property.
2. The conclusions stated in our report apply only as of the effective date of the analysis, and no representation is made as to the effect of subsequent events. Assessed values may change significantly and unexpectedly over short periods. We are not liable for any conclusions in the report that may be different if there are subsequent changes in value. We are not liable for loss relating to reliance upon our report more than three months after its date.
3. There may be differences between projected and actual results because events and circumstances frequently do not occur as predicted, and those differences may be material. We are not liable for any loss arising from these differences.
4. We are not obligated to predict future political, economic or social trends. We assume no responsibility for economic factors that may affect or alter the opinions in the report if the economic factors were not present as of the date of the letter of transmittal accompanying the report.
5. The report reflects an evaluation of the property free of any liens or encumbrances unless otherwise stated.
6. We assume responsible ownership and competent property management.
7. The assignment process requires information from a wide variety of sources. We have assumed that all information furnished by others is correct and complete, up to date and can be relied upon, but no warranty is given for its accuracy. We do not accept responsibility for erroneous information provided by others. We assume that no information that has a material effect on our analysis has been withheld.
8. We assume the following, unless informed to the contrary in writing: Each property has a good and marketable title. All documentation is satisfactorily drawn and that there are no encumbrances, restrictions, easements or other adverse title conditions, which would have a material effect on the value of the interest under consideration. There is no material litigation pending involving the property. All information provided by the Client, or its agents, is correct, up to date and can be relied upon. We are not responsible for considerations requiring expertise in other fields, including but not limited to: legal descriptions, interpretation of legal documents and other legal matters, geologic considerations such as soils and seismic stability, engineering, or environmental and toxic contaminants. We recommend that you engage suitable consultants to advise you on these matters.
9. We assume that all engineering studies correct. The plot plans and illustrative material in the report are included only to help the reader visualize the property.
10. We assume that there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. We are not responsible for such conditions or for obtaining the engineering studies that may be required to discover them.
11. We assume that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the report. We have not made or requested any environmental impact studies in conjunction with the report. We reserve the right to revise or rescind any opinion of value that is based upon any subsequent environmental impact studies. If any environmental impact statement is required by law, the report assumes that such statement will be favorable and will be approved by the appropriate regulatory bodies.
12. Unless otherwise stated in the report, you should assume that we did not observe any hazardous materials on the property. We have no knowledge of the existence of such materials on or in the property; however, we are not qualified to detect such substances, and we are not providing environmental services. The presence of substances

such as asbestos, urea-formaldehyde foam insulation and other potentially hazardous materials may affect the value of the property. Our report assumes that there is no such material on or in the property that would cause a loss in value. We do not assume responsibility for such conditions or for any expertise or engineering knowledge required to discover them. We encourage you to retain an expert in this field, if desired. We are not responsible for any such environmental conditions that exist or for any engineering or testing that might be required to discover whether such conditions exist. We are not experts in the field of environmental conditions, and the report is not an environmental assessment of the property.

13. We may have reviewed available flood maps and may have noted in the report whether the property is generally located within or out of an identified Special Flood Hazard Area. However, we are not qualified to detect such areas and therefore do not guarantee such determinations. The presence of flood plain areas and/or wetlands may affect the value of the property. Any opinion of value we include in our report assumes that floodplain and/or wetlands interpretations are accurate.
14. We have not made a specific survey or analysis of the property to determine whether it is in compliance with the Americans with Disabilities Act ("ADA"), Stark law or any anti-kickback laws. We claim no expertise in such issues and render no opinion regarding compliance of you or the property with ADA, Stark law or anti-kickback law or regulations.
15. We assume that the property conforms to all applicable zoning and use regulations and restrictions unless we have identified, described and considered a non-conformity in the report.
16. We assume that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the opinion of value contained in the report is based.
17. We assume that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
18. We have not made any investigation of the financial standing of actual or prospective tenants unless specifically noted in the report. Where properties are valued with the benefit of leasing, we assume, unless we are informed otherwise, that the tenants are capable of meeting their financial obligations under the leases, all rent and other amounts payable under the leases have been paid when due, and that there are no undisclosed breaches of the leases.
19. We did not conduct a formal survey of the property and assume no responsibility for any survey matters. The Client has supplied the spatial data, including sketches and/or surveys included in the report, and we assume that data is correct, up to date and can be relied upon.
20. Unless otherwise stated, the opinion of value included in our report excludes any additional value attributable to goodwill, or to fixtures and fittings which are only of value, in situ, to the present occupier. We have made no allowance for any plant, machinery or equipment unless they form an integral part of the building and would normally be included in a sale of the building. We do not normally carry out or commission investigations into the capacity or condition of services being provided to the property. We assume that the services, and any associated controls or software, are in working order and free from defect. We also assume that the services are of sufficient capacity to meet current and future needs.
21. In the case of property where construction work is in progress, such as refurbishment or repairs, or where developments are in progress, we have relied upon cost information supplied to us by the Client or its appointed experts or upon industry accepted cost guides. In the case of property where construction work is in progress, or has recently been completed, we do not make allowance for any liability already incurred, but not yet discharged, in respect of completed work, or obligations in favor of contractors, subcontractors or any members of the professional or design team. We assume the satisfactory completion of construction, repairs or alterations in a workmanlike manner.

22. Any allocation in the report of value between the land and the improvements applies only under the stated program of utilization. The separate values allocated to the land and buildings must not be used in conjunction with any other report and are invalid if so used.
23. The report is confidential to the party to whom it is addressed and those other intended users specified in the report for the specific purpose to which it refers. Use of the report for any other purpose or use by any party not identified as an intended user of the report without our prior written consent is prohibited, and we accept no responsibility for any use of the report in violation of the terms of this Agreement.
24. We are not required to testify or provide court-related consultation or to be in attendance in court unless we have agreed to do so in writing.
25. Neither the whole report, nor any part, nor reference thereto, may be published in any manner without our prior written approval.
26. We may rely on, and will not verify, the accuracy and sufficiency of documents, information and assumptions provided to it by the Client or others. We will not verify documents, information and assumptions derived from industry sources or that JLL or its affiliates have prepared in the regular course of business. We are not liable for any deficiency in the report arising from the inaccuracy or insufficiency of such information, documents and assumptions. However, our report will be based on our professional evaluation of all such available sources of information.
27. JLL IS NOT LIABLE TO ANY PERSON OR ENTITY FOR LOSS OF PROFITS, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL THE LIABILITY OF JLL AND ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEE PAID TO JLL HEREUNDER.
28. Unless expressly advised to the contrary, we assume that appropriate insurance coverage is and will continue to be available on commercially acceptable terms.
29. We assume that no material changes in any applicable federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated.
30. We may determine during the course of the assignment that additional Hypothetical Conditions and Extraordinary Assumptions may be required in order to complete the assignment. The report will be subject to those Hypothetical Conditions and Extraordinary Assumptions. Each person that is permitted to use the report agrees to be bound by all the Assumptions and Limiting Conditions and any Hypothetical Conditions and Extraordinary Assumptions stated in the report.

Exhibit C

Proposal Contact

JLL Valuation Advisory is pleased to be completing the services relating to your property as laid out in our proposal / letter of engagement. Should you have any additional information about the proposal or other matters, please contact the following individual anytime.

Charlotte Kang, MAI, FRICS

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